

Adobe® Gold Support Program Service Agreement for FLP Purchases

This Agreement is between Adobe Systems Incorporated and Customer ordering the Adobe® Gold Support Program (“Support Program”), if Customer is resident in the United States, Canada, or Mexico or between Adobe Systems Software Ireland Limited and Customer, if Customer is resident in any other country. The two Adobe entities shall be referred to collectively as "Adobe". Customer hereby agrees that the following terms and conditions shall govern the delivery of support services by Adobe to Customer under the Support Program with respect to applicable registered Adobe products (“Products”) and where indicated with respect to third-party products and technologies. Subject to Customer’s termination right as set forth in Section 4 below, ordering the Support Program indicates Customer’s acceptance of the terms and conditions contained in this Service Agreement. This Service Agreement is effective upon receipt and acceptance of Customer’s order by Adobe or by the authorized reseller from whom support is purchased (“Commencement Date”).

1. Services.

1. Adobe will provide Customer and the allotted authorized users “Technical Support Contacts” the support services (“Support Services”) described at adobe.com/support/programs/gold.html (the “Support Site”). Such descriptions, as may be amended from time to time, are deemed to be part of this Service Agreement. The Adobe software products and technologies for which Gold Support is available are listed on the Support Site. Gold Support is not available for all Adobe software products. Support Services will be delivered by a member of Adobe's technical support team to the Technical Support Contacts during the regional hours of operation as listed on the Support Site. Additional Technical Support Contracts may be purchased and registered as authorized users of the Support Program. Support is delivered in English only, unless the Customer is in a location where localized support has been made available by Adobe.
 2. Customer shall have access to Adobe's eSupport services via remote computer access (“eSupport Services”). Should Customer choose to access the eSupport Services, Customer hereby grants permission to Adobe to access the Software, including any and all systems on which it resides, for the sole purpose of providing Support Services to Customer. CUSTOMER ACKNOWLEDGES THAT IT MAY CONTROL ALL ADOBE ACCESS TO THE SOFTWARE AND TO CUSTOMER'S SYSTEMS BY SELECTING A "HIGH" SECURITY SETTING AND MONITORING ALL SUCH ACCESS; PROVIDED, HOWEVER ADOBE SHALL NOT BE LIABLE FOR ANY FAILURE TO PROVIDE SUPPORT SERVICES AS A RESULT OF CUSTOMER'S SECURITY SETTINGS AND MONITORING OF ADOBE'S ACCESS TO CUSTOMER'S SYSTEMS.
2. **Restrictions.** Adobe may limit or terminate the Support Services being provided if Customer uses the Support Services in an abusive or fraudulent manner, as determined by Adobe in its reasonable discretion. Examples of such use include a high number of calls that concern previously resolved issues, repeated posing of questions to which the answer is readily found in the documentation, and discussion of issues that are not related to technical support. Resale or assignment is strictly prohibited and will be grounds for termination of this Agreement. Replacing an authorized user with a different Technical Support Contact is permitted so long as the contact is not the owner of the Support Program and the request is done in writing prior to providing Support Services to the new Technical Support Contact. Adobe will only provide Support Services for Products that are properly registered with Adobe as documented on the Support Site.

3. **Exclusions.** Adobe shall not be required to provide any Support Services relating to problems or issues arising out of or from (i) Customer's use of the Products in a manner for which they were not designed; (ii) damage to the media on which the Products are provided or to the computer on which the Products are installed; (iii) Customer's negligence, misuse, or modification of the Products; (iv) versions of Products other than the most recent version (e.g., 5.x) and one version back (e.g., 4.x), provided that Adobe shall also not be required to provide any Support Services for Products that are no longer listed on the Support Site as supported products; (v) third-party products and technologies not associated with network installation assistance as listed on the Support Site as supported technologies or (vii) conflicts related to replacing or installing hardware, drivers, and software that have not been Adobe certified.
4. **Term and Termination.**
 1. Adobe shall provide the above Support Services under this Agreement for a term of one (1) year from Support Services ("Commencement Date") (the "Initial Term"). Subsequent one year renewal terms are optional. If this Agreement lapses, Customer may be subject to additional fees prior to the reinstatement of Support Services hereunder.
 2. The term "Annual Support Fee" as used in this Agreement means, (i) for the Initial Term, the Annual Support Fee set forth on the applicable purchasing document ("Initial Annual Support Fee"); (ii) for each of the first and second renewal terms, if so renewed, the Initial Annual Support Fee; and (iii) for each of the third and subsequent renewal terms, if so renewed, the then-current list price of the Support Services, however, in no event shall the amount be less than the Annual Support Fee paid for the prior year for the Software covered by such renewal.
 3. Notwithstanding anything to the contrary herein, this Agreement may be terminated by Adobe for failure of Customer to pay Adobe the Annual Support Fee if such failure to pay continues for ten (10) days after Adobe gives Customer written notice of such failure. Adobe may also terminate this Agreement if Customer materially breaches the terms of this Agreement and fails to cure such breach within thirty (30) days of written notice thereof, except that a material breach of any license granted to Customer in the terms of use or end user license agreement applicable to the Software shall be grounds for immediate termination.
 4. Customer acknowledges that Adobe has the right to discontinue the manufacture and development of any of the Software and the Support Services for any Software, including without limitation the distribution of older Software versions, at any time in its sole discretion, provided that Adobe agrees not to discontinue the Support Services for the Software during the current annual term of this Agreement, subject to the termination provisions herein. Adobe reserves the right to alter these Support Services from time to time, using reasonable discretion but in no event shall such alterations result in (i) diminished support from the level of support set forth herein; (ii) materially diminished obligations for Adobe; (iii) materially diminished rights of Customer, or (iv) higher Annual Support Fees during the then-current term. Adobe shall provide Customer with thirty (30) days prior written notice of any permitted material changes to these Support Services contemplated herein.
5. **Decommissioning.** When buying Gold Support and the customer has multiple copies of one product, it is a requirement to purchase Gold Support on 100% of those licenses. This prevents partial cover whilst holding several licenses of the same product, which could lead to support being refused if it is not identifiable which licenses have valid cover. However, the customer may choose not to renew Gold Support on all the licenses of a particular product where it is no longer required and hence deemed no longer in use.

6. **Warranty and Disclaimer.** Adobe will use commercially reasonable efforts to provide the Support Services in a professional manner, but Adobe cannot guarantee that every question or problem raised by Customer can or will be resolved. Nothing in this Agreement shall be construed as expanding or adding to the warranty for the Software set forth in the Product End User License Agreement and/or other applicable agreement with Adobe governing use of the software. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION, OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO CUSTOMER IN ITS JURISDICTION, ADOBE MAKES, AND CUSTOMER RECEIVES, NO WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, RELATED TO OR ARISING IN ANY WAY OUT OF THIS SERVICE AGREEMENT OR THE PROVISION OF MATERIALS OR SERVICES UNDER THIS AGREEMENT. ADOBE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
7. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL ADOBE'S LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE SUPPORT SERVICES ORDERED BY CUSTOMER FOR THE ANNUAL TERM IN WHICH THE LIABILITY AROSE. IN NO EVENT SHALL ADOBE HAVE ANY LIABILITY FOR ANY SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE OF EQUIPMENT OR FACILITIES, OR INTERRUPTION OF BUSINESS, ARISING FROM OR RELATED TO THIS AGREEMENT UNDER ANY THEORY OF LIABILITY, WHETHER OR NOT ADOBE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
8. **Additions.** Any additional services added to this Service Agreement by written notice to Customer will be governed by the terms of this Service Agreement.
9. **General.** Except as specifically allowed herein, this Service Agreement may not be assigned by Customer. Any assignment in violation of the foregoing shall be null and void. This Service Agreement supersedes all other written and oral proposals, purchase orders, prior agreements, and other communications between Customer and Adobe concerning the subject matter hereof and constitutes the entire agreement between Adobe and Customer regarding provision of Support Services. If Customer is a resident of the United States, Mexico, or Canada then (i) this Service Agreement shall be governed by the laws of the State of California without reference to conflict of law principles; and (ii) Customer consents to the personal jurisdiction of the state and federal courts located in Santa Clara County, California. If Customer is a resident of any other country, then (i) this Service Agreement shall be governed by the laws of the Republic of Ireland without reference to conflict of law principles, as such laws are applied to agreements entered into and to be performed entirely within the Republic of Ireland between residents of the Republic of Ireland; and (ii) Customer consents to the personal jurisdiction of the courts located in Courts of Ireland in Dublin, Ireland for all disputes relating hereto. If any action at law or in equity is necessary to enforce the terms hereof, the prevailing party shall be entitled to reasonable attorney's fees, costs and expenses in addition to any other relief to which such prevailing party may be entitled. Sections 5, 6, 7 and 8 shall survive expiration or earlier termination for any reason.