



PSLT – Store Fulfillment for Adobe Commerce by Walmart Commerce Technologies (2023v1)

1. Additional Definitions.

- 1.1. **“Adobe Licensor”** means Walmart, Inc., a Delaware corporation, having its principal place of business at 850 Cherry Avenue, San Bruno, CA 94066.
- 1.2. **“Store Assist”** means Adobe Licensor’s mobile application (including any content, services, technology, data, extensions, media, and libraries that are enclosed in a single software bundle) currently named “Store Assist by Walmart,” including bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases, new versions and patches thereof, made available through the Apple App Store or the Google Play Store.
- 1.3. **“Store Fulfillment”** means Adobe Licensor’s omnichannel buy-online, pick-up in store technology services currently named “Store Fulfillment for Adobe Commerce by Walmart Commerce Technologies,” hosted by or on behalf of Adobe Licensor and provided to Customer, as set out in the Sales Order, including access to Store Assist. Store Fulfillment will be deemed Adobe Licensor’s Confidential Information without any marking or further designation. For the purposes of this PSLT, Store Fulfillment is considered an On-demand Service but is not an Adobe Cloud Service (as defined in this Agreement or the applicable Data Protection Terms).

Capitalized terms used and not defined in this PSLT have the meanings given to such terms in the General Terms.

2. **Store Fulfillment Minimum Terms.** Store Fulfillment is provided under the minimum terms attached hereto as Exhibit A-1 (the **“Minimum Terms”**) and incorporated by reference.
3. **Support Services.** Adobe will only support the Store Fulfillment solution described in the Product Description for Store Fulfillment (as referenced in the Minimum Terms). Neither Adobe nor Adobe Licensor will have any obligation to support or maintain Store Fulfillment except as described in the Product Description for Store Fulfillment. Notwithstanding anything to the contrary in the Sales Order, all priority issues and issues related to the performance of Store Fulfillment (each a **“Service Request”**) should be submitted pursuant to the Adobe Support Services Terms and Conditions described at: <https://helpx.adobe.com/support/programs/support-policies-terms-conditions.html> (or its successor location), and as may be updated by Adobe from time to time. If a Service Request relates to a problem in the usage of Store Fulfillment, Customer will provide Adobe with sufficient access and detail to permit Adobe to understand and reproduce the problem.
4. **Adobe as a Service Provider.** Customer acknowledges that: (a) Adobe is acting as a service provider for Customer in connection with Customer’s licensing of Store Fulfillment; (b) Adobe has no ownership rights in Customer Data; and (c) Adobe does not have any lawful basis to process Customer Data except in Adobe’s capacity as a service provider to Customer.

EXHIBIT A-1 – MINIMUM TERMS

1. Definitions

- 1.1 **“Agreement”** means the General Terms, the PSLT and the Sales Order, together with any exhibits included with the Sales Order.
- 1.2 **“Customer Data”** means any information that is imported by or on behalf of Customer into Store Fulfillment from Customer’s internal data stores or other third-party data providers, in connection with Customer’s use of Store Fulfillment.
- 1.3 **“Product Description”** means the product description for Store Fulfillment found here: <https://helpx.adobe.com/legal/product-descriptions.html>.
- 1.4 **“Sensitive Personal Data”** means an individual’s financial information, sexual preferences, medical or health information protected under any health data protection laws, biometric data (for purposes of uniquely identifying an individual), 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 (“**COPPA**”)) and any additional types of information included within this term or any similar term (such as “sensitive personal information” or “special categories of personal information”) as used in applicable data protection or privacy laws.

Capitalized terms used and not defined in these Minimum Terms have the meanings given to such terms in this Agreement.

2. License and Restrictions

- 2.1 **License Grant.** Subject to the terms and conditions of these Minimum Terms, Adobe grants Customer for its direct beneficial business purposes, during the License Term, a non-transferable, non-exclusive license to: (A) permit Users to access Store Fulfillment; and (B) use Store Fulfillment in accordance with the Product Description. Store Assist can be downloaded from the Apple App Store or the Google Play Store, and Customer will be responsible for compliance by Customer and any other Users with such additional terms imposed by the distribution platform on or through which Customer or any other User downloaded or otherwise accessed Store Assist, including iOS or Android.
- 2.2 **License Conditions.** Except to the extent expressly permitted under these Minimum Terms, Customer agrees as a condition of the licenses that it must not (and must ensure that its Users, Affiliates, employees, contractors, and other third parties do not):
 - (A) access or use, or provide any means of access to Store Fulfillment or the Product Description in any manner other than as expressly permitted under this Agreement, including any restrictions on the locations in which Store Fulfillment may be used;
 - (B) modify, translate or create any derivative works based upon Store Fulfillment or the Product Description; make any unauthorized configurations to Store Fulfillment, or otherwise use Store Fulfillment or Product Description for the purpose of developing, providing, or using a competing product or service;
 - (C) provide any means of access to, or otherwise display or transmit Store Fulfillment except as made available by Adobe or Adobe Licensor;
 - (D) use Store Fulfillment in: (1) violation of any applicable law or regulation, including US sanctions and export control laws, or in connection with unlawful material; (2) a manner that would cause a material risk to the security or operations of Adobe Licensor or any of their respective customers, or to the continued normal operation of other Adobe Licensor customers; or (3) a manner that would violate the legal rights of any third party;
 - (E) attempt or purport to copy, use, distribute, republish, download, display, transmit, sell, rent, lease, host, assign, transfer or sub-license Store Fulfillment or Product Description;

- (F) attempt to interact with the operating system underlying Store Fulfillment, or modify, create derivative works of, adapt, translate, reverse engineer (including monitoring or accessing the inputs and output flowing through a system or an application), disassemble, decompile, decode, adapt or otherwise attempt to discover within Store Fulfillment, the source code, data representations, or underlying algorithms, procedures, workflows, hierarchies, processes and methods or any other software component, or otherwise use Store Fulfillment or Product Description for the purpose of developing, providing, or using a competing product or service (this restriction will not apply to the extent it limits any non-waivable right Customer may enjoy under applicable law); or
- (G) remove, obscure, or alter any proprietary notices, disclaimers, confidentiality, or other legal notice associated with Store Fulfillment.

3. Ownership. Customer owns (or where applicable, must ensure it has a valid license to) the Customer Data, subject to Adobe Licensor's underlying intellectual property in Store Fulfillment.

4. Permitted Use.

4.1 Customer grants Adobe Licensor, Adobe, and their respective Affiliates a non-exclusive, worldwide, royalty-free license to use, copy, transmit, sub-license, index, store, and display Customer Data: (A) to the extent necessary to perform their respective obligations (including, but not limited to, developing, modifying, improving, supporting, customizing, and operating Store Fulfillment) or enforce their respective rights under this Agreement; or (B) where required or authorized by law.

4.2 Adobe Licensor may use, copy, transmit, index and model Customer Data for the purpose of (A) developing, improving or customizing Store Fulfillment, and (B) publishing, displaying and distributing any anonymous information derived from Customer Data.

5. Usage Analytics. Adobe Licensor may develop, modify, improve, support, customize and operate its products and services based on Customer's use, as applicable, of Store Fulfillment.

6. Service Level Agreement. The service level agreement and the minimum uptime percentage obligations for Store Fulfillment are detailed in Schedule 1 attached hereto ("**Service Level Agreement**").

7. Retained Rights. Adobe Licensor reserves all other rights not expressly granted in these Minimum Terms. Without limiting the generality of the foregoing, Customer acknowledges and agrees that: (A) except as specifically set forth in these Minimum Terms, Adobe Licensor retains all rights, title and interest in and to Store Fulfillment and the Product Description, and Customer acknowledges and agrees that it does not acquire any rights, express or implied, therein; (B) any configuration or deployment of Store Fulfillment will not affect or diminish Adobe Licensor's rights, title, and interest in and to Store Fulfillment; and (C) if Customer suggests any new features, functionality, or performance for Store Fulfillment that Adobe Licensor subsequently incorporates into Store Fulfillment, such new features, functionality, or performance will be the sole and exclusive property of Adobe Licensor and will be free from any confidentiality restrictions that might otherwise be imposed upon Adobe Licensor.

8. No Customizations. Customer, authorized Affiliates, and Users have no right to, and may not, make any customizations or changes to Store Fulfillment, other than configurations enabled by Adobe Licensor as part of Store Fulfillment.

9. Third-Party Providers. Customer is solely responsible for complying with any applicable terms and conditions of any third-party data, products, services, and platforms used by Customer in conjunction with Store Fulfillment. Adobe Licensor and Adobe will not be responsible for any defect or failure in Store Fulfillment caused by third-party data, products, services, and platforms.

10. Fraudulent Use. Adobe Licensor and Adobe will not be responsible for fraudulent or unauthorized use of Store Fulfillment by Customer or any third party.

11. Compliance. Customer, and not Adobe Licensor or Adobe, will be solely liable and responsible for complying with all applicable laws, rules, regulations, orders, and other requirements of governmental agencies applicable to it and its use

of Store Fulfillment. For example, Customer that sells age or other restricted products will be responsible for any obligations to confirm the identity and age of the purchaser. For the avoidance of doubt, Adobe Licensor will have no liability to Customer of any type with respect to the Customer's use of Store Fulfillment unless such exclusion of liability is not enforceable under applicable law.

12. Regional Service Limitations. Customer is not permitted to use, or allow its Users to use, Store Fulfillment in any country or region outside of the United States of America, Canada, or the United Kingdom.

13. Store Assist Login Credentials. Customer will enable each User of Store Assist to establish a username and password for Store Assist ("Login Credentials"). Customer, not Adobe or Adobe Licensor, is solely responsible for (A) maintaining the confidentiality and security of all Login Credentials of each User and (B) any and all access and use of Store Assist that occurs under the Login Credentials for any User. Customer agrees to immediately notify Adobe and Adobe Licensor of any unauthorized use or disclosure of, or access to, the Login Credentials of any User.

14. Third Party Beneficiary. Notwithstanding anything to the contrary in this Agreement, Adobe Licensor will be a third-party beneficiary of this Agreement with the independent right to enforce the terms directly against Customer to the extent the terms relate to Store Fulfillment and Adobe Licensor, including, for example: license grant and restrictions, third-party access, Customer Content and Customer Data, confidentiality, indemnities, limitation of liability, warranties, license compliance, effect of termination, governing law/venue, force majeure, injunctive relief, and trade rules. For the avoidance of doubt, Adobe Licensor will not be a third-party beneficiary with respect to Adobe's right to collect payment from Customer for the fees due under the Sales Order.

15. Security and Privacy.

15.1 Adobe is not selling Customer Data to Adobe Licensor as part of Customer's licensing of Store Fulfillment.

15.2 Customer agrees not to collect, process, or store any Sensitive Personal Data using Store Fulfillment. Customer agrees not to transmit, disclose, or make available Sensitive Personal Data to Adobe Licensor.

15.3 Customer acknowledges that Adobe Licensor has established and maintains a reasonable information security and privacy program for Store Fulfillment, which includes appropriate physical, technical and administrative safeguards sufficient to protect the Customer Data from unauthorized or unlawful destruction, loss, alteration, disclosure or access, solely with respect to Adobe Licensor's capacity as a sub-processor of Adobe (where Adobe is a service provider to Customer). Any documentation or other information related to Adobe Licensor's information security and privacy program for Store Fulfillment will be deemed Adobe Licensor's Confidential Information without any marking or further designation. Except as otherwise set out in these Minimum Terms or when Adobe Licensor processes Customer Data via Store Assist, Customer acknowledges that Adobe Licensor will process Customer Data solely in Adobe Licensor's capacity as a sub-processor of Adobe (where Adobe is a service provider to Customer). In respect of Adobe Licensor's processing of Customer Data via Store Assist, Customer acknowledges that Adobe Licensor will process Customer Data in accordance with its applicable privacy policy, which can be found here: <https://corporate.walmart.com/privacy-security/walmart-commerce-technology-third-party-application-support-privacy-policy>.

15.4 Customer acknowledges that Adobe Licensor will regularly dispose of Customer Data processed in connection with Store Fulfillment within sixty (60) days of such processing (or such other time period as determined by Adobe Licensor).

16. Warranties.

16.1 Limited Warranty and Remedies. Adobe warrants that Store Fulfillment, as delivered to Customer, will substantially conform to the Product Description during the License Term. Customer must notify Adobe of a claim under this warranty within 45 days of the date on which the condition giving rise to the claim first appeared. To the extent permitted by law, Customer's sole and exclusive remedy and Adobe's sole liability under or in connection with this warranty will be, at Adobe's option, a replacement of Store Fulfillment, or refund of any pre-paid fees for the unused portion of the license (calculated at the date of termination) for Store Fulfillment.

16.2 **Implied Warranties.** To the maximum extent permitted by law and except for the express warranties in these Minimum Terms, Store Fulfillment is provided on an "as-is" basis. Adobe, its Affiliates, and third-party providers, including Adobe Licensor, disclaim and make no other representation or warranty of any kind, express, implied or statutory, including representations, guarantees or warranties of merchantability, fitness for a particular purpose, title, non-infringement, or accuracy. Adobe, its Affiliates, and third-party providers, including Adobe Licensor, do not warrant to the Customer that use of Store Fulfillment will be error free or secure, achieve any intended result, be compatible or work with any of Customer's products or other software, system, or services, or that all defects will or can be corrected. Customer acknowledges that (A) neither Adobe, its Affiliates nor its third-party providers, including Adobe Licensor, controls Customer equipment or the transfer of data over communications facilities (including the Internet); (B) Store Fulfillment may be subject to limitations, interruptions, delays, cancellations, and other problems inherent in the use of the communications facilities (including search engines and social media channels); and (C) it is fully responsible for installing all bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases, new versions and patches. Adobe, its Affiliates, and its third-party providers, including Adobe Licensor, are not responsible for any interruptions, delays, cancellations, delivery failures, data loss, content corruption, packet loss, or other damage resulting from these problems.

17. License Compliance.

17.1 Adobe Licensor may, at its expense and no more than once every 12 months, appoint its own personnel or an independent third-party (or both) to verify that Customer's use, installation, or deployment of Store Fulfillment comply with these Minimum Terms. Any verification may include an onsite audit conducted at Customer's relevant places of business upon 7 days' prior notice, during regular business hours, and will not unreasonably interfere with Customer's business activities.

17.2 If the verification shows that Customer, its Affiliates or third-party contractors of Customer or its Affiliates are deploying, installing or using Store Fulfillment: (A) beyond the quantity that was legitimately licensed; or (B) in any way not permitted under these Minimum Terms, so that additional fees apply, without limiting Adobe Licensor's rights at law or in equity, Customer must pay the additional license fees and any applicable related maintenance and support fees within 30 days of invoice date. If use, deployment, or installation exceeds 5% of that which is permitted under this Agreement, Customer must pay Adobe Licensor's reasonable costs of conducting the verification, in addition to paying the additional fees.

18. Deployment Risk. If Adobe Licensor reasonably determines that Customer's deployment of Store Fulfillment is causing a material risk to the security or operations of Adobe Licensor or any of its customers or to the continued normal operation of other Adobe Licensor customers (each a "**Deployment Risk**"), then Adobe Licensor may, at any time, upon written notice (through Adobe) to Customer: (A) immediately suspend Customer's access, in whole or in part, to Store Fulfillment, until such Deployment Risk is resolved; or (B) as a final option, where Adobe Licensor has first used all commercially reasonable efforts to mitigate the Deployment Risk, Adobe Licensor may (through Adobe) terminate Store Fulfillment.

19. Survival. The termination or expiration of these Minimum Terms will not affect any provisions of these Minimum Terms which by their nature survive termination or expiration, including the following: Section 1, Section 2.2, Section 3, Section 4, Section 5, Section 6, Section 12, Section 14, Section 15, Section 19 and Section 20.

20. Order of Precedence. With respect to Store Fulfillment only, notwithstanding anything to the contrary contained in this Agreement, in the event of any conflict between the provisions of these Minimum Terms and any other provisions contained in this Agreement, the provisions of these Minimum Terms shall control and supersede such other provisions of this Agreement with respect to such conflicts.

SCHEDULE 1 – SERVICE LEVEL AGREEMENT

This Service Level Agreement (“**SLA**”) is governed by the terms of the General Terms, this PSLT, these Minimum Terms, and the applicable Sales Order.

A. DEFINITIONS

1. “**Available / Availability**” means when Adobe Licensor or its third-party monitoring services indicate that the Covered Services are capable of receiving, processing, and responding to requests during the production phase.
2. “**Calendar Month**” means the calendar month to which this SLA applies and for which Uptime Percentage is being calculated.
3. “**Covered Services**” means Store Fulfillment.
4. “**Downtime**” means the minutes during the Calendar Month when the Covered Services are not Available to the Customer, except any Excluded Minutes.
5. “**Excluded Minutes**” means the minutes that the Covered Services are not Available caused by one or more of the following:
 - a) acts or omissions of Customer, its agents, employees, or contractors, or acts or modifications as directed or authorized by Customer, or breach of the terms of the Agreement that apply to the Covered Services;
 - b) Adobe’s applications and content, and errors from Adobe’s own custom scripting or coding or Adobe’s configuration(s) outside of the Adobe Licensor’s infrastructure that affects the Covered Services;
 - c) Downtime to install services or for Adobe Licensor’s to meet Adobe requests;
 - d) Customer’s failure to adhere to Adobe’s documented recommendations, including hardware or software configuration necessary to meet minimum system requirements for the Covered Services;
 - e) spikes in demand for system resources driven by Customer for which Customer and Adobe did previously not agree in writing to a process to allow Adobe to make accommodation for such increase in demand unless otherwise agreed to in a Sales Order;
 - f) force majeure;
 - g) software, hardware, or third-party services not provided or controlled by Adobe Licensor, or events beyond Adobe or Adobe Licensor’s reasonable control, including but not limited to force majeure events, any law, regulation or order issued by the government, or any agency or department, effectively prohibits or restricts Adobe or Adobe Licensor from offering the Covered Services, or imposes significant additional costs on Adobe or Adobe Licensor to provide those Covered Services, in the territory;
 - h) services provided by a third party outside of Adobe or Adobe Licensor’s control and outages caused by systems external to Adobe or Adobe Licensor upon which Adobe or Adobe Licensor’s technologies are reliant on;
 - i) scheduled maintenance and emergency maintenance;
 - j) internet traffic exchange points external to Adobe or Adobe Licensor, including without limitation network access points and metropolitan area exchanges, and internet networks controlled by others; or
 - k) Adobe or Adobe Licensor’s suspension and/or termination of a Customer’s right to use the Covered Services in accordance with this Agreement.
6. “**Maximum Uptime**” means the total minutes in the Calendar Month (e.g., 44,640 minutes in the month of July) minus Maintenance Minutes during the same Calendar Month.
7. “**Maintenance Minutes**” means the number of minutes elapsed during maintenance performed by Adobe or Adobe Licensor that results in the Covered Services not being Available where Adobe or Adobe Licensor has provided Customer with at least one business day advance notice.
8. “**Minimum Uptime Percentage**” means 99.9%.
9. “**Service Credit**” means for each percentage or fraction of a percentage of Downtime per Calendar Month, Customer shall be entitled to a credit for the corresponding percentage or fraction of a percentage of the

applicable fees paid by Customer that are attributable to that month up to a maximum of twenty-five percent (25%) of the portion of the applicable fees attributable to a Calendar Month.

10. **“Unavailable / Unavailability”** means when the Covered Services are not Available.
11. **“Uptime Percentage”** means, for a given Calendar Month, the uptime percentage, which will be calculated as follows: $[(\text{Maximum Uptime} - \text{Downtime} - \text{Excluded Minutes}) \div (\text{Maximum Uptime} - \text{Excluded Minutes})] \times 100\%$.

B. MAINTENANCE PROCESS

1. **Maintenance.** During scheduled maintenance, including infrastructure maintenance, access to the Covered Services may or might be available. Infrastructure maintenance includes all Adobe and Adobe Licensor’s components, including the server(s). Normally scheduled maintenance (**“Normal Maintenance Window”**) occurs once per quarter from 3am - 7am EST. Adobe and Adobe Licensor shall use all commercially reasonable efforts to choose a date for maintenance with the least possible impact on the Covered Services. The Normal Maintenance Window may or may not be needed in any one quarter and is subject to change at Adobe and Adobe Licensor’s sole discretion. Scheduled maintenance does not count as Downtime and is not included in the calculation of the Minimum Uptime Percentage.

C. SERVICE CREDITS

1. **Uptime Percentage.** If during any full Calendar Month of the term of the Agreement, the Uptime Percentage is lower than the Minimum Uptime Percentage and Customer notifies Adobe in writing of the foregoing within ten (10) days of the end of the applicable Calendar Month, then Adobe shall provide Customer with a Service Credit upon Adobe Licensor’s determination that such Unavailability in excess of the Minimum Uptime Percentage constitutes Downtime. If the Service Credit is represented as a percentage value, then it shall be calculated against Monthly Fees and will be paid against future fees. The **“Monthly Fee”** will be calculated based upon the licensing fees for the Covered Service as stated in the applicable Sales Order. If, for example, the licensing fee for the Covered Service is an annual licensing fee, then the Monthly Fee will be equal to the annual licensing fee applicable to the Covered Service divided by 12.
2. **Exclusive Remedies; Cumulative Service Credits.** Any Service Credits provided pursuant to this Service Level Agreement shall constitute Adobe’s and Adobe Licensor’s sole liability and Customer’s sole and exclusive remedy for any failure to achieve Uptime Percentages. In no event shall Customer setoff any Service Credits against the amounts that it owes. Adobe or Adobe Licensor shall not be responsible for meeting the obligations under this SLA to the extent such obligations are not fulfilled because of failures by Customer or a third party. A failure by Adobe or Adobe Licensor to meet these terms of this SLA shall not constitute a material breach of this Agreement, unless such failure is material, persistent, and repeated.