



SOFTWARE as a SERVICE SUBSCRIPTION AGREEMENT

General Terms and Conditions

This Software as a Service Subscription Agreement, including the Order Form and SOW (collectively the “Agreement”) is entered into by the Parties signing the Order Form.

1. Definitions

- 1.1 “Adobe Data” means all electronic data or information that may include Adobe’s Confidential Information that is stored on Provider’s server.
- 1.2 “Authorized Users” means Adobe’s and its Affiliate’s employees and individual contractors (i.e., temporary employees), or anyone authorized by Adobe to use the Software. Affiliate of Adobe means any entity in which Adobe owns or controls, directly or indirectly, a majority of the outstanding shares, securities or interests of such entity, and any parent company that owns or controls a majority of the outstanding shares, securities, or interests of Adobe, as applicable.
- 1.3 “Confidential Information” means a discloser’s non-public written information, in any form, and all copies, summaries and extracts, which are identified as confidential at the time of disclosure. Confidential Information does not include information that:
 - (A) is or becomes generally publicly available at the time of disclosure or subsequently through no fault of recipient,
 - (B) was known to recipient, free of any confidentiality obligations, before its disclosure by discloser,
 - (C) becomes known to recipient, free of any confidentiality obligations, from a source other than discloser, or
 - (D) is independently developed by recipient without use of the Confidential Information.
- 1.4 “Documentation” means any information published by Provider including reference material, help documentation and product information on Provider’s website, relating to the use of the Software.
- 1.5 “Order Form(s)” means the document that describes the Software that is being ordered by Adobe, including fees and number of Authorized Users as set forth in the attached Exhibit A.
- 1.6 “Personnel” means individuals supplied by Provider to perform the Professional Services.
- 1.7 “Principal Place of Business” means the location where Provider is headquartered, as identified in the preamble above.
- 1.8 “Professional Services” means any services required for Adobe to implement and use the Software as detailed in the SOW attached as Exhibit C to this Agreement, which may include, configuration, implementation, customization, consulting, and training. Adobe will own all Deliverables (developed and provided to Adobe in performance of the Services), specified in an SOW to be delivered to Adobe.
- 1.9 “Software” means Provider’s software-as-a-service products, including Documentation, as described more fully in one or more Order Form(s) along with any releases, updates, or upgrades, licensed to Adobe under the terms of this Agreement.
- 1.10 “SOW” means a project-specific statement of work containing, at a minimum, the information requested in the SOW form attached as Exhibit A, including a description of the Professional Services to be performed, the Personnel, and all other necessary details associated with the Professional Services.
- 1.11 “Support” means the maintenance and support services listed in the Technical Support, Maintenance, and Service Level Agreement attached as Exhibit B.
- 1.12 “Tax(es)” means any tax, fee, or cost not based on Adobe’s net income or capital, including without limitation any sales, excise, value added, use, customs, tariffs, imports, government proposed surcharges, withholding, social security, unemployment, and similar taxes and any fees, penalties, or interest associated with any of the foregoing.

2. Terms of Use

- 2.1 Subject to the payment of fees set forth in the Order Form, Provider grants Adobe and Adobe’s Authorized Users a non-exclusive, non-transferable, royalty-free,



license during the Term to access and use the Software listed on the Order Form.

- 2.2 Use of the Software will include Adobe's right to; where applicable, access and use any of Provider's application programming interfaces for the purpose of accessing and using the Software.

3. Professional Services. If Provider performs Professional Services, the following additional terms will apply:

- 3.1 Provider will perform the Professional Services described in and in accordance with the schedule and delivery requirements set forth in the SOW.
- 3.2 If on-site at Adobe, Provider will take all necessary precautions to prevent injury to any persons (including employees and other agents of Adobe) or damage to property (including Adobe's property).
- 3.3 If Adobe notifies Provider that any Personnel, as determined in Adobe's sole discretion, does not have the requisite knowledge or skill to perform the Professional Services, or has violated any of Adobe's safety or security requirements, Provider will immediately remove and replace the offending Personnel.
- 3.4 For instances where Adobe requests replacement of Personnel other than those set forth in Section 3.3 above, Provider will use commercially reasonable efforts to accommodate Adobe's request.
- 3.5 Provider will supervise and monitor its Personnel and ensure that all Personnel are properly documented workers.
- 3.6 Provider will advise Adobe of Provider's progress in performing the Professional Services in a manner and frequency indicated in the SOW.
- 3.7 If Adobe decides to modify the scope of the Professional Services, Adobe will notify Provider of the proposed change(s), and Provider will furnish Adobe with a written offer to provide the services and an estimate of the costs, if any, within five days of Adobe's notice. Any change in the scope of the Professional Services will not be effective until Adobe accepts the offer with a signed writing.

4. Fees

- 4.1 All fees and rates are set out in the applicable Order Form or SOW and payable 45 days from receipt of invoice that includes a valid Adobe purchase order number in accordance with the schedule of payment. In no event will Adobe be responsible for fees in

excess of the amounts set forth in the Order Form or the SOW. All invoices must be sent via email to ap@adobe.com.

- 4.2 No part of Provider's compensation under this Agreement will be subject to withholding for any Taxes or other required payments. Provider will;
- (A) report as income, and pay all Taxes on, all compensation received by Provider pursuant to this Agreement; and
- (B) pay all Taxes, insurance and other benefits arising from Provider's employment of Personnel performing Professional Services.
- 4.3 Provider's invoice must state all applicable Taxes. Provider will remit all charges to the appropriate tax authority unless Adobe provides sufficient proof of tax exemption. When property is delivered, services are provided, or the benefit of services occurs within jurisdictions where Provider's collection and remittance of taxes is required by law, Provider will have the sole obligation to pay the taxes to the appropriate tax authorities. If Provider does not collect taxes from Adobe and is subsequently audited by any tax authority, Adobe's liability will be limited to the tax assessment with no reimbursement to Provider for any penalty or interest charges. Each party is responsible for its own income taxes or taxes based on gross revenues, including but not limited to business and occupation taxes.
- 4.3 If this Agreement includes hosting fees, data, or storage fees, and related services fees, and the related services are taxable or become taxable, Provider will collect the taxes that are due from Adobe, and will remit to the appropriate taxing authorities. If taxes are imposed on gross revenues from the provision of services, Provider will remit those taxes to the taxing authority prior to deducting for Adobe's share of the services. Provider will not suspend any part of the Software where Adobe is reasonably disputing any amount due to Provider.
- 4.4 Additional costs for travel expenses, if any, will be reimbursed with Adobe's express, prior written consent in accordance with Adobe's Business Travel and Expense Policy, attached as Exhibit D.
- 4.5 Neither Provider, nor any Personnel will receive any Adobe-sponsored benefits, including paid vacation, sick leave, pension, medical or disability insurance, worker's compensation or 401(k) participation, from Adobe as an agent, consultant, or employee. If Provider or any Personnel are reclassified by a government agency or court as an employee, Provider



or its applicable Personnel will become a reclassified employee and will receive no benefits except those mandated by applicable law, even if by the terms of Adobe's benefit plans in effect at the time of reclassification. Provider or Personnel would otherwise be eligible for those benefits.

5. Term, Termination and Survival

- 5.1 Term. The term of this Agreement will begin on the Effective Date and will continue until the subscription end date, as identified on the Order Form (the "Initial Term"). Following the Initial Term or any Renewal Period as defined below, the parties may execute a new Order Form for a subsequent term (each, a "Renewal Period").
- 5.2 Termination for Breach. Either party may terminate this Agreement should the other party breach any of its material obligations and the breach continues uncured for 10 days after written notice to the breaching party.
- 5.3 Termination due to Bankruptcy. Either party may terminate this Agreement, Order Form, or SOW with written notice if either party is adjudicated bankrupt, files a voluntary petition of bankruptcy, makes a general assignment for the benefit of creditors, is no longer able to function in the normal course of business, or if a receiver is appointed on account of insolvency.
- 5.4 Termination for Convenience. Adobe may terminate this Agreement, Order Form, or SOW at any time effective immediately on Provider's receipt of written notice. Adobe's only obligation to Provider on termination will be to pay any unpaid charges for fees incurred or services performed up to the effective date of termination. Provider may terminate the Agreement at any time with 30 days prior written notice if there are no outstanding Order Forms or SOWs.
- 5.5 Effect of Termination. Following termination or expiration of the Agreement, Adobe will have a 30 day period to access its account and download or export Adobe Data. After the 30-day period, Provider will convert Adobe's account to an inactive status. Provider will maintain all Adobe Data for a period of not more than 60 days following receipt of written notice. All Adobe Data will be deleted at the end of this period.
- 5.6 Survival. On termination or expiration of this Agreement, each party will be released from all obligations and liabilities to the other party occurring or arising after that date; except that any termination

or expiration will not relieve the parties of their obligations under Sections 5, 7, 8, 9, and 10, nor will termination relieve the parties from liability arising from breach of this Agreement. Provider will comply with Adobe's reasonable directions to effect the orderly transition of all services then being performed by Provider or that Provider is then responsible for performing. Adobe and its employees and agents will cooperate with Provider's obligations under this Section. Provider will deliver to Adobe originals and all copies of any Confidential Information, Adobe Data, and other materials supplied to Provider by Adobe.

6. Ownership

- 6.1 Adobe has no right or claim to the intellectual property rights in and to the Software, the Documentation, the Professional Services (except to the Deliverables specifically made for Adobe as specified in an SOW), or to Provider's Confidential Information. Adobe will notify Provider if Adobe becomes aware of any potential infringement of Provider's rights.
- 6.2 Provider has no intellectual property rights or other claim to the Adobe Data that is hosted, stored, or transferred to and from the Software. Provider will cooperate with Adobe to protect Adobe's intellectual property rights and Adobe Data. Provider will promptly notify Adobe if Provider becomes aware of any potential infringement of those rights.
- 6.3 Adobe will not remove, obscure, or alter any copyright notice, trademark, or other proprietary right appearing in or on any item included with the Software, or the Documentation.

7. Confidentiality

- 7.1 A recipient will:
- (A) use Confidential Information only as necessary to perform its obligations under this Agreement,
 - (B) hold Confidential Information in strict confidence,
 - (C) disclose Confidential Information to only those third parties who need to know the information to perform the obligations under this Agreement and who have previously agreed in writing to protect third party confidential information to the same extent as required in this Agreement, and
 - (D) either promptly deliver or promptly destroy (and certify the destruction to the discloser) all Confidential Information and copies in the recipient's possession at the discloser's request and at the expiration or termination of this Agreement, provided



that no Confidential Information will be destroyed without providing 30 day written notice to Adobe for destruction.

7.2 If a party receives a court order or is otherwise required by law to disclose any Confidential Information obtained from a discloser, the receiving party must:

- (A) notify the discloser immediately on receipt of the court order or other document requiring disclosure so that the discloser may object and move for a protective order, and
- (B) if Confidential Information is to be filed with a court, file it under seal or request that the court seal the Confidential Information before disclosure.

7.3 Except as may be required by court order or law, a recipient's obligations regarding Confidential Information will remain in full force and effect. The recipient acquires no licenses or other rights to Confidential Information under this Agreement. If Provider retains or stores Adobe's Confidential Information in any manner, Provider will comply with the Information Security and Privacy requirements posted at:

www.adobe.com/content/dam/Adobe/en/legal/terms/enterprise/pdfs/2013/Information_Security_and_Privacy_Requirements.pdf.

8. Representations and Warranties. Provider represents and warrants to Adobe:

8.1 The Software and Professional Services will not infringe any third party intellectual property rights,

8.2 Provider will use Personnel that have the requisite experience and qualifications to perform the Professional Services,

8.3 The Professional Services will comply with all applicable laws, statutes, ordinances and regulations,

8.4 The Software will substantially comply with the functionality and performance set forth in [Exhibit B](#),

8.5 The Software will be free from significant errors and defects in workmanship and materials and the Professional Services will be provided in a workmanlike and competent manner in accordance with the professional standards in the cloud computing/online services industry,

8.6 The Software does not contain an undisclosed tracking technology that may be used in connection with the internet, world-wide-web, or a mobile network that is capable of obtaining information about the activity of an end user. This provision does not include tracking

technology that is materially described in Provider's Documentation where the technology only operates as described in the Documentation.

8.7 The terms of this Agreement supersede any other license terms supplied by Provider that may be contained in the Software, including any references to GPL, ALGPL, or similar licenses, and

8.8 If any part of the Professional Services have been obtained by a third party, Provider will obtain all intellectual property rights necessary for Adobe's use as intended under this Agreement.

9. Indemnity.

9.1 Provider will defend, indemnify, and hold Adobe, its officers, directors, employees, sub-licensees, customers, and agents, harmless from and against any and all third party claims, losses, liabilities, damages, expenses, costs, attorneys' fees, and court costs related to or arising out of:

- (A) Provider's or its Personnel's performance or breach of this Agreement ("General Claims"), and
- (B) allegedly or actually infringing on any intellectual property rights of a third party by using the Software ("Infringement Claims"), provided;
- (C) Adobe will supply Provider with prompt written notice of any claims. Provider will have sole control of the defense of any claims, provided, Adobe may participate in the defense and settlement of claims at its own expense. Any settlement of claims that imparts any obligation or liability on Adobe will require Adobe's prior written consent. Adobe will supply Provider with all reasonable assistance and information in the defense and settlement of claims at Provider's expense.

9.2 If an Infringement Claim endangers or disrupts Adobe's use of the Software, Provider will, at no charge to Adobe:

- (A) obtain a license for Adobe's continued use of the Software,
- (B) modify the Software to avoid infringement without impairing the functionality,
- (C) replace the Software with a compatible, functionally equivalent, and non-infringing replacement; or, if options (A) through (C) cannot be accomplished under commercially reasonable terms, or
- (D) terminate this Agreement, and refund a pro-rata portion of fees paid in accordance with this Agreement.



10. General

10.1 Relationship of Parties. Provider is an independent contractor and is not an agent or employee of Adobe. Provider has no authority to bind Adobe by contract or otherwise. Provider will perform any Professional Services under the general direction of Adobe, but Provider will determine, in Provider's sole discretion, the manner and means that the Professional Services are accomplished, subject to the express conditions that Provider will:

- (A) comply with all applicable laws, statutes, ordinances, and regulations,
- (B) follow all Adobe supplied guidelines and policies, and
- (C) not subcontract any portion of the Professional Services without Adobe's prior written consent. If Provider does subcontract any portion of the Professional Services, then Provider will be responsible and liable for the performance and acts or omissions of its subcontractors.

10.2 Assignment. The parties' rights and liabilities will bind and inure to the benefit of their respective successors, executors, and administrators. Neither party will assign or delegate its obligations under this Agreement either in whole or in part without the other party's prior written consent. Any attempted assignment in violation of this section will be void and of no effect. Any permitted assignee will be bound by all of the applicable provisions of this Agreement. For the purposes of this section, a change in the persons or entities that control 50% or more of the equity securities or voting interest of either party will be considered an attempted assignment of rights.

10.3 Equitable Relief. Adobe may enforce this Agreement and any of its provisions by injunction, specific performance, or any other equitable relief, without prejudice to any other rights and remedies that Adobe may have, for breach of this Agreement.

10.4 Attorney Fees. If an action at law or in equity is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and expenses in addition to any other relief that the prevailing party is entitled.

10.5 Governing Law; Choice of Forum and Venue. This Agreement (including the arbitration agreement in this section where applicable) and all matters relating to this Agreement will be governed by and construed in accordance with the laws in force in:

- (A) the State of California, if Provider's Principal Place of Business is in the United States, Canada, or Mexico;

- (B) Japan, if Provider's Principal Place of Business is in Japan;

- (C) Singapore, if Provider's Principal Place of Business is in a member state of the Association of Southeast Asian Nations (ASEAN) excluding Myanmar, mainland China, Hong Kong S.A.R., Macau S.A.R., Taiwan R.O.C., the Republic of Korea, Bangladesh, or Nepal; or

- (D) England and Wales, if Provider's Principal Place of Business is in Australia, New Zealand, India, Sri Lanka, Myanmar, or any other location not named above.

- (E) The respective courts of Santa Clara County, California when California law applies, Tokyo District Court when Japanese law applies, and the competent courts of London, England, when the law of England and Wales applies, will each have nonexclusive jurisdiction over all disputes relating to this Agreement.

- (F) When Singapore law applies, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity, or termination, will be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Centre ("SIAC") for the time being in force, which rules are deemed to be incorporated by reference into this section. There will be one arbitrator, selected jointly by both parties. If the arbitrator is not selected within 30 days of the written demand by a party to submit to arbitration, the Chairman of the SIAC will make the selection. English will be the language of the arbitration.

- (G) Notwithstanding any provision in this Agreement, either party may request any judicial, administrative, or other authority in any other jurisdiction to order any provisional or conservatory measure, including injunctive relief, specific performance, or other equitable relief, prior to the institute of legal or arbitration proceedings, or during the proceedings, for the preservation of its rights and interests or to enforce specific terms that are suitable for provisional remedies.

- (H) This Agreement will not be governed by the conflict of laws rules of any jurisdiction, UCITA, or the United Nations Convention on Contracts for the International Sale of Goods, the application of which are expressly excluded.

10.6 Notice. Any notices will be given to the appropriate party at the address specified at the beginning of this Agreement, or as otherwise specified in writing. Notice will be by personal delivery, by certified or registered mail, or by reputable courier. Notice will



be deemed given on personal delivery to the appropriate address, on receipt of certified or registered mail, or if sent by courier, on the date of delivery shown in the courier's records.

10.7 Equal Employment Opportunity. Adobe is an equal employment opportunity employer and is a federal contractor. The parties agree that, to the extent applicable, they will each comply with: Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 503 of the Vocational Rehabilitation Act of 1973, and also agree that these laws are incorporated by reference. Provider agrees to comply with the provisions of Executive Order 13201 Compliance (29 CFR Part 470) relating to the notice of employee rights concerning payment of union dues. The affirmative action clauses and regulations contained in the above are incorporated by reference.

10.8 Complete Understanding; Modification; Waiver. This Agreement constitutes the full and complete understanding of the parties and supersedes all prior understandings and agreements. Any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

10.9 Insurance. Provider will maintain standard insurance policies issued by companies in good standing. This insurance will include the coverage written for not less than the limits described in Sections (A) through (D) below, or as required by law, whichever is greater.

- (A) Workers' compensation insurance with employer's liability of not less than \$1,000,000 per employee;
- (B) Commercial general liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage, and commercial umbrella liability insurance with a combined single limit of not less

than \$2,000,000 each occurrence for bodily injury and property damage.

- (C) General Products Liability aggregates of \$2,000,000 each, covering all operations, Professional Services, and/or work performed under this Agreement.
- (D) Errors and omissions / professional liability insurance covering errors and omissions of Provider with limits not less than \$2,000,000 per occurrence and general aggregate and endorsed to provide coverage for contractual liability with respect to liability assumed by Provider under this Agreement. The insurance will provide an extended claims reporting period of not less than three years after the termination or expiration of this Agreement.
- (E) Provider will submit certificates of insurance to Adobe naming Adobe as an additional insured before beginning any services associated with this Agreement. The certificates will provide no termination or non-renewal of coverage without 30 days prior written notice to Adobe.
- (F) Service Provider insurance will be primary, and any applicable insurance maintained by Adobe will be excess and non-contributing. The above coverage will name Adobe as additional insured.

10.10 Force Majeure. Non-performance by either party will be excused if the non-performance is a result of strike, fire, flood, governmental action, earthquake, or any other reason where failure to perform is beyond the reasonable control of the nonperforming party for up to a maximum of 45 days.

10.11 Export. Provider's Products are subject to the U.S. Export Administration Regulations and other export laws, restrictions, and regulations and Provider will comply with those export laws when providing the Software and Professional Services.

10.12 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, the remainder of this Agreement will continue in full force and effect.

