

**VENDOR PASS-THROUGH TERMS**  
**Adobe Reseller Pass Through Terms**

<b>Vendor:</b>	ADOBE
<b>Product(s):</b>	Adobe Software Products. This is defined as Software, Services, Works, Media and Documentation made available by Adobe and supplied to Reseller by Distributor under the VIP Marketplace Program.
<b>Territories:</b>	UK, Ireland ,France, Belgium, Netherlands, Sweden, Norway, Denmark, Finland, Italy, Spain, Portugal, Germany, Switzerland, Austria, Poland, Czech Republic, Slovakia, Romania, Bulgaria, Hungary, Croatia, Turkey

In addition to the **Terms and Conditions** (available at [eu.tdsynnex.com/termsandconditions](http://eu.tdsynnex.com/termsandconditions)) and the **Country Specific Terms** (available at [eu.tdsynnex.com/vendor-pass-through-terms](http://eu.tdsynnex.com/vendor-pass-through-terms)) these Adobe Reseller Pass Through Terms (“Adobe Reseller Pass Through Terms” or “Vendor Pass-Through Terms”) apply to the purchase or licensing, as applicable, of Vendor Products (as set out above) by **Buyer (also called Reseller)** from TD SYNnex.

By purchasing or licensing, as applicable, the Vendor Products from TD SYNnex, Buyer agrees to these Vendor PassThrough Terms, which shall form a part of the Agreement between TD SYNnex and Buyer.

To the extent required under these Vendor Pass-Through Terms, Buyer will flow down such terms to its customer in its agreements with such customer.

Vendor may amend these Vendor Pass-Through Terms from time to time. In such case, TD SYNnex will publish the updated terms on its website at: [eu.tdsynnex.com/vendor-pass-through-terms](http://eu.tdsynnex.com/vendor-pass-through-terms). Buyer agrees to be bound by such updated pass-through terms. It is Buyer’s responsibility to check such link from time to time.

In case of conflicts between these Vendor Pass-Through Terms and the Terms and Conditions or the Country Specific Terms, the Vendor Pass-Through Terms shall prevail.

Unless agreed otherwise in the following for the purposes of these Vendor Pass-Through Terms, capitalized terms shall have the meaning given in the Agreement.

**Preamble**

In order to offer Adobe Software Products to End Users, Reseller must first agree to these Adobe Reseller Pass Through Terms, together with the terms and conditions, rules or documents incorporated by reference herein (collectively, these “**Reseller Terms**”). Reseller will not offer Adobe Software Products to End Users if Reseller does not affirmatively accept these Reseller Terms. Any capitalized terms used but not otherwise defined in these Reseller Terms will have the meanings assigned to them in Section 14 (Definitions) below.

**RESELLER HEREBY ACCEPTS AND AGREES TO ABIDE BY THE TERMS AND CONDITIONS IN THESE RESELLER TERMS, WHICH BECOME BINDING AND EFFECTIVE ON RESELLER, WHEN RESELLER AFFIRMATIVELY ACCEPT THESE RESELLER TERMS (such date the “Effective Date” of these Reseller Terms). PARTIES**

(1) “**Distributor**” means the distributor authorized by Adobe to offer Adobe Software Products through the VIP- Marketplace in the territory authorized by Adobe (the “Territory”).

(2) If you are entering into these Reseller Terms on behalf of an entity or organization that you represent: (1) all references to “**Reseller**” are to that entity or organization; and (2) you represent and warrant that you have the power and authority to enter into these Reseller Terms on behalf of Reseller.

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## **AGREED TERMS**

### **1. AGREEMENT & ORDER OF PRECEDENCE**

Reseller acknowledges and agrees that any rights to offer Adobe Software Products via the Distributor Marketplace are being made available to Reseller subject to Reseller complying at all times with these Reseller Terms. If there is any inconsistency between these Reseller Terms and any agreement between Distributor and Reseller, these Reseller Terms will govern with respect to the Adobe Software Products.

### **2. APPOINTMENT & LICENSE GRANT**

#### **2.1 Nature of Appointment and License**

(A) Subject to the terms and conditions set forth in these Reseller Terms, Distributor hereby grants Reseller, and Reseller hereby accepts, a non-exclusive and non-transferable license to order Adobe Software Products under the VIP Marketplace Program from Distributor via the Distributor Marketplace, for the purpose of offering such products to End Users in the Territory during the Term of these Reseller Terms.

(B) These Reseller Terms will not be interpreted or construed as an agreement for the sale of Adobe Software Products. Reseller must advise End Users to whom Reseller offers the Adobe Software Products that Reseller has a license to supply the Adobe Software Products and that the Adobe Software Products have been licensed, not sold.

(C) Reseller acknowledges and agrees that Adobe (and Distributor, as applicable) reserves the right to: (a) deal directly in the Adobe Software Products in the Territory, including the right to license to End Users directly, via Internet distribution or otherwise; (b) license distributors, and other resellers (including retail partners) to distribute or resell the Adobe Software Products in the Territory; (c) provide technical support and other services for the Adobe 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 Adobe Software Products in the Territory.

**2.2 Modification and Suspension Rights.** Nothing in these Reseller Terms, any addendum or amendment will be construed to (a) require Adobe to continue the manufacture and development of any Adobe Software Products, (b) require Distributor to continue offering such products to Reseller, (c) restrict Adobe’s right to update, revise, modify, withdraw, or cancel any of its programs, offerings, the VIP Marketplace Program or participation in the Distributor Marketplace. Distributor may (or upon request of Adobe shall) suspend or terminate Reseller’s rights to offer Adobe Software Products under these Reseller Terms, upon written notification to Reseller.

### **3. LICENSE RESTRICTIONS**

3.1 Reseller’s right to offer Adobe Software Products under these Reseller Terms is subject to the following restrictions:

- (A) **Territory Restrictions, Anti-Piracy and Gray Market/Unauthorized Products:** (a) Reseller will not supply Adobe Software Products to anyone outside the Territory or to anyone, whom Reseller using reasonable commercial diligence, believes may supply Adobe 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 offer Adobe Software Products authorized under the VIP Marketplace Program, and Reseller may supply each such Adobe Software Product only to End Users who meet the eligibility criteria and/or are authorized under the VIP Marketplace Program, if applicable; (d) Reseller must advise End Users to whom it offers Adobe Software Products of the restrictions set forth in this Section 3.1(A); and (e) Reseller must promptly notify Adobe if Reseller is aware of any occurrence of the activities described in in this Section 3.1(A), whether carried out by Reseller or others.
- (B) **Compliance with Terms of Use:** Reseller acknowledges and accepts that (i) each Adobe Software Product is to be licensed to End Users in accordance with the terms and conditions of the General Terms of Use (available at <https://www.adobe.com/legal/terms.html> or any successor website), including the Additional Terms and any other terms referenced therein that are applicable to the Adobe Software Product (collectively, the “**TOU**”); (ii) the terms of the TOU are not negotiable and must not be amended or modified for any End User; and (iii) Reseller may not utilize the Adobe Software Product for its own internal business use except pursuant to a separate licensing agreement for that purpose.
- (C) **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 Adobe Software Products, Documentation. (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 Adobe Software Product, Reseller will not use or disclose the source code in any way, and will immediately deliver all copies of such source code to Adobe.
- (D) **Education and Government Software Products.**
- (1) Reseller must be authorized by Distributor to supply Education Versions and/or Government Versions prior to Reseller supplying Education Versions or Government Versions. In order to become authorized to supply Education Versions and/or Government Versions, Reseller must at least:
- (a) Complete Distributor’s code of conduct training.
- (b) Complete training on whether End Users qualify as Education Entities, Non-Profit Entities, and Government Entities and thus are eligible for Education Versions and Government Versions, respectively
- (c) Complete an ethics and anti-corruption questionnaire provided by Distributor (“Ethics Questionnaire”). Such Ethics Questionnaire will include an attestation regarding acting with the highest ethical standards and integrity. Reseller will complete such Ethics Questionnaire as appropriate based on Distributor’s risk assessment of Reseller. Reseller must work with Distributor to remediate any potential issues found during Distributor’s assessment or monitoring of Reseller.
- (3) If Reseller is deemed high risk, then Reseller must be reauthorized every 12 months. Reauthorization includes all steps in Section 3.1(D)(1) above (code of conduct training, eligible entity training, and Ethics Questionnaire).
- (4) If authorized by Distributor to supply Education Versions, then Reseller may supply Education Versions to only Non-Profit Entities and Education Entities. Any supply of Education Versions to any entities that are not Non-Profit Entities or Education Entities is a breach of these Reseller Terms and any such transaction may be

returned and the entitlement may be removed.

(5) If authorized by Distributor to supply Government Versions, then Reseller may supply Government Versions only to Government Entities. Any supply of Government Versions to any entities that are not Government Entities is a breach of these Reseller Terms and any such transaction may be returned and the entitlement may be removed.

(6) Region-Specific Specialization Requirements. In addition to the above requirements, Reseller must abide by any other applicable region-specific authorization requirements for Education or Government.

#### 4. ORDERS AND RETURNS

4.1 **Reseller Orders.** Before placing any order with Distributor for Adobe Software Products, Reseller must receive a corresponding order from an End User for such Adobe Software Products. Reseller is required to maintain records of all orders for the VIP Marketplace Program that it processes in accordance with Section 5.2 (Records and Inspections). Reseller must provide the same name, address, and company information to Distributor that Reseller uses to contract and correspond with an End User.

4.2 **Returns.** Any unused Adobe Software Product may be returned to Distributor within fourteen (14) days of order placement. After migration to VIP Marketplace, any orders placed in VIP may no longer be returned. Upon migration to VIP Marketplace, Reseller waives any rights to return such orders.

#### 5. RESELLER'S OBLIGATIONS

5.1 **Notification of Infringement.** Reseller will immediately inform Adobe and Distributor by e-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, including Gray Market/Unauthorized Products.

5.2 **Records and Inspections.** During the Term and for at least two (2) years after the expiration or termination of these Reseller Terms: (a) Reseller will maintain a complete, clear and accurate record of all matters pertaining to the offering of Adobe Software Products and any actions taken under these Reseller Terms, including maintaining records of all orders for the VIP Marketplace Program that it processes ("**Records**"); and (b) Reseller will permit Distributor, Adobe or an independent third party (who is nominated by Distributor or Adobe and bound by reasonable confidentiality obligations), to audit and inspect such Records, to ensure compliance by Reseller of the obligations contained in these Reseller Terms, including to verify Reseller's compliance with Section 5.7 (Ethical Conduct and Compliance). 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. Distributor or Adobe, as applicable, will bear its expenses of such audit, unless Reseller is found to be noncompliant with these Reseller Terms, in which case the audit will be at the expense of Reseller. Upon request by Distributor (or Adobe), Reseller will provide Distributor (or Adobe) with documentary proof that Reseller has complied with Section 4.1 (Reseller Orders). If Distributor (or Adobe) finds acceptable order documentation has not been received by the Reseller in advance of placing an order, then Distributor may (or at the request of Adobe, shall) suspend or terminate these Reseller Terms pursuant to the terms herein.

5.3 **Consent.** If providing Personal Information to Distributor or 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 Distributor or Adobe, as applicable, to enter and use Personal Information provided by or on behalf of Reseller, including consents for the use of such data by Distributor or Adobe, as applicable, for product and marketing communications with End Users.

#### **5.4 VIP Marketplace Migration and Licenses.**

5.4.1 Existing Adobe VIP Buying Program Members may migrate to the VIP Marketplace Program. Reseller may migrate such existing VIP Member's licenses to VIP Marketplace Program; provided that Reseller must: (a) obtain End User's written consent prior to migrating such End User's licenses to VIP Marketplace, unless auto-renewal is turned off; and (b) notify End User in writing that upon migration to VIP Marketplace, End User's licenses will be licensed under VIP Marketplace.

5.4.2 Subscriptions in VIP Marketplace default with auto-renewal on. Reseller must turn off autorenewal for any subscriptions unless Reseller obtains End User's prior written consent to the Auto-Renewal Terms for any automatically-renewing subscription. Auto-Renewal Terms means the following terms (i) that the subscription will continue until the End User cancels; (ii) Reseller's cancellation policy (including an option for online cancellation if the End User accepts the licensing terms online); (iii) the price of the recurring charges for each product and that the amount of the charge may change; (iv) the length of the automatic renewal term or that the service is continuous; and (v) if a free trial is offered, the price that will be charged after the trial ends. These Auto-Renewal Terms must be displayed clearly and conspicuously to End Users, meaning (x) in a larger font than the surrounding text; (y) in contrasting type, font, or color to the surrounding text of the same size; or (z) set off from the surrounding text of the same size by symbols or other marks (e.g., a text box). Reseller must notify each End Users in writing when any Adobe Software Products are licensed through VIP Marketplace.

5.4.3 VIP orders cannot be returned within VIP Marketplace. After migration to VIP Marketplace, any orders placed in VIP may no longer be returned. Even if such prior VIP orders would have been eligible for return in VIP, such orders may no longer be returned once a customer has migrated to VIP Marketplace. Upon migration to VIP Marketplace, Reseller waives any rights to return such orders.

#### **5.5 Data Protection and Privacy**

5.5.1 Adobe and Reseller acknowledge that they are each separate and independent data controllers of any Personal Information Processed under this Agreement. Adobe and Reseller, pursuant to this Agreement, do not and will not jointly determine the purposes or the means of processing of any Personal Information disclosed or received under this Agreement. In collecting, retaining, processing, recording, storing, registering, disclosing, transferring and using data (including Personal Information) and in maintaining records, Adobe and Reseller will each comply with any applicable privacy and data protection regulations and other applicable Laws in relation to the Processing of Personal Information pursuant to this Agreement.

5.5.2 If Reseller operates a website to market and/or accept online orders of any Adobe 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 or

Distributor, 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 or Distributor 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.

5.5.3 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, Distributor and any third party(ies) designated thereby, and the holding and use of such data by Adobe, Distributor and any third party(ies) designated thereby, for any purposes specified by Adobe or Distributor, and in so far as permitted under the applicable privacy protection regulations and the applicable data protection regulations.

5.5.4 In addition to Reseller's obligations under Section 8 (Confidentiality) and any confidentiality obligations between Reseller and Distributor, 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.

5.5.5 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) incurred by Adobe which arise directly or indirectly out of or in connection with Reseller's data Processing activities under this Agreement, including, without limitation, those arising out of any third party demand, claim or action, including by a data protection authority, or any breach of contract, negligence, fraud, willful misconduct, breach of statutory duty or non-compliance with any applicable data protection laws by Reseller or Reseller Parties.

5.5.6 Reseller's obligation of indemnification survives the expiration or termination of these Reseller Terms.

## 5.6 Reseller's Representations and Warranties

5.6.1 Reseller represents, warrants and covenants to Adobe and Distributor 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 conducted; (b) Reseller has the power and authority and all rights necessary to enter into and perform its obligations under these Reseller Terms; (c) Reseller will comply with all Laws that are related in any way to the performance of its obligations under these Reseller Terms; (d) Reseller will not make any representations or warranties with respect to Adobe Software Products that exceed the limited warranties made by Adobe in the TOU; (e) all information which Reseller has provided to Adobe or Distributor in connection with these Reseller Terms prior to or during the Term, including in the course of onboarding procedures with Distributor, is true, correct, complete, and accurate in every respect and is not misleading or deceptive (including by omission), (e) Reseller will, during the Term and for three (3) months thereafter, promptly notify Adobe or 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, including any such information that would alter a warranty or representation made by Reseller pursuant to this section; (f) Reseller's activities, collaterals, materials and websites associated with the Adobe Software Products will not incorporate Restricted Content. and (g) Reseller will not represent that it is authorized to act on behalf of Adobe.

- 5.6.2 If Reseller breaches this Section 5.6 (Reseller's Warranties and Representations) or any part thereof, Distributor will be entitled to (and if requested by Adobe, shall) terminate these Reseller Terms pursuant to Section 12.1 (Termination) without prejudice to all its other rights and remedies.

## 5.7 Ethical Conduct and Compliance

- 5.7.1 Adobe Business Partner Code of Conduct. Reseller will conduct its business in a manner that reflects favorably upon Adobe and the Adobe Software Products. Without prejudice to any other provision in these Reseller Terms, Reseller represents, warrants and covenants that it will 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) which are hereby incorporated into these Reseller Terms.

- 5.7.2 Reseller Compliance with Laws; Anti-corruption. In performing these Reseller Terms, Reseller and its shareholders, beneficial owners, affiliates, officers, directors, employees, subcontractors and agents involved in providing services under this agreement (collectively "Reseller Parties"), will comply with all applicable laws, including (but not limited to) anti-corruption laws or anti-bribery laws such as the U.S. FCPA, UK Bribery Act, and other anti-corruption laws of any other applicable jurisdiction. In carrying out its responsibilities under this agreement, the Reseller Parties will not offer, promise, give, authorize the paying or giving of, solicit, or accept money or anything of value, directly or indirectly, to (i) any Government Official in order to influence official action or otherwise obtain an improper advantage, (ii) any other person with the knowledge that all or any portion of the money or thing of value will be offered or given to a Government Official in order to influence official action or otherwise obtain an improper advantage, or (iii) any other person in order to induce them to perform their work duties disloyally or otherwise improperly or in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption laws. For the purposes of this section, a person shall be deemed to have "knowledge" with respect to conduct, circumstances or results if such person is aware of (1) the existence of or (2) a high probability of the existence of such conduct, circumstances, or results. Reseller agrees to defend, indemnify and hold Adobe harmless for any claim arising out of or related to Reseller's alleged violation of anti-bribery or anti-corruption laws. Adobe reserves the right to defend itself in any such claim

- 5.7.3 Conflict of Interest. (a) Reseller will inform Distributor and Adobe prior to agreeing to these Reseller Terms, after having made diligent checks and enquiries, whether (i) any Reseller Personnel 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 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 these Reseller Terms. (b) 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, or member of staff of Adobe or anyone Related to them.

- 5.7.4 If Adobe reasonably suspects that Reseller has not complied with Section 5.7, Adobe may request, and the Reseller will promptly provide evidence sufficient, in Adobe's reasonable satisfaction, of compliance with applicable anti-bribery and anti-corruption laws and regulations. If such evidence is not, in Adobe's determination, sufficient, then such non-compliance will constitute a material breach of this Agreement and Adobe will be entitled to immediately request Distributor to terminate the Reseller Terms.
- 5.7.5 During the Term of this Agreement, Reseller shall promptly notify the Distributor and Adobe of any allegation or investigation of fraud, bribery, or corrupt practices regarding Reseller, regardless of the forum or venue in which such allegations are raised or investigation instigated.
- 5.7.6 Export Compliance. Reseller acknowledges that the Adobe Software Products are subject to U.S. and international laws, restrictions, and regulations that may govern the import, export, and use of Adobe Software Products. Reseller agrees to comply with all such laws, restrictions, and regulations.
- 5.7.7 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.
- 5.7.8 Fair Dealing; No False Representations. Reseller has made no false representations to Adobe or Distributor 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.
- 5.7.9 Reporting of Violations. Should Reseller know of any acts or omissions, by Reseller's, Distributor's or Adobe's employees or other personnel, which violate this Section 5.7 (Ethical Conduct and Compliance), 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.

- 5.8 **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: (a) a breach by Reseller of these Reseller Terms; (b) any claims, warranties, and representations made by Reseller or Reseller Personnel which differ from the warranties provided by Adobe in the relevant TOU; (c) any wrongful (including unlawful, fraudulent or negligent) acts or omissions made by Reseller or Reseller Personnel; and (d) any breach of any Law by Reseller (including without limitation, privacy or data protection Laws).



## 6. MARKETING AND USE OF TRADEMARKS

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

6.1.1 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 Adobe Software Products in the Territory, subject to the terms of these Reseller Terms, 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.

6.1.2 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 these Reseller Terms by reference (“Trademark Usage Guidelines”).

6.1.3 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 Adobe Software Products or to use any additional trademarks, logos or trade designations to promote and/or distribute the Adobe 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.

6.1.4 Reseller may not assign, transfer or sublicense this license (or any right granted herein) in any manner without prior written authorization from Adobe.

6.1.5 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.

6.1.6 Adobe may at any time by giving Reseller notice terminate the license in this [Section 6.1.6](#) (Adobe Trademark License and Use of Adobe Trademarks), or withdraw any approval given thereunder. Upon termination or expiry of these Reseller Terms, termination or withdrawal of the license in this [Section 6.1.6](#) (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.

6.2 **No Endorsement of Reseller Products.** 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).

6.3 **Publicity & Consent.** Except as expressly set forth in these Reseller Terms, Reseller shall not issue any press releases, publicity, marketing or sales materials, or other materials developed by or on behalf of Reseller that refer to these Reseller Terms or the relationship between Reseller, Adobe, and Distributor. Notwithstanding the foregoing, Reseller agrees that the fact that it has entered into these Reseller Terms and is licensed to distribute Adobe 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 Adobe Software Products; and (b) supply details of Reseller's name, address, telephone, and fax numbers to parties seeking information concerning Adobe's resellers.

## 7. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

7.1 The Software (including its structure, organization, code and other intellectual property) and all Adobe Software Products 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 Adobe Software Products and the Adobe Trademarks.

7.2 Reseller must take all reasonable measures to protect the Intellectual Property rights of Adobe, its licensors and suppliers in the Adobe Software Products 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 these Reseller Terms, Reseller is not granted any rights to any Intellectual Property or any other rights, franchises or licenses with respect to the Adobe Software Products or the Adobe Trademarks. Reseller does not at any time have title to the Intellectual Property in the Adobe Software Products.

## 8. CONFIDENTIALITY

### 8.1 Definition of Confidential Information

8.1.1 **"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 Reseller, Distributor, or Adobe (such entity disclosing the relevant information being the "Discloser") (i) that are directly or indirectly disclosed to any other party or Adobe (such entity 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 subsections (a), (b) or (c) above.

8.1.2 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.

8.1.3 Without restricting the definition of Confidential Information, a Discloser’s Confidential Information includes any of the following: (a) Personal Information not provided in conjunction with an order for Adobe Software Products; (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.

8.1.4 For clarity, Distributor or Adobe may need to provide Reseller with certain confidential or proprietary information of or about Adobe, the Adobe Software Products, the VIP Marketplace Program or other information related to these Reseller Terms. Any such information is deemed “Confidential Information” of Adobe and is at all times subject in each case to the terms of these Reseller Terms and the terms of the confidentiality obligations between Distributor and Reseller.

**8.2 Recipient must Keep Information Confidential.** Where Discloser discloses Confidential Information to the Recipient, the Recipient must: (a) use the Confidential Information solely for the purposes of performing its obligations under this Agreement; and (b) keep all Confidential Information confidential and not disclose, circulate or disseminate it in any way except as: (i) expressly permitted under this Agreement; (ii) to the extent necessary to fulfill its obligations under this Agreement; or (iii) 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 [Section 8.2](#) (Recipient must Keep Information Confidential). Recipient remains responsible for any such party’s actions regarding the Confidential Information.

**8.3 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.

**8.4 Recipient’s Security Obligations.** The Recipient must: (a) 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 (b) 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.

## 9. WARRANTY; DISCLAIMER OF WARRANTIES

ADOBE WARRANTS THE ADOBE SOFTWARE PRODUCTS TO END USERS ONLY PURSUANT TO THE TERMS AND CONDITIONS OF THE TOU. EXCEPT FOR THE EXPRESS WARRANTIES IN THESE RESELLER TERMS, ADOBE GROUP AND ITS THIRD PARTY PROVIDERS DISCLAIM AND MAKE NO OTHER EXPRESS, IMPLIED OR STATUTORY GUARANTEES, WARRANTIES, REPRESENTATIONS, OR OTHER TERMS AND CONDITIONS RELATING TO ADOBE SOFTWARE PRODUCTS, THESE RESELLER TERMS OR ITS SUBJECT MATTER, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF NON- INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR ACCURACY.

## 10. LIMITATION OF LIABILITY

10.1 Non-Excludable Provisions. If any guarantee, warranty, term or condition is implied or imposed in relation to these Reseller Terms 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

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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: (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.

10.2 LIMITATION OF LIABILITY. 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 THESE RESELLER TERMS 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 THESE RESELLER TERMS 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.

10.3 DISCLAIMER OF CONSEQUENTIAL DAMAGES. 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.

10.4 PROPORTIONAL LIABILITY; REQUIREMENT TO MITIGATE LOSSES. THE LIABILITY OF ADOBE, DISTRIBUTOR OR RESELLER FOR ANY LOSS SUFFERED OR INCURRED BY ANY OTHER ENTITY SUBJECT TO THESE RESELLER TERMS (INCLUDING UNDER ANY INDEMNITY) WILL BE REDUCED PROPORTIONATELY TO THE EXTENT THAT ANY WRONGFUL (INCLUDING NEGLIGENT) ACT OR OMISSION OF THE OTHER ENTITY OR ITS PERSONNEL DIRECTLY CAUSED OR CONTRIBUTED TO THE LOSS. IN THE EVENT THAT ADOBE, DISTRIBUTOR OR RESELLER HAS SUFFERED OR IS LIKELY TO SUFFER LOSSES AS A RESULT OF ANY EVENT GIVING RISE TO LIABILITY OF ANY OTHER ENTITY UNDER THESE RESELLER TERMS (INCLUDING UNDER ANY INDEMNITY), ADOBE, DISTRIBUTOR OR RESELLER, AS APPLICABLE, 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.

## 11. MODIFICATION BY ADOBE

11.1 At any time, Adobe may, in its sole discretion, modify, withdraw or cancel the terms of these Reseller Terms, including but not limited to: (a) updating, revising, modifying, withdrawing or cancelling all or parts of its VIP Marketplace Program; (b) changing any of the criteria for appointment and performance required of Reseller; (c) changing or terminating any financial or other benefits that may be provided to Reseller, if applicable; and/or (f) adding additional terms, restrictions, and conditions applicable to any partner or other program incentives or benefits that may be made available by Adobe.

11.2 The changes described in this Section 11 (Modifications by Adobe) will become effective immediately and will be deemed to modify and supplement the terms of these Reseller Terms. Reseller shall not offer any Adobe Software Products unless and until Reseller agrees to and affirmatively accepts such modified Reseller Terms. If any modification is unacceptable to Reseller, Reseller's only recourse is to terminate these Reseller Terms within ten (10) days of such notice, without any recourse for damages or compensation of any form from Adobe or Distributor. In such event, any and all rights to offer Adobe Software Products hereunder will immediately be terminated.

## 12. TERM AND TERMINATION

12.1 **Term and Termination.** The term of these Reseller Terms will commence on the Effective Date and will continue until terminated earlier in accordance with the provisions of these Reseller Terms ("Term"). Notwithstanding anything to the contrary herein, Distributor may (and upon Adobe's request, shall) terminate these Reseller Terms immediately, upon written notice to Reseller: (a) for Reseller's breach of: Section 3 (License Restrictions); Section 5.5 (Reseller's Representations and Warranties); Section 5.6 (Ethical Conduct and Compliance); Section 7 (Ownership of Intellectual Property Rights); Section 8 (Confidentiality); Section 13.2 (Assignment); or (b) upon occurrence of a Breach under Section 5.4 (Data Protection and Privacy). Adobe, Distributor, or Reseller may terminate this Agreement upon 30 days' prior written notice to the other parties. Any transactions entered into prior to the effective date of termination will continue to be governed by these Reseller Terms.

Without prejudice to Distributor's or Adobe's other rights and remedies, if Reseller breaches any of the covenants set forth in Sections 5.6.2 (Reseller Compliance with Law;

Anti-corruption), (i) Adobe and Distributor 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, (ii) all payment obligations by Distributor to Reseller will cease immediately; and (iii) Distributor may, in its sole discretion, (and at Adobe's request, shall) rescind these Reseller Terms, and Reseller must immediately return any sum of money paid to Reseller arising from any transaction in violation of Section 5.6.2 (Reseller Compliance with Law; Anti-corruption).

**12.2 Rights Upon Termination or Expiration.** The termination or expiration of these Reseller Terms will be without prejudice to the rights and obligations of Adobe, Distributor, and Reseller that have accrued as of the date of termination or expiration. Upon termination or expiration of these Reseller Terms (a) all licenses granted to Reseller hereunder will automatically cease; and (b) Reseller must (i) discontinue all representations that it is a reseller of Adobe Software Products; (ii) immediately cease using the Adobe Trademarks; (iii) as directed by Adobe or Distributor, return, destroy, or delete all copies of Confidential Information, or other Adobe materials (such as marketing collaterals) that is in Reseller's possession or under its control; (iv) provide to Distributor and Adobe, upon such party's request, written confirmation that Sections 12.2(b) (i), (ii) and (iii) above have been complied with; and (v) refer all inquiries regarding Adobe or the Adobe Software Products to Adobe and give Adobe notice thereof.

**12.3 Survival.** The termination or expiration of these Reseller Terms does not extinguish or otherwise affect any provisions of these Reseller Terms which by their nature survive termination or expiration. For the avoidance of doubt, the following is a non-exclusive list of clauses which will survive the termination or expiration of these Reseller Terms: Section 5.2 (Records and Inspections); Section 5.5 (Data Protection and Privacy); Section 5.6 (Reseller's Representations and Warranties); Section 5.7 (Ethical Conduct and Compliance); Section 5.8 (Indemnity by Reseller); Section 6.1.2 and 6.1.3 (Marketing and Use of Trademarks); Section 6.2 (No Endorsement of Reseller Products); Section 6.3 (Publicity & Consent); Section 8 (Confidentiality); Section 10 (Limitation of Liability); Section 12 (Term and Termination); and relevant provisions of Section 13 (Miscellaneous), including but not limited to, Section 13.5 (Legal Costs), Section 13.8 (Governing Law and Dispute Resolution), and Section 13.9 (Provisional/Equitable Relief).

## 13. MISCELLANEOUS

### 13.1 Notices

**13.1.1** Any notice given under these Reseller Terms must be in writing and may be given by email, hand, courier, or post to the party's address on file (for Adobe, in these terms, for Reseller, submitted or updated on file with Distributor) (each a "Notice").

**13.1.2** 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.

**13.1.3** If a Notice is sent to Adobe, it must be sent to the attention of the Associate General Counsel, Indirect Sales, Legal Department WT11.

- 13.2 **Assignment.** Except as expressly set forth below in this section, neither these Reseller Terms nor any of the rights or obligations of the Reseller hereunder may be assigned, in whole or in part without the prior written approval of Adobe. In the event Reseller undergoes a Change in Control, Adobe will be entitled to terminate these Reseller Terms immediately upon written notice to Reseller. Adobe may, in its sole discretion, assign, novate or otherwise transfer these Reseller Terms without the prior written consent of Reseller. These Reseller Terms are binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 13.3 **Waiver.** No waiver of a right or remedy under these Reseller Terms is effective unless the person granting it complies with [Section 13.1](#) (Notices). Such waiver is only effective in the specific instance and for the specific purpose for which it is granted. Any single or partial exercise of, failure to exercise, or delay in exercising, a right or remedy under these Reseller Terms does not prevent a further exercise of that or of any other right or remedy.
- 13.4 **Severability.** Any term of these Reseller Terms 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 these Reseller Terms is not affected.
- 13.5 **Legal Costs.** If any proceeding or lawsuit is brought by Adobe, Distributor or Reseller in connection with these Reseller Terms, the prevailing party in such proceeding is entitled to receive its costs, expert witness fees, and reasonable legal fees, including on appeal.
- 13.6 **No Agency.** Nothing in these Reseller Terms is intended to constitute a fiduciary relationship or an agency, partnership, joint venture, exclusive, trust or other similar relationship between Adobe, Distributor or Reseller. No party has authority to bind or incur any obligation on behalf of any other party.
- 13.7 **Headings.** The clause headings appearing in these Reseller Terms 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.
- 13.8 **Governing Law, Venue and Dispute Resolution.** The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Reseller Terms. For a Reseller that has a principal place of business in:
- a) Europe, these Reseller Terms are governed by the laws of Ireland;
  - b) Australia or New Zealand, these Reseller Terms are governed by the laws of New South Wales, Australia;
  - c) a member state of the Association of Southeast Asian Nations (ASEAN), mainland China, Hong Kong S.A.R., Macau S.A.R., Taiwan R.O.C., the Republic of Korea, India, Sri Lanka, Bangladesh or Nepal, these Reseller Terms are governed by the laws of Singapore;
  - d) Japan, these Reseller Terms are governed by the laws of Japan; and
  - e) any other country, these Reseller Terms are governed by the laws of California, U.S.A.
- 13.8.1 **Alternative Dispute Resolution.** In the event of a dispute regarding these Reseller Terms, 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.

- 13.9 **Provisional/Equitable Relief.** The parties expressly agree that a violation of certain sections of these Reseller Terms, including a breach of Adobe's Intellectual Property rights, Section 3 (License Restrictions), Section 5 (Reseller's Obligations), Section 6 (Marketing and Use of Trademarks), Section 7 (Ownership of Intellectual Property Rights) and Section 8 (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.
- 13.10 **Entire Agreement.** This Agreement is the entire agreement between the parties with respect to 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 these Reseller Terms except as expressly provided in these Reseller Terms.
- 13.11 **Language.** This Agreement is in the English language only, which will be controlling in all respects. All versions of these Reseller Terms in any other language will not be binding on the parties. All communications and notices to be made or given pursuant to these Reseller Terms will be in the English language.
- 13.12 **Third Party Beneficiaries.** Reseller acknowledges and agrees that Adobe and its licensors are third party beneficiaries of these Reseller Terms, with the right to enforce the obligations set forth in these Reseller Terms.
- 13.13 **Taxes.** In addition to any payments due to 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 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.
- 13.14 **Force Majeure.** None of Adobe, Reseller or Distributor is liable for failure to perform its obligations under these Reseller Terms (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.

## 14. DEFINITIONS

In these Reseller Terms, 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:

- 14.1 "**Adobe**" means (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 Inc.**, 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**"), (b) for transactions with End Users located in Australia, **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, as authorized agent of Adobe Systems Pty Ltd (ABN 72 054 247



835), and (c) for transactions with End Users located anywhere else, **Adobe Systems Software Ireland Limited**, a company incorporated in Ireland, having a place of business at 4-6 Riverwalk, City West BusinessCampus, Saggart D24, Dublin, Ireland (“**Adobe Ireland**”).

- 14.2 “**Adobe Group**” means Adobe and its subsidiaries and affiliates.
- 14.3 “**Adobe Software Products**” means Software, Services, Works, Media and Documentation made available by Adobe and supplied to Reseller by Distributor under the VIP Marketplace Program.
- 14.4 “**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. . For the purposes of these Reseller Terms, 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.
- 14.5 “**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.
- 14.6 “**Distributor Marketplace**” means the online marketplace platform provided by Distributor and authorized by Adobe for use under the VIP Marketplace Program.
- 14.7 “**Documentation**” means the manuals, registration information, supporting documentation and other materials, whether of a technical nature or otherwise, provided with the Software by Adobe.
- 14.8 “**Education Entity**” is defined in Exhibit B at [https://www.adobe.com/go/vip\\_terms](https://www.adobe.com/go/vip_terms) (or its successor website thereto), as updated by Adobe from time to time.
- 14.9 “**Education Version**” means a Software Product designated by Adobe in its sole discretion as being for distribution to only Education Entities.
- 14.-10 “**End User**” means a licensee of Adobe Software Products who acquires Adobe 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 Adobe Software Products from Adobe for distribution or resale.
- 14.11 “**Government Official**” means any public or elected official or officer, employee, or person acting on behalf of a national, provincial, or local government, including a department, agency, instrumentality, state-owned or state-controlled company, public international organization (such as the United Nations or World Bank), or any other Government Entity, or any political party, party official or any candidate for political office. Officers, employees, or persons acting on behalf of an entity that is financed in large measure through public appropriations, is widely perceived to be performing government functions, or has its key officers and directors appointed by a government should also be considered “Government Officials.”
- 14.12 “**Government Entity**” means a national government, political subdivision thereof, or local jurisdiction therein; an instrumentality, board, commission, court or agency, whether civilian or military, or any of the above, however constituted; a government-owned or government-controlled association, organization, business or enterprise, including any state-owned enterprise, such as any state-owned broadcaster, state-owned airlines, tourism boards, state-owned (or part-owned) banks or an entity that provides a service to its citizens (e.g., a postal office); public international organizations (including

organizations whose members are countries, or territories, governments of countries or territories); and any a political party.

- 14.13 “**Government Version**” means a Software Product designated by Adobe in its sole discretion as being for distribution to only Government Entities
- 14.14 “**Gray Market/Unauthorized Products**” means Adobe Software and/or Adobe Software Products: (a) that were originally or intended for distribution outside the Territory; or (b) that are not sold in compliance with the terms of the VIP Marketplace Program, including Adobe Software Products that are diverted from an intended channel into another channel or that are made to appear as full commercial versions when in fact they are not.
- 14.15 “**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.
- 14.16 “**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.
- 14.17 “**Media**” means the physical property in and the physical copy of the Software, specifically the DVD-ROM, CD-ROM or other media.
- 14.18 “**Non-Profit Entity**” is defined in Exhibit B at [https://www.adobe.com/go/vip\\_terms](https://www.adobe.com/go/vip_terms) (or its successor website thereto), as updated by Adobe from time to time.
- 14.19 “**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.
- 14.20 “**Distributor-Authorized Reseller**” means an entity in the Territory that has entered into a contract with Distributor, including these Reseller Terms, for the distribution of Adobe Software Products via the Distributor Marketplace in the Territory, under the VIP Marketplace Program.
- 14.21 “**Software**” means the Adobe proprietary software.
- 14.22 “**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.
- 14.23 “**Relevant Staff Member**” includes employees who are engaged in marketing, purchasing and/or selling the Adobe Software Products.
- 14.24 “**Reseller Personnel**” means Reseller’s officers, employees, representatives or agents.
- 14.25 “**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.

- 14.26 “**Term**” has the meaning ascribed to it in Section 12 (Term and Termination).
- 14.27 “**VIP Marketplace**” or “**VIP Marketplace Program**” means Adobe’s VIP Marketplace Buying Program, under which Adobe has authorized Distributor to distribute Adobe Software Products via the Distributor Marketplace to Distributor-Authorized Resellers.
- 14.28 “**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.