



## 1. INTRODUCTION

### 1.1 Definitions

- (A) “**Adobe**” means one or both of the following:
- (1) If the Products and Services are licensed in the United States, Canada, Mexico, United States territories and possessions, and United States military bases wherever located: Adobe Systems Incorporated, located in San Jose, California.
  - (2) If the Products and Services are licensed in all other countries: Adobe Systems Software Ireland Limited, located in Ireland.
- (B) “**Adobe Partner**” means an entity that is appointed by Adobe to process orders from end users, or a reseller of Products and Services to end users.
- (C) “**Adobe Technology**” means technology owned by Adobe or licensed to Adobe by a third party (including the Products and Services, Reports, software tools, algorithms, software (in source and object forms), user interface designs, architecture, toolkits, plug-ins, objects and Documentation, network designs, processes, know-how, methodologies, trade secrets, and any related intellectual property rights throughout the world), and suggestions made to Adobe that are incorporated into any of the foregoing (which will be deemed assigned to Adobe), as well as any of the derivatives, modifications, improvements, enhancements, or extensions of the above, whenever developed.
- (D) “**Affiliate**” means for a Party, any other entity that controls, is controlled by or under common control with the Party. For the purposes of this definition, the term “control” means the direct or indirect power to direct the affairs of the other entity through at least 50% of the shares, voting rights, participation, or economic interest in this entity.
- (E) “**Agreement**” means these General Terms and the applicable Product Specific Licensing Terms, and the Sales Order.
- (F) “**Claim**” means a claim, action, or legal proceeding made against a Party.
- (G) “**Computer**” means a virtual or physical device for storing or processing data, such as servers, desktop computers, laptops, mobile devices, Internet-connected devices, and hardware products where a device contains more than one virtual environment (including virtual machines and virtual processors), each virtual environment will be counted as a separate Computer.
- (H) “**Confidential Information**” means non-public or proprietary information about a disclosing Party’s business related to technical, commercial, financial, employee, or planning information that is disclosed by the disclosing Party to the other Party in connection with this Agreement, and is (1) identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic, or electronic form; or (2) disclosed in non-tangible form, identified as confidential at the time of disclosure, summarized in a writing labeled as “confidential”, and delivered to the receiving Party within 15 days after disclosure. “Confidential Information” does not include information that: (a) has become public knowledge through no fault of the receiving Party; (b) was known to the receiving Party, free of any confidentiality obligations, before its disclosure by the disclosing Party; (c) becomes known to the receiving Party, free of any confidentiality obligations, from a source other than the disclosing Party; or (d) is independently developed by the receiving Party without use of Confidential Information.
- (I) “**Customer**” means the entity identified in the Sales Order as “Customer” or otherwise identified in the Sales Order as the end user customer.
- (J) “**Customer Content**” means any material, such as audio, video, text, or images that is provided to Adobe by Customer or on Customer’s behalf in connection with Customer’s use of the Products and Services for content delivery, digital publishing, targeted advertising, or indexing.
- (K) “**Customer Data**” means any information collected from the Customer Site or Customer’s search engine providers via the Distributed Code; and any information that Customer imports into the On-demand Services or Managed Service from its internal data stores or other sources not supplied by Adobe.
- (L) “**Customer Site**” means any current or future website or application that is owned and operated by

Customer, or is hosted or operated by a third party or Adobe on Customer's behalf, and that contains a privacy policy or terms of use governing data collection practices that Customer controls.

- (M) **"Distributed Code"** means HTML tags, JavaScript code, object code, plugins, SDKs, APIs, or other code provided by Adobe for use of the On-demand Services or Managed Services.
- (N) **"Documentation"** means the technical user manuals made generally available by Adobe that accompanies the Products and Services, and the product descriptions of the Products and Services published by Adobe on <https://helpx.adobe.com/product-descriptions.html>, which may be updated from time to time. "Documentation" does not include any forum or content by any third party.
- (O) **"Effective Date"** means the effective date stated in the Sales Order.
- (P) **"Enterprise Licensing Terms"** means these General Terms and the applicable Product Specific Licensing Terms.
- (Q) **"Indemnified Technology"** means On-demand Services, Managed Services or On-premise Software (as applicable), paid for by Customer.
- (R) **"License Metric"** means the per-unit metrics specified by Adobe concerning the licensed quantities in the Sales Order, to describe the scope of Customer's license to use the Products and Services.
- (S) **"License Term"** means the duration of the license for Products and Services, as stated in the Sales Order, or any shorter term arising from a termination of this Agreement.
- (T) **"Managed Services"** means the technology services hosted by or on behalf of Adobe and provided to Customer as a dedicated instance, as set out in the Sales Order.
- (U) **"On-demand Services"** means the technology services hosted by or on behalf of Adobe and provided to Customer as a shared instance, as set out in the Sales Order.
- (V) **"On-premise Software"** means the Adobe software that is deployed by or on behalf of Customer on hardware designated by Customer, as set out in the Sales Order.
- (W) **"Party"** means Adobe or Customer, as applicable.
- (X) **"Personal Data"** is given the meaning under the relevant applicable privacy or data protection laws relating to this term or any similar term (such as "personal information" or "personally identifiable information") used in the applicable 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.
- (Y) **"Products and Services"** means the On-premise Software, On-demand Services, Managed Services, or Professional Services, as set out in the Sales Order.
- (Z) **"Product Specific Licensing Terms" or "PSLT"** means the Product Specific Licensing Terms document that describes the additional licensing terms for specific Products and Services.
- (AA) **"Professional Services"** means any consulting, training, implementation, or technical services provided by Adobe to Customer, as set out in the Sales Order.
- (BB) **"Report"** means any graphical or numerical display of Customer Data that contains Adobe's proprietary design, look and feel, and is generated by the On-demand Services or Managed Services, and which Customer may use and distribute within Customer's internal operations.
- (CC) **"Sales Order"** means the sales order form, statement of work, or other written document for the Products and Services that is either (A) executed between Adobe and Customer; or (B) if no such documents are executed between Adobe and Customer and Customer is purchasing through an Adobe Partner, executed between Customer and the Adobe Partner.
- (DD) **"Sensitive Personal Data"** is given the meaning under relevant privacy or data protection laws relating to this term or any similar term (such as "sensitive personal information") used in the applicable 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).
- (EE) **"User"** means an individual (either an employee or temporary worker of Customer) who may use or access the Products and Services.

## 2. PAYMENT OF FEES

This section 2 applies only if Customer orders the Products and Services directly from Adobe. If Customer orders the Products and Services from an Adobe Partner, payment terms are agreed between Customer and the Adobe Partner.

- 2.1 **Payment.** Customer must pay the fees according to the payment terms in the Sales Order. All invoices will only be delivered electronically to Customer. Adobe may charge interest at a monthly rate equal to the lesser of 1% per month or the maximum rate permitted by applicable law on any overdue fees, from the due date until the date the overdue amount (plus applicable interest) is paid in full. Any fees that are unpaid as of the date of termination or expiration will be immediately due and payable. Customer agrees to provide clear indication with its checks (or other form of payment) as to which invoices (or portions thereof) the payment should be applied. Alternatively, these payment details can be emailed to [sjar@adobe.com](mailto:sjar@adobe.com) no later than the date of payment. If Customer is not a publicly-traded corporation, upon Adobe's request, Customer will provide the necessary financial documents to allow Adobe to ascertain the credit-worthiness of Customer.
- 2.2 **Failure to Pay.** If Customer fails to pay any amount due under this Agreement, Adobe will send Customer a reminder notice. If Customer fails to pay within 15 days of the date of the reminder notice, Adobe may, in its sole discretion, terminate the applicable Sales Order or suspend or restrict the provision of the Products and Services.
- 2.3 **Disputes.** If Customer believes in good faith that Adobe has incorrectly billed Customer, Customer must contact Adobe in writing within 30 days of the invoice date, specifying the error. Unless Customer has correctly notified Adobe of the dispute, Customer must reimburse Adobe's reasonable collection costs. Customer must pay the undisputed portions of Adobe's invoice as required by this Agreement.
- 2.4 **Taxes.** Prices do not include applicable taxes. Adobe will invoice Customer for any applicable taxes, and Customer must pay these taxes. Where applicable, Customer must provide a tax-exemption claim to Adobe before placing an order. If Customer is required to withhold income taxes from its payment to Adobe, Customer agrees to send Adobe an official tax receipt within 60 days of payment to Adobe.

## 3. DELIVERY

On-premise Software is deemed to be delivered and accepted by Customer on the earlier of the date the On-premise Software is made available for electronic download or, if applicable, the date that Adobe ships the tangible media (e.g., CD or DVD) containing the On-premise Software FOB origin. On-demand Services or Managed Services are deemed to be delivered and accepted on the License Term start date.

## 4. LICENSE AND RESTRICTIONS

- 4.1 **License Grant for On-demand Services and Managed Services.** Provided Customer makes a purchase for the respective Products and Services, Adobe grants Customer, during the License Term, a non-transferable, non-exclusive, to:
  - (A) permit Users to access the Products and Services, through the applicable interfaces;
  - (B) install, implement, and use the Distributed Code on Customer Sites; and
  - (C) develop and test Customer Customizations (as that term is defined in the PSLT for the applicable Managed Services) to evaluate potential configurations of the Managed Services;all solely in connection with Customer's use of the Products and Services for its internal operations. Unless otherwise specifically limited in the Sales Order, User login IDs and passwords will be provided to Customer in a quantity mutually agreed upon by Customer and Adobe. Customer must not share its login IDs and passwords, and is responsible for unauthorized access to its login IDs and passwords. Customer must not allow the use of the same login ID simultaneously by two or more Users.
- 4.2 **License Grant for On-premise Software.** Provided Customer makes a purchase for the respective Products and Services, Adobe grants Customer, during the License Term, a non-exclusive and non-transferable license to:
  - (A) install and use the Products and Services on Computers for its internal operations, for the platforms and quantities set out in the Sales Order; and
  - (B) make a reasonable number of copies of the On-premise Software for archival purposes and install and use the copies only when the primary copy has failed or is destroyed. Customer may also install copies of the On-premise Software in a disaster recovery environment, on a cold backup basis, for use solely in

disaster recovery, and not for production, development, evaluation, or testing. For purposes of the prior sentence, cold backup basis means that the backup copies are completely disconnected from any use environment and not receiving automatic data updates, and those backup copies require a manual activation process to pick up the use environment load during the failure of the primary copies.

- 4.3 **License to Documentation.** Customer may make and distribute copies of the Documentation for use by Users in connection with use of the Products and Services in accordance with this Agreement, but no more than the amount reasonably necessary. Any permitted copy of the Documentation must contain the same copyright and other proprietary notices that appear in the Documentation.
- 4.4 **License Restrictions.** Except as permitted under this Agreement, Customer must not:
- (A) use the Products and Services in (1) violation of any applicable law (including, where applicable, COPPA), or in connection with unlawful material (such as material that violates any obscenity, defamation, harassment, privacy, or intellectual property laws); or (2) a manner that would cause a material risk to the security or operations of Adobe or any of its customers, or to the continued normal operation of other Adobe customers;
  - (B) copy, use, distribute, republish, download, display, transmit, sell, rent, lease, host, or sub-license the Products and Services;
  - (C) offer, use, or permit the use of the Products and Services in a computer service business, third-party outsourcing service, on a membership or subscription basis, on a service bureau basis, on a time-sharing basis, as part of a hosted service, or on behalf of any third party;
  - (D) attempt to interact with the operating system underlying the On-demand Services and Managed Services, or modify, create derivative works of, adapt, translate, reverse engineer, decompile, or otherwise attempt to discover the source code in, any Adobe Technology. This restriction will not apply to the extent it limits any non-waivable right Customer may enjoy under applicable law;
  - (E) remove, obscure, or alter any proprietary notices associated with the Products and Services;
  - (F) use any software components, modules, or other services that may be delivered with the Products and Services, but which are not licensed to Customer and identified in the Sales Order; or
  - (G) unbundle any components of the On-premise Software for use on different Computers as the On-premise Software is designed and provided to Customer for use as a single product.

Adobe reserves all other rights not expressly granted in this Agreement.

- 4.5 **Update Requirements.** Customer must possess a valid license to the On-premise Software to purchase an upgrade to that On-premise Software. All upgrades and updates are provided to Customer on a license-exchange basis. Upon installing an upgrade or update, Customer may only continue to use a simultaneous installation of the previous version of the On-premise Software to assist Customer in the transition to the upgrade or update for a reasonable period of time (not to exceed 180 days), after which period, Customer must uninstall and cease using the previous version. Except for this limited right to simultaneous installation and use, this right does not otherwise constitute an increase in the scope of use granted to Customer under this Agreement. Such upgrades and updates constitute On-premise Software, and are subject to the terms of this Agreement and the then-current version of the applicable PSLT.
- 4.6 **Third Party Providers.** If Customer uses certain features of the Products and Services in conjunction with third party data, products, services, and platforms (e.g. social media platforms, media partners, wireless carriers, or device operating systems), then Customer is responsible for complying with the terms and conditions required by such third party providers.
- 4.7 **License Grant from Customer.**
- (A) Customer owns or has a valid license to the Customer Data and Customer Content, subject to Adobe's underlying intellectual property in the Adobe Technology.
  - (B) During the License Term, Customer grants Adobe and its Affiliates a non-exclusive, worldwide, royalty-free license to use, copy, transmit, sub-license, index, store, and display Customer Data and Customer Content, solely to the extent necessary to provide the On-demand Services or Managed Services, and Reports to Customer, and to enforce its rights under this Agreement.
  - (C) Customer grants Adobe and its Affiliates a non-exclusive, perpetual, worldwide, and royalty-free license 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.

## 5. THIRD-PARTY ACCESS

- 5.1 **Use by Affiliates.** Customer may allow its Affiliates to use and access the Products and Services, only if, and as specified in, a Sales Order.
- 5.2 **Outsourcing and Third-Party Access.** Customer may allow a third-party contractor to operate, use or access the Products and Services solely on Customer's behalf, but only if: (A) upon Adobe's request, Customer provides Adobe with the identity of the contractor and the purpose for the contractor's use or access to the Products and Services; and (B) the use or access by the contractor is only for Customer's internal operations.
- 5.3 **Customer Responsibility.** If Customer allows any person or entity to operate, use or access the Products and Services, including under sections 5.1 (Use by Affiliates) or 5.2 (Outsourcing and Third-Party Access), Customer is responsible for ensuring that such person or entity complies with the terms of this Agreement.
- 5.4 **No Additional Rights.** For clarity, the rights granted under this section 5 (Third-Party Access) do not modify the License Metric or increase the number of licenses granted under this Agreement.

## 6. CUSTOMER CONTENT AND DATA

- 6.1 **Monitoring.** Customer will: (A) implement a process through which infringing, abusive, or otherwise unlawful content ("Unlawful Content") can be reported to Customer; (B) promptly remove any Unlawful Content from Customer Site(s) in accordance with applicable laws and regulations; and (C) promptly notify Adobe if Customer becomes aware of a possible violation regarding any Customer Content that is uploaded to the On-demand Services or Managed Services.
- 6.2 **Consumer Generated Content.** If content generated by consumers of Customer is uploaded to Adobe's On-demand Services and Managed Services, the following terms apply:
  - (A) Adobe does not review all content uploaded to Adobe On-demand Services and Managed Services, but Adobe may use available technologies or processes to screen for certain types of illegal content (for example, child pornography) or other abusive content or behavior (for example, patterns of activity that indicate spam or phishing);
  - (B) Adobe may access or disclose information about Customer, its consumers, or Customer's use of the On-demand Services and Managed Services; (1) when it is required by law (such as when Adobe receives a valid subpoena or search warrant); or (2) when Adobe, in its reasonable discretion, believes it is necessary to protect the rights, property, or personal safety of Adobe, consumers, or the public.
- 6.3 **Responsibility.** Customer retains complete control over each Customer Site and all Customer Content. Customer remains fully responsible for ensuring that all Customer Sites used with the On-demand Services or Managed Services, and all Customer Content: (A) comply with all applicable laws and regulations; and (B) do not infringe any person's or entity's rights. Adobe may suspend services or remove Customer Content that violates the requirements of the foregoing sentence.
- 6.4 **Data Retention.** With respect to On-demand Services, Customer Data may be permanently deleted from Adobe's servers 25 months from the date of its collection or receipt, unless specified otherwise in the respective PSLT.

## 7. CONFIDENTIALITY

- 7.1 **No Use or Disclosure.** The receiving Party will only use Confidential Information for the purposes of this Agreement and will not reproduce, disseminate, or disclose Confidential Information to any person, except to its employees and authorized representatives (i.e., temporary employees, consultants, and contractors) who need to know the Confidential Information for the purposes of this Agreement and are bound by confidentiality obligations at least as restrictive as those in this section 7 (Confidentiality). The receiving Party will treat all Confidential Information with at least the same degree of care as it treats its own information of similar sensitivity, but never with less than reasonable care.
- 7.2 **Required Disclosure.** The receiving Party may disclose Confidential Information: (A) as approved in a writing signed by the disclosing Party; (B) as necessary to comply with any law or valid order of a court or other governmental body; or (C) as necessary to establish the rights of either Party, but in the case of (B) and (C), only if the receiving Party promptly notifies the disclosing Party of the details of the required disclosure and gives the disclosing Party all assistance reasonably required by the disclosing Party to enable the disclosing Party to take available steps to prevent the disclosure or to ensure that disclosure occurs subject to an

appropriate obligation of confidence.

- 7.3 **Responsibility for Representatives and Affiliates.** For the purpose of this section 7 (Confidentiality) and the definition of “Confidential Information”, a reference to a Party means a Party and its Affiliates. The receiving Party is responsible for ensuring that its representatives and Affiliates fully comply with the obligations of the receiving Party under this section.

## 8. PRIVACY AND SECURITY MEASURES

- 8.1 **Compliance with Privacy Laws.** Adobe will comply with applicable privacy and data protection laws regarding the collection, processing and use of Personal Data in connection with its role as described in the Agreement.
- 8.2 **Security Measures.** Adobe has established and implemented reasonable and appropriate information security practices regarding the protection of Customer Data, including administrative, technical and physical security processes.
- 8.3 **Security Claims.** Adobe will, at its expense, defend or settle any third-party Claim against Customer caused by Adobe’s failure to comply with Section 8.2 (Security Measures) to the extent such failure results in a confirmed, unauthorized acquisition by a third-party of Customer Data provided by Customer to Adobe in connection with the Agreement (“Security Claim”). In addition, Adobe will pay: (A) any Adobe–negotiated settlement amounts (to the extent Adobe is permitted to settle); and (B) any damages finally awarded by a court, to the extent directly attributable to Adobe’s non-compliance.
- 8.4 **Conditions.**
- (A) Adobe will have no liability for any Security Claim to the extent such claim arises from any of the Customer obligations specified in section 11.1 below:
  - (B) Adobe’s obligations under section 8.3 (Security Claims) are conditioned upon Customer (to the extent permitted by applicable law):
    - (1) promptly notifying Adobe of any Claim in writing;
    - (2) cooperating with Adobe in the defense of the Claim;
    - (3) granting Adobe sole control of the defense or settlement of the Claim; and
    - (4) refraining from making any admissions about the Claim.
- 8.5 **Sole and Exclusive Remedy.** The remedies in section 8.3 (Security Claims) are Customer’s sole and exclusive remedies and Adobe’s sole liability regarding the subject matter giving rise to any Security Claim.
- 8.6 **Privacy Policy.** In connection with Customer’s use of the On-demand Services and Managed Services, Customer will conspicuously display a privacy policy or other notice, from the primary consumer interface, that:
- (A) discloses Customer’s privacy practices;
  - (B) identifies the collection (via cookies, web beacons, and similar technologies, where applicable) and use of information gathered in connection with the Products and Services, as applicable; and
  - (C) offers individuals an opportunity to opt out of (or opt-in if applicable law requires) the collection or use of data gathered in connection with the On-demand Services or Managed Services. Adobe reserves the right to recommend to Customer that it modify its privacy disclosures to address updates or changes to applicable law, industry self-regulation, or best practices, and Customer agrees to undertake a good faith effort to address such recommendation(s).
- 8.7 **Sensitive Personal Data.** Customer agrees not to use the On-demand Services or Managed Services to collect, process, or store any Sensitive Personal Data of its employees, customers, partners, site visitors, or any third party. Customer agrees not to transmit, disclose, or make available Sensitive Personal Data to Adobe or Adobe’s third-party providers.
- 8.8 **Professional Services.** For Professional Services, Customer will not provide access to Personal Data unless specifically agreed to in writing.

## 9. TERM AND TERMINATION

- 9.1 **Term.** This Agreement applies to each of the Products and Services from the Effective Date until the expiration of the applicable License Term or the term for Professional Services, unless terminated earlier under this Agreement.

## 9.2 Termination for Cause.

- (A) **Material Breach by Either Party.** If either Party commits a material breach of this Agreement, the non-breaching Party may give written notice describing the nature and basis of the breach to the breaching Party. If the breach is not cured within 30 days of the notice date, the non-breaching Party may immediately terminate this Agreement, in whole or in part.
- (B) **Breach of Confidentiality Provisions.** If a Party is in breach of any confidentiality provisions of this Agreement, the non-breaching Party may terminate this Agreement, in whole or in part, immediately by giving the breaching Party written notice of the breach.
- (C) **Other Breaches.** Adobe may terminate this Agreement, in whole or in part, immediately upon written notice to Customer, if required by law; or Customer breaches section 4.4 (D) of these General Terms.

## 9.3 Effect of Termination or Expiration.

- (A) Upon termination or expiration of this Agreement or any License Term for the Products and Services:
    - (1) the license and associated rights for the Products and Services will immediately terminate; and
    - (2) Customer must, at its expense: (a) remove and delete all copies of the On-premise Software and Distributed Code; and (b) remove all references and links to the On-demand Services or Managed Services from the Customer Sites. Some or all of the Products and Services may cease to operate without prior notice upon expiration or termination of the License Term; and
    - (3) Customer Data and Customer Content stored within the On-demand Services and Managed Services will be available to Customer for 30 days after the termination or expiration in the same format then available within the reporting interface(s).
  - (B) Any continued use of the Products and Services after termination or expiration of this Agreement constitutes a breach of this Agreement. Customer will be liable for any fees for any Products and Services that remain active after the termination or expiration. These fees will be invoiced to Customer at the rate set out in the Sales Order.
  - (C) If Adobe reasonably determines that Customer's deployment of the On-demand Services or Managed Services contains a material risk to Adobe Technology, Adobe's Confidential Information, the security or business operations of Adobe, any customer of Adobe, or to the continued normal operation 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 On-demand Services or 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.
- 9.4 **Survival.** The termination or expiration of this Agreement will not affect any provisions of this Agreement which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: definitions, payment obligations, confidentiality, term and termination, effect of termination, intellectual property, license compliance, limitation of liability, privacy, content monitoring, and the "General Provisions" section in these General Terms.

## 10. THIRD PARTY INTELLECTUAL PROPERTY CLAIMS

- 10.1 **Adobe's Obligations.** Adobe will defend, at its expense, any third-party Claim against Customer during the License Term to the extent the Claim alleges that (A) the Indemnified Technology directly infringes the third party's patent, copyright, or trademark; or that (B) Adobe has misappropriated the third party's trade secret ("Infringement Claim"). Adobe will pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by Adobe).
- 10.2 **Adobe's Response.** In the defense or settlement of any Infringement Claim, Adobe may, at its sole option and expense:
- (A) procure for Customer a license to continue using the Products and Services under the terms of this Agreement;
  - (B) replace or modify the allegedly infringing Products and Services to avoid the infringement; or
  - (C) terminate Customer's license and access to the Products and Services (or its infringing part) and refund:
    - (1) in the case of Products and Services licensed for a limited term, any prepaid unused fees as of the date of termination; or

- (2) in the case of On-premise Software licensed for a perpetual term, an amount equal to the pro-rata value of the On-premise Software, calculated by depreciating the fee paid by Customer for the On-premise Software on a straight-line basis using a useful life of 36 months from the date of initial delivery of the On-premise Software,

but only if Customer purges and destroys all copies of the On-premise Software (and any related materials) and Distributed Code from all computer systems on which it was stored.

**10.3 Conditions.** Adobe will have no liability for any Infringement Claim:

(A) that arises from any:

- (1) use of the Products and Services in violation of this Agreement;
- (2) modification of the Products and Services by anyone other than Adobe;
- (3) failure by Customer to install the latest updated version of the Products and Services as requested by Adobe to avoid infringement; or
- (4) third-party products, services, hardware, software, or other materials, or combination of these with the Products and Services, if the Products and Services would not be infringing without this combination; or

(B) if Customer fails to:

- (1) notify Adobe in writing of the Infringement Claim promptly upon the earlier of learning of or receiving a notice of it, to the extent that Adobe is prejudiced by this failure;
- (2) provide Adobe with reasonable assistance requested by Adobe for the defense or settlement (as applicable) of the Infringement Claim;
- (3) provide Adobe with the exclusive right to control and the authority to settle the Infringement Claim; or
- (4) refrain from making admissions about the Infringement Claim without Adobe's prior written consent.

**10.4 Sole and Exclusive Remedy.** The remedies in this section 10 (Third Party Intellectual Property Claims) are Customer's sole and exclusive remedies and Adobe's sole liability regarding the subject matter giving rise to any Infringement Claim.

## 11. OTHER CLAIMS

**11.1 Customer's Obligations.** Customer will, at its expense, defend or settle any third-party Claim against Adobe, to the extent it arises from:

- (A) Adobe's compliance with Customer's written notification, approval or direction;
- (B) modification of the On-demand Services or Managed Services by anyone other than Adobe or a party authorized in writing by Adobe to make such modifications;
- (C) a vulnerability in a previous version of the On-demand Services or Managed Services, if such vulnerability would have been mitigated or remedied by a later release made available to Customer, if Customer failed, for any reason, to use such later release; or
- (D) any use of the On-demand Services or Managed Services for purposes not contemplated by this Agreement or the applicable Documentation; or
- (E) Customer's failure to comply with Customer's data privacy policy, the applicable data protection laws, guidelines, regulations, codes and rules and their privacy obligations contained in this Agreement;
- (F) any Customer Customization (as defined in the applicable PSLT) or Customer Content or Customer Data (excluding claims arising from Adobe's failure to comply with Section 8.2 (Security Measures), as set forth above); or
- (G) Customer's breach of section 4.6 (Third Party Providers)

The Limitation of Liability provision in the General Terms does not apply to Customer's liability or obligations under this section.

**11.2 Conditions.** Customer's obligations under this section 11 (Other Claims) are conditioned upon Adobe (to the extent permitted by applicable law): (1) promptly notifying the Customer of any Claim in writing; (2) cooperating with the Customer in the defense of the Claim; (3) granting the Customer sole control of the defense or settlement of the Claim; and (4) refraining from making any admissions about the Claim.

**11.3 Sole and Exclusive Remedy.** The remedies in sections 11.1 are the sole and exclusive remedies and sole liability



of the Customer regarding the subject matter giving rise to any such Claim.

## **12. LIMITATION OF LIABILITY**

### **12.1 Limitation of Damages**

- (A) Nothing in this Agreement shall limit or exclude either party's liability for (i) death or personal injury resulting from a party's negligence, (ii) fraudulent misrepresentation or (iii) loss or damage for which liability cannot be excluded or limited by law**
- (B) Subject to section 12.1(A) above, in no event will either Party be liable to the other party for any loss of revenue; loss of actual or anticipated profits (including loss of profits on contracts but excluding Adobe fees under section 2 above); loss of the use of money; loss of anticipated savings; loss of business; loss of operating time or loss of use; loss of opportunity; loss of goodwill; loss or reputation; loss of, damage to or corruption of data; or any indirect or consequential damages.**
- (B) Subject to sections 12.1(A) and (B) above, the maximum aggregate liability of each Party for each and all Claims (individually and together) under or relating to this Agreement or its subject matter is limited to an amount equal to the aggregate of the fees that must be paid by Customer under this Agreement during the 12 months before the initial Claim.**
- (C) Sections 12.1 (A) and 12.1 (B) (Limitation of Liability) of these General Terms:**
  - (1) apply regardless of the form or source of Claim or loss, whether the Claim or loss was foreseeable, and whether a Party has been advised of the possibility of the Claim or loss; and**
  - (2) do not apply in any breach of Section 7 (Confidentiality), Customer's use of Adobe Technology beyond the scope of any license granted under this Agreement, or Customer's failure to pay any amounts owing to Adobe under this Agreement.**

## **13. WARRANTIES**

- 13.1 Limited Warranty and Remedy for On-demand Services and Managed Services. Adobe warrants that the On-demand Services and Managed Services, as delivered to Customer, will substantially conform to the applicable Documentation during the License Term, to the extent that the On-demand Services and 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. 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 a replacement of the Distributed Code (as applicable), or if replacement is not commercially reasonable, a termination of the applicable On-demand Service or Managed Service and a refund of any pre-paid unused fees for the applicable On-demand Service or Managed Service.**
- 13.2 Limited Warranty and Remedies for On-premise Software. Adobe warrants that the On-premise Software will substantially conform to the applicable Documentation for 90 days following the delivery of the On-premise Software, to the extent that the On-premise Software constitutes Indemnified Technology. Customer must make these warranty claims to Adobe within this 90-day period. 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 the On-premise Software, or refund of the fees Customer paid for the On-premise Software.**
- 13.3 Implied Warranties. To the maximum extent permitted by law and except for the express warranties in this Agreement, Adobe provides the Products and Services on an "as-is" basis. Adobe, its Affiliates, and third-party providers disclaim and make no other representation or warranty of any kind, express, implied or statutory, including representations, guarantees or warranties of merchantability, satisfactory quality, fitness for a particular purpose, title, non-infringement, or accuracy. Customer acknowledges that (A) neither Adobe, its Affiliates nor its third party providers controls Customer equipment or the transfer of data over communications facilities (including the Internet); (B) the Products and Services 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 to install appropriate security updates and patches. Adobe, its Affiliates, and its third party providers are not responsible for any interruptions, delays, cancellations, delivery failures, data loss, content corruption, packet loss, or other damage resulting from these problems.**

## **14. LICENSE COMPLIANCE**

- 14.1 Adobe 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 the Products and Services (or other Adobe Technology used in conjunction with the Products and Services) comply with the terms of this Agreement.
- 14.2 For On-premise Software and any Distributed Code, the verification will require Customer to provide within 30 days of request (A) raw data from a software asset management tool of all On-premise Software and Distributed Code installed or deployed by or at the direction of Customer, including installation or deployment on servers owned by Customer or provided by third parties; (B) all valid purchase documentation for all On-premise Software and Distributed Code; and (C) any information reasonably requested by Adobe.
- 14.3 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.
- 14.4 If the verification shows that Customer, its Affiliates or third-party contractors of Customer or its Affiliates are deploying, installing or using the Products and Services (or other Adobe Technology used in conjunction with the Products and Services): (A) beyond the quantity that was legitimately licensed; or (B) in any way not permitted under this Agreement, so that additional fees apply, 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's reasonable costs of conducting the verification, in addition to paying the additional fees.

## 15. SPECIFIC PROVISIONS FOR PROFESSIONAL SERVICES

### 15.1 License to Deliverables.

- (A) Without limiting or modifying any license granted to Customer for the On-premise Software, On-demand Services or Managed Services, Adobe grants Customer a non-exclusive, non-sublicensable and non-transferable license to use the materials developed and provided to Customer by Adobe in performing the Professional Services ("Deliverables") solely for Customer's direct beneficial business purposes.
- (B) Adobe retains all rights, title and interest (including intellectual property rights) in and to the Deliverables. To the extent that Customer participates in the creation or modification of any Adobe Technology or Deliverables, Customer waives and assigns to Adobe all rights, title and interest (including intellectual property rights) in the Adobe Technology or Deliverables. Adobe is free to use the residuals of Confidential Information for any purpose, where "residuals" means that Confidential Information disclosed in non-tangible form that may be retained in the memories of representatives of Adobe.

15.2 **Employment Taxes and Obligations.** Adobe is responsible for all taxes and any employment obligations arising from its employment of personnel and contractors to perform the Professional Services.

15.3 **Warranty.** Adobe warrants the Professional Services will be performed in a professional and workmanlike manner. Customer must notify Adobe in writing of any breach of this warranty within 30 days of delivery of such Professional Service. To the extent permitted by law, Customer's sole and exclusive remedy for breach of this warranty and Adobe's sole liability under or in connection with this warranty will be re-performance of the relevant Professional Service.

15.4 **Use of Subcontractors.** Customer agrees that Adobe may use subcontractors in the performance of the Professional Services. Where Adobe subcontracts any of its obligations concerning the Professional Services, Adobe will not be relieved of its obligations to Customer under this Agreement.

## 16. GENERAL PROVISIONS

### 16.1 Assignment.

- (A) Customer may assign this Agreement in its entirety to a surviving person or entity under a merger or acquisition of Customer, upon written notice to Adobe, if the assignment does not expand the scope of the license granted in the Products and Services.
- (B) Adobe may assign this Agreement (or a part of it) to its Affiliates or a surviving person under a merger or acquisition of Adobe or the assets of the business to which this Agreement relates, upon written notice to Customer.
- (C) Except as provided in this section 16.1 (Assignment) of these General Terms, Customer may not assign, voluntarily, by operation of law or otherwise, any rights or obligations under this Agreement without the

prior, written consent of Adobe.

(D) Any (attempted) assignment in derogation of this section will be null and void.

- 16.2 **Governing Law, Venue.** This Agreement and any dispute or claim arising out of or in connection with it (including any non-contractual claims or disputes) shall be governed by and construed under the laws of England and Wales. In relation to any legal action or proceedings: (a) arising out of or in connection with this Agreement or its implementation or effect; or (b) relating to any non-contractual obligations arising out of or in connection with this Agreement, each of the Parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.
- 16.3 **Force Majeure.** Neither Party is liable for failure to perform its obligations under this Agreement (except for any payment obligations) to the extent that performance is delayed, prevented, restricted or interfered with as a result of any causes beyond its reasonable control, including acts of God, terrorism, labor action, fire, flood, earthquake, failure of third-party providers, denial of service attacks and other malicious conduct, utility failures, power outages, or governmental acts, orders, or restrictions.
- 16.4 **Injunctive Relief.** Actual or threatened breach of certain sections of this Agreement (such as, without limitation, provisions on intellectual property (including ownership), license, privacy, data protection and confidentiality) may cause immediate, irreparable harm that is difficult to calculate and cannot be remedied by the payment of damages alone. Either Party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any such breach.
- 16.5 **Notices.** Any notice given under this Agreement must be in writing by email to the following addresses (or addresses notified in writing by either Party): to Adobe: [ContractNotifications@adobe.com](mailto:ContractNotifications@adobe.com); and to Customer: at Customer's email address stated on the Sales Order, or if Customer's Sales Order is with an Adobe Partner, at Customer's registered address.
- 16.6 **No Agency.** Nothing in this Agreement is intended to constitute a fiduciary relationship, agency, joint venture, partnership, or trust between the Parties. No Party has authority to bind the other Party.
- 16.7 **Customer's Purchase Order.** Any terms or conditions in Customer's purchase order or any other related documentation submitted by or on behalf of Customer to Adobe (or any other party, such as an Adobe Partner) do not form part of this Agreement and are void, unless otherwise expressly agreed in writing and signed by both Customer and Adobe.
- 16.8 **Waiver, Modification.** Neither Party's waiver of the breach of any provision constitutes a waiver of that provision in any other instance. This Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing signed by the Parties.
- 16.9 **Order of Precedence.** If there is any inconsistency between any of these above parts, the Sales Order will prevail over the applicable Product Specific Licensing Terms, which will prevail over the General Terms (to the extent of the inconsistency).
- 16.10 **Entire Agreement.** This Agreement contains the entire understanding of the Parties relating to the subject matter and supersedes all earlier agreements, understandings, proposals, discussions, negotiations, representations and warranties, both written and oral, regarding the subject matter.
- 16.11 **Counterpart.** This Agreement (or a component) may be executed in one or more counterparts, each of which constitutes an original and all of which taken together constitutes the same agreement. Each Party may sign this Agreement using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies.
- 16.12 **Severability.** If any term of this Agreement is held invalid or unenforceable for any reason, the remainder of the term and this Agreement will continue in full force and effect.
- 16.13 **Trade Rules.** Customer acknowledges that the Products and Services may be subject to the trade control laws and regulations of the United States and other national governments, and Customer will comply with them.
- 16.14 **Adobe Partner Transactions.** If Customer orders Products and Services from an Adobe Partner under a Sales Order with the Adobe Partner ("Partner Sales Order"): (A) the terms of this Agreement apply to Customer's use of the Products and Services; (B) the Enterprise Licensing Terms (or any part of it) prevails over any inconsistent provisions in the Partner Sales Order; and (C) the Adobe Partner is solely responsible for any variations or inconsistencies between the Partner Sales Order and the order between the Adobe Partner and Adobe for the transaction. If Customer does not accept the terms of this Agreement, then Customer must not use or must immediately cease using the relevant Products and Services.

16.15 **U.S. Government Licensing.** For US Government end users: Customer acknowledges that Products and Services are “Commercial Item(s),” as that term is defined at 48 C.F.R. section 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as the terms are used in 48 C.F.R. section 12.212 or 48 C.F.R. section 227.7202, as applicable. Customer agrees, consistent with 48 C.F.R. section 12.212 or 48 C.F.R. sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (A) only as Commercial Items; and (B) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights reserved under the copyright laws of the United States.