

## ADOBE PRINT SERVICE PROVIDER PROGRAM AGREEMENT

**A.** This Adobe Print Service Provider Program Agreement (this "Agreement") sets forth the terms and conditions agreed to between Adobe (as defined below) and the individual or entity submitting the membership application form ("Member") as a member in the Adobe Print Service Provider Program (the "Program"). The parties to the Agreement are Adobe and Member as described in the Program membership application form. If Member is resident in the United States, Canada, or Mexico, "Adobe" means Adobe Systems Incorporated, a Delaware corporation ("Adobe Delaware"). If Member is resident in any other country, "Adobe" means Adobe Systems Software Ireland Limited, a company incorporated in the Republic of Ireland ("Adobe Ireland"). All references to Adobe herein will correspondingly either refer to Adobe Delaware or Adobe Ireland.

**B. The Program.** If accepted into the Program, a member will be eligible to acquire access to various specified benefits ("Benefits"). The Benefits will be related to specified Adobe products, including without limitation certain software ("Products") and services for corresponding fees ("Membership Fees"). The Benefits will be limited to those that Adobe from time to time in its sole discretion makes available to Members meeting various specified conditions or requirements to be eligible for such Benefits (the "Membership Prerequisite(s)"). This Agreement covers the Program. Currently available Benefit options, Membership Fees and conditions and restrictions with respect to any such Benefits are described in the corresponding Adobe Program Benefits appendix and other appendices, as applicable (each, an "Appendix" and collectively, "Appendices") that is/are attached hereto and incorporated herein by this reference. As additional Benefits are made available to Program Members from time to time, Adobe reserves the right to add additional terms, restrictions, and conditions (collectively, "Additional Terms") applicable to such new Benefits. Member acknowledges and agrees that Adobe may require Member to accept such Additional Terms prior to making such new Benefits available to Member.

**C. Exhibits.** Additional terms and conditions to this Agreement are attached to and made a part of this Agreement as exhibits ("Exhibits").

Exhibit A.	General Terms and Conditions
Exhibit B.	Adobe Support Services
Exhibit C.	Adobe Content
Exhibit D.	Adobe Pre-Release Software
Exhibit E.	Adobe NFR Software
Exhibit F.	Adobe Trademarks Terms and Restrictions on Use
Exhibit G.	Program Benefits

PLEASE CAREFULLY REVIEW THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT IS NOT EFFECTIVE UNLESS AND UNTIL MEMBER HAS RECEIVED NOTICE OF ACCEPTANCE INTO THE PROGRAM FROM ADOBE, AND MEMBER SHALL NOT BE ELIGIBLE FOR BENEFITS UNTIL SUCH TIME. BY SUBMITTING MEMBER'S MEMBERSHIP APPLICATION, MEMBER CERTIFIES THAT: MEMBER HAS READ AND UNDERSTANDS THE TERMS OF THIS AGREEMENT DRAWN UP IN ENGLISH, INCLUDING EACH APPENDIX AND EXHIBIT; MEMBER IS BECOMING A PARTY TO THIS AGREEMENT AND CONSENTS TO BE BOUND BY ALL THE TERMS OF THIS AGREEMENT; ALL INFORMATION IN THE MEMBERSHIP APPLICATION IS COMPLETE, TRUE, ACCURATE AND NOT MISLEADING; AND THE PERSON SUBMITTING THE MEMBERSHIP APPLICATION ON BEHALF OF THE NAMED MEMBER IS DULY AUTHORIZED TO BIND MEMBER TO THESE TERMS. IF MEMBER DOES NOT AGREE WITH THE TERMS OF THIS AGREEMENT, MEMBER IS NOT ELIGIBLE TO PARTICIPATE IN THE PROGRAM.

## EXHIBIT A

### GENERAL TERMS AND CONDITIONS

In connection with Member's participation in the Program, Member and Adobe agree as follows:

**1. ENROLLMENT IN THE PROGRAM.** To apply for enrollment, Member must submit a complete membership application, including marketing materials, product samples, and additional documents, as described in the applicable membership application form ("Membership Application"). Adobe will evaluate Member's Membership Application and will notify Member of Adobe's acceptance or rejection of Member's Membership Application. Adobe may reject Member's Membership Application at its sole discretion for any reason, including, but not limited to, a determination that Member does not meet any applicable Membership Prerequisites. If accepted, Member will be responsible for all of Member's expenses incurred in connection with Member's participation in the Program.

#### **2. PROGRAM BENEFITS.**

**2.1 General.** Adobe shall use reasonable commercial efforts to provide the Benefits to Member. Adobe will only provide Member with the Benefits for the Products that are licensed to Member under a valid, Adobe authorized, end user software license agreement for the applicable Product (an "End User License Agreement") and for which Member has satisfied or fulfilled any applicable Membership Prerequisite. Notwithstanding the foregoing, Adobe reserves the right to change any Benefit offered or provided under the Program upon thirty (30) days' notice. Adobe shall not be required to provide any Benefit relating to questions or problems arising out of: (a) Member's use of any Product or Benefit in a manner for which it was not intended; (b) accident; or (c) Member's negligence, misuse, or modification of any Product or Benefit.

**2.2 Access to Adobe's Sites.** Access to Adobe's sites on the World Wide Web is governed by Adobe's applicable Terms of Use, located at <http://www.adobe.com/misc/copyright.html> and the applicable privacy policy, located at <http://www.adobe.com/misc/privacy.html>, each of which may be accessed via the footer of the Adobe.com website of Member's country of residence (accessible through the upper right hand corner of www.Adobe.com (e.g., the German site for German residents, the US site for US residents, etc.)). In Member's uses of Adobe's sites and as otherwise applicable to Member's participation in the Program, Member will comply with these policies, as modified from time to time by Adobe in its sole discretion. Member may be granted access to restricted portions of Adobe's sites in connection with a Benefit or group of Benefits ("Restricted Site"). Member will limit Member's use of the Restricted Site in the manner specified by Adobe and subject to the restrictions on the use and disclosure of Confidential Information in Section 7.

**2.3 Support Services.** Member's Benefits may include certain support services from Adobe ("Support Services") under the support policies of Adobe, as modified from time to time by Adobe in its sole discretion, and the terms and conditions on [Exhibit B](#) (Adobe Support Services).

**2.4 Training.** Member may be invited to participate in various training programs proposed by Adobe from time to time. All such training is subject to availability and may be subject to additional fees and costs.

**2.5 Newsletters, Technical Bulletins and Other Content.** Member's Benefits may include newsletters, technical bulletins and other content from Adobe ("Adobe Content"). Member will be bound by the terms and conditions of any and all agreements distributed with or as part of Adobe Content and is bound by the terms attached hereto as [Exhibit C](#) (Adobe Content). If Member does not agree to such terms and conditions, Member shall not use such Adobe Content.

**2.6 Pre-Commercial Release Software.** Member's Benefits may include access to software and related documentation prior to their commercial release by Adobe ("Pre-Release Software"). If such Benefit is provided, Member will be bound by the terms of any and all agreements distributed with or as part of Pre-Release Software and is bound by the terms for any and all Pre-Release Software attached hereto as [Exhibit D](#) (Adobe Pre-Release Software). If Member does not agree to such Pre-Release Software terms and conditions, Member shall not use the Pre-Release Software.

**2.7 NFR Software.** Member's Benefits may include access to "Not for Resale" copies of Adobe software, including related documentation, provided by Adobe to Member for demonstration, and/or training and/or integration purposes only ("NFR Software"). Such NFR Software will be specified in Adobe's most current List of NFR Products and SKUs located on the website indicated by Adobe from time to time (currently <http://www.adobe.com/cfusion/partnerportal>) or successor site as indicated by Adobe. If such Benefit is provided, Member will be bound by the terms of any and all agreements distributed with or as part of NFR Software and is bound by the terms for any and all NFR Software attached hereto as [Exhibit E](#) ("NFR Software") and in Appendices. If Member does not agree to such terms, Member shall not use the NFR Software.

**2.8 Evaluation Software.** With respect only to entities that enter into a license or sublicense to use Adobe software only for that entity's internal purposes and not for resale, re-licensing or redistribution of any kind ("End User"), Member's Benefits may include requesting from Adobe and distributing to End Users copies of Adobe software and installing and integrating such Adobe software on an End User computer

system or network for evaluation purposes only by such End User ("Evaluation Software"). Member shall request copies of Evaluation Software on Adobe's website, or if not available on an Adobe website by request to the Adobe Partner Account Manager. Evaluation Software may only be installed on an End User computer system, and Member shall ensure that its use by End Users shall be subject to the terms and conditions of the End User License Agreements accompanying such Evaluation Software. If the End User does not agree to such terms and conditions, Member shall not install or integrate the Evaluation Software on the End User's computer system. Member shall ensure that the Evaluation Software may only be used by End User for no more than sixty (60) days. Member acknowledges, and shall ensure, that each End User agrees and acknowledges, that the time period that an End User may use the Evaluation Software is limited and that the Evaluation Software may stop functioning after such time period has expired. Subject to the terms of this Agreement and payment of applicable Membership Fees, Adobe hereby grants Member a nonexclusive, nontransferable, nonassignable, nonsublicensable, revocable, limited license to install and integrate the Evaluation Software into the computer systems of End Users, and to test such installations and integrations of the Evaluation Software.

**2.9 Adobe Referrals to Member.** Member's Benefits may include possible referrals of Adobe customers to Member by Adobe. In connection with its receipt of any such Benefits, Member grants Adobe the right to post Member's name, contact information and other applicable information to Adobe's websites and to otherwise disclose and disseminate such information to potential customers. Referral listings will generally include Member's business name, city, telephone number, and a summary of capabilities as provided on Member's Membership Application. Customer referrals to Member pursuant to the Program will be based upon the information provided by Member in Member's Membership Application. Member certifies that such information is accurate and complete. Whether to make referrals, or the process of making referrals, will be determined by Adobe in its sole discretion, taking into account Member's geographical location, equipment, capabilities, services provided and the like. Adobe reserves the right to cease providing customer referral Benefits to Member at any time, as determined by Adobe in its sole discretion.

**2.10 Links.** Member may be authorized to place links to Adobe's website(s), available through the Program, from Member's World Wide Web site ("Member's Site"). If so authorized, Adobe will provide Member with guidelines and graphical artwork to use in connection with linking to Adobe's website(s), and Member may select or remove such links, subject to the terms of this Agreement. Member will properly code all links to Adobe's websites in the manner specified by Adobe, comply with terms governing the use of Adobe Trademarks set forth in Section 4 of this Agreement and will cooperate with Adobe in establishing and maintaining such links. Member is also responsible for removing and/or informing Adobe of potential stale links. Adobe may reject Member's Membership Application or

terminate Member's right to link to Adobe's sites, at Adobe's sole discretion for any reason, including, but not limited to, a determination that Member's Site: is unsuitable for or incompatible with the Program; incorporates images or content that are in any way unlawful, offensive, profane, harmful, threatening, defamatory, obscene, harassing or racially, ethically or otherwise objectionable; facilitates illegal activity, promotes or depicts sexually explicit images, obscene or pornographic images; promotes or depicts violence; promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; incorporates any materials that infringe or assist others to infringe on any copyright, trademark or other intellectual property rights; or contains or promotes politically sensitive or controversial issues (collectively "Restricted Content"). Member shall not permit any Restricted Content to be incorporated on Member's Site, and Adobe also reserves the right to terminate this Agreement if any Restricted Content is incorporated on Member's Site after acceptance of Member's Membership Application and the commencement of the term of this Agreement.

**2.11 Additional Benefits.** Member's Benefits may include Benefits for which additional terms and conditions apply. Such terms and conditions, if any, are or will be attached hereto as Appendices.

### **3. MEMBER OBLIGATIONS**

**3.1 Fees and Payment.** In consideration of the Benefits provided hereunder, Member shall pay to Adobe, without any deduction or set-off whatsoever, the applicable Membership Fee(s) as set out in the applicable Appendix(ices). Unless otherwise specifically provided, all prices are in U.S. dollars, FOB (under Incoterms 2000 published by the ICC) Adobe shipping point, and are exclusive of applicable sales, use or value-added taxes or other taxes, import or export fees, duties or tariffs, and any other taxes, duties, or fees of any kind that may be levied in connection with the transactions covered hereby, all of which shall be paid by Member.

**3.2 Code of Conduct for Members.** During the term, Member shall conduct its activities in an ethical manner and in a way that reflects favorably on itself and Adobe.

**3.3 Marketing.** Where appropriate, each party shall at all times during the term of this Agreement use reasonable commercial efforts to market and promote the other party's software or services. Each party acknowledges, however, that the other party may have similar obligations under relationships with third parties and compliance with such obligations shall not constitute a breach hereof.

### **4. Adobe Trademarks, Intellectual Property.**

**4.1 Trademarks.** Subject to the terms of this Agreement and payment of applicable Membership Fees, Adobe grants Member a nonexclusive, nontransferable, nonassignable, nonsublicensable, revocable, limited license to use Adobe Trademarks, if any, expressly authorized for use in conjunction with a Benefit, in its advertising and promotional

materials during the term of this Agreement, solely in conjunction with the applicable Products and the applicable Benefit(s) and strictly in accordance with the terms of this Agreement. For purposes of this Agreement, "Adobe Trademarks" means, with respect to a Benefit, the artwork, Logos, or other images provided by Adobe to Member on the applicable portions of Adobe's sites for use in conjunction with such Benefit. "Logo" means, with respect to a Benefit, the Adobe Program logo(s) depicted in the applicable portions of Adobe's sites, or any replacement logo(s) that may be developed and made available by Adobe from time to time to Member for use in conjunction with such Benefit. Adobe may revoke Member's license to Adobe Trademarks at any time in its sole discretion. Member may not alter, modify, or change the Adobe Trademarks in any way. Member's license to use Adobe Trademarks under this Agreement is expressly conditioned on Member's continued good standing under the Program, and Member's use of the Adobe Trademarks must be in strict accordance with Adobe's trademark usage guidelines, including the "Adobe Trademark Guidelines for third parties who license, use or refer to Adobe trademarks," currently located at the "Permissions and trademark guidelines" pages of Adobe's official web site at <http://www.adobe.com/misc/agreement.html> (or a successor site thereto), and the Adobe Trademarks Terms and Restrictions on Use attached hereto as Exhibit F (Adobe Trademarks Terms and Restrictions on Use), each as amended by Adobe from time to time in Adobe's sole discretion.

**4.2 Intellectual Property.** All materials, including without limitation, the Products, and any associated documents, drawings, models, apparatus, sketches, designs, and lists) provided or made accessible to Member by Adobe in connection with the Program shall remain the sole and exclusive property of Adobe, its licensors and suppliers and shall be returned to Adobe promptly at Adobe's request, together with any copies thereof. Member shall abide by the terms of all applicable End User License Agreement(s) or such other agreement(s) as may be agreed to by the parties. With respect to technical information Member may provide to Adobe in connection with any Products, Adobe may use such information for purposes relating to this Agreement including, without limitation, product support and development.

## 5. TERM AND TERMINATION.

**5.1 Term.** The term of this Agreement will commence on the date Member receives notice of Adobe's acceptance of Member's Membership Application and continue for a term of twelve (12) months unless sooner terminated or revised pursuant to this Agreement. This Agreement may be extended or renewed upon written consent of Adobe. There shall be no automatic renewal or extension of this Agreement or any Benefit provided hereunder.

**5.2 Termination without Cause.** Adobe, in its sole discretion, may terminate this Agreement or any Benefit provided hereunder without cause or judicial intervention upon thirty (30) days' notice to Member.

**5.3 Termination with Cause.** If either party breaches a material term of this Agreement, either party may terminate this Agreement if the breaching party does not cure such breach within ten (10) days after receiving written notice of such breach.

**5.4 Termination of Rights.** Upon termination or expiration of this Agreement or any Benefit provided hereunder, all licenses to any and all Products, Adobe Content, Pre-Release Software, Confidential Information, or Adobe Trademarks licensed hereunder or in conjunction with the terminated or expired Benefit shall terminate, and all such Products, Adobe Content, Pre-Release Software, NFR Software, Evaluation Software, Confidential Information, or Adobe Trademarks and tangible embodiments thereof shall be returned or destroyed. If Member chooses to destroy such Products, Adobe Content, Pre-Release Software, NFR Software, Evaluation Software, Confidential Information, or Adobe Trademarks and tangible embodiments thereof, then Member shall provide Adobe with written verification of such destruction. Upon termination or expiration of this Agreement or any Benefit provided hereunder, Member shall have no further rights or obligations, as applicable, under this Agreement or in conjunction with the terminated or expired Benefit, unless otherwise provided in this Agreement, and Member must immediately discontinue all representations that it is a Member of the Program. The termination or expiration of any particular Benefit shall not result in the termination of this Agreement or any other Benefit in existence as of such termination date, unless expressly so provided.

**5.5 Refund.** Upon termination of this Agreement by Adobe in accordance with Section 5.2, Member will be entitled to receive, upon Member's written request to Adobe within thirty (30) days of such termination, a prorated refund of Membership Fees paid for any applicable Benefit(s) affected by such termination based on the number of months remaining in the term for such Benefit(s).

**5.6 Survival.** Sections 3.1, 4.2, 5.4, 5.5, 5.6, 7, and 10-12 will survive expiration or earlier termination of this Agreement for any reason.

**6. MODIFICATIONS BY ADOBE.** Upon thirty (30) days' notice to Member, Adobe, in its sole discretion, reserves the right to change the terms of this Agreement and the Benefits offered or provided hereunder from time to time, including, without limitation, ending Benefits relating to a Product should such Product be discontinued. These changes will become effective immediately at the end of such notice period and will be deemed to modify and supplement the terms of this Agreement. Such changes will govern any existing or future Benefits provided to Member hereunder. MEMBER'S CONTINUED PARTICIPATION IN THE PROGRAM FOLLOWING SUCH NOTICE WILL CONSTITUTE MEMBERS' BINDING ACCEPTANCE OF THE CHANGE. IF ANY MODIFICATION IS UNACCEPTABLE TO MEMBER, MEMBER'S ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT WITHIN THIRTY (30) DAYS OF SUCH NOTICE. IN SUCH EVENT, MEMBERSHIP WITHIN THE

PROGRAM SHALL BE CANCELLED, AND MEMBER'S SOLE AND EXCLUSIVE REMEDY WILL BE A PRO RATA REFUND, UPON MEMBER'S WRITTEN REQUEST, FOR BENEFITS PAID FOR BY MEMBER THAT WERE SUBSTANTIALLY REDUCED AS THE RESULT OF SUCH MODIFICATION.

**7. CONFIDENTIAL INFORMATION.** As used in this Agreement, "Confidential Information" means any and all trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, hardware, schematics, software source documents and any other information marked as confidential or that Member should reasonably have known to be confidential that is made available to Member by Adobe, in its sole discretion, in connection with the Program. Member shall not make use of, disseminate, or in anyway disclose Adobe's Confidential Information, except to the extent necessary for Member's performance under this Agreement and any other purpose Adobe may hereafter authorize in writing. In particular, Member shall maintain the existence, features, and capabilities of any Pre-Release Software disclosed to Member as secret and confidential until the Pre-Release Software is introduced by Adobe for license to the general public or publicly announced by Adobe. Member shall treat Adobe's Confidential Information with the same degree of care as it accords to its own confidential information but in no event with less than reasonable care. Member may disclose Adobe's Confidential Information only to those of its employees and consultants who need to know such information and who have previously agreed in writing to be bound by terms and conditions at least as protective of Adobe's Confidential Information as are the terms and conditions of this Agreement. Member's obligations under this Agreement with respect to a portion of Adobe's Confidential Information shall cease when (but only to the extent that) Member can document with clear and convincing evidence that: (a) it is or becomes generally available to the public through no fault or breach of Member; (b) it was in Member's possession free of any obligation of confidence at the time it was communicated to Member by Adobe; (c) it was rightfully in Member's possession free of any obligation of confidence subsequent to the time it was communicated to Member by Adobe; (d) it was developed by employees, agents, or consultants of Member independently of and without reference to any information communicated to Member by Adobe; or (e) it is required to be disclosed by any applicable law, regulation, regulatory authority or court of law. **NOTHING IN THIS SECTION 7 WILL EXTEND OR VARY THE TERMS OF ANY END USER LICENSE GRANTED TO MEMBER BY ADOBE (INCLUDING, WITHOUT LIMITATION, ANY RESTRICTIONS RELATING TO THE USE OF SOFTWARE).**

**8. LIMITED WARRANTIES.** While Adobe shall use reasonable commercial efforts to provide the Benefits under this Agreement in a professional manner, Adobe cannot guarantee that every question or problem raised by Member will be resolved or that published or orally disseminated referrals to Member will be accurate or will result in additional customers. Certain technical difficulties may, from time to time, result in service interruptions. Member will not hold

Adobe responsible for the consequences of such interruptions. Nothing in this Agreement shall be construed as expanding or adding to any warranty for any Product licensed under an End User License Agreement. EXCEPT FOR THE FOREGOING EXPRESS LIMITED WARRANTY, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, ADOBE MAKES, AND MEMBER RECEIVES, NO WARRANTIES, TERMS, REPRESENTATIONS OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE BY ANY COUNTRY OR JURISDICTION, RELATED TO OR ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE PROVISION OF BENEFITS, PRODUCTS OR SERVICES UNDER THIS AGREEMENT. ADOBE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY, TERM, REPRESENTATION OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, INTEGRATION, AND NON-INFRINGEMENT. NOTWITHSTANDING THE FOREGOING, MEMBER ACKNOWLEDGES THAT THE WARRANTY DISCLAIMER CONTAINED IN EXHIBIT D (ADOBE PRE-RELEASE SOFTWARE), NOT THIS WARRANTY PROVISION, GOVERNS THE PRE-RELEASE SOFTWARE.

**9. NO OTHER WARRANTIES.** Neither Member, nor any of its employees or agents, has any right to make any representation, warranty, or promise to any third party on behalf of Adobe that is not (a) explicitly stated in an applicable End User License Agreement, Product label or container or (b) specifically authorized in writing by Adobe.

**10. INDEMNITY.** Member will be solely responsible for and will defend, indemnify and hold Adobe and Adobe's officers, directors, agents, employees and representatives harmless from and against any and all claims, suits, damages, losses, liabilities, obligations, penalties and expenses, including legal fees and expenses, relating to or based on: (a) any claims of negligence, misrepresentation, or error or omission on the part of Member or agents, consultants or other representatives of Member; and (b) any claims based upon any warranty, term, condition or representation made by Member or Member's employees or agents that differ from the warranty provided by Adobe in any applicable End User License Agreement, Product label or container unless Member has obtained Adobe's prior written specific authorization otherwise.

**11. LIMITATION OF LIABILITY.**

**11.1** SUBJECT TO SECTION 11.2, ADOBE'S AGGREGATE LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE (a) WITH RESPECT TO OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT, (b) FOR ANY DAMAGES CAUSED BY OR RELATED TO A BENEFIT, SERVICE, PRODUCT OR DEFECT OR FAILURE IN ANY PRODUCT, SERVICE OR BENEFIT, OR (c) IF A COURT OF COMPETENT JURISDICTION HOLDS ANY OF THE ABOVE LIMITATIONS OR DISCLAIMERS INVALID, SHALL BE LIMITED TO TWICE THE AMOUNT ACTUALLY PAID BY MEMBER TO ADOBE UNDER THIS AGREEMENT FOR SUCH PRODUCT, SERVICE OR BENEFIT. ADOBE'S LIABILITY IS CUMULATIVE, WITH ALL OF MEMBER'S

LOSSES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. MEMBER HEREBY RELEASES AND FOREVER DISCHARGES ADOBE FROM ANY AND ALL OBLIGATIONS, LIABILITIES, CLAIMS, OR DEMANDS IN EXCESS OF THE FOREGOING LIMITATION. THE PARTIES ACKNOWLEDGE THAT OTHER PROVISIONS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS SECTION. SUBJECT TO SECTION 11.2, AND EVEN IF ADOBE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN NO EVENT SHALL ADOBE BE LIABLE FOR

(A) LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS OF DATA OR LOSS OF ANTICIPATED SAVINGS, OR

(B) FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES OR LOSS ARISING OUT OF THIS AGREEMENT OR THE USE OR THE INABILITY TO USE ANY PRODUCT(S) OR BENEFIT(S).

NOTWITHSTANDING THE FOREGOING, MEMBER ACKNOWLEDGES THAT THE LIMITATION OF LIABILITY CONTAINED IN EXHIBIT D (ADOBE PRE-RELEASE SOFTWARE), NOT THE LIMITATION OF LIABILITY PROVISION OF THIS SECTION, GOVERNS THE PRE-RELEASE SOFTWARE. Because some states and jurisdictions do not allow the exclusion or limitation of liability for consequential, special, or incidental damages or the exclusion of implied warranties or limitations on how long an implied warranty may last, some of the above limitations and disclaimers may not apply to Member. This Agreement does not exclude, restrict or modify any liability imposed under the law that cannot, by such law, be excluded, restricted or modified when applied to Member as identified in the applicable Membership Application.

**11.2** WHERE THIS AGREEMENT IS GOVERNED BY THE LAWS OF THE REPUBLIC OF IRELAND PURSUANT TO SECTION 12.2, NOTHING IN THIS AGREEMENT SHALL LIMIT ADOBE'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, FRAUD, WILFUL MISCONDUCT OR GROSS NEGLIGENCE.

## **12. MISCELLANEOUS.**

**12.1 Attorneys' Fees.** If an action is commenced to enforce either party's rights under this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and attorneys' fees.

**12.2 Governing Law.** If Member is a resident of the United States, Canada or Mexico, this Agreement shall be governed by and interpreted in all respects by the laws of the State of California, without reference to conflict of laws principles, as such laws are applied to agreements entered into and to be performed entirely within California between California residents. If Member is a resident of Japan, this Agreement shall be governed by and interpreted in all respects by the laws of Japan, without reference to conflict of laws principles, as such laws are applied to agreements entered into and to be performed entirely within Japan between Japanese

residents. If Member is a resident of the People's Republic of China or Singapore, this Agreement shall be governed by and interpreted in all respects by the laws of Singapore, without reference to conflict of laws principles, as such laws are applied to agreements entered into and to be performed entirely within Singapore between Singapore residents. If Member is a resident of any other country, this Agreement shall be governed by and interpreted in all respects by the laws of the Republic of Ireland, without reference to conflict of laws principles, as such laws are applied to agreements entered into and to be performed entirely within the Republic of Ireland between residents of the Republic of Ireland. In any event, this Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**12.3 Forum.** If Member is a resident of the United States, Canada or Mexico, all disputes arising under this Agreement will be brought in Superior Court of the State of California or the Federal District Court of San Jose in Santa Clara County, as permitted by law. If Member is a resident of Japan, all disputes arising under this Agreement will be brought in Tokyo District Court in Japan. If Member is a resident of the People's Republic of China or Singapore, all disputes arising under this Agreement will be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Centre for the time being in force which rules are deemed to be incorporated by reference to this Section. The tribunal shall consist of one (1) arbitrator jointly selected by both parties. If the parties cannot agree on the choice of arbitrator within thirty (30) calendar days after notice of the dispute by either party, such arbitrator shall be appointed by the Chairman of the Singapore International Arbitration Centre. The arbitration will be conducted in the English language, provided that any witness whose native language is not English may give testimony in his or her native language, with simultaneous translation into English (at the expense of the party presenting any such witness). Judgment upon the award rendered may be entered and shall be enforceable in any court of competent jurisdiction having jurisdiction over the parties. If Member is a resident of any other country, all disputes arising under this Agreement will be brought in the Courts of Ireland in Dublin, Ireland.

**12.4 Severability.** If any provision of this Agreement is unenforceable or invalid under any law or be so held by applicable court or arbitrator's decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable invalid provision within the limits of applicable law of applicable court decisions.

**12.5 Notice.** Any notices required or permitted to be given pursuant to this Agreement shall be in writing, sent via email, certified mail, return receipt requested, postage pre-paid, or delivered by hand, to the business or email addresses of the parties set forth in the Membership Application or to such other address as may be furnished in writing to the other

party. Notices shall be deemed effective on the earlier of the date of receipt or the fourth day after deposited in the mail. If notice is sent to Adobe, it shall be sent to the attention of the General Counsel. In addition, Member will refer to Adobe sites specified herein from time to time during the term of this Agreement to ensure its continued compliance with the terms of this Agreement, including without limitation, the Adobe sites specified in Sections 2.2 and 4 of this Exhibit A and Section 4 of Exhibit F.

**12.6 No Agency.** Nothing contained herein, including without limitation the title of this Agreement, shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties, and neither party has the authority to bind or incur any obligation on behalf of the other.

**12.7 Complete Agreement.** Each Exhibit and Appendix attached hereto is incorporated by this reference and made a part of this Agreement as if its terms were fully set forth in the body of this Agreement. This Agreement, including all such Exhibits and Appendices, constitutes the entire agreement between Adobe and Member and supersedes and terminates any and all prior agreements or contracts, written or oral, entered into between the parties relating to the subject matter hereof. In the event of any inconsistency between this Agreement and the provisions in any Membership Application, the terms of this Agreement shall govern. In addition, if there is any inconsistency between this Agreement and the Appendix(ices), for the Appendices the terms of the Appendix(ices) shall govern. Subject to Section 6, and except as expressly provided herein, this Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of Adobe and Member by their duly authorized representatives. Any additional services, Products or Benefits added to this Agreement by notice from Adobe will be governed by the terms of this Agreement. EACH PARTY AGREES THAT IT HAS ONLY RELIED UPON THE REPRESENTATIONS EXPRESSLY SET OUT IN THIS AGREEMENT. NEITHER PARTY WILL BE LIABLE FOR ANY REPRESENTATION MADE PRIOR TO ENTERING INTO THIS AGREEMENT EXCEPT AS EXPRESSLY SET FORTH OTHERWISE HEREIN, UNLESS SUCH REPRESENTATION IS FRAUDULENTLY MADE.

**12.8 Waiver.** The waiver by a party of a breach of any provisions contained herein shall be deemed effective only when in writing and shall in no way be construed as a waiver of any succeeding breach of such provision or the waiver of the provision itself.

**12.9 Remedies.** The parties expressly agree that a violation of Sections 2.6, 2.7, 2.8, 4, 7, Exhibit C (Adobe Content), Exhibit D (Adobe Pre-Release Software), Exhibit E (Adobe NFR Software) or Exhibit F (Adobe Trademarks Terms and Restrictions on Use) of this Agreement may cause irreparable harm to Adobe and that a remedy at law is likely to be inadequate. Therefore, in addition to any and all remedies available at law, Adobe will be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation

or any or all of the provisions hereof. Member hereby waives any requirement that Adobe post a bond or other security in conjunction with any application for injunctive or other equitable relief.

**12.10 Assignment; Name Change.** This Agreement may not be assigned, in whole or in part, by Member without the prior written approval of Adobe. Should Member undergo a change of control, Adobe will be entitled to terminate this Agreement immediately on written notice to Member. For the purposes of this Section 12.10, a change in the persons or entities who control fifty percent (50%) or more of the equity securities of Member shall be considered a change of control. Adobe's rights and obligations, in whole or in part, under this Agreement may be assigned by Adobe. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. Adobe will have the right to terminate this Agreement in case of any attempted assignment or transfer in contravention of this provision, and any such attempt will be null and void. In addition, if Member changes its corporate name or structure, Member shall notify Adobe in writing at least ten (10) days prior to such change taking effect.

**12.11 Force Majeure.** Neither party shall be liable for any failure or delay in performance under this Agreement that might be due, in whole or in part, directly or indirectly, to any contingency, delay, failure, or cause of any nature beyond the reasonable control of such party, including, without in any way limiting the generality of the foregoing, fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, including phone, Internet or other communications systems, strike, lockout, unavailability of components, activities of a combination of workmen or other labor difficulties, war, insurrection, riot, act of God or the public enemy, law, act, order, export control regulations, proclamation, decree, regulations, ordinance, or instructions of Government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of breach by such party of this Agreement).

**12.12 Warranty.** MEMBER WARRANTS THAT IT HAS FULL POWER AND AUTHORITY TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT AND THAT THE PERSON SIGNING THIS AGREEMENT ON MEMBER'S BEHALF HAS BEEN DULY AUTHORIZED AND EMPOWERED TO ENTER INTO THIS AGREEMENT. MEMBER WARRANTS THAT THIS AGREEMENT IS NOT LIMITED OR RESTRICTED BY, AND IS NOT IN CONFLICT WITH, ANY COMMERCIAL ARRANGEMENT, OBLIGATION, CONTRACT, AGREEMENT OR OTHER INSTRUMENT TO WHICH MEMBER IS BOUND OR SUBJECT. MEMBER FURTHER WARRANTS THAT IT SHALL COMPLY WITH ALL END USER LICENSE AGREEMENTS AND HAS SATISFIED AND FULFILLED ANY BENEFIT PREREQUISITE THAT MAY BE REQUIRED AS PROVIDED HEREUNDER.

**12.13 Export Control.** Member will not export, directly or indirectly, any technical data or software product acquired from Adobe pursuant to this Agreement or any Product utilizing any such data or software product to any country for

which the U.S. Government or the government of a Member State of the European Union or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval. Member shall be solely responsible for obtaining, and maintaining in full force and effect, all licenses, permits and authorizations required under any such Member to perform its obligations under this Agreement.

**12.14 Compliance with Laws; Foreign Corrupt Practices**

**Act.** Member will comply with all applicable laws including, if appropriate and applicable, the provisions of Executive Order 11246, as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 USC4212), and Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations at 41 CFR Parts 60-1 through 60-60, 60-250 and 60-741. The affirmative action clause and regulations contained in the above shall be incorporated by reference in this Agreement. Without limiting the generality of this section, Member hereby acknowledges and agrees that certain laws of the United States, including the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1 et. seq., as amended, prohibit any person subject to the jurisdiction of the United States from making any payment of money or anything of value, directly or indirectly, to any foreign government official, foreign political party or candidate for foreign political office for the purpose of (a) influencing any act or decision of such official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or (b) inducing such official, political party, party official, or candidate to use his or its influence with the government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist Member in obtaining or retaining business for or with, or directing business to any third party. Member hereby represents and warrants that Member, its owners, directors, and employees, are not officials or representatives of any government-owned or government-controlled entity or political party or official thereof, or political candidate. In addition, Member hereby

represents and warrants that, in the performance of its obligations hereunder, Member has not made, and will not make, any such proscribed payment. Member further agrees that if subsequent developments cause the representations made herein to be no longer accurate or complete, Member will immediately so advise Adobe.

**12.15 Publicity.** Member consents to publication of its name by Adobe as a Member of the Program or any applicable component thereof.

**12.16 Third Party Beneficiaries.** Member acknowledges and agrees that Adobe's licensors are third party beneficiaries of this Agreement, with the right to enforce the obligations set forth in this Agreement.

**12.17 Independent Investigation.** MEMBER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, HAS HAD AN OPPORTUNITY TO CONSULT WITH ITS OWN LEGAL ADVISERS IF IT SO DESIRED, AND AGREES TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IN INTERPRETING THIS AGREEMENT, NO WEIGHT SHALL BE PLACED UPON THE FACT THAT THIS AGREEMENT HAS BEEN DRAFTED BY ADOBE. MEMBER UNDERSTANDS THAT ADOBE MAY AT ANY TIME (DIRECTLY OR INDIRECTLY) PROVIDE BENEFITS ON TERMS THAT MAY DIFFER FROM THOSE CONTAINED IN THIS AGREEMENT OR OPERATE A BUSINESS THAT IS SIMILAR TO OR COMPETES WITH MEMBER'S BUSINESS. MEMBER IS ALSO AWARE THAT ADOBE RESERVES THE RIGHT TO OFFER SEPARATE AND DIFFERENT PROMOTIONAL AND/OR INCENTIVE ARRANGEMENTS TO ITS SUPPLIERS, KEY CUSTOMERS AND OTHER THIRD PARTIES. MEMBER HAS INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN THE PROGRAM AND IS NOT RELYING ON ANY REPRESENTATION, GUARANTEE, OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.

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## EXHIBIT B

### ADOBE SUPPORT SERVICES

In connection with Member's participation in the Program, Member and Adobe agree as follows:

**1.** Although Adobe will attempt to provide a timely initial response as part of Support Services and may follow-up with additional responses as necessary, Adobe makes no guarantees with respect to response time or resolution of an issue. Support Service Benefits apply only to current Members who are not in material breach of this Agreement. Adobe will not be liable under this Agreement to the extent that its delay or failure to comply with its obligations is caused by a Member's breach of this Agreement.

**2.** All information, software, or other materials provided by Adobe in connection with Support Services are supplied "AS IS" without warranty of any kind as to their accuracy or completeness. ADOBE DOES NOT GUARANTEE RESULTS OR IDENTIFICATION OR CORRECTION OF PROBLEMS. OTHER THAN AS EXPRESSLY PROVIDED ABOVE AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, ADOBE DISCLAIMS ANY AND ALL CONDITIONS, TERMS, REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, BY ANY COUNTRY OR JURISDICTION INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, INTEGRATION, AND NONINFRINGEMENT WITH RESPECT TO THE SERVICES, SOFTWARE, OR OTHER MATERIALS PROVIDED IN CONNECTION WITH OR RELATED TO THE SUPPORT SERVICES. Without limiting the foregoing, Member shall be solely responsible for any restoration of lost or altered files, data or programs.

**3.** Any code that Adobe provides in connection with Support Services is licensed to Member under and will be used by Member only in accordance with the terms and conditions of the End User License Agreement accompanying the corresponding Adobe software development kit or Product. Adobe retains all rights in such code. Member has no right to copy, modify, decompile, reverse engineer, sublicense or otherwise distribute such code, except as may be expressly provided in the relevant End User License Agreement and any other terms and conditions accompanying the code. However, to the extent applicable law grants Member the right to decompile in order to obtain information necessary to render the code

interoperable with other software, Member will first request prior written approval from Adobe, and Adobe may impose such reasonable conditions (including, without limitation, a reasonable fee) on such use to ensure that Adobe's rights in the Pre-Release Software are protected. When requesting and receiving Support Services, Member will not provide Adobe with any information, including information incorporated in Member's software, which is confidential to Member or any third party. Any notice, legend, or label to the contrary contained in any materials provided by Member to Adobe shall be without effect. With respect to information Member provides to Adobe as part of the Support Services, Adobe may use such information for its business purposes, including for product support and development.

**4.** To the extent Membership Fees for Support Services are based on the number of "Support Cases" or similar concept, such measurement unit means a single question on a single subject posed via World Wide Web email support form by Member to Adobe's support organization that is discrete and code-related or concerns another issue related to an applicable Product. Any queries for clarification from Adobe's support organization and the response to them by Member will count as part of the original Support Case. Bug reports from Member without a request for a workaround from Adobe's support organization will not count as a Support Case. Any unused Support Cases remaining at the end of a Support Services Benefits period will not be refunded or credited. Unless otherwise specified, the Support Services Benefits period shall be twelve (12) months from the date the term of this Agreement commences.

**5.** At Adobe's discretion and based upon the information in Member's Membership Application, the English language version of certain Products may be provided to Member and licensed to Member under an End User License Agreement. Only English language versions of Products are supported by certain portions of the Support Services. Adobe reserves the right to refuse delivery of certain Products to Members who are competitors of Adobe (as determined by Adobe) or whose local law requires delivery in a language other than English.

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## EXHIBIT C

### ADOBE CONTENT

In connection with Member's participation in the Program, Member and Adobe agree as follows:

**1. LICENSE GRANT.** Subject to the terms and conditions of this Agreement and payment of applicable Membership Fees, Adobe hereby grants Member a nonexclusive, nontransferable, nonassignable, nonsublicensable, revocable, limited license to view, evaluate, and make up to five (5) print copies (provided that Member reproduces all copyright and other restricted rights notices on all visible or tangible copies) of the Adobe Content, if any, for its internal purposes only and solely in conjunction with the applicable Products and the applicable Benefit(s).

**2. RESTRICTIONS.** Except and unless expressly permitted in this Exhibit, Member may not: reproduce, alter, enhance, modify, prepare derivative works of, display, publish, disclose, distribute, rent, sublicense, lease, sell, transfer, assign or otherwise use the Adobe Content, in whole or in part. Without limiting the foregoing, Member is expressly prohibited from placing or installing all or any portion of the Adobe Content on any electronic media (except for the one computer at Member's principal place of business to which the Adobe Content is delivered), including, but not limited to, local or wide area networks, timesharing services, multiple processing units, multiple site arrangements, service or software rental bureaus, list servers, online services, electronic bulletin boards or forums, World Wide Web sites or any other server that is Internet-enabled.

**3. RIGHTS IN ADOBE CONTENT.** Adobe Content contains proprietary material of Adobe (or material that Adobe or other suppliers have licensed to Adobe for use in the Adobe Content) which is protected by copyright and other laws concerning proprietary rights. Adobe retains all right, title and interest in and to the Adobe Content, including,

without limitation, all copyright and other proprietary rights worldwide in all media. Member may not use Adobe Content except as expressly permitted under this Agreement without Adobe's prior written consent, which may be granted or denied in Adobe's sole discretion. If Member is located in North America, requests for such permission may be made to [partners@adobe.com](mailto:partners@adobe.com). If Member is located in Europe, Middle East or Africa, requests for such permission may be made to [europartners@adobe.com](mailto:europartners@adobe.com). If Member is located in the Asia Pacific region or Central or South America, requests for such permission may be made to [apacpartners@adobe.com](mailto:apacpartners@adobe.com).

**4. REMEDIES.** Member acknowledges that the Adobe Content (and the licensed materials contained therein) is highly proprietary in nature and that unauthorized copying, modifying, transferring, selling, distributing, displaying, publishing, preparing derivative works, or other use may cause Adobe and/or its suppliers irreparable injury that cannot be adequately compensated for by means of monetary damages. Any breach of this Agreement by Member, its customers, its affiliates, or any third party, may be enforced by Adobe and/or any of its suppliers who may seek equitable relief (including, but not limited to, injunctive relief) in addition to any other available rights and remedies.

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## EXHIBIT D

### ADOBE PRE-RELEASE SOFTWARE

Member hereby agrees to be bound by the terms and conditions of any and all End User License Agreements applicable for any and all Product(s). Member hereby agrees to be bound by the terms and conditions of this Exhibit for any and all Pre-Release Software obtained by Member. Further, Member and Adobe agree as follows:

**1. LICENSE GRANT.** Subject to the terms of this Agreement and payment of applicable Membership Fees, Adobe grants Member a nonexclusive, nontransferable, nonassignable, nonsublicensable, revocable, limited license to (a) use the Pre-Release Software (in executable code form) solely for internal evaluation and trial purposes and providing Feedback; and (b) make a reasonable number of copies of the Pre-Release Software solely for backup or archival purposes and as necessary for testing and evaluation as set forth in this Agreement.

**2. RESTRICTIONS.** Member acknowledges that the Pre-Release Software and its structure, organization and source code constitute valuable trade secrets of Adobe and its suppliers. Member will have no right to (a) modify, enhance, adapt, alter, translate, or create derivative works from the Pre-Release Software; (b) merge the Pre-Release Software with other software; (c) sublicense, lease, rent, loan, sell, export, or otherwise transfer or distribute the Pre-Release Software to any third party; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Pre-Release Software; or (e) otherwise use or copy the Pre-Release Software except as expressly allowed under Section 1 above. However, to the extent applicable law grants Member the right to decompile the Pre-Release Software in order to obtain information necessary to render the Pre-Release Software interoperable with other software, Member will first request prior written approval from Adobe, and Adobe may impose such reasonable conditions (including, without limitation, a reasonable fee) on such use to ensure that Adobe's rights in the Pre-Release Software are protected. Except as expressly set forth in this Exhibit, Member acquires no license under any intellectual property rights of Adobe under this Exhibit, and Adobe retains all right, title and interest in and to the Pre-Release Software and any derivative works thereof.

**3. WARRANTY AND DISCLAIMER.** Member acknowledges that the Pre-Release Software: is in pre-commercial release version(s) form; does not represent a final product from Adobe; and may time-out, have limited functionality, contain bugs, errors, and other problems that could cause computer software, hardware, system failures, or loss of access to data. The Pre-Release Software may contain time bombs or other license management software. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PRE-RELEASE SOFTWARE IS PROVIDED TO MEMBER "AS IS," AND ADOBE MAKES, AND MEMBER RECEIVES NO WARRANTIES, TERMS, REPRESENTATIONS OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR

OTHERWISE BY ANY COUNTRY OR JURISDICTION, RELATED TO, ARISING FROM OR IN CONNECTION WITH THE PRE-RELEASE SOFTWARE. ADOBE SPECIFICALLY DISCLAIMS ANY AND ALL CONDITIONS, TERMS, REPRESENTATIONS AND WARRANTIES FOR THE PRE-RELEASE SOFTWARE INCLUDING, BUT NOT LIMITED TO THOSE OF PERFORMANCE, MERCHANTABILITY, CONDITION OF WARRANTY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, INTEGRATION AND NON-INFRINGEMENT.

**4. PRE-RELEASE ONLY.** Member acknowledges that Adobe: has not publicly announced the availability of the Pre-Release Software; has not promised or guaranteed to Member that such Pre-Release Software will be announced or made available to anyone in the future; has no express or implied obligation to Member to announce or introduce the Pre-Release Software; and may not introduce, commercialize or make publicly available a product similar to or compatible with the Pre-Release Software. Accordingly, Member acknowledges that any research or development that it performs regarding the Pre-Release Software or any product associated with the Products is done entirely at Member's own risk (including any costs and liabilities). Adobe is not obligated to provide maintenance, technical support or updates to Member for any Product.

#### **5. LIMITATION OF LIABILITY.**

**5.1** SUBJECT TO SECTION 5.2, IN NO EVENT SHALL ADOBE BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY OF THE FOLLOWING DAMAGES WHATSOEVER INCLUDING

(A) THIRD-PARTY, SPECIAL, OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF DATA, LOSS OF GOODWILL, LOSS OF REVENUE OR LOSS OF ANTICIPATED SAVINGS, AND THE LIKE), OR

(B) INDIRECT OR CONSEQUENTIAL LOSS, RELATED TO, ARISING FROM OR IN CONNECTION WITH THE PRE-RELEASE SOFTWARE OR THE USE OR THE INABILITY TO USE ANY OF THE PRE-RELEASE SOFTWARE,

EVEN IF ADOBE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MEMBER HEREBY RELEASES AND FOREVER DISCHARGES ADOBE FROM ANY AND ALL SUCH DAMAGES. IN THE EVENT THAT A COURT OF COMPETENT

JURISDICTION HOLDS ANY OF THE ABOVE LIMITATIONS OR DISCLAIMERS INVALID, ADOBE'S AGGREGATE LIABILITY SHALL BE LIMITED TO TWICE THE AMOUNT ACTUALLY PAID BY MEMBER TO ADOBE UNDER THIS AGREEMENT. ADOBE'S LIABILITY IS CUMULATIVE, WITH ALL OF MEMBER'S LOSSES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE PARTIES ACKNOWLEDGE THAT OTHER PROVISIONS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS SECTION. Because some states and jurisdictions do not allow the exclusion or limitation of liability for consequential, special, or incidental damages or the exclusion of implied warranties or limitations on how long an implied warranty may last, some of the above limitations and disclaimers may not apply to Member. This Agreement does not exclude, restrict or modify any liability imposed under the law that cannot, by such law, be excluded, restricted or modified when applied to Member as identified in the applicable Membership Application.

**5.2** NOTHING IN THIS AGREEMENT SHALL LIMIT ADOBE'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, FRAUD, WILFUL MISCONDUCT, OR GROSS NEGLIGENCE.

**6. INTELLECTUAL PROPERTY.** All materials (including, without limitation, the Pre-Release Software and any associated documents, drawings, models, apparatus, sketches, designs, and lists) furnished to Member by Adobe shall remain the sole and exclusive property of Adobe and shall be returned to Adobe promptly at its request, together with any copies thereof. Upon public release or commercialization of the Pre-Release Software, Member will destroy all prerelease versions of the Pre-Release Software received from Adobe, including all associated documentation, and to abide by the terms of the applicable End User License Agreement or such other

agreement as may be agreed to by the parties. With respect to technical information Member may provide to Adobe in connection with any Pre-Release Software, Adobe may use such information for its business purposes, including, without limitation, for product support and development.

**7. FEEDBACK.** If requested by Adobe, Member will provide reasonable feedback with respect to the Pre-Release Software evaluations, including without limitation reasonable feedback on usability, bug reports, test results and documentation (collectively "Feedback") and develop a test sample and either send paper samples with comments to Adobe or, where appropriate, send machine-readable files as test samples. Member grants to Adobe a non-exclusive, worldwide, royalty-free, fully paid-up right and license to reproduce, distribute, make derivative works based upon, publicly display, publicly perform, make, use, sell, and export the Feedback as incorporated within Adobe products and services, including without limitation the right to sublicense such rights through multiple tiers of sublicensees.

**8. DEBUG APPLICATION.** If debug application software for any Pre-Release Software is made available to Member, Member may reproduce and use such debug application software only for its internal Adobe-related coding purposes, and Member may not use the debug application software, its libraries, symbol files, or any component thereof for purpose not explicitly permitted under this Section 8. Such debug application software is provided as a development tool only. The debug application software is Adobe's proprietary technology, and Member shall treat it as Adobe's Confidential Information. The waiver of warranty provision in this Exhibit and the limitation of liability provision of this Exhibit shall apply to any debug application software made available to Member.

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## EXHIBIT E

### ADOBE NFR SOFTWARE

Member hereby agrees to be bound by the terms and conditions of any and all End User License Agreements applicable for any and all Product(s). Member hereby agrees to be bound by the terms and conditions of this Exhibit and the applicable Appendix (ices) for any and all NFR Software obtained by Member. Further, Member and Adobe agree as follows:

**1. LICENSE GRANT.** Subject to the terms of this Agreement and payment of applicable Membership Fees, Adobe hereby grants Member a nonexclusive, nontransferable, nonassignable, nonsublicensable, revocable, limited license to use the NFR Software (in executable code form) solely for: (a) demonstrations; (b) training purposes ("Training Services") at: (i) the physical locations of Member where the NFR will be installed (including those facilities identified in the Member program application and all facilities rented or leased on a temporary basis for the explicit purpose of providing instructor-led, classroom technical training) ("Member Location"), (ii) a rented or leased classroom facility, or (iii) an End User's site (provided that the NFR Software may not be installed on an End User's systems, servers or network without the prior written consent of the Adobe Order Management group); (c) installation and integration of the NFR Software into the secured computer systems of an End User, and testing of such installation and integration of the NFR Software, only as necessary in connection with and for enablement of the Software. Use of NFR Software shall not be for production purposes; and (d) for training, for such period of time when Training Services are performed at the End User's site when Training Services are being provided by Member per the terms of an Appendix.

**2. Conditions of Use.** Member shall not use the NFR Software for any purposes other than those permitted hereunder or under an Appendix.

**3. Restrictions on License.** The NFR Software may not be resold, transferred or otherwise distributed to third parties. Member shall be entitled to one copy of the NFR Software per product per platform for each Member Location for each of the purposes set forth in Section 1 above. Member shall request the NFR Software through the issuance of no charge purchase orders. The NFR license is restricted to twelve (12) workstations for each Adobe software product. The total of twelve (12) NFR licenses is in total and cannot be expanded by combining with benefits that Member may have under other agreements with Adobe or under Appendices. If used for Training Services, up to twelve (12) people authorized by Member (not including the trainer), may use the NFR Software provide under the NFR license on site at a single training location per training session. For the purposes of this Agreement, use on a "workstation" means that such workstation is not used as a local area network server and allows the NFR Software to be accessed by a single processor only. Notwithstanding the foregoing, if the Adobe software product is intended for server applications, Member may

install and access the corresponding NFR Software on a single server that may be accessed by up to five (5) workstations for demonstration and training purposes only. Member acknowledges that notwithstanding anything to the contrary, the licenses to all NFR Software provided to Member will expire as of the expiration or termination of this Agreement. Unless expressly provided herein, Member may not install the NFR Software on an End User system and if installed on the personal system of a Member employee, must be removed if such employee should cease to be employed by Member. Use of the NFR Software is subject to the terms and conditions of the license agreement that is contained in the NFR Software in electronic form as part of the product installer or which accompanies the NFR Software. If there is any conflict between the terms of the NFR Software license and the terms of this Agreement, the terms of this Agreement shall prevail.

**4. PROHIBITIONS.** Member acknowledges that the NFR Software and its structure, organization and source code constitute valuable trade secrets of Adobe and its suppliers. Member will have no right to (a) modify, enhance, adapt, alter, translate, or create derivative works from the NFR Software; (b) merge the NFR Software with other software; (c) sublicense, lease, rent, loan, sell, export, or otherwise transfer or distribute the NFR Software to any third party; (d) transfer this Agreement or any license to use the NFR Software (e) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the NFR Software; or (e) otherwise use or copy the NFR Software except as expressly allowed under Section 1 above. However, to the extent applicable law grants Member the right to decompile the NFR Software in order to obtain information necessary to render the NFR Software interoperable with other software, Member will first request prior written approval from Adobe, and Adobe may impose such reasonable conditions (including, without limitation, a reasonable fee) on such use to ensure that Adobe's rights in the NFR Software are protected. Except as expressly set forth in this Exhibit, Member acquires no license under any intellectual property rights of Adobe under this Exhibit, and Adobe retains all right, title and interest in and to the NFR Software and any derivative works thereof.

**5. WARRANTY AND DISCLAIMER.** Member acknowledges that the NFR Software: is in pre-commercial release version(s) form; does not represent a final product from Adobe; and may time-out, have limited functionality, contain bugs, errors, and other problems that could cause computer software, hardware, system failures, or loss of access to data. The NFR Software may contain time bombs or other license management software. EXCEPT AS EXPRESSLY PROVIDED

IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE NFR SOFTWARE IS PROVIDED TO MEMBER "AS IS," AND ADOBE MAKES, AND MEMBER RECEIVES NO WARRANTIES, TERMS, REPRESENTATIONS OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE BY ANY COUNTRY OR JURISDICTION, RELATED TO, ARISING FROM OR IN CONNECTION WITH THE NFR SOFTWARE. ADOBE SPECIFICALLY DISCLAIMS ANY AND ALL CONDITIONS, TERMS, REPRESENTATIONS AND WARRANTIES FOR THE NFR SOFTWARE INCLUDING, BUT NOT LIMITED TO THOSE OF PERFORMANCE, MERCHANTABILITY, CONDITION OF WARRANTY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, INTEGRATION AND NON-INFRINGEMENT.

## **6. LIMITATION OF LIABILITY.**

**6.1** SUBJECT TO SECTION 6.2, IN NO EVENT SHALL ADOBE BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY OF THE FOLLOWING DAMAGES WHATSOEVER INCLUDING

- (A) THIRD-PARTY, SPECIAL, OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF DATA, LOSS OF GOODWILL, LOSS OF REVENUE OR LOSS OF ANTICIPATED SAVINGS, AND THE LIKE), OR
- (B) INDIRECT OR CONSEQUENTIAL LOSS, RELATED TO, ARISING FROM OR IN CONNECTION WITH THE NFR SOFTWARE OR THE USE OR THE INABILITY TO USE ANY OF THE NFR SOFTWARE,

EVEN IF ADOBE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MEMBER HEREBY RELEASES AND FOREVER DISCHARGES ADOBE FROM ANY AND ALL SUCH DAMAGES. IN THE EVENT THAT A COURT OF COMPETENT JURISDICTION HOLDS ANY OF THE ABOVE LIMITATIONS OR DISCLAIMERS INVALID, ADOBE'S AGGREGATE LIABILITY

SHALL BE LIMITED TO TWICE THE AMOUNT ACTUALLY PAID BY MEMBER TO ADOBE UNDER THIS AGREEMENT. ADOBE'S LIABILITY IS CUMULATIVE, WITH ALL OF MEMBER'S LOSSES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE PARTIES ACKNOWLEDGE THAT OTHER PROVISIONS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS SECTION. Because some states and jurisdictions do not allow the exclusion or limitation of liability for consequential, special, or incidental damages or the exclusion of implied warranties or limitations on how long an implied warranty may last, some of the above limitations and disclaimers may not apply to Member. This Agreement does not exclude, restrict or modify any liability imposed under the law that cannot, by such law, be excluded, restricted or modified when applied to Member as identified in the applicable Membership Application.

**6.2** NOTHING IN THIS AGREEMENT SHALL LIMIT ADOBE'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, FRAUD, WILFUL MISCONDUCT, OR GROSS NEGLIGENCE.

**7. INTELLECTUAL PROPERTY.** All materials (including, without limitation, the NFR Software and any associated documents, drawings, models, apparatus, sketches, designs, and lists) furnished to Member by Adobe shall remain the sole and exclusive property of Adobe and shall be returned to Adobe promptly at its request, together with any copies thereof. Upon public release or commercialization of the NFR Software, Member will destroy all prerelease versions of the NFR Software received from Adobe, including all associated documentation, and to abide by the terms of the applicable End User License Agreement or such other agreement as may be agreed to by the parties. With respect to technical information Member may provide to Adobe in connection with any NFR Software, Adobe may use such information for its business purposes, including, without limitation, for product support and development.

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## EXHIBIT F

### ADOBE TRADEMARKS TERMS AND RESTRICTIONS ON USE

In connection with Member's participation in the Program, Member and Adobe agree as follows:

**1.** Member acknowledges that, except for the license expressly granted in this Agreement, Member has not acquired and will not acquire any right, interest or title to the Adobe Trademarks by reason of this Agreement or through the exercise of any rights in the Adobe Trademarks granted to Member hereunder. Member further acknowledges that all proprietary rights in the Adobe Trademarks and the goodwill associated therewith are solely owned by and belong to Adobe, and that all additional goodwill associated with the Adobe Trademarks created through their use by Member will inure to Adobe's sole benefit. As between Member and Adobe, Adobe will be considered the creator of the Adobe Trademarks, and all rights in the Adobe Trademarks will be Adobe's property. In addition, Member hereby grants, assigns and conveys to Adobe any and all rights Member may now have or may be deemed to have in the future with respect to the Adobe Trademarks or any portion of them. At Adobe's request and reasonable cost, Member shall execute all documents as are necessary to vest such rights in Adobe. Member will not register or attempt to register any brand, names, marks, or other elements of the Adobe Trademarks as a trademark, service mark, Internet domain name, trade name, or any similar trademarks or name, with any domestic or foreign governmental or quasi-governmental authority which would be likely to cause confusion with any of the Adobe Trademarks. Member will not to commit any act that would cause any of the Adobe Trademarks to vest in the public domain in any jurisdiction. Other than as set forth in this Agreement, Member shall make no use of the Adobe Trademarks or of any designation confusingly similar to any of the Adobe Trademarks without Adobe's prior written consent.

**2.** Member further agrees that Member will not have the right to, and Member will not, (a) use any method other than that authorized in writing by Adobe for the purpose of identifying Member as a member of the Program or establishing a link from Member's Site to Adobe's; (b) use the Adobe Trademarks in any manner that suggests an endorsement or validation of any product or service of a company other than Adobe, except as expressly permitted by this Agreement; (c) use the Adobe Trademarks in connection or association with any matter that is unsuitable for or incompatible with the Program or in connection or association with any matter relating to any Restricted Content as that term is defined in Section 2.10 of this Agreement; or (d) use the Adobe Trademarks or any other names, marks, symbols, copyrights, logos, fanciful or other characters, designs, representations, figures, drawings, photographs, ideas or other proprietary designations or properties owned, developed, licensed or created by Adobe, except as expressly permitted by this Agreement.

**3.** Upon reasonable request from Adobe, Member will notify Adobe of the locations of Member's use of the Adobe Trademarks and promptly provide Adobe with suitable specimens of materials created by or for Member that use any of the Adobe Trademarks. Adobe shall be entitled to review Member's use of the Adobe Trademarks periodically to evaluate Member's compliance with Adobe's quality standards. If Adobe so requests, Member will submit to Adobe any uses of the Adobe Trademarks for Adobe's approval prior to the dissemination of the materials, such approval not to be unreasonably withheld. If at any time Adobe determines that Member is not maintaining adequate quality standards, Member shall be considered in breach of this Agreement and subject to the termination provisions of Section 5.3 of **Exhibit A**. Member shall remedy any material deficiencies in its use of the Adobe Trademarks and/or quality of Member's services or products provided in conjunction with the Adobe Trademarks, as determined by Adobe in its sole discretion and upon reasonable notice from Adobe, as soon as reasonably possible but in any event not later than ten (10) days following notice from Adobe.

**4.** Member will use the Adobe Trademarks only in connection with services or products that: (a) meet or exceed all applicable (U.S. and non-U.S.) laws and regulations; (b) are advertised in compliance with all applicable (U.S. and non-U.S.) fair advertising laws and regulations; (c) comply with all other applicable (U.S. and non-U.S.) laws and regulations; (d) are of a quality and reputation consistent with the high quality of Adobe products and services; and (e) are advertised in a manner consistent with industry standards. Member shall mark every use of the Adobe Trademarks with the proper trademark notices set forth in the applicable list of Adobe trademarks currently located at "Permissions and trademark guidelines" pages of Adobe's official web site at <http://www.adobe.com/misc/agreement.html>, or a successor site thereto. Member shall ensure that the appropriate trademark symbol(s) will appear in superscript whenever the Adobe Trademarks are included in any advertisement, brochure, or other material created or circulated by or for Member. Member shall display the following acknowledgment of trademark ownership on any advertising, promotional or other materials created or circulated by or for Member that include the Adobe Trademarks: [List of Adobe Trademarks used, beginning with "Adobe" and "the Adobe logo," if used, followed by other Adobe Trademarks in alphabetical order] are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries. Member's use of the Adobe Trademarks shall comply at all times with this Agreement, the "Adobe Trademark

Guidelines for third parties who license, use or refer to Adobe trademarks," currently located at the "Permissions and trademark guidelines" pages of Adobe's official web site at <http://www.adobe.com/misc/agreement.html>, or a successor site thereto, and any specific Logo usage guidelines provided by Adobe for the Program. Member shall employ its best efforts to use the Adobe Trademarks in a manner that does not derogate from Adobe's exclusive and valuable rights in the Adobe Trademarks and shall take

no action that will interfere with or diminish Adobe's rights in the Adobe Trademarks.

5. Member shall promptly report to Adobe if Member becomes aware of (a) any infringement of Adobe's intellectual property rights relating to the Adobe Trademarks by any third party, (b) any infringement by any third party of any right granted under this Agreement and (c) any unauthorized copying or distribution of the Adobe Trademarks or any component thereof by any third party.

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## EXHIBIT G

### ADOBE® SERVICE PROVIDER PROGRAM BENEFITS

If Member has been accepted to receive Benefits as a “Service Provider,” the following additional terms shall apply. Member and Adobe agree as follows:

**Fees:**

Current Program fees are listed at <http://www.adobe.com/cfusion/partnerportal> by Program Level.

**1. ADDITIONAL TERMS**

- 1.1** Receiving Adobe Products as a Benefit of the Program requires that Member accept customer job submissions generated by software applications either in their native format or as Postscript or Adobe PDF files.
- 1.2** Member shall use Products licensed from Adobe via the Program solely for the purpose of outputting, imaging, or rendering Product files its customers create.
- 1.3** Member shall complete and submit a report of services provided with respect to the Products, in the form provided from time to time by Adobe, at the intervals requested.
- 1.4** Member agrees to provide output, imaging, or rendering services on appropriate professional equipment that meets or exceeds industry standards for quality and maintenance, and to do so only from a location or locations that are owned or leased by Member and are commercial (i.e., are not residential or otherwise non-commercial) premises, professional in appearance. Adobe is entitled to inspect Member’s premises and product output upon thirty (30) days’ written notice for compliance.

**2. SERVICE PROVIDER PROGRAM BENEFITS.<sup>1</sup>**

<b>Technical Benefits<sup>1</sup></b>	<b>Premium</b>	<b>Authorized</b>
• Unlimited toll-free technical support calls to product specialists <sup>2</sup>	Yes	Yes
• Monthly Technical Newsletter	Yes	Yes
• Monthly Program Newsletter	Yes	Yes
• Technical Bulletins	Yes	Yes
• Troubleshooting support for pre-press related inquires <sup>2</sup>	Yes	No
• Eligible for onsite training	Yes	No

<b>Product Benefits<sup>1</sup></b>	<b>Premium</b>	<b>Authorized</b>
• Access to one (1) single user copy of Adobe product(s) (designated by Adobe at <a href="http://www.adobe.com/cfusion/partnerportal">http://www.adobe.com/cfusion/partnerportal</a> ) on both the Microsoft Windows and Macintosh platforms as available (one time new Member benefit only)	Yes	Yes
• Access to upgrades for the above mentioned software provided under this Agreement	Yes	Yes
• Pre-release evaluation copies of the Product(s) if and when made available by Adobe <sup>3</sup>	Yes	Yes

<b>Promotional Benefits<sup>1</sup></b>	<b>Premium</b>	<b>Authorized</b>
• Permission to use Adobe Trademarks in advertising material <sup>4</sup>	Yes	Yes
• Link from Adobe Partner Finder searchable database on Adobe’s World Wide Web site with valid URL <sup>5</sup>	Yes	Yes

• Service Provider logo usage promoting Member as an Adobe Authorized Print Service Provider	Yes	Yes
• Eligible to participate in Adobe Partner Pavilion at trade show events <sup>6</sup>	Yes	Yes
• Eligible to submit a Success Story for publication on Adobe.com	Yes	Yes
• Access to set of certain Adobe marketing tools	Yes	Yes
• Access to certain mailing lists <sup>7</sup>	Yes	Yes
• Eligible to co-host events with Adobe	Yes	No

<sup>1</sup> All benefits are subject to change on 30 days' notice by Adobe. Benefits apply only to current Members (one individual if Member is an entity) in good standing who are not in breach of the Agreement.

<sup>2</sup> Support Services are subject to the terms and conditions set in Exhibit B.

<sup>3</sup> Subject to Section 2.6 of Exhibit A and Exhibit D of this Agreement.

<sup>4</sup> Subject to Section 4 of Exhibit A and Exhibit F of this Agreement of this Agreement.

<sup>5</sup> Inclusion of Member in the Adobe Partner Finder, as well as Member's membership in the Program, are subject to the terms and conditions of this Agreement. Such inclusion will generally include Member's business name, city, telephone number, and a summary of Member's capabilities as provided on Member's Membership Application. Any potential referrals of Adobe customers to Member pursuant to the Program will be based upon the information provided by Member in Member's Membership Application. Adobe may elect to discontinue its provision of this benefit to Member, as determined by Adobe in its sole discretion.

<sup>6</sup> Subject to availability. Attendance may be subject to additional fees and costs. Please see applicable invitation for details.

<sup>7</sup> Subject to additional terms and conditions accompanying the list and in the List Exchange Agreement available at <http://www.adobe.com/cfusion/partnerportal> or a successor site thereto.

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