

Adobe® Enterprise Term License Agreement

Adobe Education Consortium - Indirect Sales Order

**Customer: Oklahoma State Regents
for Higher Education**

Agreement No: 4400414982

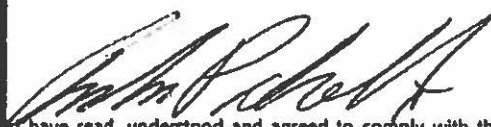
Summary of Products and Services

Product Titles	Combined FTE	Unit Price per FTE
Creative Cloud Enterprise	10,000	\$53.00 (Institutions with < 5,000 FTE) \$35.00 (Institutions with > 5,000 FTE)

By signing below, the parties agree to be bound by the terms and conditions set out in this Sales Order (including all schedules and referenced terms and conditions set out on the following pages) which shall become effective upon the date of last signature (the "Effective Date").

Customer:

Signature



I have read, understood and agreed to comply with the terms and conditions of this Agreement, and I represent and warrant that I am authorized to bind Customer.

Name: **Amanda Paliotto**

Title: **Vice Chancellor for Budget & Fiscal Affairs**

Date: **6/25/14**

Address:

655 Research Parkway.
Suite 200
Oklahoma City, OK 73104

Contact:

Liza Hanke

Adobe Systems Incorporated

Signature



I have read, understood and agreed to comply with the terms and conditions of this Agreement, and I represent and warrant that I am authorized to bind Adobe.

Name: **Matthew Glaser**

Title: **Sr. Director Finance**

Date: **Jun 25, 2014**

Address: **345 Park Avenue**
San Jose, CA 95113-2001

Contact:

Approved
As To Form

Initials **QSH**

1. Customer shall inform its Consortium Members that by placing an order under this Agreement, a Consortium Member agrees to be bound to the terms and conditions set out in this Agreement. Any order associated with this Sales Order shall be for use of Products by the Consortium Member executing the order. Any Consortium Member placing an order hereunder for Products or Services, shall place such order with its Channel Entity that reflect the pricing on the Summary of Products and Services table set forth on the Sales Order. On or around July 15, 2014, the cumulative orders placed by each Consortium Member with its Channel Entity must be greater than or equal to the FTE minimums for each Product Title ("Minimum Order"). No orders will be fulfilled until the Minimum Order has been reached.
2. All Adobe Products and Services listed on this Sales Order are provided under the terms and conditions set out in this Sales Order (including all Schedules, Exhibits and/or Appendices attached to this Sales Order) and the Adobe Enterprise Licensing Terms available here: www.adobe.com/legal/terms/enterprise-licensing.html (version: 2014 v1), except that the General Terms are as attached to this Sales Order. All capitalised terms used in this Sales Order have the meanings set out in the Agreement (as defined in the Adobe Enterprise Licensing Terms), unless otherwise specified in this Sales Order. The terms of the Agreement shall be comprised of the General Terms, the applicable Exhibit(s) (On-Premise, and On-Demand) and the applicable Product Description and Metrics (PDMs). If there is any inconsistency between the following parts of this Agreement, then the part listed earlier will prevail to the extent of the inconsistency: (i) this Sales Order; (ii) the applicable PDM(s); (iii) the applicable Exhibit(s) to the General Terms; and (iv) the General Terms.
3. Any Consortium Member that wishes to purchase the Products and Services described herein shall do so by executing an order in the form set forth in Schedule A, which includes detailed description of the particular Products and Services transaction. The ordering and payment terms applicable to this Sales Order are set out in Schedule A. Each Consortium Member will execute its own Schedule A and shall be liable for its own actions under this Agreement.
4. Compliance. Consortium Member agrees that, in addition to any license compliance checking performed by the Product, Adobe or its authorized representative have the right, no more than once every twelve (12) months, upon seven (7) business days' prior notice to Consortium Member, to inspect Consortium Member's records, systems, and facilities to verify that its installation and use of any and all Adobe software or service is in conformity with its valid licenses from Adobe. For example, Adobe has the right to those of Consortium Member's records useful to determine whether installations of the Software have been serialized, and Consortium Member shall provide such records to Adobe promptly upon request by Adobe. Additionally, Consortium Member shall provide Adobe with all records and information requested by Adobe in order to verify that its installation and use of any and all Adobe software is in conformity with its valid licenses from Adobe within thirty (30) days of Adobe's request. Additional information on serialization is available at <http://www.adobe.com/go/elicensing>. If the verification discloses a shortfall in licenses for the Software or Membership, Consortium Member shall immediately acquire any necessary licenses, prorated from the date of commencement of use the shortfall(s).
5. NON-APPROPRIATION/NON-ALLOCATION: The terms of this Agreement are contingent upon sufficient appropriations/allocations being made by the Oklahoma State Legislature or other appropriate government entity. Accordingly, the Oklahoma State Regents for Higher Education and Consortium Members may terminate this Agreement without penalty should funding for this Agreement be reduced to a level that the Oklahoma State Regents for Higher Education or the Consortium Member reasonably deems insufficient to support this Agreement. Upon such termination, which shall be effective thirty (30) days after Adobe's receipt of written notice from Customer, Customer shall not be entitled to any refund or credit for fees paid under this Sales Order prior to the effective date of such termination.

SAMPLE

**Customer: Oklahoma State Regents
for Higher Education**

**Customer Sales Order Number:
4400414982**

Summary of Products and Services

Offerings	Recurring Fees
Delivery Date – June 30, 2015:	[Fill in]
July 1, 2015 – June 30, 2016:	
July 1, 2016 – June 30, 2017:	
License Term: (approximately 35.5 months)	Delivery Date – June 30, 2017
Total Fees	[Fill in]

By signing below, the parties agree to be bound by the terms and conditions set out in this Schedule A (including all schedules and referenced terms and conditions set out in the above referenced Customer's Sales Order agreement) which shall become effective upon the date of last signature (the "Effective Date").

Consortium Member:	Adobe Systems Incorporated
Signature I have read, understood and agreed to comply with the terms and conditions of this Agreement, and I represent and warrant that I am authorized to bind Consortium Member. Name: Title: Date: Address: Contact:	Signature I have read, understood and agreed to comply with the terms and conditions of this Agreement, and I represent and warrant that I am authorized to bind Adobe. Name: Title: Date: Address: 345 Park Avenue San Jose, CA 95113-2001 Contact:

1. Definitions

- 1.1. **Consortium Member** means a Qualified Educational User that is accepted by Customer as part of Customer's cooperative association.
- 1.2. **Customer** means the cooperative association that agreed to the terms and conditions of the Sales Order this Schedule A is associated with.
- 1.3. **Education Eligibility Criteria** means the eligibility criteria for Adobe's education program(s) in North America set forth at the "Qualified Educational Users" page on Adobe's website (currently available at: <http://www.adobe.com/education/institution-eligibility-guide.html>).
- 1.4. **Enterprise** means all entities within Consortium Member's enterprise that meet the Education Eligibility Criteria, and shall include all FTE selected below in Section 4.2.
- 1.5. **Faculty** means a then-current employee or independent contractor of Consortium Member whose primary job duties including providing educational instruction to students.
- 1.6. **Staff** means a then-current employee of the Consortium Member that provides administrative support to the Consortium Member's educational operations and/or Faculty.
- 1.7. **Student** means a student who is then-currently enrolled at a Consortium Member operated educational

Institution.

1.8. **Maintenance** means the provision of Upgrades according to Section 7.

2. Deadline for Execution and Return of Sales Order

All License rights described in this Schedule A are contingent upon Consortium Member's execution and return of this Schedule A and the submission of the Consortium Member's purchase order to its Channel Entity on or around: July 15, 2014.

3. License Term

The License Term is approximately 35.5 months starting on the delivery date (i.e. the date the Products are made available for download) through June 30, 2017. The License Term is comprised of three "Periods", one period running from Delivery Date – June 30, 2015, the following running from July 1, 2015 – June 30, 2016, and the final period running from July 1, 2016 – June 30, 2017. During the License Term, the terms of this Schedule A will govern all orders by Consortium Member of the Products and Services set out in this Schedule A. This Schedule A is subject to the NON-APPROPRIATION/NON-ALLOCATION CLAUSE provided in the Sales Order Terms and Conditions.

4. Enterprise Term License

4.1. Consortium Member shall have a license to deploy an unlimited quantity of licenses to the Products shown in the table in Section 6 below within its Enterprise which is comprised of the Full Time Equivalent (FTE) population selected below during the Term, subject to the Growth Limitation clause in Section 8, below.

4.2. FTE is calculated as follows:

☐ If Student License option is not elected: FTE = full-time Faculty + (part-time Faculty ÷ 3) + full-time Staff + (part-time Staff ÷ 2).

☐ If Student License option is elected: FTE = full-time Faculty + (part-time Faculty ÷ 3) + full-time Staff + (part-time Staff ÷ 2) + full time Students + (part-time Students ÷ 2).

Consortium Member's current FTE Count is INSERT FTE NUMBER.

4.3. **Home Use Rights:**

Home Users are:		☐ Faculty	☐ Staff	☐ Students
☐ Consortium Member elects to permit home use rights	During the License Term, each Home User may install and use the OnPremise Software on his/her Authorized Computer in accordance with Clause 1.1(Portable or Home Computer Use) of the PDM for Desktop Software and Creative Cloud. Consortium Member is responsible for managing the distribution of serial number(s) to all Home Users. For any Work at Home or home use rights licensed under any ETLA, any Maintenance, Support, Updates or any other rights granted under the ETLA or by subsequent addendum or amendment, if any, will terminate on the expiration of the ETLA.			
	☐ Manual Installation Option	☐ Manual Installation: Type 1	Kivuto Solutions Inc. ("Kivuto") (formerly e-academy Deployment) - Notwithstanding anything to the contrary in the PDM, Consortium Member may use Kivuto, to manage the Product licenses granted to Home Users for work at home usage. Consortium Member shall make no agreement, express or implied, that limits Adobe's right or ability to track and/or audit Kivuto's distribution of Product licenses hereunder.	

			Consortium Member also understands that the use of Kivuto may be subject to additional fees, requirements, and/or terms of use. Consortium Member permits Adobe to obtain, and Kivuto to release, any and all information relating to Consortium Member's use and deployment of the Products and Consortium Member shall obtain all necessary consents, if applicable, for the release of such information. Consortium Member shall purchase Product downloads on an as-needed basis. Consortium Member shall pay for Product licenses prior to download.
		☐ Manual Installation: Type 2	Kivuto Solutions Inc. ("Kivuto") (formerly e-academy Deployment) - Notwithstanding anything to the contrary in the PDMs, Consortium Member may use Kivuto, to manage the Product licenses granted to Home Users for work at home usage. Consortium Member shall make no agreement, express or implied, that limits Adobe's right or ability to track and/or audit Kivuto's distribution of Product licenses hereunder. Consortium Member also understands that the use of Kivuto may be subject to additional fees, requirements, and/or terms of use. Consortium Member permits Adobe to obtain, and Kivuto to release, any and all information relating to Consortium Member's use and deployment of the Products and Consortium Member shall obtain all necessary consents, if applicable, for the release of such information. Consortium Member will purchase all downloads in advance. When Consortium Member has exhausted its prepaid downloads, it must purchase additional pre-paid downloads prior to downloading any additional Software.
☐ Consortium Member elects <u>not</u> to permit home	Notwithstanding anything to the contrary, home use of the OnPremise Software is not permitted under this Agreement.		

use rights	
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- 4.4.** If the Student Use option is not selected, then notwithstanding anything else in the Agreement, access and use of the Products by Students shall be limited solely to computers physically located in a Consortium Member's classroom or Consortium Member's educational lab environment.
- 4.5.** If Adobe makes available file storage in the cloud, Consortium Member shall be limited to total cloud storage equal to two gigabytes per FTE. (For example, a Consortium Member has 100 FTEs, Consortium Member's total limit would be 200 gigabytes.)
- 4.6.** Consortium Member shall ensure that its participating end users are aware of and comply with all the terms and conditions of this Agreement. Consortium Member shall be liable to Adobe for all actions and inactions of Consortium Member's end users relating to this Agreement.
- 4.7.** At the end of the License Term, unless renewed by a mutually executed document under mutually agreed terms and conditions, the Enterprise term license described in this Schedule A will no longer apply and will automatically expire, and all OnPremise Software licensed under this Schedule A must be deleted from Consortium Member's computers and systems, and Consortium Member must provide Adobe with a letter of destruction in the form attached to this Sales Order as Schedule B. For clarity, Consortium Member is not required to remove any perpetual licenses that it has purchased under other agreements.

5. Ordering and Payment Terms

- 5.1. Adobe is not entering into a direct purchasing relationship with Consortium Member for the Products and Services. Rather, Consortium Member must utilize a Channel Entity for placing its orders. The Channel Entity is solely responsible for setting the terms of payment with Consortium Member (including but not limited to when payments by Consortium Member are due to Channel Entity).
- 5.2. In this clause, "Channel Entity" means the third party with whom Consortium Member places its order(s) for the Products and Services. The Channel Entity will be a service provider appointed by Adobe to act as its fulfillment agent under this Agreement.
- 5.3. Consortium Member must place its order(s) with the Channel Entity for the Products and Services promptly, in accordance with this Schedule A.
- 5.4. Channel Entity information as of the Effective Date:

Channel Entity:	Channel Entity Contact Information:
Name: CDW Logistics	Contact Name
Address:	Contact Title
State, Zip	Street Address
	City, State, Zip
Phone:	Contact Phone
Email:	Contact EMail

6. Products and Services Ordered; Fees

The Products and Services ordered, applicable quantities and unit Fees are as follows:

[illegible]**Fees are inclusive of Maintenance.**

7. Maintenance is included with all Software licensed under this Schedule A for the entire duration of the License Term. Support may also be ordered, and is optional throughout the License Term. Adobe will provide Support to Consortium Members who have ordered it for the applicable annual periods. The provision of any fixes, updates, upgrades or other releases in connection with Maintenance will not expand the scope of permitted use of the Software under this Agreement. Support is provided in annual increments and will expire the day prior to the applicable anniversary date of the Effective Date.

8. **Growth License Limitation**

The rights granted herein are based on the total number of Consortium Member's FTEs as set forth in Section 4.2, above. At any time during the Term, if the Consortium Member's total number of FTEs increases by five percent (5%) or more, ("Growth Event") as compared to the number specified in Section 4.2, above, or the number established as a result of a prior Growth Event, then Consortium Member must purchase additional licenses for the products licensed hereunder at the unit prices specified herein, prorated from the date of occurrence of the Growth Event to the end of the Term (rounded to the nearest whole month). Consortium Member may be asked to confirm from time to time (by written or email request from their Adobe Account Representative) that a growth event has occurred, and will respond within a reasonable time to confirm that a Growth Event has or has not occurred, using the form attached hereto as Schedule C.

Schedule B: Sample Letter of Software Destruction

"Consortium Member" means _____

"Agreement" means the Enterprise Term License Agreement Sales Order with Agreement Number:

For the purposes of this Letter of Destruction, "OnPremise Software" shall mean all copies of all software installed pursuant to the Agreement.

I, authorized signatory of Consortium Member, hereby declare on behalf of Consortium Member that Consortium Member has undertaken the necessary measures to delete and destroy the OnPremise Software licensed by Consortium Member under the Agreement. In order to delete and destroy the OnPremise Software, Consortium Member has taken the following steps:

1. Deleted the decryption key, if applicable, received from Adobe.
2. Removed and destroyed any and all electronic copies of the OnPremise Software, including but not limited to electronic copies on tape or other backup media, from any and all authorized workstations, Internet or Intranet sites, or Consortium Member's computers, computer servers or computer networks.
3. Destroyed all User Documentation provided with the OnPremise Software, whether hard copies of media or documentation that is provided with the OnPremise Software download.

Consortium Member acknowledges and confirms that Consortium Member has relinquished all rights to use the OnPremise Software and no longer has any rights under the Agreement in relation to the OnPremise Software.

Consortium Member Authorized Signature:

Name of Signatory:

Title of Signatory:

Date:

Schedule C: Growth Event Report

Submit original Report to Adobe per the information below.

Agreement Number: _____

Consortium Member Name: _____

Agreement Effective Date: _____

Total Number of Full-Time Equivalents (FTEs) as of Contract Effective Date: _____

Total Number of Full-Time Equivalents (FTEs) as of Report Date: _____

By signing below, you certify that the above information is correct.

Authorized Signature: _____

Name: _____

Title: _____

Date: _____

**Submit completed report
to:**

elatrueup@adobe.com



GENERAL TERMS (2014v1)

1. INTRODUCTION

1.1 Agreement and Order of Precedence. A reference to "Agreement" means:

- (A) the Enterprise Licensing Terms, consisting of:
 - (1) these General Terms;
 - (2) the applicable exhibits; and
 - (3) the applicable Product Descriptions and Metrics; and
- (B) the Sales Order.

If there is any inconsistency between any of the above parts, the part listed later will prevail (to the extent of the inconsistency) over a part listed earlier.

1.2 Definitions

- (A) "Adobe" means one or both of the following:
 - (1) If the Products and Services are licensed in the United States, Canada, Mexico, United States territories and possessions, and United States military bases wherever located:
Adobe Systems Incorporated (a Delaware corporation, of 345 Park Avenue, San Jose, California 95110, USA).
 - (2) If the Products and Services are licensed in all other countries:
Adobe Systems Software Ireland Limited (an Irish company, of 4-6 Riverwalk, Citywest Business Campus, Dublin 24, Ireland).
- (B) "Adobe Partner" means an entity that is appointed by Adobe to process orders from end users, or a reseller of Products and Services to end users.
- (C) "Adobe Technology" means technology owned by Adobe or licensed to Adobe by a third party (including the Products and Services, Reports, software tools, algorithms, software (in source and object forms), user interface designs, architecture, toolkits, plug-ins, objects and Documentation, network designs, processes, know-how, methodologies, trade secrets, and any related intellectual property rights throughout the world), and suggestions made to Adobe that are incorporated into any of the foregoing (which will be deemed assigned to Adobe), as well as any of the derivatives, modifications, improvements, enhancements, or extensions of the above, whenever developed.
- (D) "Affiliate" means, for a Party, any other entity that controls, is controlled by or under common control with the Party. For the purposes of this definition, the term "control" means the direct or indirect power to direct the affairs of the other entity through at least 50% of the shares, voting rights, participation, or economic interest in this entity.
- (E) "Claim" means a claim, action, proceeding, or demand made against a person or entity, however arising and whether present or future, fixed or unascertained, actual, threatened or contingent.
- (F) "Computer" means a virtual or physical device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions, consistent with the configuration recommendations in the Documentation, including desktop computers, laptops, tablets, mobile devices, telecommunication devices, Internet-connected devices, and hardware products capable of operating a wide variety of productivity, entertainment, or software applications.
- (G) "Confidential Information" means a Discloser's or Discloser's Affiliates' non-public information (including copies, summaries, and extracts): (i) that is identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic, or electronic form; or (ii) that is disclosed in non-tangible form, identified as confidential at the time of disclosure, summarized in a writing labeled as "confidential", and delivered to Recipient or Recipient's Affiliate (as applicable) within 15 days after disclosure. The Party disclosing Confidential Information is referred to as "Discloser" and the Party

receiving Confidential Information is referred to as "Recipient". Confidential Information does not include information that: Agreement id: 4400414982

- (1) is or becomes generally publicly available at or after the time of disclosure through no fault of either Recipient or Recipient's Affiliate;
 - (2) was known to Recipient or Recipient's Affiliate (as applicable), free of any confidentiality obligations, before its disclosure by either Discloser or Discloser's Affiliate;
 - (3) becomes known to Recipient or Recipient's Affiliate (as applicable), free of any confidentiality obligations, from a source other than either Discloser or Discloser's Affiliate; or
 - (4) is independently developed by either Recipient or Recipient's Affiliate without use of Confidential Information.
- (H) "Customer" means the entity identified in the Sales Order as "Customer" or otherwise identified in the Sales Order as the end user customer.
- (I) "Development Software" means On-premise Software licensed for use in a non-production, technical environment solely for internal development and testing authorized under the PDM.
- (J) "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.
- (K) "Documentation" means: (A) for On-premise Software, the technical user manual describing the features and functionalities of the applicable On-premise Software, as provided by Adobe and generally available in PDF format in the software or via www.adobe.com; and (B) for On-premise Software that does not have a technical user manual, Managed Services or On-demand Services, the description of the software or service contained in the PDM applicable to the service or software. "Documentation" does not include any forum or content contributed by any third party.
- (L) "Effective Date" means the effective date stated in the Sales Order.
- (M) "Enterprise Licensing Terms" is described in section 1.1 of these General Terms.
- (N) "Evaluation Software" means On-premise Software licensed for internal evaluation purposes in a non-production environment.
- (O) "Indemnified Technology" means On-demand Services, Managed Services or On-premise Software, or both (as applicable) paid for by Customer, but excludes any sample code, SDK, open source, trial or Evaluation Software, pre-release software, not-for-resale software, and software provided free of charge.
- (P) "License Metric" means each of 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.
- (Q) "License Term" means the duration of the license granted for the On-demand Services, Managed Services or On-premise Software (as applicable), as specified in the Sales Order, or any shorter term arising from a termination of this Agreement.
- (R) "Loss" means any damage, loss, cost, expense, or liability incurred by a person or entity.
- (S) "Managed Services" means the enterprise solutions hosted by or on behalf of Adobe (and Distributed Code, where applicable) in a single-tenant environment, as set out in the Sales Order and identified as "Managed Services" in the applicable PDM. Adobe may use virtualization technologies at different layers to mimic the concept of dedicated resources (e.g., processing, networking, message center servers, etc.) to create a single tenant environment for Customer.
- (T) "On-demand Services" means the enterprise solutions hosted by or on behalf of Adobe (and Distributed Code, where applicable), as set out in the Sales Order and identified as "On-demand Services" in the applicable PDM.
- (U) "On-premise Software" means the software set out in the Sales Order and identified as "On-premise Software" in the applicable PDM.
- (V) "Party" means Adobe or Customer, as applicable.

- (W) "Products and Services" means one or more of the following procured by Customer: On-premise Software, On-demand Services, Managed Services, or Professional Services, as set out in the Sales Order. Agreement Id: 4400414982
- (X) "Product Descriptions and Metrics" or "PDM" means the Product Descriptions and Metrics document that describes the Products and Services and the terms that apply to their use.
- (Y) "Professional Services" means any consulting, training, implementation, or technical services provided by Adobe to Customer, as set out in the "Adobe Professional Services" section of the Sales Order.
- (Z) "Sales Order" means the sales order form, statement of work, purchase authorization letter, 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.

2. PAYMENT OF FEES

This section 2 (Payment of Fees) applies only if Customer orders the Products and Services directly from Adobe. If Customer orders the Products and Services from an Adobe Partner, the payment terms are as 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 must provide a detailed remittance advice with each payment to Adobe via email to slar@adobe.com no later than the date of the 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 within 45 days of the date of Adobe's notice of Customer's failure to pay, Adobe may, in its sole discretion, terminate this Agreement or the applicable Sales Order or suspend or restrict 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. Customer must pay the undisputed portions of Adobe's invoice as required by this Agreement.
- 2.4 **Taxes.** Prices do not include applicable taxes. The following applies only if Customer orders the Products and Services directly from Adobe: 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.

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 customer receives the tangible media (e.g., CD or DVD) containing the On-premise Software FOB destination. On-demand Services or Managed Services are deemed to be delivered and accepted on the License Term start date.

4. OUTSOURCING AND THIRD-PARTY ACCESS

- 4.1 Customer may allow a third-party contractor to use and access the Products and Services solely to operate the Products and Services on Customer's behalf, but only if:
- (A) upon Adobe's request, Customer provides Adobe with written notice;
 - (B) Customer ensures that (1) the contractor complies with the terms of this Agreement on the same basis as the terms apply to Customer; and (2) Adobe has the right to enforce this Agreement directly against the contractor;

- (C) the use or access by the contractor is only for Customer's direct business purposes; and
Agreement Id: 4400414982
(D) Customer remains liable for any act or omission of the contractor.

- 4.2 For clarification, the rights granted under this section 4 (Outsourcing and Third-Party Access) do not modify the License Metric or increase the number of licenses granted under this Agreement.

5. CONFIDENTIALITY

- 5.1 **No Use or Disclosure.** Recipient will only use Confidential Information for the purposes of this Agreement and will not reproduce, disseminate, or disclose Confidential Information to any person, except to its employees and authorized representatives (i.e., temporary employees, consultants, and contractors) who need to know the Confidential Information for the purposes of this Agreement and are bound by confidentiality obligations at least as restrictive as those in this section 5 (Confidentiality). Recipient will treat all Confidential Information with at least the same degree of care as it treats its own Information of similar sensitivity, but never with less than reasonable care.
- 5.2 **Required Disclosure.** Recipient may disclose Confidential Information:
- (A) as approved in a writing signed by Discloser;
 - (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 only if, in the case of section 5.2(B) and section 5.2(C), Recipient (1) promptly notifies Discloser of the details of the required disclosure; and (2) gives Discloser all assistance reasonably required by Discloser to enable Discloser to take available steps to prevent the disclosure or to ensure that disclosure occurs subject to an appropriate obligation of confidence.
- 5.3 **Responsibility for Representatives and Affiliates.** Recipient is responsible for ensuring that its representatives and Affiliates fully comply with the obligations of the Recipient under this section 5 (Confidentiality). The OSRHE and Consortium Members are governmental entities of the State of Oklahoma, by virtue of which they are subject to the Oklahoma Open Records Act ("ORA"), codified at 51 O.S. § 24.A.1, et seq. The parties agree that any provision of this Agreement that conflicts with the ORA is ineffective. The OSRHE and Consortium Members do undertake to protect the proprietary information provided by ADOBE to the full extent permitted by the ORA.

6. TERM AND TERMINATION

- 6.1 **Term.**
- This Agreement applies to each Product and Service from the Effective Date until the expiration of the applicable License Term or the term for Professional Services, unless terminated earlier under this Agreement.
- 6.2 **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 Customer breaches section 7.2 (No Modifications) of these General Terms.
- 6.3 **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,

7. INTELLECTUAL PROPERTY

- 7.1 Ownership.** Adobe and its licensors own the Adobe Technology.
- 7.2 No Modifications.** Customer must not modify, create derivative works of, adapt, translate, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code in, any Adobe Technology. These restrictions will not apply to the extent they limit any non-waivable right Customer may enjoy under applicable law.

8. INDEMNIFICATION

- 8.1 Adobe's Duty to Indemnify.** Adobe will defend 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 Customer the Losses (including reasonable legal fees) that are directly attributable to an Infringement Claim and are either finally awarded by a court of competent jurisdiction against Customer or agreed to in a written settlement agreement signed by Adobe.
- 8.2 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 Indemnified Technology under the terms of this Agreement;
 - (B) replace or modify the allegedly infringing Indemnified Technology to avoid the infringement; or
 - (C) terminate Customer's license and access to the Indemnified Technology (or its infringing part) and refund:
 - (1) in the case of On-demand Services, Managed Services or On-premise Software 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 all copies of the On-premise Software (and related materials from all computer systems on which it was stored) and returns to Adobe all physical copies of the On-premise Software and related materials.
- 8.3 Conditions to Indemnification.** Adobe will have no liability for any Infringement Claim:
- (A) that arises from any:
 - (1) use of the Indemnified Technology in violation of this Agreement;
 - (2) modification of the Indemnified Technology by anyone other than Adobe or a party authorized in writing by Adobe to modify specific code within the Indemnified Technology;
 - (3) failure by Customer to install the latest updated version of the Indemnified Technology as requested by Adobe to avoid infringement; or
 - (4) third-party products, services, hardware, software, or other materials, or combination of these with Indemnified Technology if the Indemnified Technology 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 (Customer may participate in the matter at Customer's own expense), except that in the case of the State of Oklahoma, such sole control is subject to the authorization of the Attorney General of Oklahoma and will be provided to the extent of such authorization. The State of Oklahoma agrees that the authorization required in the preceding sentence will not be unreasonably withheld, delayed, or conditioned. In the event that the Attorney General of Oklahoma does not authorize sole control to Adobe over any claims that may arise under this subsection, then the Parties agree that Adobe will be granted authorization to equally participate in any proceeding subject to this subsection; or

(4) refrain from making admissions about the Infringement Claim without Adobe's prior written consent.

8.4 **Sole and Exclusive Remedy.** The remedies in this section 8 (Indemnification) are Customer's sole and exclusive remedies and Adobe's sole liability regarding the subject matter giving rise to any Claim that the Products and Services infringe or misappropriate any third party's intellectual property rights.

9. LIMITATION OF LIABILITY

9.1 LIMITATION OF DAMAGES

(A) In no event is either Party liable for any of the following arising out of or concerning this Agreement, however caused: special, indirect, moral, consequential, incidental, punitive, or exemplary damages; loss of profits, use, or revenue; business interruption; or loss or corruption of data.

(B) The maximum aggregate liability of each Party for each and all Claims (individually and together) under or relating to this Agreement or its subject matter is limited to an amount equal to the aggregate of the fees that must be paid by Customer under this Agreement during the 12 months before the Initial Claim.

(C) Sections 9.1(A) and 9.1(B) (Limitation of Liability) of these General Terms:

(1) apply regardless of the form or source of Claim or Loss, whether the Claim or Loss was foreseeable, and whether a Party has been advised of the possibility of the Claim or Loss; and

(2) do not apply in any breach of any confidentiality provisions of this Agreement, 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, or to any indemnification action described in Section 8 herein.

9.2 **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); and (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). 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.

10. LICENSE COMPLIANCE

10.1 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.

10.2 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. Agreement Id: A400414982

- 10.3 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.
- 10.4 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 based on Adobe's then-current, country-specific list price, 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.

11. GENERAL PROVISIONS

11.1 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 11.1 (Assignment) of these General Terms, Customer may not assign, voluntarily, by operation of law or otherwise, any rights or obligations under this Agreement without the prior, written consent of Adobe.

- 11.2 **Governing Law, Venue.** This Agreement is governed by and construed under the laws of the state of Oklahoma, 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 Oklahoma, state of Oklahoma, 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.

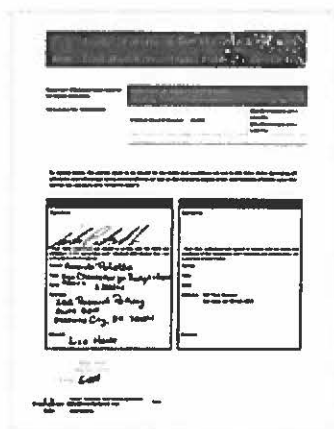
- 11.3 **Force Majeure.** Neither Party is liable for failure to perform its obligations under this Agreement (except for any payment obligations) to the extent that performance is delayed, prevented, restricted or interfered with as a result of any causes beyond its reasonable control, including acts 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.

- 11.4 **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.

- 11.5 **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): (A) to Adobe: ContractNotifications@adobe.com; and (B) 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. A notice is taken to have been received by email 3 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.

- 11.6 **Customer Responsibility.** Customer is responsible for all acts and omissions of its Affiliates or any person or entity that Customer is permitted under this Agreement to allow the use of, or access to, the Products and Services, but shall not be responsible for the act(s) of Consortium Members accessing the Products and Services under separate Sales Orders.

- 11.7 **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. Agreement Id: 4400414982
- 11.8 **Third-Party Beneficiaries.** Customer acknowledges and agrees that Adobe's licensors are third-party beneficiaries of this Agreement, with the right to enforce the obligations in this Agreement directly against Customer.
- 11.9 **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.
- 11.10 **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.
- 11.11 **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.
- 11.12 **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.
- 11.13 **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.
- 11.14 **Export Rules.** Customer acknowledges that the Products and Services may be subject to the U.S. Export Administration Regulations and other export laws and regulations, and Customer will comply with them.
- 11.15 **Adobe Partner Transactions.** If Customer orders Products and Services from an Adobe Partner under a Sales Order with the Adobe Partner ("Partner Sales Order"), notwithstanding anything to the contrary: (A) the terms of this Agreement apply to Customer's use of the Products and Services; (B) the Enterprise Licensing Terms (or any part of it) prevails over any inconsistent provisions in the Partner Sales Order; and (C) the Adobe Partner is solely responsible for any variations or inconsistencies between the Partner Sales Order and the order between the Adobe Partner and Adobe for the transaction. If Customer does not accept the terms of this Agreement, then Customer must not use or must immediately cease using the relevant Products and Services.
- 11.16 **U.S. Government Licensing.** For US Government end users: Customer acknowledges that Products and Services are "Commercial Item(s)," as that term is defined at 48 C.F.R. section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as the terms are used in 48 C.F.R. section 12.212 or 48 C.F.R. section 227.7202, as applicable. Customer agrees, consistent with 48 C.F.R. section 12.212 or 48 C.F.R. sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (A) only as Commercial Items; and (B) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights reserved under the copyright laws of the United States.



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