



RESELLER ADDENDUM TO PARTNER GENERAL TERMS (2017v1)

1. **DEFINITIONS.** The defined terms used but not defined in this Reseller Addendum (“**Addendum**”) have the meanings given to those terms in the Partner General Terms. In this Addendum:

- 1.1 “**Customer Content**,” “**Customer Data**,” “**Customer Site**,” “**Customer’s Users**” and “**Customer’s data privacy policy (or policies)**” have the meanings given in the Minimum Terms.
- 1.2 “**Distributed Code**” means HTML tags, JavaScript code, object code, plugins, SDKs, APIs, or other code provided by Adobe for use of the On-demand Services or Managed Services.
- 1.3 “**Indemnified Technology**” means On-demand Services, Managed Services or On-premise Software (as applicable), paid for by Partner.
- 1.4 “**License Term**” means the duration of each of the Products and Services, as stated in the Partner Sales Order, or any shorter term arising from a termination of the Agreement.
- 1.5 “**Minimum Terms**” means the terms and conditions required to be put in place between Partner and Customer, the current form of which can be found at <http://www.adobe.com/content/dam/acom/en/legal/terms/enterprise/pdfs/ExperienceCloud-ResellerMinimumTerms-NA-2017v1.pdf>
- 1.6 “**Taxes**” means any sales, use, excise, services, import or export, value added (VAT), goods and services (GST) or any similar tax.

2. APPOINTMENT

2.1 Reseller.

- (A) Adobe appoints Partner as an Adobe reseller, on a non-exclusive basis, to resell directly to Customer the Products and Services contained in the Partner Sales Order.
- (B) Adobe reserves the right to:
 - (1) independently set recommended retail prices for Products and Services regardless of the distribution or resale channel;
 - (2) independently set customer prices for Products and Services solely to the extent sold by Adobe directly to customers (rather than via a third party, such as a reseller);
 - (3) independently or through its licensees, distributors, resellers or agents, market, sell, and provide, and to appoint others to market, sell, and provide, the Products and Services to any and all customers and potential customers worldwide; and
 - (4) choose to offer, at its sole discretion, support and maintenance services for the Products and Services as well as providing other services with respect to such Products and Services according to Adobe’s own standard practices.

2.2 **Support Services.** Unless otherwise provided for in the Partner Sales Order, as an Adobe reseller, Partner will provide all implementation and first line support services to Customer. Partner will be Customer’s first point of contact to respond to any questions from Customer about implementation and usage of the Products and Services.

3. PAYMENT OF FEES

- 3.1 **Customer Pricing.** Partner is free to set its own prices to its Customer for all Products and Services and Professional Services.
- 3.2 **Payment.** Partner must pay the fees according to the payment terms in the Partner Sales Order. All invoices will be delivered electronically to Partner. Adobe may charge interest at a monthly rate equal to the lesser of



1.0% per month or the maximum rate permitted by applicable law on any overdue fees, from the due date until the date the overdue amount (plus applicable interest) is paid in full. Any fees that are unpaid as of the date of termination or expiration will be immediately due and payable. Partner agrees to provide clear indication with its checks (or other form of payment) as to which invoices (or portions thereof) the payment should be applied. Alternatively, these payment details can be emailed to sjar@adobe.com, unless the Partner is located in APAC, in which case these payment details can be emailed to bvar@adobe.com, in either case, no later than the date of payment. Upon request from Adobe, Partner shall provide to Adobe under confidentiality quarterly and/or annual audited financial statements including a balance sheet, income statement, statement of cash flow, and relevant notes for Adobe to ascertain the credit-worthiness of Partner.

- 3.3 **Failure to Pay.** If Partner fails to pay any amount due under this Addendum according to the payment terms in the Partner Sales Order, Adobe will send Partner a reminder notice. If Partner fails to pay within 15 days of the date of the reminder notice, Adobe may, in its sole discretion, terminate the Partner Sales Order or suspend or restrict the provision of the Products and Services.
- 3.4 **Disputes.** If Partner believes in good faith that Adobe has incorrectly billed Partner, Partner must contact Adobe in writing within 30 days of the invoice date, specifying the error. Unless Partner has correctly notified Adobe of the dispute, Partner must reimburse Adobe's reasonable collection costs. Partner must pay the undisputed portions of Adobe's invoice as required by this Addendum.
- 3.5 **Taxes.** Prices in the Partner Sales Order and Adobe price lists do not include Taxes. Adobe may invoice Partner for any applicable Taxes. Where applicable, Partner must provide a tax-exemption claim to Adobe before placing an order. Partner is responsible for all customs, duty, tariff and similar fees levied upon the delivery of Products and Services. Partner is responsible for obtaining, at its expense, all required import licenses, permits or other governmental orders.
- (A) Partner agrees to charge Taxes to Partner's Customer on the subsequent resale of Products and Services. If Partner fails to pay Taxes as of the original due date and Adobe receives any notice ("**Assessment**") from any taxing authority that such Taxes are due from Adobe, Adobe shall give Partner written notice of the Assessment and Partner shall pay to Adobe or to taxing authority the Assessment amount within thirty (30) days of notice from Adobe.
- (B) If Partner is required to withhold income taxes from its payment to Adobe, Partner agrees to send Adobe an official tax receipt within sixty (60) days of payment to Adobe. Partner shall have no recourse against Adobe for such withholding taxes unless Partner paid such withholding taxes to the appropriate taxing authority at the time of the applicable remittance to Adobe. All withholding tax certificates or receipts must be forwarded to Adobe as follows:

Adobe Inc. – All withholding tax certificates must be forwarded to: Adobe Inc., Attention: Credit Department, 345 Park Avenue, MS A16, San Jose, California 95110-2704 USA.

Adobe Ireland EMEA/Latin America – All withholding tax receipts must be forwarded in a PDF format to Adobe Systems Software Ireland Limited via e mail ID credit-ir@adobe.com, and the original certificate mailed to Adobe: Attention Credit Department, Adobe Systems Software Ireland Ltd, 4-6 Riverwalk, Citywest Business Campus, Saggart, Dublin 24, Ireland.

Adobe Ireland Asia – All withholding tax receipts must be forwarded in a PDF format to Adobe Systems Software Ireland Limited via e mail ID credit-ir@adobe.com, and the original certificate mailed to Adobe Systems Software Ireland Ltd at the above address.

4. ORDERS; DELIVERY

- 4.1 **Order Requirements.** Upon Adobe's request, Partner shall provide documentation to Adobe to show that Partner has received a valid Customer Order from its Customer prior to entering into a Partner Sales Order with Adobe. Partner will ensure that any Customer Order contains terms and information substantially similar to the



Partner Sales Order, including license metrics, quantities and length of term, except that pricing, payment, financing, delivery, and any tax terms, as applicable, will be as agreed between Partner and Customer. Partner agrees to release and discharge Adobe from any claims, obligations or liabilities arising from or related to any:

- (A) differences between the Partner Sales Order and Customer Order; or
- (B) additional terms contained in the Customer Order that are not reflected in the Partner Sales Order.

4.2 **Delivery.** On-premise Software will be deemed to be delivered and accepted on the earlier of the date the On-premise Software is made available for electronic download, or if applicable, the date that Adobe ships the tangible media (e.g., CD or DVD) containing the On-premise Software FOB origin. On-demand Services or Managed Services are deemed to be delivered and accepted on the License Term start date in the Partner Sales Order.

4.3 **Purchase Order.** Any terms or conditions in Partner's purchase order, or any other related documentation submitted by or on behalf of Customer to Adobe or Partner do not form part of the Agreement and are void, unless otherwise expressly agreed in writing and signed by Adobe.

5. LICENSE AND RESTRICTIONS

5.1 **License Grant From Adobe.** Adobe grants Partner, a non-transferable, non-exclusive limited right pursuant to the Partner Sales Order to resell the Products and Services listed in the Partner Sales Order directly to Customer in accordance with this section.

(A) **Minimum Terms.** All use of the Products and Services by Customer shall be subject to the Minimum Terms. Partner must ensure that Customer has accepted the Minimum Terms prior to Customer's access to or use of the Adobe Products and Services, and Partner will use best efforts to enforce the Minimum Terms with Customer. Partner is not permitted to make any material changes to the Minimum Terms without Adobe's prior written consent. Adobe will have no obligation to provide the Distributed Code, On-demand Services, Managed Services, On-premise Software or Professional Services to the Customer if Partner has not executed a binding legal agreement with Customer acknowledging and agreeing to terms substantially similar to and no less restrictive than the Minimum Terms, nor will Partner provide such Distributed Code, On-demand Services, Managed Services, On-premise Software or Professional Services to a Customer that has not executed the same. The Minimum Terms can be updated at the discretion of Adobe upon 30 days' notice to Partner.

(B) **Managed Services.** Notwithstanding anything to the contrary in the Minimum Terms or Documentation, for any Adobe Managed Services, Adobe has no obligation to:

- (1) perform pre-production work, customization or modification of the Adobe Products and Services or Distributed Code for Customer unless coordinated through Partner,
- (2) meet or provide remedies for any service level related objectives to Customer,
- (3) provide staging software, development software, or development consultants to Customer, or
- (4) provide any support to Customer.

5.2 **Partner Use of Products and Services for the Benefit of Customer**

(A) If Partner operates, uses, or accesses the Products and Services, Partner must obtain the right to do so from Customer pursuant to the Outsourcing and Third-Party Access section of the Minimum Terms prior to such operation, use, or access.

(B) Partner may not utilize the Adobe Products and Services for its own internal business use except pursuant to a separate agreement for that purpose. The rights granted pursuant to section 5.1 (License Grant from Adobe) are solely in connection with the Products and Services and for Customer's internal business purposes. Nothing in this section grants any express or implied license to use, engage, modify, copy, link, or translate the Distributed Code other than in connection with Customer's use of the Products and Services. Any use, modification, copying, linking, translating, or reverse engineering of the Distributed Code



to enhance or enable usage of any third party product or service is hereby expressly prohibited. Adobe reserves all other rights not expressly granted in the Agreement.

6. WARRANTIES

- 6.1 **Limited Warranty and Remedy for On-demand Services and Managed Services.** Adobe warrants solely to Partner that the On-demand Services and Managed Services, as delivered by Adobe, will substantially conform to the applicable Documentation during the License Term, to the extent that the On-demand Services and Managed Services constitute Indemnified Technology. Partner must notify Adobe of a claim under this warranty within 30 days of the date on which the condition giving rise to the claim first appeared. To the extent permitted by law, Partner's sole and exclusive remedy and Adobe sole liability under or in connection with this warranty will be a replacement of the Distributed Code (as applicable), or if replacement is not commercially reasonable, a termination of the applicable On-demand Service or Managed Service and a refund of any pre-paid, unused fees for the applicable On-demand Service or Managed Service.
- 6.2 **Limited Warranty and Remedies for On-premise Software.** Adobe warrants solely to Partner that the On-premise Software will substantially conform to the applicable Documentation for 90 days following the delivery of the On-premise Software, to the extent that the On-premise Software constitutes Indemnified Technology. Partner must make these warranty claims to Adobe within this 90-day period. To the extent permitted by law, Partner's sole and exclusive remedy and Adobe's sole liability under or in connection with this warranty will be, at Adobe's option, a replacement of the On-premise Software, or refund of fees Partner paid for the On-premise Software.
- 6.3 **Implied Warranties.** To the maximum extent permitted by law and except for the express warranties in this Addendum, Adobe provides the Products and Services on an "as-is" basis. Adobe, its Affiliates, and third-party providers disclaim and make no other representation or warranty of any kind, express, implied or statutory, including representations, guarantees or warranties of merchantability, fitness for a particular purpose, title, non-infringement, or accuracy. Partner acknowledges that (A) neither Adobe, its Affiliates nor its third party providers controls Partner's or Customer's equipment or the transfer of data over communications facilities (including the Internet); (B) the Products and Services may be subject to limitations, interruptions, delays, cancellations, and other problems inherent in the use of the communications facilities (including search engines and social media channels); and (C) Partner or Customer are fully responsible for installing appropriate security updates and patches. Adobe, its Affiliates, and its third party providers are not responsible for any interruptions, delays, cancellations, delivery failures, data loss, content corruption, packet loss, or other damage resulting from these problems.
- 6.4 **Non-Excludable Provisions.** If any guarantee, warranty, term, or condition is implied or imposed concerning this Agreement under any consumer law or any other applicable law and cannot be excluded (a "**Non-Excludable Provision**"), and Adobe is able to limit Partner'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, at Adobe's option:
- (A) 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
 - (B) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

7. THIRD PARTY INTELLECTUAL PROPERTY CLAIMS

- 7.1 **Adobe's Obligations.** Adobe will defend, at its expense, any third-party Claim against Partner during the License Term to the extent the Claim alleges that (A) the Indemnified Technology directly infringes the third party's patent, copyright or trademark ; or (B) Adobe has misappropriated the third party's trade secret ("**Infringement Claim**"). Adobe will pay the Partner any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by Adobe).
- 7.2 **Adobe's Response.** In the defense or settlement of any Infringement Claim, Adobe may, at its sole option and expense:



- (A) procure for Partner a license to continue reselling the Products and Services under the terms of this Addendum;
- (B) replace or modify the allegedly infringing Products and Services to avoid the infringement; or
- (C) terminate the license and access to the Products and Services (or its infringing part), and refund:
 - (1) in the case of Products and Services licensed for a limited term, the applicable prepaid unused fees as of the date of termination; or
 - (2) in the case of On-premise Software licensed for a perpetual term, an amount equal to the pro-rata value of the On-premise Software, calculated by depreciating the fee paid by Partner, for the On-Premise Software on a straight-line basis using a useful life of 36 months from the date of initial delivery of the On-premise Software,

but only if Partner purges and destroys, and ensures the Customer purges and destroys, all copies of the On-premise Software (and any related materials) and Distributed Code from all computer systems on which it was stored.

7.3 Conditions. Adobe will have no liability for any Infringement Claim:

- (A) that arises from any:
 - (1) use of the Products and Services in violation of the Agreement or the Minimum Terms;
 - (2) modification of the Products and Services by anyone other than Adobe;
 - (3) failure by Partner to install, or failure by Partner to require the Customer to install, the latest updated version of the Products and Services as requested by Adobe to avoid infringement;
 - (4) third party products, services, hardware, software or other materials, or combination of these with the Products and Services, if the Products and Services would not be infringing without this combination; or
 - (5) claims by Customers.
- (B) if Partner fails to:
 - (1) notify Adobe in writing of the Infringement Claim promptly upon the earlier of learning of or receiving a notice of it, to the extent that Adobe is prejudiced by this failure;
 - (2) provide Adobe with reasonable assistance requested by Adobe for the defense or settlement (as applicable) of the Infringement Claim;
 - (3) provide Adobe with the exclusive right to control and the authority to settle the Infringement Claim; or
 - (4) refrain from making admissions about the Infringement Claim without Adobe's prior written consent.

7.4 Sole and Exclusive Remedy. The remedies in this section 7 (Third Party Intellectual Property Claims) are Partner's sole and exclusive remedies and Adobe's sole liability regarding the subject matter giving rise to any Infringement Claim.

8. OTHER CLAIMS

- 8.1 Partner's Obligations.** Partner will, at its expense, defend or settle any third-party Claim against Adobe to the extent it arises from:
- (A) the performance of, or infringement by, software, services, equipment, or materials (including Partner Intellectual Property) not supplied by Adobe or Partner;
 - (B) Partner's or Customer's failure to comply with Customer's data privacy policies, the applicable data protection laws, guidelines, regulations, codes and rules, and the obligations relating to Customer Data contained in the Minimum Terms;



- (C) any Customer Customization (as defined in the applicable PSLT), Customer Content or Customer Data;
- (D) Partner's or Customer's breach of the Third Party Providers section of the Minimum Terms; or
- (E) any Claims arising from Partner's failure to secure Customer's agreement to the Minimum Terms.

Partner will pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by Partner). The Limitation of Liability provision in the Partner General Terms does not apply to Partner's liability or obligations under this section.

- 8.2 **Conditions.** Partner's obligations under this section 8 (Other Claims) are conditioned upon Adobe (to the extent permitted by applicable law):
- (A) promptly notifying the Partner of any Claim in writing;
 - (B) cooperating with the Partner in the defense of the Claim;
 - (C) granting the Partner sole control of the defense or settlement of the Claim; and
 - (D) refraining from making any admissions about the Claim.
- 8.3 **Sole and Exclusive Remedy.** The remedies in section 8.1 (Partner's Obligations) are Adobe's sole and exclusive remedies and Partner's sole liability regarding the subject matter giving rise to any such Claim.

9. SPECIFIC PROVISIONS FOR PROFESSIONAL SERVICES

- 9.1 **Employment Taxes and Obligations.** Adobe is responsible for all taxes and any employment obligations arising from its employment of personnel and contractors to perform the Professional Services.
- 9.2 **Warranty.** Adobe warrants solely to Partner that the Professional Services will be performed in a professional and workmanlike manner. Partner must notify Adobe in writing of any breach of this warranty within 30 days of delivery of such Professional Service. To the extent permitted by law, Partner's sole and exclusive remedy for breach of this warranty and Adobe's sole liability under or in connection with this warranty will be re-performance of the relevant Professional Service.
- 9.3 **Use of Subcontractors.** Partner agrees that Adobe may use subcontractors in the performance of the Professional Services. Where Adobe subcontracts any of its obligations concerning the Professional Services, Adobe will not be relieved of its obligations to Partner under the Agreement.
- 9.4 **Deliverables.** Without limiting or modifying any license granted to Customer for the On-premise Software, On-demand Services or Managed Services, Adobe grants Partner the right to extend to Customer a non-exclusive, non-sublicensable and non-transferable license to use the materials developed and provided by Adobe in performing the Professional Services ("Deliverables") solely for Customer's direct beneficial business purposes. Adobe retains all rights, title and interest (including intellectual property rights) in and to the Deliverables. To the extent that Partner participates in the creation or modification of any Adobe Technology or Deliverables, Partner waives and assigns to Adobe all rights, title and interest (including intellectual property rights) in the Adobe Technology or Deliverables. Adobe is free to use the residuals of confidential information for any purpose, where "residuals" means that confidential information disclosed in non-tangible form that may be retained in the memories of representatives of Adobe.

10. TERM AND TERMINATION

- 10.1 **Term.** This Addendum applies to each of the Products and Services listed on the Partner Sales Order from the Effective Date until the expiration of the applicable License Term or the term for Professional Services, unless terminated earlier under the Agreement.
- 10.2 **Effect of Termination or Expiration**
- (A) Upon termination or expiration of this Addendum or any License Term for the Products and Services:
 - (1) the license and associated rights for the Products and Services will immediately terminate;



- (2) Partner must, at its expense: (a) remove and delete all copies of the On-premise Software and Distributed Code; (b) remove all references and links to the On-demand Services or Managed Services from the Customer Sites; and (c) require Customer to do the same. Some or all of the Products and Services may cease to operate without prior notice upon expiration or termination of the License Term; and
 - (3) Customer Data and Customer Content stored within the On-demand Services will be available to Customer for 30 days after the termination or expiration in the same format then available within the reporting interface(s).
- (B) Partner will be liable for any fees for any On-demand Services and Managed Services that are still in use or which remain active after the License Term. These fees will be invoiced to Partner at the rate set out in the Partner Sales Order.
 - (C) If Adobe reasonably determines that the deployment of the On-demand Services or Managed Services contains or creates a material risk to Adobe Technology, Adobe's Confidential Information, the security or business operations of Adobe, any customer of Adobe, or to the continued normal operation of other Adobe customers, then Adobe may, at any time, upon written notice to Partner, immediately suspend or terminate access, in whole or in part, to the On-demand Services or Managed Services, until such risk is resolved. Adobe will use commercially reasonable efforts to mitigate any such security or operational risk prior to suspension or termination and only will look to such efforts as a final option to avoid such risks.
 - (D) Each party must reasonably cooperate in transitioning support for Products and Services to Adobe or a third party identified by Customer or Adobe.