



## EXHIBIT FOR MANAGED SERVICES (2014v1) (APAC)

This Exhibit for Managed Services, in addition to the General Terms and any applicable PDM, applies to any Managed Services offering licenced by the Customer.

### 1. DEFINITIONS

- 1.1 **"CAB"** means the Change Advisory Board, a panel of Adobe employees who must approve any changes requested by Customer or the Development Partner to the Managed Services in the Production Phase.
- 1.2 **"Customer Content"** means any information or material that is provided to Adobe in connection with Customer's use of Managed Services, such as audio, video, text, and images.
- 1.3 **"Customer Customizations"** means the customizations made to the Managed Services by Customer, the Development Partner, or both during the Pre-Production Phase. Customer Customizations do not constitute Indemnified Technology.
- 1.4 **"Customer Data"** means (A) any data or information collected from the Customer Site or Customer's search engine providers, via the Distributed Code; or (B) any data or information that Customer imports into the Managed Services from its internal data stores or other sources not supplied by Adobe.
- 1.5 **"Customer Site"** means any current or future website or application: (A) that is owned and operated by Customer, or is hosted or operated by a third party or Adobe on Customer's behalf; (B) that contains Customer's brand or logo; and (C) that contains a privacy policy or data collection practices that Customer maintains and controls, or that complies with applicable privacy or data protection laws that mandate the privacy disclosures and data collection practices for such website or application.
- 1.6 **"Development Partner"** means a third party systems integrator who has rights to access and customize the Managed Services during the Pre-Production Phase as a result of that party's relationship with or connection to Customer.
- 1.7 **"Managed Services User"** means, unless otherwise described in this Agreement, Customer's employees, third-party contractors described in the "Outsourcing and Third-party Access" clause of the General Terms, or those whom Customer is permitted under this Agreement to allow access to the Managed Services.
- 1.8 **"Personal Data"** is given the meaning under the relevant privacy or data protection laws, or where no such laws apply, means any information that by itself or when combined with other information (such as telephone number, e-mail address, precise real-time GPS location, and government-issued identification number) can be used by Adobe to identify a specific natural person.
- 1.9 **"Pre-Production Phase"** means the period of time before the Production Phase in which Customer or Development Partner (A) may customize and test the components and features of the Managed Services for the purpose of evaluating potential configurations of the Managed Services; (B) may conduct quality testing of those configurations by performing bug elimination, simulations and integration with other Customer systems; and (C) if applicable, as noted in the relevant PDM, creates a Runbook and obtains Adobe's written approval of such Runbook.
- 1.10 **"Production Phase"** means the period of time when Managed Services Users use the Managed Services (A) on Customer Sites; or (B) for its internal operations.
- 1.11 **"Report"** means any graphical or numerical display of Customer Data that contains Adobe's proprietary design, look and feel, which is generated by the Managed Services.
- 1.12 **"Runbook"** means a document written by Customer, the Development Partner, or both, which provides Adobe with a list of the Customer Customizations and configurations Customer, the Development Partner, or both, made to the Managed Services. If applicable, such list is intended to assist Adobe in running and supporting the Managed Services in the Production Phase.

- 1.13 **“Sensitive Personal Data”** is given the meaning under relevant privacy or data protection laws, or where no such laws apply, means financial information (including financial account information), sexual preferences, medical or health information, and personal information of children protected under any child protection laws (such as the personal information defined under the US Children’s Online Privacy Protection Act).

## 2. LICENCE AND RESTRICTIONS

### 2.1 Licence Grant from Adobe

(A) Subject to the terms of this Agreement, Adobe grants Customer, during the Licence Term, a non-transferable, non-exclusive, and worldwide licence to:

(1) **Pre-Production Phase:**

- (a) develop and test Customer Customizations for the purpose of evaluating potential configurations of the Managed Services; and
- (b) conduct quality testing of Customer Customizations.

(2) **Production Phase:**

- (a) permit Managed Services Users to access the Managed Services through the applicable interfaces;
  - (b) install, implement, and use the Distributed Code;
  - (c) use and distribute Reports internally within Customer’s business, solely for Customer’s use of the Managed Services (a) on Customer Sites; or (b) for its internal operations.
- (B) Nothing in this Agreement grants Customer any express or implied licence to use, distribute, modify, copy, link, or translate the Distributed Code, other than for Customer’s use of the Managed Services.

### 2.2 Licence Restrictions

Except as permitted under this Agreement, Customer must not:

- (A) attempt to interact with the operating system underlying the Managed Services;
- (B) copy, use, reproduce, distribute, republish, download, display, post or transmit, the Managed Services, Distributed Code or Reports;
- (C) sell, rent, lease, host, or sub-license the Managed Services, the Distributed Code or the Reports;
- (D) make Customer’s login IDs or passwords available to any third party;
- (E) use, modify, copy, link, translate, or reverse engineer the Distributed Code to enhance or enable the use of any third-party product or service;
- (F) remove, obscure, or alter any proprietary notices associated with the Managed Services, Distributed Code, or Reports; or
- (G) use the Managed Services, Distributed Code, or Reports in violation of any applicable law (including use on websites that contain unlawful material such as material that violates any obscenity, defamation, harassment, privacy, or intellectual property laws).

2.3 **Managed Services User IDs.** Unless otherwise specifically limited in the Sales Order, Managed Services User passwords and login IDs for the Managed Services will be provided to Customer in an amount mutually agreed upon by Customer and Adobe. Customer must take steps to prevent unauthorized access to its login IDs and passwords, and must not allow the use of the same login ID simultaneously by two or more Managed Services Users.

### 2.4 Licence Grant from Customer

(A) During the Licence Term, Customer grants Adobe and its Affiliates a non-exclusive, worldwide, royalty-free licence to use, copy, transmit, sub-license, index, store, and display Customer Data and Customer Content, solely to the extent necessary to provide the Managed Services and Reports to Customer and enforce its rights under this Agreement.

- (B) Additionally, Customer grants Adobe and its Affiliates a non-exclusive, perpetual, worldwide, and royalty-free licence to use, copy, transmit, sub-license, index, model, aggregate (including combination with similar data of other customers of Adobe or its Affiliates), publish, display, and distribute any anonymous information derived from Customer Data, such as, but not limited to, web browser, screen resolution, and mobile device-type information.

### **3. OWNERSHIP**

Customer owns the Customer Data and Customer Content, subject to Adobe's underlying intellectual property in the Adobe Technology. Adobe owns the Adobe Technology.

### **4. PRE-PRODUCTION PHASE**

During the Pre-Production Phase, Customer is responsible for:

- 4.1 creating a Runbook and providing the Runbook to Adobe for review;
- 4.2 obtaining Adobe's written approval of the Runbook; and
- 4.3 ensuring the completeness and accuracy of the Runbook, including the listing of all Customer Customizations in the Runbook.

### **5. PRODUCTION PHASE**

During the Production Phase, Customer may not make customizations to the Managed Services. If Customer desires to make any customizations to the Managed Services in the Production Phase, the following will apply:

- 5.1 Customer will request that Adobe launch a cloned staging server, implement such customizations and request that such customizations be reviewed and approved by the CAB;
- 5.2 the Managed Services will then revert back to the Pre-Production Phase in connection with such customizations on such cloned server; and
- 5.3 Adobe will continue to simultaneously run the Managed Services in the Production Phase while such customizations are in the Pre-Production Phase.

### **6. CUSTOMER CUSTOMIZATIONS**

Customer is solely responsible for all security testing of Customer Customizations, and Adobe has no obligation or responsibility in connection with any failure or defect caused by Customer Customizations or Customer's failure to meet the obligations in clause 4.

### **7. DEVELOPMENT PARTNERS.** Customer may appoint Development Partners to develop and test Customer Customizations during the Pre-Production Phase, subject to the following limitations and restrictions:

- 7.1 Customer may provide the appointed Development Partners access to the Managed Services, including user logins and passwords, solely for the internal business purposes of Customer and related to Customer's use of the Managed Services during the Pre-Production Phase;
- 7.2 prior to providing the Development Partner with access to the Managed Services, Customer will enter into a confidentiality agreement with the Development Partners at least as protective as the confidentiality terms in this Agreement;
- 7.3 if, during the term of this Agreement, Customer learns that the Development Partner is, has become, or plans on becoming a direct competitor of Adobe for the Managed Services, then Customer will immediately terminate the Development Partner's access to the Managed Services and any other Confidential Information of Adobe;
- 7.4 Customer must ensure that the Development Partner complies with all terms of this Agreement, as applicable, and Customer remains liable for any acts or omissions of the Development Partner which result in a breach or violation of this Agreement, including indemnifying Adobe for any and all third party claims arising from such acts or omissions of Development Partner; and

- 7.5 Adobe may deny access to any Development Partner it deems is adversely impacting the Managed Services or other Managed Services Users.

## 8. CONTENT MONITORING

Customer must implement a process through which infringing, abusive, or otherwise unlawful content can be reported to Customer and removed in accordance with applicable laws, regulations, rules, guidelines, codes, and industry best practices. If Customer Content is hosted by Adobe, and if Customer becomes aware of a possible violation regarding any Customer Content that is uploaded to the Managed Services, Customer must promptly notify Adobe. Customer acknowledges that although the Managed Services may be used to modify or edit Customer Content to be posted or integrated into Customer Sites on Customer's behalf, Customer: (A) retains complete control over each Customer Site and all Customer Content; and (B) remains fully responsible for ensuring that all Customer Sites used with the Managed Services and all Customer Content: (1) fully comply with all applicable laws, regulations, rules, guidelines, and codes; and (2) do not infringe any person's or entity's rights. Customer acknowledges and agrees that nothing in this clause prevents Adobe from suspending services to comply with an applicable court order.

## 9. USE OF ONLINE SERVICES

The Managed Services may facilitate Customer's access to APIs or other websites maintained by Adobe or its affiliates or third parties offering services (collectively, "**Online Services**"). Use of Online Services may be subject to additional terms. Except as expressly agreed by Adobe, its Affiliates or a third party in a separate agreement, Customer's use of Online Services is at its own risk.

## 10. TERMINATION OR EXPIRY

10.1 **Termination or Suspension.** Despite anything in the General Terms, if Adobe determines, in its sole judgment, that Customer's deployment of the Managed Services contains a material risk to the security of Adobe, any customer of Adobe, or to the continued normal operations of other Adobe customers, then Adobe may at any time, upon written notice to Customer, immediately terminate or suspend Customer's access, in whole or in part, to the Managed Services, until such risk is resolved. Adobe will use commercially reasonable efforts to mitigate any such security or operational risk prior to suspension or termination and only will look to such efforts as a final option to avoid such risks. Further, Adobe may terminate or suspend Customer's access, in whole or in part, to the Managed Services, if Adobe deems, in its sole judgment, that such termination or suspension is necessary to protect Adobe from liability.

10.2 **Effect of Termination.** Upon termination or expiry of this Agreement or any Licence Term for Managed Services:

- (A) the licence and associated rights for Managed Services granted to Customer under this Agreement will immediately terminate; and
- (B) Customer must, at its expense: (1) remove and delete all copies of the Distributed Code; and (2) remove all references and links to the Managed Services from the Customer Sites.

Any continued use of the Distributed Code or Managed Services after termination or expiry of this Agreement constitutes a breach of this Agreement, and Customer will be liable for any fees for any Managed Services that remain active after the termination or expiry. These fees will be invoiced to Customer at the rate set out in the Sales Order.

## 11. PRIVACY

11.1 **Compliance with Laws.** Customer is responsible for complying with (including giving any notifications, obtaining any consents, and making any disclosures required under) applicable privacy and data protection laws, regulations, rules, guidelines, and codes. Customer must ensure it does not directly or indirectly cause Adobe or third-party providers that operate servers or host data for the Managed Services to breach any laws, regulations, rules, guidelines, and codes in the collection, storage, access, transfer, use or disclosure of Personal Data arising from or in connection with this Agreement.

- 11.2 **Customer's Users.** Adobe does not communicate with Customer's users directly. Where required under applicable privacy and data protection laws, regulations, rules, guidelines, or codes, Customer must ensure that:
- (A) each Customer Site contains a notice to its users that identifies the collection, use, disclosure, and transfer of their Personal Data by Customer, Adobe, or third party host providers in connection with the Managed Services; and
  - (B) Customer, when disclosing or transferring Personal Data from any source (including Customer Sites) to Adobe or third party host providers, complies with the requirements for such disclosure or transfer.
- 11.3 **Sensitive Personal Data.** Customer must not use the Managed Services to collect, process, or store any Sensitive Personal Data of its employees, customers, partners, site visitors, or any third party. Customer must not under any circumstances transmit, disclose or make available Sensitive Personal Data to Adobe or third-party providers.

## 12. CLAIMS

- 12.1 Customer must defend any Claims brought by any person against Adobe, its Affiliates (and directors, employees, or agents of Adobe or its Affiliates), and third-party providers ("**Indemnified Parties**"), which arise in connection with (A) Customer's breach of any of its privacy or content monitoring obligations; (B) any violation of Customer's privacy policy, any third party's rights of privacy, or any privacy or data protection laws, guidelines, regulations, codes, or rules; (C) any Customer Data or Customer Content; or (D) any Customer Customizations. Customer will, in each case, indemnify the Indemnified Parties against their Losses arising out of or in connection with the foregoing (A), (B), (C) or (D) in this clause and are either awarded by a court of competent jurisdiction against Adobe; assessed by a government agency or regulator; or agreed to in a written settlement agreement signed by Customer. The Limitation of Liability provision in the General Terms does not apply to Customer's liability or obligations under this clause.
- 12.2 Customer will have no liability for any Claim under clause 12.1 of this Managed Services Exhibit if Adobe fails to:
- (A) notify Customer in writing of the Claim promptly upon the earlier of learning of or receiving a notice of it, to the extent that Customer is prejudiced by this failure;
  - (B) provide Customer with reasonable assistance requested by Customer for the defense or settlement (as applicable) of the Claim;
  - (C) provide Customer with the exclusive right to control and the authority to settle the Claim (Adobe may participate in the matter at Adobe's own expense); or
  - (D) refrain from making admissions about the Claim without Customer's prior written consent.

## 13. LIMITED WARRANTY; REMEDIES

- 13.1 **Warranty.** Adobe warrants that the Managed Services as delivered to Customer will substantially conform to the applicable Documentation during the Licence Term, to the extent the Managed Services constitute Indemnified Technology. Customer must notify Adobe of a claim under this warranty within 30 days of the date on which the condition giving rise to the claim first appeared.
- 13.2 **Sole and Exclusive Remedies.** To the extent permitted by law, Customer's sole and exclusive remedy and Adobe's sole liability arising out of or in connection with a breach of the warranty in clause 13.1 (Limited Warranty; Remedies) of this Exhibit is limited to:
- (A) a replacement of the Distributed Code (as applicable); or
  - (B) if replacement is not commercially reasonable, a termination of the applicable Managed Service and a refund of any pre-paid unused fees for the applicable Managed Service.
- 13.3 **Australian Consumer Law.** If Customer is an Australian consumer, Adobe's goods come with guarantees that cannot be excluded under the Australian consumer law. Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable

quality and the failure does not amount to a major failure. To make a warranty claim under clause 13.1 (Warranty) of this Exhibit, Customer must call the Adobe Customer Support Department at 1800 614 863.