



ADOBE – EXHIBIT FOR PROFESSIONAL SERVICES (2013v1)

1. Professional Services Definitions

- 1.1. **Time and Materials Engagement:** means engagements where the Parties have agreed to service rate(s) (which may be blended or tiered depending on skill set and measured, for example, in person hours or person days) for estimated services to be performed by Adobe employees or subcontractors over the agreed upon time period. The scope of services to be performed in a Time and Materials Engagement may be described in the Sales Order but may change over the course of the engagement, depending upon Customer's evolving priorities, and as Customer directs. Fees are billed in arrears.
 - 1.2. **Milestone Engagement:** means engagements with fixed-price payments for services that are payable upon the completion of well-defined milestones. Adobe only enters into Milestone Engagements when the following requirements have been met: (i) the engagement has been fully scoped in advance; (ii) the engagement is based upon clearly defined assumptions and Customer dependencies, (iii) the level of effort required for each milestone has been ascertained clearly in advance, and (iv) an appropriate risk premium has been built into the pricing.
 - 1.3. **Capped Hours Engagement:** means engagements where the Parties have agreed to a general description of work to be completed, and for which there is an agreed upper limit on the total hours to be provided (e.g. an engagement where Customer will receive assistance on the described project, but only until the cap is reached, regardless of project status). Unless otherwise noted in the Sales Order, any hours under the cap which remain unused twelve (12) months following the start date of the applicable engagement will expire and cannot be used for any other purpose. Fees are billed in advance.
 - 1.4. **Consultant Retainer:** means engagements for which Customer purchases a number of hours per period (e.g. week, month, or year) to be deployed as needed over the term of the retainer (e.g. an engagement where Customer may consume up to ten (10) hours per month over a period of one year). Hours not consumed within each period expire, do not carry over to future periods, and are not interchangeable with other Adobe consulting engagements
 - 1.5. **Training:** means training services provided at an approved Adobe training facility or on-site at the fees and for the time period and number of individuals set forth in the Sales Order.
2. **License.** For all Services engagements (i.e. Time and Materials Engagements, Capped Hours Engagements, Milestone Engagements, Consulting Retainers and Training Services), unless mutually agreed in writing by Adobe and Customer, the following terms shall apply:
- 2.1. Adobe grants to Customer a non-exclusive license to use the materials developed and provided to Customer in performance of the Services ("Deliverables") for internal business purposes. (The previous sentence is not intended to supersede or modify the license grants for OnPremise Software or OnDemand Services.)
 - 2.2. As between Adobe and Customer, Adobe retains all rights (including intellectual property rights) to Adobe Technology and the Deliverables. To the extent that Customer participates in the creation or modification of Adobe Technology or Deliverables, Customer expressly waives, and hereby assigns to Adobe, any intellectual property rights therein.
3. **Employment Taxes and Obligations.** Adobe acknowledges and agrees that it shall pay for all taxes and other obligations arising from its employment of its employees or contractors performing the Professional Services provided hereunder.
4. **Acceptance.** For Milestone Engagements, unless otherwise mutually agreed in writing by Adobe and Customer, the Services associated with a Milestone will be deemed accepted upon completion of the Milestone (as set forth in the description of the Services in the Sales Order). Deliverables for a Milestone may only be rejected for failure to comply with the acceptance criteria set forth in the Sales Order, if any. If Deliverables are rejected, they shall be rejected in writing, within five (5) business days of delivery, specifying the non-conformity to the applicable acceptance criterion. Any deliverables not rejected within said period (or such longer period as the parties may



mutually agree in writing) shall be deemed accepted. If a Deliverable is rejected, Adobe shall be given a reasonable opportunity for re-performance, after which the same acceptance procedure shall be repeated by Customer.

For Time and Materials Engagements, Capped Hours Engagements, Consulting Retainer, and Training, Services shall be deemed accepted when performed unless otherwise mutually agreed in writing by Adobe and Customer.

5. **Professional Services Limited Warranty; Remedies.** Adobe warrants for a period of thirty (30) days from the performance of the Service that the Service was performed in a professional and workmanlike manner. CUSTOMER'S SOLE REMEDY FOR BREACH OF THIS WARRANTY SHALL BE RE-PERFORMANCE OF THE SERVICE.
6. **Privacy; Sensitive Data.** Adobe structures its services engagements whenever possible to avoid the transmission to Adobe of information that is regulated by applicable privacy or data protection laws ("Protected Data") (for example, by using "dummy data") when configuring or testing solutions). Moreover, the transmission of Protected Data may require the recipient to undertake special precautions and use appropriate infrastructure for the handling of Protected Data (and, in some circumstances, enter into ancillary agreements such as a Business Associate Agreement before it may legally receive such information). Absent compelling business reasons for doing so, Adobe does not wish to receive Protected Data. Accordingly, Customer shall not transmit Protected Data to Adobe unless Adobe and Customer have mutually agreed in writing to terms specifying that Adobe has agreed to receive Protected Data, and detailing the protocol for the transmission and processing of Protected Data for the Services engagement.
7. **Terms of Cancellation for Training.**
 - 7.1. Any request by Customer to cancel any Training Services ("Cancellation") must be received in writing and confirmed by Adobe. If such confirmed request was received at least ten (10) business days before the Start Date of the applicable Services, Customer may reschedule the canceled Services without additional charge. If such confirmed request was received between six (6) and ten (10) days before the scheduled Start Date of the applicable Services, Adobe will refund Customer half the applicable Fees to which Services the request pertains. If such confirmed request was received less than five (5) days before the scheduled Start Date of the applicable Services, then Customer shall not be entitled to a refund of any Fees applicable to such Services. If Customer fails to use the rescheduled Services within twelve (12) months of original notice of Cancellation, Customer will forfeit all Fees applicable to such Services.
 - 7.2. If a registered attendee does not show up for the scheduled Services (e.g course), or if due to the fault of Customer, Adobe is unable to perform Services, Customer will forfeit all Fees applicable to such Services.
 - 7.3. Adobe reserves the right to cancel Training Services at any time. In the event of such cancellation, Customer may choose to (i) receive a full refund of applicable Fees, or (ii) reschedule for the affected Services. In the event that Customer chooses to reschedule, but fails to complete or use the rescheduled Services within twelve (12) months of original notice of Cancellation, Customer will forfeit all Fees applicable to such Services.
 - 7.4. There will be no partial delivery on any of the individually listed Training set forth in a Sales Order.
8. **Practical Training Requirements.** For on-site Training, minimum requirements (i.e. minimum PC requirements, space, projector, etc.) shall be provided to Customer in advance of the Start Date of the applicable Services. If Customer fails to meet these requirements on the Start Date, resulting in the inability of Adobe to perform Services, such failure shall be considered a Cancellation.
9. **Use of Subcontractors.** Customer agrees that Adobe may use subcontractors in performance of professional services engagements. Adobe agrees that it shall bear the same degree of responsibility for its subcontractors with respect to this Agreement that it would bear if they were employees.