

Addendum  
to the  
Adobe General Terms (2017v1) and  
PSLT – Adobe Electronic Signature Service (2017v1)

Certain terms and conditions are required by applicable North Carolina law and regulation, and are set forth below. Such terms supersede all conflicting terms in the Adobe General Terms and PSLT Agreements (Licensor's Agreements) from the date of execution set forth below.

The State acknowledges that the Licensor's Agreement may include terms and conditions, hyperlinks, or similar references to additional license agreements, and that such additional license agreements address the proprietary and intellectual property rights of third parties for software or software services owned by parties other than the Licensor ("Third Parties"). The State further acknowledges that the proprietary and intellectual property rights of the Third Party are subject to a software license agreement. The Licensor shall provide the State with copies of all documentation and warranties for the Third Party software and related services offered.

- 1) The License Agreements are modified by this Addendum, and therefore, conflicts arising among the terms of the License Agreement and the terms of this Addendum shall be resolved by the following order of precedence:
  - a) This Addendum,
  - b) The License Agreement,
  - c) Terms and other documents incorporated by reference in the License Agreements.

For the avoidance of doubt, this Addendum supersedes and replaces all prior Addenda entered into by the State and Licensor, including Addendum I to Universal Amendment dated June 7, 2018 (#00716602), and the Universal Amendment to All Software License Agreements dated February 24, 2015 (#4400442278).

- 2) Notwithstanding terms and conditions, hyperlinks, or similar references to additional license agreements of third Parties presented in Licensor's Agreement, the State shall not be obligated under the Licensor's Agreement, or other agreements, to indemnify or hold harmless the Vendor, its licensors, successors or assigns, nor arbitrate any dispute, nor pay late fees, legal fees, termination costs, costs of audits, or other similar costs. For the avoidance of doubt, the State remains responsible for performing its obligations under the License Agreement and related terms. Further, the State acknowledges that Adobe is not responsible for any liabilities, losses, damages, action or claims, including all costs and expenses associated therewith, including attorneys fees arising out of or related to its use or distribution of the software by the State, its contractors, subcontractors and assigns.
- 3) General Modifications to the Adobe General Terms and PSLT Agreements:
  - a) Third Party Software, Open Source Software, and flow down terms: Notwithstanding terms and conditions, hyperlinks, or similar references to additional license agreements of third Parties presented in Licensor's Agreement, the State has no financial obligation or liability to Vendor or such third parties under such additional license agreements. The

State will not knowingly violate the licensing limitations stated in such additional license agreements.

- b) Clickwrap / universal license by use or installation: Notwithstanding terms of the Licensor's Agreement conditioning the license grant upon acceptance of terms when downloading, installing, using, etc. the software (e.g. by using the software, you accept and agree to the terms and conditions of this agreement), such conditions shall not bind the State or its agencies, and such conditions shall be superseded by this Addendum to the License Agreement.
- c) Notwithstanding any payment terms in the Licensor's Agreement, the State's payment obligations in its contracts with resellers shall supersede the payment terms in the Licensor's Agreement and the State shall have no payment obligation to Licensor pursuant to the payment terms in the Licensor's Agreement.
- d) IP Indemnity – notwithstanding the Licensor's rights to defend its IP and its obligations to indemnify the State, the State shall have the right to participate in any litigation at its own expense, alternative dispute resolution and settlement of such claims to the extent the State seeks to assert any immunities or defenses applicable to the State as a sovereign government.
- e) Neither party to this Agreement is entitled to obtain judgment from the other party for attorney fees it has incurred in any litigation between the parties or in defense of any claim asserted by a third party. Either party may seek such equitable relief, costs and fees as permitted by applicable law. Applicable law, for the purpose of this Agreement and all services shall exclude laws of foreign jurisdictions, including but not limited to the European Union General Data Protection Regulation and its implementation in European Countries.
- f) Notwithstanding any term in the License Agreement prohibiting assignment or transfer of the agreement, transfers authorized by N.C.G.S. §143A-6 are not prohibited or limited.
- g) Notwithstanding any merger clauses in the License Agreement, this Addendum shall be read together with the License Agreement as the agreement of the Parties.
- h) Notwithstanding any term in the License Agreement providing for data transfers, no data or records may be transferred outside of the United States unless specifically authorized by the State.

4) Certain terms and conditions are required by applicable North Carolina law and regulation, and are set forth below. Such terms supersede all conflicting terms in the Licensor's Agreement from the date of execution set forth below. State Terms and Conditions:

a) By executing this Addendum, the undersigned Vendor certifies that: the Licensor's Agreement and this Addendum are entered without collusion (G.S. 143B-1354; False certification is a Class I felony), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that it is not an ineligible Vendor as set forth in G.S. 143-59.1. Furthermore, by executing this Addendum, the undersigned certifies to the best of Vendor's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment,

declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency.

b) **VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.**

In accordance with N.C.G.S. §143B-1361(b), Vendor must identify the manner in which it intends to utilize resources or workers located outside the U.S. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor's offer. The Vendor shall provide the following for any offer or actual utilization or contract performance:

The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States.

The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors.

Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside of the United States.

Any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided.

Will any work under this contract be performed outside the United States?  YES  NO

c) **E-VERIFY** Pursuant to N.C.G.S. § 143B-1350(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

d) **REMEDIES AND LIMITATION OF LIABILITY**

For purposes of the remedies and limitations of liability set forth herein, Vendor shall be deemed to include the Vendor and its employees, agents, representatives, subcontractors, and suppliers and damages shall be deemed to refer collectively to all injuries, damages, losses, liabilities, expenses or costs incurred.

The Vendor's liability for damages to the State arising under the contract shall be limited to, in the aggregate, fees paid, or due, according to the Purchase Order, in the prior 12 months.

The foregoing limitation of liability shall not apply to claims covered by other specific provisions including Service Level Agreement or Deliverable/Product Warranty compliance, or to claims for physical injury to persons or damage to tangible personal property caused by Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 et seq., the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

**Adobe Contract Number: 00782318**

For delays in the delivery or successful Product or Software installation, whichever is applicable, Vendor shall have no liability unless the delivery or successful installation date is delayed by more than thirty (30) days by causes not attributable either to the State or to Force Majeure conditions, in which case the State shall have the right, as its remedies:

To recover direct costs including replacement Products, if any, attributable to Vendor's delay, and

To cancel the order without incurring cancellation charges.

Vendor shall have no liability unless the default in delivery of Services is occasioned by causes not attributable either to the State or to Force Majeure conditions

e) **TRANSPORTATION:** Shipments of Deliverables shall be made by the Reseller.

f) **TRAVEL EXPENSES:** In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in GS §138-6; as amended from time to time.

g) **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements. Violations of this provision may result in debarment of the vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1206, or other provision of law.

h) **AVAILABILITY OF FUNDS:** Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement is expressly contingent upon the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Products and software not yet delivered under this Agreement, terminate any Services supplied to the Agency under this Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

i) **ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional

audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

j) Confidentiality: In accordance with N.C.G.S. §143B-1350(e) and 143B-1375, and 09 NCAC 06B.0103 and 06B.1001, the State may maintain the confidentiality of certain types of information described in the NC Public Records Act: N.C.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Materials must be identified as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. However, under no circumstances shall price information be designated as confidential. The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall indemnify the State and any official(s) and individual(s) for damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law, but the State shall provide notice of the requirement.

i) The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Department of Information Technology or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

ii) The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.

k) ASSIGNMENT: Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Any assignee shall affirm this Agreement accepting the terms and conditions and duties as previously agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this

**Adobe Contract Number: 00782318**

Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

l) TERMINATION: Any notice or termination made under the Agreement shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

i) The parties may mutually terminate the Agreement by written agreement at any time.

ii) Termination For Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

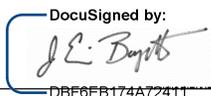
m) GOVERNING LAWS, JURISDICTION, AND VENUE: This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters. Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern the Agreement. To the extent the Contract entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.

**Executed by authorized officials as of the day and date indicated below.**

**Adobe**

By: Eric Piziali  
Name: Eric Piziali  
Title: Senior Director Revenue Operations  
Date: Aug 26, 2019

**North Carolina Department of Information Technology**

By:   
DBF6EB174A72411...

**22 August 2019 2:15:55 PM**

**Adobe Contract Number: 00782318**

Name: Eric Boyette

Title: SCIO

Date: 10/28/2019 | 3:44 PM EDT

**1. DEFINITIONS**

- 1.1 **“Adobe”** means one or both of the following:
- (A) 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.
  - (B) If the Products and Services are licensed in all other countries: Adobe Systems Software Ireland Limited, located in Ireland.
- 1.2 **“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.
- 1.3 **“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.
- 1.4 **“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.
- 1.5 **“Agreement”** means these General Terms, the applicable Product Specific Licensing Terms, and the Sales Order.
- 1.6 **“Claim”** means a claim, action, or legal proceeding filed against a Party.
- 1.7 **“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.
- 1.8 **“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 (A) identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic, or electronic form; or (B) 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. Any Adobe Technology and the terms and conditions of this Agreement will be deemed Confidential Information of Adobe without any marking or further designation. Any Customer Data will be deemed Confidential Information of Customer without any marking or further designation. “Confidential Information” does not include information that: (1) has become public knowledge through no fault of the receiving Party; (2) was known to the receiving Party, free of any confidentiality obligations, before its disclosure by the disclosing Party; (3) becomes known to the receiving Party, free of any confidentiality obligations, from a source other than the disclosing Party; or (4) is independently developed by the receiving Party without use of Confidential Information.
- 1.9 **“Customer”** means the entity identified in the Sales Order as “Customer” or otherwise identified in the Sales Order as the end user customer.
- 1.10 **“Customer Content”** means any material, such as audio, video, text, or images, that is imported into the On-demand Services or Managed Services by or on behalf of Customer in connection with Customer’s use of the Products and Services, including for collaboration, content delivery, digital publishing, targeted advertising, or

indexing.

- 1.11 **“Customer Data”** means any information that is imported by or on behalf of Customer into the On-demand Services or Managed Services from Customer’s internal data stores or other third-party data providers, or is collected via the Distributed Code, in connection with Customer’s use of the Products and Services.
- 1.12 **“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.
- 1.13 **“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.
- 1.14 **“Documentation”** means the technical usage and 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.
- 1.15 **“Effective Date”** means the effective date stated in the Sales Order.
- 1.16 **“Enterprise Licensing Terms”** means these General Terms and the applicable Product Specific Licensing Terms.
- 1.17 **“Indemnified Technology”** means On-demand Services, Managed Services or On-premise Software (as applicable), paid for by Customer.
- 1.18 **“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.
- 1.19 **“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.
- 1.20 **“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.
- 1.21 **“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.
- 1.22 **“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.
- 1.23 **“Party”** means Adobe or Customer, as applicable.
- 1.24 **“Products and Services”** means the On-premise Software, On-demand Services, Managed Services, or Professional Services, as set out in the Sales Order.
- 1.25 **“Product Specific Licensing Terms”** or **“PSLT”** means the Product Specific Licensing Terms document that describes the additional licensing terms for specific Products and Services.
- 1.26 **“Professional Services”** means any consulting, training, implementation, or technical services provided by Adobe to Customer, as set out in the Sales Order.
- 1.27 **“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.
- 1.28 **“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.
- 1.29 **“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 an individual’s 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).
- 1.30 **“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 according to the payment terms in the Sales Order, 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 purchases the respective Products and Services, Adobe grants Customer, during the License Term, a non-transferable, non-exclusive license, to:

- (A) permit Users to access the Products and Services and where applicable, Reports, 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 in accordance with the Documentation for its direct beneficial business purposes. 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 purchases 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 in accordance with the Documentation on Computers for its direct beneficial business purposes, 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 (including any notices in Reports);
  - (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 **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, and all such use is at Customer's own risk.
- 4.6 **Regional Service Limitations.** Unless specifically licensed in the Sales Order, Customer is not permitted to use or allow its Users to use the On-demand Services and Managed Services in mainland China, Russia and any other country where usage is restricted by local laws.

## 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 direct beneficial business purposes.
- 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 **Ownership.** Customer owns (or where applicable, must ensure it has a valid license to) the Customer Data and Customer Content, subject to Adobe's underlying intellectual property in the Adobe Technology.
- 6.2 **Permitted Use.** 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: (A) to the extent necessary to perform its obligations or enforce its rights under this Agreement; or (B) where required or authorized by law.
- 6.3 **Anonymized and Aggregated Data.** Unless otherwise stated in the PSLT, Customer grants Adobe and its Affiliates a non-exclusive, perpetual, worldwide, royalty-free license to use, copy, transmit, sub-license, index, model, aggregate (including with other customers' data), 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).
- 6.4 **Responsibility.** Customer retains complete control over the installation and configuration of Distributed Code, and each Customer Site and Customer Content. Customer is responsible for ensuring that all Customer Sites used with the On-demand Services or Managed Services, and all Customer Data and Customer Content comply with all applicable laws and regulations. Customer will take reasonable steps to identify and promptly remove any Customer Data or Customer Content that violates the requirements of section 4.4(A) ("**Unlawful Content**"), in accordance with applicable laws and regulations. If there is Unlawful Content, Adobe may suspend services or remove the Unlawful Content.
- 6.5 **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); and
- (B) Adobe may access or disclose information about Customer, its consumers, or Customer's use of the On-demand Services and Managed Services when it is required by law (such as when Adobe receives a valid subpoena or search warrant).
- 6.6 **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.
- 6.7 **Usage Analytics.** Adobe may develop, modify, improve, support, and operate its Products and Services based on Customer's use, as applicable, of any Products and Services.

## 7. CONFIDENTIALITY

- 7.1 **No Use or Disclosure.** The receiving Party will only use Confidential Information for the purposes of or as permitted under 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).

- 7.2 **Protection of Information.** The receiving Party will treat Confidential Information with the same degree of care as it treats its own information of similar sensitivity, but never with less than reasonable care.
- 7.3 **Permitted 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.
- 7.4 **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 processing and storage of Customer Data in connection with its role as described in the Agreement.
- 8.2 **Security Measures.** Adobe has implemented reasonable information security practices regarding the protection of Customer Data, including administrative, technical and physical security measures consistent with the information found at [www.adobe.com/go/cloudcompliance](http://www.adobe.com/go/cloudcompliance), for the applicable On-demand Services or Managed Services.
- 8.3 **Security Claims.** In the event of a Security Claim, Adobe will, at its expense:
- (A) defend 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 the unauthorized acquisition by a third-party of Customer Data (“**Security Claim**”), and
  - (B) indemnify Customer from and against any of the following, to the extent directly attributable to a Security Claim:
    - (1) Adobe-negotiated settlement amounts (to the extent Adobe is permitted to settle);
    - (2) damages finally awarded by a court;
    - (3) credit monitoring services (up to one year in duration), provided through a nationally-recognized credit monitoring service, for each individual affected by the incident giving rise to the Security Claim;
    - (4) forensic analysis of the incident giving rise to the Security Claim, to the extent the incident emanates from the On-demand or Managed Services; and
    - (5) reasonable attorney’s fees and costs associated with an investigation brought by a governmental agency as a direct result of Adobe’s failure to comply with section 8.2 (Security Measures) to the extent such failure results in the unauthorized acquisition by a third-party of Customer Data.
    - (6) reasonable out-of-pocket expenses of Customer associated with satisfying applicable statutory requirements related to notifying affected individuals of the incident giving rise to the Security Claim.
  - (C) Irrespective of how damages are characterized by a court of competent jurisdiction issuing the final award or in the written settlement agreement signed by Adobe, the damages described in section 8.3(B) will constitute direct damages.
- 8.4 **Conditions**
- (A) Adobe will have no liability for any Security Claim to the extent such claim arises from:
    - (1) any act or omission of Customer that impedes or prevents Adobe’s ability to comply with section 8.2 (Security Measures);

- (2) any Customer Customization (as defined in the applicable PSLT), or any vulnerability in the Customer Content or Customer Data; or
  - (3) Customer's breach of section 4.5 (Third Party Providers).
- (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 **Remedies.** The remedies in section 8.3 (Security Claims) are Customer's sole and exclusive remedies and Adobe's sole liability and obligation regarding Adobe's failure to comply with section 8.2 (Security Measures) and any confidentiality claims involving Customer Data that may arise from an incident giving rise to the Security Claim (notwithstanding section 11.3(B)).
- 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 Distributed Code, 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 collect, process, or store any Sensitive Personal Data using the On-demand Services or Managed Services. 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 Customer Data unless specifically agreed to in writing.

## 9. THIRD PARTY INTELLECTUAL PROPERTY CLAIMS

- 9.1 **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).
- 9.2 **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.

9.3 **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.

9.4 **Sole and Exclusive Remedy.** The remedies in this section 9 (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.

## 10. OTHER CLAIMS

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

- (A) Customer's failure to comply with Customer's data privacy policy, the applicable data protection laws, guidelines, regulations, codes and rules, and its obligations relating to Customer Data contained in this Agreement;
- (B) any Customer Customization (as defined in the applicable PSLT), Customer Content or Customer Data (excluding claims arising from Adobe's failure to comply with section 8.2 (Security Measures)); or
- (C) Customer's breach of section 4.5 (Third Party Providers).

Customer will pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by Customer). The Limitation of Liability provision in the General Terms does not apply to Customer's liability or obligations under this section.

10.2 **Conditions.** Customer's obligations under this section 10 (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.

10.3 **Sole and Exclusive Remedy.** The remedies in this section 10 are Adobe's sole and exclusive remedies and Customer's sole liability regarding the subject matter giving rise to any such Claim.

## 11. LIMITATION OF LIABILITY

- 11.1 Neither Party will be liable to the other Party for any special, indirect, moral, consequential, incidental, punitive, or exemplary damages; loss of profits; loss of reputation, use, or revenue; loss or corruption of data; or interruption of business.
- 11.2 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 payable by Customer under this Agreement during the 12 months before the initial Claim.
- 11.3 Sections 11.1 and 11.2 (Limitation of Liability):
- (A) 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
  - (B) 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.

## 12. WARRANTIES

- 12.1 **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.
- 12.2 **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.
- 12.3 **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, 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.

## 13. LICENSE COMPLIANCE

- 13.1 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.
- 13.2 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.

- 13.3 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.
- 13.4 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.

#### 14. SPECIFIC PROVISIONS FOR PROFESSIONAL SERVICES

##### 14.1 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.

14.2 **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.

14.3 **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.

14.4 **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.

#### 15. TERM AND TERMINATION

15.1 **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.

##### 15.2 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.

##### 15.3 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;
    - (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 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) Customer will be liable for any fees for any On-demand Services and Managed Services that are still in use or which remain active after termination or expiration of this Agreement. 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 or creates 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 suspend or terminate 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.
- 15.4 **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.

## 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), 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 is governed by and construed under the laws of the state of California, without regard to any conflict of law rules or principles, and excluding the application of the United Nations Convention on Contracts for the International Sale of Goods. The Parties irrevocably submit to the exclusive jurisdiction of the courts of competent jurisdiction in the County of Santa Clara, state of California, provided however, Adobe will have the right to pursue claims against Customer in any other jurisdiction worldwide to enforce its rights under this Agreement or to enforce its intellectual property rights.
- 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.** The Sales Order will prevail over the applicable Product Specific Licensing Terms, which will prevail over the General Terms (to the extent of any 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 ("**Customer 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) prevail over any inconsistent provisions in the Customer Order; and (C) the Adobe Partner is solely responsible for any variations or inconsistencies between the Customer 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 are reserved under the copyright laws of the United States.



## PSLT - Adobe Electronic Signature Service (2017v1)

1. **Content Files.** Customer may use, display, modify, reproduce, and distribute any of the Adobe-provided sample files such as fonts, stock images, sounds or templates (“Content Files”), but Customer must not distribute Content Files on a stand-alone basis, or claim any trademark rights in the Content Files, or derivative works of, the Content Files.
2. **Modification.** Adobe may modify or discontinue the On-demand Services or any portions or service features at any time without liability to Customer or anyone else. However, Adobe will make reasonable effort to notify Customer before Adobe makes such changes. If Adobe discontinues an On-demand Service in its entirety, then Adobe will provide Customer with a pro rata refund for any unused fees for that On-demand Service.
3. **Third-Party Software Notices.** The creators or third party licensors of certain public standards and publicly available code (“Third Party Materials”), require that certain notices be passed through to the end users of the On-demand Service. These third party notices are located at <http://www.adobe.com/go/thirdparty> (or a successor website thereto). The On-demand Service, as delivered to Customer, complies with these notices, and the inclusion of these third party notices does not limit Adobe’s obligations to the Customer for Third Party Materials integrated into the On-demand Service.
4. **Storage and Retention.** Adobe will store Customer Content and Customer Data during the License Term up to any storage limit specified in the applicable Sales Order. Adobe may create reasonable storage limits, such as limits on file size, storage space, and other technical limits. If Customer exceeds those limits, Adobe will make reasonable efforts to notify Customer to permit transition of Customer Content and Customer Data prior to deletion.
5. **Privacy, Information Security, and Compliance.**
  - 5.1 **Configurable Controls.** Adobe makes certain security controls available and configurable by Customer, or Adobe’s customer support. It is Customer’s responsibility to determine what notices, consents, and controls Customer requires in order to comply with laws, standards, regulations, or obligations that Customer may have to Customer’s Participants. Once Customer sends an Electronic Document for signature, or transfers an Electronic Document out of the electronic signature service, or to a third-party provider, that Electronic Document leaves Adobe’s servers, and Adobe’s security controls no longer apply. Information received by Adobe in connection with the electronic signature service is governed by the Adobe Privacy Policy ([adobe.com/privacy/policy.html](http://adobe.com/privacy/policy.html)), including the Adobe electronic signature services privacy terms ([adobe.com/privacy/echosign.html](http://adobe.com/privacy/echosign.html), or successor websites).
  - 5.2 **Security.** Adobe has implemented information security practices to help protect Customer Content. For more information, please see: <http://www.adobe.com/security.html>. However, Customer may not use the fax option in Adobe Sign to process payment card information, including credit card numbers and verification codes.
  - 5.3 **Sensitive Personal Information.** The Sensitive Personal Data section of the General Terms does not apply to Customer’s use of the electronic signature service.
6. **Legal Counsel.** Customer will rely on its own legal counsel and determinations as to the use and viability of electronic signatures in a particular country or for a particular use.
7. **Digital Certificates.** Digital certificates are generally provided by third parties and not Adobe. Customer is responsible for deciding whether to rely on a digital certificate, and Customer’s use of digital certificates is at Customer’s sole risk.

**8. Additional License Restrictions.** Customer must not: (A) place advertisement of any products or services through the On-demand Services; or (B) impersonate any person or entity, or falsely state or otherwise misrepresent Customer's affiliation with a person or entity.

**9. Additional Definitions.**

- 9.1 **"Electronic Document"** means any document uploaded into the electronic signature service.
- 9.2 **"Participant"** means an individual or entity that electronically reviews, accepts, signs, approves, transmits, or delegates action to a third party regarding Electronic Documents via Customer's electronic signature service account.
- 9.3 A **"Transaction"** occurs each time an Electronic Document, or collection of related Electronic Documents up to 100 pages or 10 MB are sent to Participants through the On-demand Services.