



## ADOBE PARTNER CONNECTION PROGRAM RESELLER AGREEMENT

Effective Date: date of last signature

### PARTIES

- (1) **Adobe Systems Incorporated**, a company incorporated in Delaware, U.S.A., having a place of business at 345 Park Avenue, San Jose, California 95110-2704, U.S.A. ("**Adobe US**").
  - (2) **Adobe Systems Software Ireland Limited**, a company incorporated in Ireland, having a place of business at 4-6 Riverwalk, City West Business Campus, Saggart D24, Dublin, Ireland ("**Adobe Ireland**").
  - (3) **[Name of Partner]**, a company incorporated in [insert jurisdiction], having a place of business at [insert address] ("**Reseller**").
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### BACKGROUND

- A. For transactions with End Users located in the United States, Canada, Mexico, United States territories and possessions, and United States military bases wherever located ("**North America**"), Adobe means Adobe US. For transactions with End Users located outside of North America, Adobe means Adobe Ireland.
- B. This Adobe Partner Connection Program Reseller Agreement, the Adobe Partner Connection Reseller/Retailer Program Guide (as applicable), and the terms and conditions, rules or documents incorporated by reference in this Agreement, if any (together, the "**Agreement**") form a legally binding contract between the parties.
- C. In order to resell Software Products under the Adobe Partner Connection Program, Reseller must first agree to the terms and conditions of the Agreement, by signing and returning this Agreement. Reseller may not resell Software Products if you do not accept the Agreement.

### AGREED TERMS

#### 1. DEFINITIONS, AGREEMENT & ORDER OF PRECEDENCE

##### 1.1 Definitions

In this Agreement, the following terms and expressions shall have the following meanings. Any terms capitalized but not defined below shall have the meanings ascribed to them in the Schedules or Program Guide:

- 1.1.1 "**Adobe Group**" means Adobe and its subsidiaries and affiliates.
- 1.1.2 "**Adobe Maintenance and Support Program(s)**" means Adobe's standard maintenance and support program(s) for Software Products, the terms of which are available at the Adobe Support Website (or its successor website thereto) and incorporated into this Agreement by reference.
- 1.1.3 "**Adobe Support Website**" means Adobe's website detailing Adobe's maintenance and support programs, [http://www.adobe.com/support/programs/policies/terms\\_customer.html](http://www.adobe.com/support/programs/policies/terms_customer.html) (or successor website thereto).
- 1.1.4 "**Authorized Adobe Distributor(s)**" means an entity in the Territory that has entered into a contract with Adobe for the distribution of Software Products in the Territory, under the Partner Program.
- 1.1.5 "**Authorized Programs**" means the various Adobe licensing programs and specializations, under

which Adobe has authorized Reseller to resell Software Products, that are more particularly described in the Program Guide. "Authorized Programs" includes "New/Ad-hoc Programs".

- 1.1.6 **"Change in Control"** in relation to a party, means that:
- (a) there occurs a material change in control of that party having regard to any matter which relates to control of a corporation, including legal or beneficial ownership of shares, voting rights, rights to receive income or capital and rights to appoint directors; or
  - (b) that party disposes of all or substantially all of its assets.
- 1.1.7 **"Claim"** or **"Loss"** means any damage, loss, cost, expense or liability incurred, or a claim, action, proceeding or demand made, however arising and whether present or future, fixed or unascertained, actual, threatened or contingent.
- 1.1.8 **"CLP"** means the Adobe Cumulative Licensing Program (or successor program thereto), as described in the Program Guide and/or on Adobe's Volume Licensing website located at <http://www.adobe.com/aboutadobe/volumelicensing/> or successor site.
- 1.1.9 **"Criteria for Appointment and Performance"** means the criteria and requirements for appointment as a reseller of the Software Products under the Partner Program, as set forth in the Program Guide.
- 1.1.10 **"Documentation"** means the manuals, registration information, supporting documentation and other materials, whether of a technical nature or otherwise, provided with the Software by Adobe.
- 1.1.11 **"EA"** means the Adobe Volume Licensing Enterprise Program (or successor program thereto), as described in the Program Guide and/or on Adobe's Volume Licensing website located at <http://www.adobe.com/aboutadobe/volumelicensing/> or successor site.
- 1.1.12 **"EEA" or "EEA Program"** means the Adobe Education Enterprise Program (or successor program thereto), as described in the Program Guide and/or on Adobe's Volume Licensing website located at <http://www.adobe.com/aboutadobe/volumelicensing/> or successor site.
- 1.1.13 **"Educational Establishments"** have the same meaning as a qualified "institution" as designated by Adobe on <http://www.adobe.com/education/purchasing/qualify.html> (or its successor website thereto), as updated by Adobe from time to time, and incorporated by reference into this Agreement.
- 1.1.14 **"Education Version"** means Software Products designated on the License Fee List from time to time by Adobe in its sole discretion, as being for distribution to Educational Establishments only.
- 1.1.15 **"End User"** means a licensee of Software Products who acquires Software Products for its own use rather than distribution, and excludes distributors, resellers, retail partners, third party vendors, systems integrators, commission agents, or other parties who have licensed the Software Products from Adobe for distribution or resale.
- 1.1.16 **"End User License Agreement" or "EULA"** means Adobe's then current Software Product End User license agreement(s) and/or Terms of Use for the relevant Software Product, that can be included with each Software Product generally in electronic form as part of a product installer or provided by url, web address, link, or other means.
- 1.1.17 **"Government Entity"** means: a public agency or organization created and/or funded by a governmental entity listed and defined in this Section and authorized to conduct the business of governing or supporting citizens, businesses, or other governmental entities. The definition also includes prime contractors to a Government Entity that are authorized to spend funds directly on behalf of a Government Entity. All other private "for profit" companies, non-profit organizations, trade or industry associations and labor unions are not included. For the purposes of this Agreement the following definitions apply with respect to Government Entities, if applicable:
- (a) **"Canadian Government Sector"** (whether capitalized or not) means all departments, agencies

and sub-agencies of government entities, whether Crown, Crown Corporation, federal government, provincial government or municipal government, as those are more fully defined under “State/Local Government” and “Federal Government”.

- (b) **“Crown”** refers to the powers and authority of the Canadian Monarchy, which have been delegated to the Governor General of Canada.
  - (c) **“Crown Corporation”** is an enterprise owned by the federal government of Canada (the “Queen in Right of Canada”), one of Canada’s provincial governments (the “Queen in right of province”) or one of the territorial governments.
  - (d) **“Provincial Government”** (whether capitalized or not) means an entity that is authorized to spend funds approved as part of an annual budget established by any one of the Canadian Provinces.
  - (e) **“State/Local Government”** (whether capitalized or not) means an entity that is a body within any of the three branches of the government (executive, legislative, or judicial) of any of the fifty United States, the District of Columbia and other U.S. possessions included in the Territory definition, if applicable. The entity must have authorization to spend funds as defined by the state’s approved annual budget. A local government entity may be an entity within a city, county or municipal government structure with the ability to directly spend funds established within the approved budget of either a city, county or municipality (as applicable).
  - (f) **“Federal Government”** (whether capitalized or not) means any entity within any of the three branches of the U.S. Government (executive, legislative, or judicial), and which has authorization to spend funds established by the federal government of the United States or Canada, as applicable.
  - (g) **“U.S. Government”** (whether capitalized or not) means all departments, agencies and sub-agencies of government entities, whether Federal Government or State/Local Government.
- 1.1.18 **“Government Version”** means Software Products designated by Adobe in its sole discretion, as being for distribution to Government Entities only, and available to Reseller pursuant to Reseller’s Authorized Program.
- 1.1.19 **“Gray Market/Unauthorized Products”** means Adobe Software and/or Software Products: (a) that were originally distributed or intended for distribution outside the Territory; or (b) that are not sold in compliance with the terms and restrictions of Authorized Programs, including Adobe Software Products that are diverted from an intended channel into another channel, that are made to appear as full commercial versions when in fact they were initially distributed by Adobe as Education Versions, Government Versions, Upgrade Products, OEM versions or other versions under Authorized Programs.
- 1.1.20 **“Intellectual Property”** means all intellectual property rights of whatever nature anywhere in the world, including all rights conferred under statute, common law or equity, including Trademark rights, service mark rights, patents rights, copyrights, design rights and trade secrets, any rights to apply for registration (to the extent registrable) of any of the foregoing rights.
- 1.1.21 **“Law(s)”** includes common law, principles of equity, statutes, regulations, constitutional provision, treaty, decree, and generally accepted accounting principles, whether in the Territory or any other relevant jurisdiction.
- 1.1.22 **“Media”** means the physical property in and the physical copy of the Software, specifically the DVD-ROM, CD-ROM or other media.
- 1.1.23 **“NFR Software”** means Software that is not for resale and may only be used by Reseller solely for demonstration purposes.
- 1.1.24 **“Non-Profit End User”** means a qualified institution or organization that is eligible under: (i) U.S.-IRS

Code 501(c)(3), or (ii) Canada – The Excise Tax Act (“ETA”) Subsection 123(1) and 259(1) of the ETA.

The following nonprofit and charity organizations are excluded from this program:

- (a) Private foundations as defined in section 509 of the Internal Revenue Code;
- (b) Health-care systems other than Federally Qualified Health Centers (FQHC) or FQHC lookalikes;
- (c) Research laboratories associated with the federal government;
- (d) Any agency or institution of the federal government (any organization listed at [firstgov.gov](http://firstgov.gov));
- (e) Political, labor, or fraternal organizations;
- (f) Nonprofit lobbyist groups.

- 1.1.25 **“Other Authorized Resellers”** means other resellers who are authorized under the Partner Program to resell Software Products.
- 1.1.26 **“Partner Program”** means Adobe’s then current partner program for Authorized Adobe Distributors and resellers (known as “Adobe Partner Connection Program” as of the Effective Date of this Agreement).
- 1.1.27 **“Partner Program Benefits”** are the benefits provided by Adobe to Reseller under the Partner Program, subject to Reseller fulfilling the Criteria for Appointment and Performance as well as the terms and conditions established under the Partner Program and this Agreement.
- 1.1.28 **“Personal Information”** means any information that identifies or can be used to identify an individual. Personal information may relate to any individual, including, but not limited to End Users.
- 1.1.29 **“Program Guide”** means Adobe’s program guide for resellers under the Partner Program (known as “Adobe Partner Connection – Reseller Program Guide” or “Adobe Partner Connection – Retail Program Guide” (as applicable) as of the Effective Date of this Agreement) and any subsequent versions which Adobe may issue from time to time, that are hereby incorporated by reference into this Agreement. Adobe reserves the right at any time on 30 days notice to (a) update, revise or modify the Program Guide, Partner Program, and/or Authorized Programs, or (b) withdraw or cancel the Partner Program or any Authorized Program.
- 1.1.30 **“Software”** means the Adobe proprietary software.
- 1.1.31 **“Software Products”** means licensed copies of the Software, Works, Media and Documentation made available by Adobe to Reseller and supplied to Reseller by Authorized Adobe Distributors under the Authorized Programs. In this Agreement, a reference to “Software Products” includes a reference to the applicable Adobe Maintenance and Support Program(s).
- 1.1.32 **“Student and Teacher Edition Software Products”** means Software Products designated on the License Fee List from time to time by Adobe in its sole discretion, as being for distribution to Students and Teacher Edition End Users only. The acronym “STE” may be used at times, including on the License Fee List, to designate these Software Products.
- 1.1.33 **“Student and Teacher Edition End User”** means a qualified Student and/or Teacher, as identified at <http://www.adobe.com/education/purchasing/qualify.html> (or its successor website thereto), as updated by Adobe from time to time, and incorporated by reference into this Agreement.
- 1.1.34 **“Systems Integrator”** is a company authorized to sell products and services to Government Entities, as defined herein, and such sale results in the usage of government funds to procure the Software Products; the procured Software Products are for the use of the Government Entity only and upon fulfillment, acceptance or termination of the sale, the Government Entity retains the Software Products and any related licenses.
- 1.1.35 **“Term”** has the meaning ascribed to it in Clause 13.1.1 (Term and Termination).

- 1.1.36 **“Territory”** means Canada and the fifty United States, U.S. military bases, U.S. insular areas and freely associated states as described by the U.S. Department of the Interior, with the exception of Puerto Rico and U.S. Virgin Islands, which are not included, and U.S. embassies, which are specifically excluded as well.
- 1.1.37 **“TLP”** means the Adobe Transactional Licensing Program (or successor program thereto), as described in the Program Guide and/or on Adobe’s Volume Licensing website located at <http://www.adobe.com/aboutadobe/volumelicensing/> or successor site.
- 1.1.38 **“Upgrade Products”** means Software Products made available to licensees of authorized, full, specific previous versions of Software for upgrading to the then current version of Software Products, that are designated as “Upgrade Products” on the License Fee List.
- 1.1.39 **“VIP”** means the licensing program (or successor program thereto), as described in the Program Guide and/or on Adobe’s Volume Licensing website located at <http://www.adobe.com/aboutadobe/volumelicensing/> or successor site.
- 1.1.40 **“Work(s)”** means the photographs, illustrations, images, videos, 3D assets, templates (including any copyrighted material included within a template or submitted with a template) or other pictorial or graphic work (collectively “Work”) that you purchase or download through any Adobe websites.

## 1.2 Agreement & Order of Precedence

- 1.2.1 This Agreement comprises the following parts:
- (A) The Program Guide;
  - (B) these agreement terms;
  - (C) the attached Schedules, if any;
  - (D) the terms and conditions, rules or documents incorporated by reference in this Agreement
- 1.2.2 If there is any inconsistency between any of the above parts, then the part listed earlier will prevail (to the extent of the inconsistency) over a part listed later.

## 2 APPOINTMENT & LICENSE

### 2.1 Criteria for Appointment and Performance

- 2.1.1 Reseller represents and warrants to Adobe that it meets and will continue to meet the Criteria for Appointment and Performance for Reseller’s Program Level and/or Specialization(s).
- 2.1.2 Reseller acknowledges and agrees that Partner Program Benefits, if any, are being made available to Reseller subject to Reseller meeting and fulfilling the Criteria for Appointment and Performance and in consideration of Reseller complying with the terms and conditions of this Agreement.
- 2.1.3 In the event or at any time that (a) Reseller does not meet Criteria for Appointment and Performance or fails to perform any other obligations set forth in this Agreement, or (b) Adobe reasonably determines that Reseller does not qualify for its then Program Level and/or Specialization(s) under the Partner Program or qualifies for a different Program Level, Adobe is entitled, at its option to, (i) remove, suspend, withhold or refuse payment of any Partner Program Benefit; (ii) change Reseller’s Program Level (if applicable) by written notification pursuant to Clause 12 (Modifications by Adobe); (iii) remove or suspend Reseller’s Specialization(s), if any; and/or (iv) terminate this Agreement pursuant to Clause 13.3 (Termination with Cause), without prejudice to all its other rights and remedies.

### 2.2 Nature of Appointment and License

- 2.2.1 Provided Adobe accepts Reseller’s application, and subject to the terms and conditions set forth herein, including the terms and conditions applicable to Reseller’s Program Level and/or

Specializations, Adobe hereby grants Reseller, and Reseller hereby accepts, a non-exclusive and non-transferable license to order Software Products under the Authorized Programs from Authorized Adobe Distributors, for the purpose of reselling to End Users in the Territory during the Term of this Agreement. For the avoidance of doubt, nothing in this Agreement, any addendum or amendment will be construed to require Adobe to continue the manufacture and development of any Software Products or to continue offering any licensing programs.

- 2.2.2 This Agreement will not be interpreted or construed as an agreement between Adobe and Reseller for the sale of Software Products. Reseller must advise End Users to whom Reseller resells Software Products that Reseller has a license to supply the Software Products and that the Software Products have been licensed, not sold.
- 2.2.3 Adobe reserves the right to:
  - (a) deal directly in the Software Products in the Territory, including the right to license End Users directly, via Internet distribution or otherwise;
  - (b) license distributors, and other resellers (including retail partners) to distribute or resell the Software Products in the Territory;
  - (c) provide technical support and other services for the Software Products in the Territory; and
  - (d) enter into arrangements or agreements with third parties (including but not limited to End Users, resellers, retail partners or systems integrators) in connection with the Software Products in the Territory.

### 2.3 Program Guide and Authorized Programs

- 2.3.1 Reseller agrees to comply with the Program Guide.
- 2.3.2 Adobe reserves the right at any time to (a) update, revise or modify the Program Guide, Partner Program, and/or Authorized Programs, or (b) withdraw or cancel the Partner Program or any Authorized Program, by giving thirty (30) days' notice to Reseller.
- 2.3.3 New/Ad-hoc Programs
  - (a) From time to time, Adobe may make available to Reseller, Software Products or other Adobe products, under new or modified licensing programs, arrangements or schemes ("New/Ad-hoc Program Products"), in respect of which additional or different terms and conditions apply ("New/Ad-hoc Programs") ("New/Ad-hoc Program Terms").
  - (b) Adobe may notify Reseller of the New/Ad-hoc Programs and the New/Ad-hoc Program Terms. Reseller's placement of orders with Authorized Adobe Distributors for New/Ad-hoc Program Products will be deemed Reseller's unequivocal acceptance of the New/Ad-hoc Program Terms, which will then be automatically incorporated into this Agreement by reference. Reseller acknowledges and accepts that save as expressly modified by the New/Ad-hoc Program Terms, the terms and conditions of this Agreement will continue to apply to Reseller's resale of New/Ad-hoc Program Products. Adobe may also require Reseller to acknowledge in writing, Reseller's acceptance of the New/Ad-hoc Program Terms.

## 3 LICENSE RESTRICTIONS

- 3.1 Reseller's appointment under this Agreement is subject to the following restrictions:
  - 3.1.1 Authorized Programs; Territory Restrictions, Anti-Piracy and Gray Market/Unauthorized Products
    - (a) Reseller will not supply Software Products to anyone outside the Territory or to anyone whom Reseller using reasonable commercial diligence believes may supply Software Products to anyone outside the Territory.
    - (b) Reseller will not deal in illegal copies of Adobe Software Products or Gray Market/Unauthorized

Products.

- (c) Reseller may only deal in Software Products under the Authorized Programs, and Reseller may supply each Software Product only to End Users who meet the eligibility criteria and/or are authorized under the specific Authorized Program, if applicable. For VIP, CLP, EEA, and EA Products, if authorized to sell such Products, Reseller must verify, prior to providing any VIP, CLP, EEA, and EA Product(s) that the End User has entered into a VIP, CLP, EEA, or EA agreement, as applicable, with Adobe. Any Software Product(s) that are designated as Education or Government versions of Software Products may only be provided to qualified Educational Establishments or Government Entities, respectively. Reseller may provide Non-Profit End Users with Software Products designated as TLP-Education. Reseller is responsible for verifying the status of all End Users who purchase Software Products that are restricted for distribution to particular market segments or End Users. Reseller may only supply Software Products to End Users.
- (d) VIP Products and the VIP Program may be sold only in countries: (a) Reseller is authorized to sell VIP Products and/or the VIP Program; and (b) countries authorized by Adobe, as further defined in the "VIP Authorized Countries" list available on the Adobe Partner Connection Portal at <http://www.adobe.com/partners>.
- (e) Reseller must promptly notify Adobe if Reseller is aware of any occurrence of the activities described in Clause 3.1.1 (a)-(d) above, whether carried out by Reseller or others.
- (f) Reseller must advise End Users to whom it resells Software Products of the restrictions set forth in this Clause 3.1.1 (Authorized Programs; Territory Restrictions, Anti-Piracy and Gray Market/Unauthorized Products).

#### 3.1.2 Orders from Authorized Adobe Distributors only

Adobe agrees to supply Software Products to Reseller on the condition that Reseller does not acquire Software Products directly or indirectly from anyone other than Authorized Adobe Distributors.

#### 3.1.3 EULA is Applicable

- (a) Reseller acknowledges and accepts that each Software Product is to be licensed to End Users in accordance with the terms and conditions of the EULA applicable to the Software Product. The terms of the EULA are not negotiable and must not be amended or modified for any End User.
- (b) If Reseller is installing the Software Product(s) for any End User, it is Reseller's responsibility to ensure that an End User has accepted the terms of the End User License Agreement. Acceptance of the End User License Agreement must be demonstrated either by the End User "accepting" the terms during the installation process or by physically executing a copy of the End User License Agreement. Reseller may not utilize the Software Product for its own internal business use except pursuant to a separate licensing agreement for that purpose.

#### 3.1.4 No Alteration of Design and Packaging

Reseller may only resell the Software Products solely in the original form and packaging provided by Adobe. Reseller must not remove any item or document from the Software Product package, alter the design or contents of any Software Product or NFR Software, or alter or remove any of Adobe's or its licensors' copyright notices or other designations that appear or may appear in or on the Software Products and NFR Software. In addition, Reseller agrees to resell Software Products that are collections, bundles or groups of Adobe Software Products intact and not to separate any of the contents of collections, bundles or groups of Adobe Software Products for individual distribution.

#### 3.1.5 No Rental or Lease

Reseller agrees not to resell the Software Products by rental or lease.

### 3.1.6 Restrictions on Copying and Decompiling

- (a) Reseller agrees that it will not reverse engineer, decompile, translate, disassemble, make copies, make media translations, modify, adapt, create derivative works, merge, separate or make any attempt to discover the source code of any part of the Software Products, Documentation or NFR Software.
- (b) If Reseller comes into possession of any source code for any Adobe product that is not generally provided by Adobe as part of the Software Product or NFR Software, Reseller will not use or disclose the source code in any way, and will immediately deliver all copies of such source code to Adobe.

### 3.1.7 Government Agreements

If authorized to sell to Government Entities,

If Reseller is authorized to resell Software Products to Government Entities, the following additional terms apply:

- (a) Reseller has the right to order those Government Version Software Products made available to Reseller by Adobe from Authorized Adobe Distributors. Reseller may only distribute the Government Version Software Products to Government Entity End Users in the Territory pursuant to the terms and conditions of the then current applicable EULA and this Agreement. Reseller acknowledges the necessity of providing adequate service and support in connection with the distribution of the Government Version Software Products.
- (b) Reseller agrees not to distribute the Government Version Software Products (i) by rental or lease, (ii) in bulk for redistribution, (iii) with knowledge or reason to know that the Government Version Software Products will be transported outside the country in which Reseller's principal place of business is located, (iv) to other resellers, VARs, retailers or distributors; (v) with modification or alteration of any notice on the Government Version Software Products or the packaging of the Government Version Software Products; or (vi) with any additional warranty, express or implied on behalf of Adobe with regard to the Government Version Software Products. Reseller further agrees that it will not unbundle any Adobe products, including but not limited to Software Products, which are collections, bundles or groups of Adobe products and attempt to sell them separately. Further, Reseller must not disclose any information about a Government Entity to third parties.
- (c) *U.S. Government Contracts.* Unless authorized by Adobe in advance and in writing, Reseller is not permitted to resell Software Products or provide related services or support through any U.S. Government purchasing vehicle, including (but not limited to): GSA Schedule, SEWP IV, State-wide Purchasing Contracts, Government Wide Acquisition Contracts (GWACs), Blanket Purchase Agreements (BPAs), Indefinite Quantity Indefinite Delivery (IDIQ) contracts or any purchasing mechanisms which obligate government funds. Reseller is specifically precluded from modifying identified Adobe products, including but not limited to Software Products, onto such purchasing vehicles. To secure Adobe authorization for amendment or submission of Adobe products onto a U.S. Government purchasing vehicle, a written request must be sent to the Government Channels Operations Manager. Such request will include the following information at a minimum:
  - a. Contract or Program Name
  - b. Agency(ies)/Department(s) Covered by Contract
  - c. Brief description of Contract Scope
  - d. Government Award Number for Contract



- e. Term of Contract (base plus option years, if applicable) with start month/year, end month/year
- f. Specific Products/Descriptions identifying Adobe Products to be amended
- g. Business Justification for Request

A written approval from Public Sector Channel or Operations Management, if provided, will constitute Reseller's ability to resell the approved Adobe products through the approved Government purchasing vehicle.

- (d) *No Letter of Supply.* This Agreement does not constitute, nor does Adobe convey to Reseller, or Reseller's partners and affiliates, a letter of supply or authorization to represent Software Products on GSA or other federal schedules.
- (e) (g) In all proposals and agreements with the U.S. Government or any contractor therefore, Reseller must (a) identify and license the applicable Government Version Software Products and (b) legend or mark the Software and User Documentation provided to the U.S. Government or any contractor therefore as follows:
  - i) By accepting delivery of any Software Products, the parties acknowledge and agree that such Software Products qualify as a "commercial item(s)," as that term is defined at 48 C.F.R. 2.101 (OCT 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and is provided to the U.S. Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7202-4 (JUN 1995). The Software Product is furnished under and is subject to the terms and conditions set forth in Adobe's standard EULA.
  - ii) In the event that Reseller receives a request from any agency of the U.S. Government to provide the Software Products and Documentation with rights beyond those set forth above, Reseller will notify Adobe of the scope of rights requested and the agency making such request, and Adobe will have ten business days to, in its sole discretion, accept or reject such request.
  - iii) Adobe agrees to comply with all applicable laws including, if appropriate, the provisions of Executive Order 11246, as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 USC 4212), 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 will be incorporated by reference in this Agreement.
- (f) Reseller, in making proposals and agreements with government entities that involve the Software Products, must take all reasonable steps to ensure that Adobe's proprietary rights in the Software Products receive the maximum protection available from such government entities for commercial computer software and related documentation developed at private expense.
- (g) Where the U.S. Federal Government is the End User, Adobe agrees to comply, as applicable, only with the following federal government FAR provisions: 52.222-26 Equal Opportunity; 52.222-35 Equal Opportunity for Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans; 52.222-36 Affirmative Action; 52.222-41 Service Contract Act (Applicable for certain commercial services.)
- (h) This Clause 3.1.7 (Government Agreements) will not be construed to expand the scope of Reseller's rights set forth in Clause 2.2 (Nature of Appointment and License) of this Agreement.

### 3.1.8 NFR Software

- (a) From time to time, Adobe may provide Reseller with NFR Software. Subject to the terms of this Agreement and Reseller's compliance with the EULA, Adobe hereby grants Reseller a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable, limited license to use the NFR Software (in executable code form) solely for the non-production purposes of demonstrations and internal and promotional training purposes, ("Non-Commercial Training") at:
  - i) Reseller locations and all facilities rented or leased on a temporary basis for the explicit purpose of providing instructor-led, classroom technical training;
  - 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 Adobe).
- (b) By way of illustration only, Non-Commercial Training includes internal training of Reseller's employees for the purposes of Reseller's business in relation to the Software Products and free training sessions conducted by Reseller for the purposes of promoting Software Products to third parties. Non-Commercial Training does not include any training services conducted by Reseller where such services are part of Reseller's business (e.g., training services conducted by training centers).
- (c) Upon request by Adobe, Reseller will provide Adobe with reports detailing the number of copies of NFR Software received by Reseller and the Reseller Locations to which copies thereof have been sent.

3.2 Adobe is entitled to terminate this Agreement pursuant to Clause 13.3 (Termination With Cause) without prejudice to all its other rights and remedies, if Reseller breaches any of the provisions in this Clause 3 (License Restrictions).

## 4. STUDENT AND TEACHER EDITION SOFTWARE PRODUCTS

### 4.1 Reseller Rights and License Restrictions

- 4.1.1 Reseller has the right to order from an Authorized Distributor those Student and Teacher Edition Software Products made available to Reseller by Adobe for direct delivery within the Territory to such Student and Teacher Edition End Users so long as it remains in compliance with all of the following conditions: (i) Reseller does not permit the distribution of Student and Teacher Edition Software Products outside the Territory; (b) Reseller does not distribute the Student and Teacher Edition Software Products from an online auction site; (c) Student and Teacher Edition Software Products are distributed pursuant to the terms and conditions of the then current applicable EULA; and (d) Reseller remains qualified, pursuant to the terms of the Agreement and the Program Guide, to sell Student and Teacher Edition Software Products.
- 4.1.2 Reseller must ensure that Student and Teacher Edition Software Products are distributed to Student and Teacher Edition End Users in the Territory only. Reseller will not supply Student and Teacher Edition Software Products to anyone who will distribute, or whom Reseller knows, ought to know, or has reason to believe, may (a) distribute Student and Teacher Edition Software Products to customers who are not Student and Teacher Edition End Users; or (b) otherwise deal in Gray Market/Unauthorized Products. Reseller will advise customers of these restrictions.
- 4.1.3 Reseller agrees not to order Student and Teacher Edition Software Products without prior written approval from Adobe (a) directly from Adobe and not from an Authorized Adobe Distributor, (b) by rental or lease, (c) in bulk for redistribution, (d) with knowledge or reason to know that the Student and Teacher Edition Software Products will be transported for use outside the Territory, or (e) on

behalf of any Education Student and Teacher Edition Reseller or other third party other than as permitted herein.

## 4.2 Reseller Obligations

- 4.2.1 *Reseller Website Requirements.* Reseller may accept online orders of the Student and Teacher Edition Software Products. Reseller warrants and represents it will only make such online offerings for Student and Teacher Edition Software Products available for purchase on Reseller's website in accordance with all requirements in this Agreement. Reseller's Website must prominently display the notice language set forth in section 4.3 ("Student and Teacher Edition Eligibility Requirements"). The notice language must also be displayed as part of a click-thru process prior to completion of an individual's order for Student and Teacher Edition Software Products.
- 4.2.2 *Marketing.* Reseller agrees: (a) to use diligent efforts to market and distribute the Student and Teacher Edition Software Products to Student and Teacher Edition End Users, and agrees that its marketing and advertising efforts will be of high quality, in good taste, and will preserve the professional image and reputation of Adobe and the Student and Teacher Edition Software Products; (b) if Reseller uses its Reseller Website to market Student and Teacher Edition Software Products, to provide on such web site a hypertext link to a separate web page(s) dedicated primarily to promoting the Student and Teacher Edition Software Products, which web page(s) must provide accurate information (or links to page(s) with accurate information) of the qualifications for an Student and Teacher Edition End User and the requirement to provide Appropriate Identification in order to unlock software POST-purchase; (c) to include on the Reseller Website and in all its advertisements, brochures and other marketing materials referring to Adobe or to an Student and Teacher Edition Software Product all applicable copyright, trademark and other proprietary notices as they appear on or in the Student and Teacher Edition Software Products. Adobe may provide a reasonable amount of advertising material, as requested by Reseller, for use in Reseller's efforts to market the Student and Teacher Edition Software Products; (d) not to display or advertise Student and Teacher Edition Software Products as standard Adobe retail products.

## 4.3 Student and Teacher Edition Eligibility Requirements

- 4.3.1 To purchase and unlock the Student and Teacher Edition Software Products, individuals must meet the eligibility requirements and provide proof of eligibility, as set forth below. Reseller must provide Student and Teacher Edition End Users the Student and Teacher Edition Eligibility Requirements. In addition, if Reseller accepts online orders of the Student and Teacher Edition Software Products, then Reseller must display the Student and Teacher Edition Eligibility Requirements as well as the acceptable proof of eligibility on Reseller's website. Adobe reserves the right to modify any or all of this section 4.3 ("Student and Teacher Edition Eligibility Requirements") upon thirty (30) days prior notice to Reseller.
- 4.3.2 *Student and Teacher Edition Eligibility.* Adobe Student and Teacher Editions are for purchase and use ONLY by students who are over the age of 18 or whose parents or guardians have agreed to purchase the software on behalf of the students, and teachers, faculty, and school staff. This includes (a) university and college students, meaning students enrolled at a higher education institution defined as an accredited public or private university or college (including community, junior, or vocational college) that grants degrees requiring not less than the equivalent of two years of full-time study; (b) primary and secondary school students, meaning students enrolled at an accredited public or private primary or secondary school providing full-time instruction; and (c) teachers, faculty, and staff employed by an accredited primary or secondary school or public or private university or college.
- 4.3.3 *Proof of Eligibility.* To receive an authorized serial number, an individual must provide proof that he or she is an eligible user of Adobe Student and Teacher Edition Software Product as follows:
- 4.3.3.1 Students. A student must provide a photocopy of a valid, current student identification card that includes his or her name, date, and a photograph of himself or herself. If a student does not

have such a form of identification, he or she must instead provide a photocopy of a valid identification card with a photograph of himself or herself and one of the following items: (a) official, current student identification card without a photograph which identifies the student's name and date; (b) official, current school transcript indicating name of school and student; (c) official, current school tuition bill indicating name of school and student; (d) official, current report card indicating name of school and student; or (v) such other official dated proof of enrollment. Students who are under the age of 18 and do not have a valid form of identification with a photograph may provide an official letter from their eligible educational institution stating their name and current enrollment status.

- 4.3.3.2 **Teachers, Faculty and Staff.** A teacher, faculty, or staff member must provide a photocopy of a valid current school ID that includes his or her name, date, and a photograph. If such end user does not have such a form of identification, the end user must instead provide a photocopy of a valid identification card with a photograph of himself or herself and one of the following items: (a) faculty or staff paycheck stub; or (b) an official letter from the registrar of the educational entity.
- 4.3.4 **Formats for Digital Proof of Eligibility.** The end user must use a digital camera or scanner to create a copy of his/her proof of eligibility. All documents must be clear, legible, and true to size. Acceptable formats include JPEG, GIF, BMP, TIF, and PDF. The file must be no larger than 3MB. Proof of eligibility must be submitted in accordance with the instructions accompanying the Adobe Student and Teacher Edition Software Product.
- 4.3.5 **Restrictions on Use.** A Student and Teacher Edition End User may purchase only one license of any Adobe Student and Teacher Edition Product. This license may be used only on the Student and Teacher Edition End User's privately owned computer. Student and Teacher Edition Software Products may not be resold by the Student and Teacher End User.

#### 4.4 Education Version Software Products

Should Adobe make available to Reseller any Education Version(s) of Software Products, the following additional terms and conditions will apply:

- 4.4.1 Reseller must ensure that Education Versions of Software Products are distributed to Educational Establishments only. Subject to clause 4.4.2 below, Reseller will only supply Education Versions of Software Products to customers who are Educational Establishments. Reseller will not supply Education Versions of Software Products to anyone who will distribute, or whom Reseller knows, ought to know, or has reason to believe, may (a) distribute Education Versions of Software Products to customers who are not Educational Establishments; or (b) otherwise deal in Gray Market/Unauthorized Products.
- 4.4.2 All of Reseller's orders for Education Versions of Software Products must be supported by signed orders from Educational Establishments. Upon request by Adobe, Reseller will promptly provide Adobe with the name and address of each Educational Establishment to which any Education Version of Software Product has been supplied.

## 5. ORDERS AND RETURNS

### 5.1 Reseller Orders

Before placing any order with Authorized Adobe Distributors for Software Products other than shrink-wrap Software Products, Reseller must ensure that it has received corresponding orders from End Users for the Software Products. The number of licenses indicated on the purchase order issued by Reseller cannot exceed the number of licenses ordered by the End User. Reseller is required to maintain records of all orders for Authorized Programs that it processes. Upon request by Adobe, Reseller will provide Adobe with documentary proof that Reseller has complied with this Clause 5.1 (Reseller Orders). If Adobe finds acceptable order

documentation has not been received by the Reseller in advance of placing an order, then Adobe may (i) back out such transactions from Reseller's financial incentives (e.g., deal registration payout and rebate qualifying revenue), or (ii) debit any future payments to Reseller by any amount previously awarded due to such transactions.

## 5.2 Returns

Neither Adobe nor its Authorized Adobe Distributors are obligated to accept any returns. The sole exceptions, subject to Adobe having authorized the return on a case by case basis at its sole, reasonable discretion and subject to the limitations set forth below, are: (a) orders where an Authorized Adobe Distributor has delivered the wrong Software; (b) warranty returns from an End User; and (c) instances where an End User does not wish to accept an End User License Agreement. Any such returns will only be accepted by Adobe after the issuance of an RMA (return material authorization) number. Reseller must contact its Authorized Adobe Distributor to make a request for that RMA number. The RMA number must be referenced on all shipping documentation accompanying the Adobe Software Product to be returned and on any claims for credit. During the last week of an Adobe Quarter, neither Adobe nor its Authorized Adobe Distributors will accept any Adobe Software Product returns. Reseller must ensure that End Users return or destroy all media for the Adobe Software Product when processing a return. Where no physical media was shipped at time of order but Reseller's End User customer is making a return for the reasons permitted hereunder, Adobe reserves the right to require such End User to document destruction. All Adobe Software Products must be returned by Reseller, to Adobe's designated warehouse and, unless expressly set forth otherwise in the Agreement, at Reseller's expense; freight, insurance and duty must be prepaid by Reseller. Risk will pass to Adobe only upon receipt of the Adobe Software Product by Adobe. Reseller will receive a credit for all Software Product returned as permitted.

## 6. RESELLER'S OBLIGATIONS

### 6.1 Upgrade Products

Upgrade Products are intended for upgrading previous versions of Software Products and are in fact a benefit extended to licensees of authorized, full versions of Software Products. If available, Reseller must ensure that Upgrade Products are supplied only in accordance with this principle.

### 6.2 Notification of Infringement

Reseller will immediately inform Adobe by e-mail, facsimile or telephone (with written confirmation by mail), if it becomes aware of any facts indicating that Reseller or any person, entity, or firm is or may be infringing any Intellectual Property rights of Adobe and/or its licensors and suppliers, dealing in illegal copies of Adobe Software Products, or engaging in unauthorized distribution of any Software Product, NFR Software or Gray Market/Unauthorized Products.

### 6.3 Records and Inspections

During the Term and for at least two (2) years after the expiry or termination of this Agreement: (a) Reseller agrees to maintain a complete, clear and accurate record of all matters pertaining to the resale of Software Products, use of NFR Software and participation in the Partner Program, under this Agreement, including but not limited to records pertaining to Reseller's obligations under Clause 5 (Orders and Returns) and Clause 6 (Reseller's Obligations); and (b) Reseller will permit either Adobe's internal compliance auditor, chief compliance officer or such designee, or an independent third party (who is nominated by Adobe and bound by reasonable confidentiality undertakings), to audit and inspect its books, records and all other relevant information and documents (wherever located) pertaining to Reseller's resale of Software Products, use of NFR Software and participation in the Partner Program, under this Agreement, to ensure compliance by Reseller of the obligations contained in this Agreement. Any such inspection and audit will be conducted during regular business hours upon seven (7) days' prior written notice to Reseller, and in such a manner as not to interfere with the normal business activities of Reseller. Adobe will bear its expenses of such audit,

unless Reseller is found to be non-compliant with this Agreement, in which case the audit will be at the expense of Reseller.

#### 6.4 Consent

If providing Personal Information to Adobe, Reseller will ensure that it has all necessary consents from End Users, including all necessary consents under applicable data protection, electronic communications and privacy Laws, for Adobe to enter and use Personal Information provided by or on behalf of Reseller, including consents for the use of such data by Adobe for product and marketing communications with End Users.

#### 6.5 Data Protection and Privacy

6.5.1 In collecting, processing, recording, storing, registering, disclosing, transferring and using data (including Personal Information) and in maintaining records, Reseller will comply fully with any applicable privacy protection regulations, data protection regulations and other applicable Laws, and will only do so, directly or indirectly, if required to perform its obligations under this Agreement, and in accordance with (a) applicable local and international privacy and data protection Laws, and (b) the Adobe Online Privacy Policy (available at <http://www.adobe.com/misc/privacy.html>).

6.5.2 If Reseller operates a website to market and/or accept online orders of any Software Products, Reseller must, at a minimum, (a) feature a privacy policy, linked conspicuously from the website that (i) discloses Reseller's privacy practices, (ii) identifies the collection and use of Personal Information gathered in connection with End User's submission of Personal Information as part of the online order process, and (iii) if Reseller collects or transmits Personal Information from any source to Adobe, contains a statement specifically disclosing such practices (including transmission to a third party service provider) and offers website visitors the opportunity to opt out of (or opt-in, if applicable law requires) such use by third parties, and (b) to configure the website to prohibit the receipt of Personal Information from individuals under the age of thirteen (13) or to comply with all published FTC guidelines with respect to the Children's Online Privacy Protection Act of 1998 ("COPPA") and all FTC guidelines thereto. Reseller represents and warrants that it will not transmit, provide, or otherwise make available to Adobe sensitive personal information of its employees, customers, partners or site visitors, which includes but is not limited to information regarding a minor, financial information, and medical or health information.

6.5.3 Without limiting the generality of the foregoing, Reseller will make all appropriate registrations and will apply for all appropriate authorizations, approvals, and/or licenses so as to enable (a) an inspection and/or audit as referred to above, and (b) the transfer of the data to Adobe and any third party(ies) designated by Adobe, and the holding and use of such data by Adobe and any third party(ies) designated by Adobe, for any purposes specified by Adobe, and in so far as permitted under the applicable privacy protection regulations and the applicable data protection regulations.

6.5.4 In addition to Reseller's obligations under Clause 9 (Confidentiality), Reseller acknowledges and agrees that, as between Reseller and Adobe, Personal information that Reseller collects, processes, records, stores, transfers or receives from or on behalf of the Adobe Group, or directly from End Users, or other persons in relation to the Adobe Group or its products or services, will be considered Confidential Information.

6.5.5 Reseller may only use Adobe Personal Information and Adobe Confidential Information (together, "Adobe Information") for purposes of performing its obligations under this Agreement. Reseller is not entitled to use Adobe Information for its own purposes or for the purpose of any third party, firm or enterprise (including any affiliate of Reseller). Before providing Adobe Information to any third party, including a potential subcontractor or service provider, Reseller must obtain Adobe's written approval for such disclosure.

6.5.6 Reseller must develop, implement, maintain, and monitor a comprehensive, written information security program that contains administrative, technical and physical safeguards to protect against anticipated threats or hazards to the security, confidentiality or integrity of Adobe Information,

including the unauthorized or accidental acquisition, destruction, loss, alteration or use of, and the unauthorized access to, Adobe Information. Reseller will be responsible for any information security incident involving Adobe Information that is handled by, or on behalf of, Reseller. Reseller must notify the Adobe security contact by telephone (800-285-1203) and subsequently via written notice immediately (and in any event within forty-eight (48) hours) whenever Reseller reasonably believes that there has been an unauthorized acquisition, destruction, modification, use, or disclosure of, or access to, Adobe Information that is handled by, or on behalf of, Reseller (“Breach”). After providing such notice, Reseller will investigate the Breach, take all necessary steps to eliminate or contain the exposures that led to such Breach, and, within seven (7) days of identifying the Breach, provide Adobe with a written report detailing mitigation steps taken by Reseller in response to the occurrence.

6.5.7 Reseller will indemnify and hold the Adobe Group and any third party(ies) designated by Adobe harmless against any and all Claims (including attorneys’ fees) arising from, in connection with, or based on allegations of, any of the following: (a) any violation of the requirements of this Clause 6.5 (Data Protection and Privacy); (b) any Breach; (c) any negligence or willful misconduct of Reseller or any third party to whom Reseller provides access to Adobe Information or systems, with respect to security or confidentiality of Adobe Information; (d) remedial action taken by Adobe as the result of a Breach; and (e) any other costs incurred by Adobe with respect to Adobe’s rights in this Clause 6.5 (Data Protection and Privacy).

6.5.8 Reseller’s obligation of indemnification survives the expiration or termination of this Agreement.

## 6.6 Reseller’s Representations and Warranties

6.6.1 Reseller warrants and represents to Adobe that:

- (a) Reseller is validly existing under the Laws of its place of incorporation and has the power and authority to carry on its business as such business is being conducted;
- (b) Reseller has the power and authority to enter into and observe its obligations under this Agreement;
- (c) Reseller will comply with all Laws that are related in any way to the performance of its obligations under this Agreement;
- (d) Reseller has all necessary licenses, approvals, permits and consents to enter into this Agreement and perform its obligations under this Agreement;
- (e) Reseller will not make any representations or warranties with respect to the Software Products which exceed the limited warranties made by Adobe in the EULA;
- (f) all information which Reseller has, or which any of its representatives have, provided to Adobe or any representative of Adobe in connection with this Agreement prior to the Effective Date or during the Term, including all information provided to Adobe in the course of partner onboarding procedures, is true, correct, complete and accurate in every respect and is not misleading or deceptive (including by omission), and Reseller will update or correct (via email to Adobe at [Integrity@Adobe.com](mailto:Integrity@Adobe.com)), in a timely manner, any information that it previously submitted that it knows has changed or is no longer true, correct, complete and accurate;
- (g) Reseller’s activities, collaterals, materials and websites associated with the Software Products will not incorporate Restricted Content. “Restricted Content” means images or content that are in any way unlawful, offensive, profane, harmful, threatening, defamatory, libelous, slanderous, 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 Intellectual Property rights; or contains or promotes politically sensitive or controversial

issues; and

(h) Reseller will not represent that it is, or hold itself out as, authorized to act on behalf of Adobe.

6.6.2 Reseller undertakes, during the Term and for a period of three (3) months after the expiration or termination of this Agreement, to promptly notify Adobe, if Reseller becomes aware of any information that would alter any warranty or representation made by Reseller pursuant to this Clause 6.6 (Reseller's Representations and Warranties).

6.6.3 If Reseller breaches this Clause 6.6 (Reseller's Warranties and Representations) or any part thereof, Adobe will be entitled to terminate this Agreement pursuant to Clause 13.3 (Termination With Cause) without prejudice to all its other rights and remedies.

## 6.7 Ethical Conduct and Compliance

### 6.7.1 Adobe Business Partner Code of Conduct

Reseller will conduct its business in a manner that reflects favorably upon the Software Products and Adobe. Without prejudice to any other provision in this Agreement, Reseller agrees to comply with the principles outlined in the Adobe Business Partner Code of Conduct set forth at [http://www.adobe.com/corporateresponsibility/pdfs/adobe\\_business\\_partner\\_code\\_of\\_conduct.pdf](http://www.adobe.com/corporateresponsibility/pdfs/adobe_business_partner_code_of_conduct.pdf) (or successor website thereto) and incorporated into this Agreement by reference.

### 6.7.2 Reseller Compliance with Law; Anti-corruption

(a) In performance of this Agreement, Reseller must comply with all applicable Laws in all countries in which Reseller conducts business. The fact that in some countries certain Laws prohibiting particular conduct are not enforced in practice, or that violation is not subject to public criticism or censure, will not excuse noncompliance with those Laws.

(b) Reseller warrants and represents, and will so certify if requested by Adobe, that neither Reseller nor any of its officers, directors, employees, agents or other representatives has provided or will provide, directly or indirectly through any third party, to any government official, employee of any government entity or instrumentality, or any candidate for political or public office, anything of value for the purpose of: (i) influencing any act or decision of such person in their official capacity; (ii) inducing such person to use their influence with such governmental agency or instrumentality to affect or influence any act or decision thereof; or (iii) securing any improper advantage. Furthermore, Reseller has knowledge and understanding of the Foreign Corrupt Practices Act of the United States of America ("FCPA"). Reseller will comply with the FCPA, and Reseller agrees to provide certifications of FCPA compliance to Adobe on an annual basis.

(c) Reseller further warrants and represents that: (i) none of its officers, directors, employees, agents, or other representatives are a government official, employee of any government entity or instrumentality, or candidate for political or public office, and (ii) it will communicate to all of its employees, agents and third parties performing any services or actions in furtherance of this Agreement, the requirements of Clause 6.7.2 (b) above, including the prohibitions on corruptly influencing any government official, employee of any government entity or instrumentality, or any candidate for political or public office.

(d) Without prejudice to Adobe's other rights and remedies, if Reseller breaches any of the covenants set forth in Clauses 6.7.2 (a), (b) or (c) above:

- i) at the election of Adobe, this Agreement will become void;
- ii) Adobe will have a right of action against Reseller for the amount of any monetary payment or thing of value made or given by Reseller in breach of any such covenants;
- iii) all obligations by Adobe to pay any sum of money to Reseller (including but not limited to Partner Program Benefits) will cease immediately; and



- iv) Adobe may at its sole discretion, rescind this Agreement, and Reseller must immediately return any sum of money paid to Reseller arising from any transaction in violation of Clause 6.7.2 (b) above.

#### 6.7.3 Conflict of Interest

- (a) Reseller will inform Adobe prior to executing this Agreement and after having made diligent checks and enquiries, whether (i) any of Reseller's officers, directors or Relevant Staff Members (as defined below) and/or (ii) any shareholder(s) holding 10% (ten percent) or more of the shares and/or equity in Reseller or an affiliate of Reseller are Related (as defined below) to any officer, director or Relevant Staff Member of Adobe. In the absence of such a notification, Reseller will be deemed to have confirmed that no such Relation exists to the best of Reseller's knowledge, as of the Effective Date of this Agreement.
- (b) The term "Related" includes any of the following relationships: spouse, children, parents, parents-in-law, siblings, brother/sister-in-law, uncles, aunts, nieces and nephews, and the term "Relation" is construed accordingly. The term "Relevant Staff Member" includes employees (as the case may be) who are engaged in marketing, purchasing and/or selling the Software Products.
- (c) Reseller will refrain from (i) making any direct or indirect payments or (ii) granting anything of value which is unlawful and/or outside the ordinary course of business and not in accordance with generally accepted international industry practices) to an officer, director, member of staff of Adobe or anyone Related to them.

#### 6.7.4 Export Compliance

- (a) Reseller acknowledges that the Software Products may not be exported outside of the Territory. However, if Reseller's authorized territory includes any location outside of the U.S., Reseller acknowledges that the Software Products are subject to and must be exported in accordance with U.S. Export Administration Regulations (EAR, 15 CFR 730-774) and diversion contrary to U.S. Law is prohibited. Reseller agrees not to transfer, resell or divert any of the Software Products, or to provide services using the Software Products to those countries that may be embargoed from time to time by the U.S. government (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan, and Syria). Further, Reseller represents that neither the United States Bureau of Industry and Security, the United States Office of Foreign Assets Control, nor any other federal agency has suspended, revoked or denied Reseller's export privileges and Reseller will not provide any of the Software Products or services to any entity that is prohibited from participating in the US export transactions by any federal agency of the US government. Reseller represents that it will not use or transfer the Software Products for end uses relating to any nuclear, chemical or biological weapons, rocket systems, space launch vehicles, sounding rockets, or unmanned air vehicle systems unless authorized by the U.S. Government by regulation or specific license.
- (b) Additionally, Reseller acknowledges that the Software Products may be subject to export control regulations in countries in which they operate, and Reseller hereby declares and agrees that it will not directly or indirectly export, import, transmit or use the Software Products contrary to the Laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or use. Reseller acknowledges that Adobe may be prohibited from providing maintenance and support for Software Products, if Adobe has knowledge that a violation of the EAR has occurred. The parties agree to cooperate with each other with respect to any application for any required licenses and approvals, however, Reseller acknowledges it is Reseller's ultimate responsibility to comply with any and all export and import Laws and that Adobe has no further responsibility after the initial sale to Reseller within the original country of sale.

#### 6.7.5 No Anti-Trust Arrangements

Reseller is not aware of and has not participated in (a) any business arrangements or deal allocation arrangements that could restrict free trading, competition and independent pricing of products among Adobe's partners, including but not limited to distributors and resellers of Adobe Software Products, or (b) practices that restrict free trading or lead to the promotion of monopolistic or anti-competitive business practices to the detriment of Adobe's customers.

#### 6.7.6 Fair Dealing; No False Representations

Reseller has made no false representations to Adobe with respect to any transactions entered into during Reseller's current fiscal quarter or any prior quarter. False representations would include, but not be limited to, the promotion or utilization of false documentation such as invalid purchase orders, fake or forged contracts, forged letters of destruction and/or inaccurate reporting to facilitate any Reseller transactions.

#### 6.7.7 Business Conduct Inspections

During the Term and for at least two (2) years after the expiry or termination of this Agreement, Reseller agrees that it permits either Adobe's internal compliance auditor, chief compliance officer or such designee, or an independent third party (who is appointed by Adobe and bound by reasonable confidentiality undertakings), to verify Reseller's compliance with this Clause 6.7 (Ethical Conduct and Compliance). Any such inspection and audit will be carried out in accordance with Clause 6.3 (Records and Inspections) of this Agreement.

#### 6.7.8 Reporting of Violations

Should Reseller know of any acts or omissions, by Adobe employees or other personnel, which violate Clause 6.7 (Ethical Conduct and Compliance) of this Agreement, or suspect any such violations, Reseller should contact Adobe at [Integrity@Adobe.com](mailto:Integrity@Adobe.com) or 1-800-300-1026 for an anonymous reporting of such a violation or suspected violation.

#### 6.7.9 Consequences of Breach

If Reseller breaches this Clause 6.7 (Ethical Conduct and Compliance) or any part thereof, Adobe may terminate this Agreement pursuant to Clause 13.3 (Termination With Cause), without prejudice to Clause 6.7.2 (d) and all of Adobe's other rights and remedies.

### 6.8 Indemnity by Reseller

Reseller indemnifies Adobe, each member of the Adobe Group, and each of their respective officers, employees and agents against any Losses (including attorneys' fees) brought or made against Adobe by third parties relating to or arising out of:

- 6.8.1 a breach by Reseller of this Agreement;
- 6.8.2 any misrepresentations made by Reseller or Reseller's officers, employees, representatives or agents ("Reseller Personnel");
- 6.8.3 any claims, warranties and representations made by Reseller or Reseller Personnel which differ from the warranties provided by Adobe in the relevant EULA;
- 6.8.4 any wrongful (including unlawful, fraudulent or negligent) acts or omissions made by Reseller or Reseller Personnel; and
- 6.8.5 any breach of any Law by Reseller (including without limitation, privacy or data protection Laws).

- 6.9 Reseller shall utilize Adobe SKU numbers and specific product descriptions within Reseller's internal database systems which maintains transaction records. Such information shall be tracked and documented by Reseller on a transaction by transaction basis and segregated by product (as opposed to only being consolidated by invoice number). Reseller must also supply correct manufacturer number (Adobe SKUs) on its GSA published price lists, if applicable.

## 7. MARKETING AND USE OF TRADEMARKS

### 7.1 Adobe Trademark License and Use of Adobe Trademarks

- 7.1.1 Adobe grants to Reseller, and Reseller accepts, a non-exclusive, non-transferable license during the Term to use "Adobe," both the name and in the stylized form used by Adobe, and the applicable Software Product trademarks (together, the "Adobe Trademarks"), solely for and in connection with its resale, marketing, advertising and promotion of the Software Products in the Territory, subject to the terms of this Agreement, provided that all uses of the Adobe Trademarks are approved in advance, in writing by Adobe. Adobe will use all reasonable efforts to respond to requests for approval promptly. Adobe reserves all rights not expressly granted herein.
- 7.1.2 Reseller acknowledges that all Intellectual Property and other rights in the Adobe Trademarks belong to Adobe. Reseller's use must be in accordance with applicable Law and Adobe's policies regarding advertising and Trademark usage as established from time to time, as posted on Adobe's website at <http://www.adobe.com/misc/agreement.html>, and incorporated into this Agreement by reference ("Trademark Usage Guidelines").
- 7.1.3 Reseller agrees:
- (a) that Adobe is the exclusive owner of the Adobe Trademarks and all associated goodwill, and Adobe retains all right, title and interest in the Adobe Trademarks; any unauthorized use of the Adobe Trademarks will be deemed an infringement of the rights of Adobe;
  - (b) Reseller acquires no right, title or interest in the Adobe Trademarks, and any and all goodwill associated with the Adobe Trademarks inures exclusively to the benefit of Adobe;
  - (c) to comply with the Adobe Trademark Usage Guidelines;
  - (d) not to use the Adobe Trademarks in any manner or take any action that will adversely affect the ownership or validity of the Adobe Trademarks, or that will diminish, damage or otherwise adversely affect the value of the goodwill attached to the Adobe Trademarks, Adobe and/or the Adobe Group;
  - (e) not to attach any additional trademarks, logos or trade designations to the Software Products or to use any additional trademarks, logos or trade designations to promote and/or distribute the Software Products;
  - (f) not to adopt, use or apply to register any corporate name, trade name, Trademark, domain name, service mark or certification mark, or other designation similar to or containing, in whole or in part, the Adobe Trademarks or any other Trademark of Adobe or the Adobe Group; and
  - (g) to notify Adobe of any suspected violation of, or challenge to, Adobe's and/or the Adobe Group's rights in the Adobe Trademarks of which Reseller becomes aware, and acknowledges that Adobe and/or the Adobe Group has the sole right to, and in its sole discretion may, control any action concerning the Adobe Trademarks.
- 7.1.4 Reseller may not assign, transfer or sublicense this license (or any right granted herein) in any manner without prior written authorization from Adobe.
- 7.1.5 Reseller agrees that the nature and quality of any products or services it supplies in connection with the Adobe Trademarks and all related advertising, promotional and other related uses of the Adobe

Trademarks by Reseller must conform to the standards set by Adobe and its licensors. Reseller agrees to co-operate with Adobe in facilitating Adobe's monitoring and control of the nature and quality of such products and services. Reseller agrees to promptly correct and remedy any deficiencies in its use of the Adobe Trademarks and conformance to the Quality Standards upon reasonable notice from Adobe.

- 7.1.6 Adobe may at any time by giving Reseller notice terminate the license in this Clause 7.1 (Adobe Trademark License and Use of Adobe Trademarks), or withdraw any approval given thereunder. Upon termination or expiry of this Agreement, termination or withdrawal of the license in this Clause 7.1 (Adobe Trademark License and Use of Adobe Trademarks) or withdrawal of Adobe's approval hereunder, Reseller must immediately cease using the Adobe Trademarks and destroy all materials in its possession or control which contain the Adobe Trademarks.

## 7.2 Reseller Trademark License and Use of Reseller Trademark

Subject to the terms of this Agreement, and only during the Term, Reseller grants Adobe a nonexclusive, nontransferable, paid-up, revocable limited license to use Reseller Trademarks, solely to exercise Adobe's rights and fulfill its obligations under this Agreement. For the purposes of this Agreement, "Reseller Trademarks" means the artwork, logos, and other images, trademarks, service marks, trade names or other identifying indicia of Reseller. Reseller may revoke Adobe's license to Reseller Trademarks at any time in its sole discretion. Upon such notice, Adobe will use commercially reasonable efforts to remove Reseller Trademarks from Adobe properties.

## 7.3 No Endorsement of Reseller Products

Adobe does not, and will not, endorse, warrant or guarantee the performance of any Reseller product. Reseller may not represent to any third party that Adobe: (a) has endorsed, warranted or guaranteed the performance of any Reseller product; (b) has implied the merchantability or fitness for a particular purpose of any Reseller product; or (c) intends to do either (a) or (b).

## 7.4 Publicity & Consent

7.4.1 Except as expressly set forth in this Agreement, neither party may issue any press releases, publicity, marketing or sales materials, or other materials developed by or on behalf of either party that refer to this Agreement or the relationship between the parties, or otherwise use the name or trademark of the other party without prior review and written approval by the other party.

7.4.2 Notwithstanding Clause 7.4.1:

- (a) either party may include factual descriptions of the relationship between the parties in presentations without consent; and
- (b) Reseller agrees that the fact that it has entered into this Agreement and is licensed to distribute Software Products is not Confidential Information, and Adobe is entitled to (a) include Reseller's details on any website that Adobe maintains for its customers in connection with the Software Products; and (b) supply details of Reseller's name, address, telephone and fax numbers to parties seeking information concerning Adobe's resellers.

## 8. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Software (including its structure, organization, code and other intellectual property) and all Software Products, NFR Software, and the Adobe Trademarks are proprietary to, and are the Intellectual Property and Confidential Information of, Adobe and its licensors and suppliers. Adobe, its licensors and suppliers retain exclusive ownership of the Intellectual Property rights vested in the Software Products, NFR Software, and the Adobe Trademarks.
- 8.2 Reseller must take all reasonable measures to protect the Intellectual Property rights of Adobe, its licensors

and suppliers in the Software Products, NFR Software, and the Adobe Trademarks, including providing such assistance and taking such measures as are reasonably requested by Adobe from time to time. Except as expressly provided in this Agreement, Reseller is not granted any rights to any Intellectual Property or any other rights, franchises or licenses with respect to the Software Products, NFR Software or the Adobe Trademarks. Reseller does not at any time have title to the physical property or the Intellectual Property in the Software Products and NFR Software.

## 9. CONFIDENTIALITY

### 9.1 Definition of Confidential Information

- 9.1.1 “Confidential Information” means any of the following, whether in material form or not and whether disclosed before or after the Effective Date of this Agreement:
- (a) all information of a party (such party disclosing the relevant information being the “Discloser”) (i) that are directly or indirectly disclosed to the other party (such party receiving the relevant information being the “Recipient”), or (ii) that the Recipient otherwise becomes aware of under this Agreement;
  - (b) any other information disclosed by the Discloser which can reasonably be inferred to be confidential from the circumstances in which it is imparted;
  - (c) the terms of this Agreement; or
  - (d) any notes and other records prepared by the Recipient that are based on or incorporating the information referred to in any of Clauses 9.1.1 (a), (b) or (c) above.
- 9.1.2 A Discloser’s Confidential Information does not include information that is (without being in breach of this Agreement): (a) already in the public domain; (b) received by the Recipient from a third party who does not owe an obligation of confidentiality to the Discloser; or (c) independently developed by the Recipient.
- 9.1.3 Without restricting Clause 9.1.1 above, a Discloser’s Confidential Information includes any of the following: (a) Personal Information; (b) Intellectual Property (c) information concerning any research, experimental work or other development undertaken by Discloser; and (d) any design details and specifications, engineering, financial information, pricing, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing plans and information, that belongs to the Discloser.

### 9.2 Recipient must Keep Information Confidential

Where Discloser discloses Confidential Information to the Recipient, the Recipient must:

- 9.2.1 use the Confidential Information solely for the purposes of performing its obligations under this Agreement; and
- 9.2.2 keep all Confidential Information confidential and not disclose, circulate or disseminate it in any way except as:
- (a) expressly permitted under this Agreement;
  - (b) to the extent necessary to fulfill its obligations under this Agreement; or
  - (c) as otherwise expressly agreed to in writing by Discloser;

provided that the Recipient ensures that any party receiving such disclosure, circulation or dissemination are under an obligation to keep the Confidential Information confidential under terms at least as restrictive as those in this Clause 9.2 (Recipient must Keep Information Confidential). Recipient remains responsible for any such party’s actions regarding the Confidential Information.

### 9.3 Requirement to Disclose

Where the Recipient is required to disclose Confidential Information in order to comply with applicable Laws: (a) the Recipient must immediately notify the Discloser of the particulars of the required Disclosure; and (b) the Recipient must give the Discloser all assistance reasonably required by the Discloser to enable the Discloser to take any steps available to it to prevent the disclosure or to ensure that it occurs subject to an appropriate obligation of confidence.

### 9.4 Recipient's Security Obligations

The Recipient must:

- 9.4.1 treat all Confidential Information with at least the same degree of care as it gives to the protection of its own confidential information of same or similar nature, but in no event less than reasonable care; and
- 9.4.2 at its own cost, establish and maintain security measures to safeguard the Discloser's Confidential Information from unauthorized access or use, including by not transferring the relevant Confidential Information in a clear or unprotected manner through public networks, and these security measures must be no less restrictive than the security measures that the Recipient takes to protect its own confidential information of same or similar nature.

## 10. WARRANTY

Adobe warrants the Software Products TO END USERS ONLY pursuant to the terms and conditions of the EULA, and no express or implied warranty or guarantee in relation to the Software Products or any other matter is extended in any way to Reseller under this Agreement, except to the extent set out under Clause 11 (Limitation of Liability) below.

## 11. LIMITATION OF LIABILITY

- 11.1 All express or implied guarantees, warranties, representations, or other terms and conditions relating to this Agreement or its subject matter, not contained in this Agreement, are excluded from this Agreement to the maximum extent permitted by Law, including without limitation and warranty of non-infringement, merchantability or fitness for a particular purpose.
- 11.2 Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any Law which cannot lawfully be excluded or limited.
- 11.3 If any guarantee, warranty, term or condition is implied or imposed in relation to this Agreement under any consumer Law of the Territory or any other applicable Law and cannot be excluded (a "Non-Excludable Provision"), and Adobe is able to limit Reseller's remedy for a breach of the Non-Excludable Provision, then the liability of Adobe for breach of the Non-Excludable Provision is limited to one or more of the following Adobe's option:
  - 11.3.1 in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
  - 11.3.2 in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 11.4 Subject to Adobe's obligations under the Non-Excludable Provisions and to the maximum extent permitted by Law, the maximum aggregate liability of Adobe for all Claims under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to

the amount of license fees paid under this Agreement in the twelve (12) months prior to the Claim. In calculating Adobe's aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by Adobe for a breach of any Non-Excludable Provision.

- 11.5 Subject to Adobe's obligations under the Non-Excludable Provisions and to the maximum extent permitted by Law, neither party will be liable for, and no measure of damages will, under any circumstances, include (i) special, indirect, consequential, incidental or punitive damages; or (ii) damages for loss of profits, business interruption, revenue, goodwill, anticipated savings or loss or corruption of data, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- 11.6 The liability of a party for any Loss suffered or incurred by the other party under this Agreement (including under any indemnity) will be reduced proportionately to the extent that any wrongful (including negligent) act or omission of the other party or its personnel directly caused or contributed to the Loss.
- 11.7 A party that has suffered or is likely to suffer Losses as a result of any event giving rise to liability of the other party under this Agreement (including under any indemnity), must take all reasonable steps to mitigate the Losses. If the party suffering or likely to suffer Losses does not do so, then the other party's liability will be reduced accordingly.

## 12. MODIFICATION BY ADOBE

- 12.1 Upon thirty (30) days' notice to Reseller, Adobe, in its sole discretion, reserves the right at any time to modify the terms of this Agreement, including but not limited to:
  - 12.1.1 updating, revising, or modifying all or parts of the Program Guide, Partner Program, and/or Authorized Programs;
  - 12.1.2 withdrawing or cancelling the Partner Program or any Authorized Program;
  - 12.1.3 changing any of the Criteria for Appointment and Performance required of Reseller;
  - 12.1.4 changing or terminating any of the Partner Program Benefits;
  - 12.1.5 adding additional terms, restrictions, and conditions applicable to any new Partner Program Benefits that may be made available by Adobe; and/or
  - 12.1.6 changing Reseller's Program Level.
- 12.2 The changes described in this Clause 12 (Modifications by Adobe) will become effective immediately at the end of the notice period specified herein and will be deemed to modify and supplement the terms of this Agreement. Such changes will govern any existing or future Partner Program Benefits provided to Reseller. Reseller's continued participation in the Partner Program or resale of Software Products following such notice will constitute Resellers' binding acceptance of the change. If any modification is unacceptable to Reseller, Reseller's only recourse is to terminate this Agreement within ten (10) days of such notice, without any recourse for damages or compensation of any form from Adobe. In such event, membership within the Partner Program will be cancelled.

## 13. TERM AND TERMINATION

### 13.1 Term

- 13.1.1 The term of this Agreement will commence on the Effective Date and expire one (1) year later, unless extended by Adobe or terminated earlier in accordance with the provisions of this Agreement ("Term").

13.1.2 The Term may be extended by Adobe giving notice to Reseller. If Reseller receives a renewal notice from Adobe but does not wish to renew the Term, Reseller must notify Adobe of its desire to not renew and the Agreement will terminate.

### 13.2 Termination Without Cause

13.2.1 Without prejudice to Clause 12 (Modifications by Adobe), either party may terminate this Agreement for convenience at any time, upon fourteen (14) days' prior written notice to the other party.

### 13.3 Termination With Cause

13.3.1 Without prejudice to additional remedies provided herein, either party may terminate this Agreement, upon fifteen (15) days' written notice to the other party, if the other party is in material breach of this Agreement and such material breach is not remedied within such fifteen (15) day period.

13.3.2 Notwithstanding Clause 13.3.1 above, either party may terminate this Agreement immediately, upon written notice to the other party if:

- (a) the other party ceases to carry on its business;
- (b) there is a Change in Control of the other party; or
- (c) the other party or one of its direct shareholders is or becomes subject to any of the following events (including any events in the nature of or analogous to any of the following):
  - (1) insolvency (including bankruptcy, filing for moratorium on payments of its debts or seeking any other like relief);
  - (2) any form of voluntary or involuntary insolvency administration or liquidation, including where it has an administrator, examiner or receiver appointed to it, its property and assets or its affairs, but excluding where such administration or liquidation is voluntarily entered into for the purpose of carrying out a reconstruction or amalgamation while solvent; or
  - (3) entering into a scheme or voluntary arrangement with its creditors for partial discharge of indebtedness.

13.3.3 Notwithstanding Clause 13.3.1 above, Adobe may terminate this Agreement immediately, upon written notice to Reseller:

- (a) for Reseller's breach of:
  - (1) Clause 3 (License Restrictions);
  - (2) Clause 6.6 (Reseller's Representations and Warranties);
  - (3) Clause 6.7 (Ethical Conduct and Compliance);
  - (4) Clause 8 (Ownership of Intellectual Property Rights);
  - (5) Clause 9 (Confidentiality);
  - (6) Clause 14.2 (Assignment);
- (b) upon being advised by Reseller that Reseller has become aware of information that would alter any warranty or representation made by Reseller pursuant to Clause 6.6 (Reseller's Representations and Warranties); or
- (c) upon occurrence of a Breach under Clause 6.5 (Data Protection and Privacy).

### 13.4 Rights Upon Termination or Expiration

13.4.1 The termination or expiration of this Agreement will be without prejudice to the rights and obligations of the parties that have accrued as of the date of termination or expiration.



13.4.2 Upon termination or expiration of this Agreement:

- (a) all licenses granted to Reseller hereunder will automatically cease; and
- (b) Reseller must:
  - (1) discontinue all representations that it is a reseller of Adobe Software Products;
  - (2) immediately cease using the Adobe Trademarks;
  - (3) as directed by Adobe, return, destroy or delete all copies of the NFR Software, Confidential Information or other Adobe materials (such as marketing collaterals) that is in Reseller's possession or under its control;
  - (4) provide to Adobe written confirmation that Clauses 13.4.2 (b) (1), (2) and (3) above have been complied with; and
  - (5) refer all inquiries regarding Adobe or the Adobe Software Products to Adobe and give Adobe notice thereof.

### 13.5 Survival

13.5.1 The termination or expiration of this Agreement does not extinguish or otherwise affect any provisions of this Agreement which by their nature survive termination or expiration.

13.5.2 For the avoidance of doubt, the following is a non-exclusive list of clauses which will survive the termination or expiration of this Agreement:

- (a) Clause 6.3 (Records and Inspections);
- (b) Clause 6.5 (Data Protection and Privacy);
- (c) Clause 6.6 (Reseller's Representations and Warranties)
- (d) Clause 6.7.2 (Reseller Compliance with Law; Anti-corruption);
- (e) Clause 6.7.4 (Export Compliance);
- (f) Clause 6.8 (Indemnity by Reseller);
- (g) Clause 9 (Confidentiality);
- (h) Clause 11 (Limitation of Liability);
- (i) Clause 13 (Term and Termination); and
- (j) Relevant provisions of Clause 14 (Miscellaneous), including but not limited to, Clause 14.5 (Legal Costs), Clause 14.8 (Governing Law and Dispute Resolution), and Clause 14.9 (Provisional/Equitable Relief).

## 14. MISCELLANEOUS

### 14.1 Notices

14.1.1 Any notice given under this Agreement must be in writing and may be given by email, hand, courier, or post to the party's address set out on the front page of this Agreement, except that all notices made pursuant to Clause 13.3 (Termination with Cause) must only be made in writing and given by hand, courier or post to the party's address set out on the front page of this Agreement ("Notice").

14.1.2 A Notice is taken to have been received:

- (a) if delivered by hand or courier to the receiver, at the time of delivery;
- (b) if posted within the same country, 3 days after the date of posting;

- (c) if posted to a different country, 10 days after the date of posting; and
- (d) if emailed, upon the earlier of (i) the sender receiving an automated message confirming delivery; or (ii) 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.

14.1.3 If a Notice is sent to Adobe, it must be sent to the attention of the Associate General Counsel, Indirect Sales, Legal Department A17.

#### **14.2 Assignment**

Except as expressly set forth below in this section, neither the Agreement nor any of the rights or obligations of the Reseller may be assigned, in whole or in part without the prior written approval of Adobe. Should Reseller undergo a Change in Control, Adobe will be entitled to terminate the Agreement immediately on written notice to Reseller. For the purposes of this Section, a change in the persons or entities who control fifty percent (50%) or more of the equity securities of Reseller will also be considered a Change In Control. . Adobe may, at its sole discretion, assign or novate this Agreement, or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of Reseller. The Agreement is binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. Adobe is entitled to terminate this Agreement pursuant to Clause 13.3 (Termination With Cause) without prejudice to all its other rights and remedies, if Reseller breaches any of the provisions in this Clause 14.2 (Assignment).

#### **14.3 Waiver**

No waiver of a right or remedy under this Agreement is effective unless the person granting it complies with Clause 14.1 (Notices). It is only effective in the specific instance and for the specific purpose for which it is granted. A single or partial exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

#### **14.4 Severability**

Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement is not affected.

#### **14.5 Legal Costs**

If any proceeding or lawsuit is brought by Adobe or Reseller in connection with this Agreement, the prevailing party in such proceeding is entitled to receive its costs, expert witness fees, and reasonable legal fees, including on appeal.

#### **14.6 No Agency**

Nothing in this Agreement is intended to constitute a fiduciary relationship or an agency, partnership, joint venture, exclusive, trust or other similar relationship between the parties. No party has authority to bind or incur any obligation on behalf of any other party.

#### **14.7 Headings**

The clause headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such clause or in any way affect such clause.

#### **14.8 Governing Law, Venue and Dispute Resolution**

14.8.1 The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

14.8.2 This Agreement is governed by the laws of the State of California, exclusive of its conflict of laws statute. All disputes arising out of or in connection with this Agreement must be brought in the state

or federal courts located in Santa Clara County, California. If Reseller is a Government Entity or public Educational Establishment and is precluded by law from agreeing to any portion of this Clause 14.8.2 as of the date of execution of this Agreement, then Clause 14.8.2 will not apply to the extent not permitted by law and Clause 14.8.3 will apply.

**14.8.3 *Alternative Dispute Resolution.*** In the event of a dispute regarding this Agreement, the parties will consult each other in a good faith attempt to resolve the dispute without judicial intervention. If the parties cannot resolve the dispute, the parties will promptly agree on an alternative dispute resolution procedure. Nothing in this clause is intended to limit Adobe's right to seek provisional, equitable and/or legal relief with respect to any actual or potential breach of Adobe's Intellectual Property rights. This clause applies only in the event that Reseller is a Government Entity or public Educational Establishment and is precluded by law from agreeing to Clause 14.8.2.

#### **14.9 Provisional/Equitable Relief**

The parties expressly agree that a violation of certain sections of the Agreement and/or the Program Guide, including a breach of Adobe's Intellectual Property rights, Sections 3 (License Restrictions), 6 (Reseller's Obligations), 7 (Marketing and Use of Trademarks), 8 (Ownership of Intellectual Property Rights), and 9 (Confidentiality), may cause irreparable harm and that a remedy at law is likely to be inadequate. Therefore, in addition to any and all remedies available at law, a party 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 set forth above in this Section. Reseller hereby waives any requirement that Adobe post a bond or other security in conjunction with any application for injunctive or other equitable relief.

#### **14.10 Entire Agreement**

This Agreement is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter. Each party represents and warrants that it has not relied on any representations or warranties about the subject matter of this Agreement except as expressly provided in this Agreement.

#### **14.11 Language**

This Agreement is in the English language only, which will be controlling in all respects. All versions of this Agreement in any other language will not be binding on the parties. All communications and notices to be made or given pursuant to this Agreement will be in the English language.

#### **14.12 Third Party Beneficiaries**

Reseller acknowledges and agrees that Adobe's licensors are third party beneficiaries of the Agreement, with the right to enforce the obligations set forth in the Agreement.

#### **14.13 Counterparts**

This Agreement may be executed in several counterparts, which together constitute the same instrument. A fax signature or signature delivered as an imaged attachment to and e-mail message is deemed equivalent to an original ink signature.

#### **14.14 Taxes**

In addition to any payments due to an Authorized Adobe Distributor, Reseller may be required to pay any taxes, duties, or other amounts, including state sales taxes, however designated, which are levied or based upon such payments as requested by the Authorized Adobe Distributor. Reseller agrees to pay and to indemnify and hold Adobe harmless from any such taxes, duties or other amounts, including penalties and interest, as well as any costs associated with the collection or withholding thereof.

#### **14.15 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.

Adobe Systems Incorporated

[ Customer ]

Adobe Systems Software Ireland Limited

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Authorized Signature

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