

**ADOBE® VOLUME LICENSING  
CUMULATIVE LICENSING PROGRAM GOVERNMENT MEMBERSHIP**

This Cumulative Licensing Program Government Membership Agreement ("Agreement") (Adobe Ref.4400628239) is effective as of July 1, 2016 (the "Effective Date") and is entered into between ADOBE SYSTEMS INCORPORATED, a Delaware corporation having a place of business at 345 Park Avenue, San Jose, CA 95110-2704 ("Adobe Systems") and the Department of Defense (DoD) ("Licensee" or "Member") as executed by their duly authorized representative, the Department of the Navy, NAVSUP Fleet Logistics Center Norfolk (FLCN), Mechanicsburg Office, and includes the entities identified in Exhibit A under "Program Applicant Information" ("Member"). Such entity, whether a Member or Self-enrolled Affiliate shall be referred to as a "Member" for the purposes of this Agreement.

### 1. Program Description.

**1.1 General.** The Cumulative Licensing Program ("CLP") is a flexible volume licensing program offered through Adobe Volume Licensing. The CLP applies the same discount level to all of Member's and its Affiliates' qualified Adobe software purchases ("Software") during the Term based on the value of the initial order. In recognition of Member's prior year purchasing history under its prior Adobe Volume Licensing Cumulative Licensing Program Government Agreement with Adobe (which shall expire on June 30, 2016, Adobe Ref. 4400405715) (the "Prior CLP Agreement"), Member shall not have any initial order commitment. Member shall retain the Level 2 discount level. Member may improve its discount level as it and its Affiliates order additional Software during the Term. CLP membership begins on the Effective Date and continues through the two (2) year anniversary of the day immediately prior to the Effective Date, provided Member complies with all obligations under this Agreement (the "Term"). Notwithstanding the foregoing, either party may terminate the Agreement with or without cause on sixty (60) days prior written notice. For additional information on the CLP, refer to the current version of the CLP Program Guide (the "Program Guide"), posted in the Adobe Volume Licensing section of the Adobe website. Membership in the Government CLP is regional. Orders cannot be placed outside of the region in which the CLP membership is established.

**1.2 Software.** For a complete list of Software available through the Government CLP, along with the point values for purchases, Member shall contact its Adobe License Center ("ALC") or reseller (the ALC or reseller collectively and individually, the "Reseller" herein) or use the Adobe Discount Level Calculator available on the Adobe website. All Software point values are consistent worldwide. All use of the Software licensed under the CLP is subject to the DoD Adobe (Digital Media) Software License Agreement attached hereto as Exhibit B, including the Adobe Enterprise Licensing Terms ("Licensing Terms") attached to Exhibit B in Attachment A and B thereto. To the extent there is a conflict between Exhibit B and this CLP, Exhibit B shall prevail. As such, all Software purchased under the Agreement are solely for use within Member's own organization and all resale, sublicensing and other distribution is subject to the restrictions set forth in the applicable Licensing Terms.

**1.3 Discount Levels.** Member may improve its discount level as it and its Affiliates (defined below) continue to order Software through the CLP. Member's discount level shall be applied to its Affiliates' orders and the points accumulated with each Member or Affiliate order shall be added to Member's cumulative point total. On the 14th day of each month, Adobe will review the points accumulated by Member and its Affiliates from the Effective Date to that day. If the total points equal or exceed the minimum requirement for the next discount level, then upon the 15th day of that same month, Member and its Affiliates will become eligible for the improved discount level. If, however, the total points should drop below the Level 2 requirement, the CLP agreement will remain at discount level 2 for the duration of its term. Resellers operate as independent distributors and are not agents or affiliates of Adobe. As a result, Member and its Affiliates are responsible for informing any Reseller of its CLP membership and applicable discount.

### 2. Participation.

**2.1 Government Entity.** Participation is contingent upon Member (and each Affiliate) identified in Section 7.2 to Exhibit A being a "government entity", which means: either (a) a federal, central or national agency, department, commission, board, office, council, or authority (executive, legislative, or judicial); or (b) a municipality, special district, city, county, or state governmental agency, department, commission, board, office, council, or authority, or any other agency in the executive, legislative, or judicial branch of state or local government that is created by the constitution or a statute of the governing state, including the district, regional, and state administrative offices or (c) a public agency, or organization created and/or funded by federal, state, or local governments and authorized to conduct the business of governing or supporting citizens, businesses, or other governmental entities. For the avoidance of doubt, private "for profit" companies, non-profit organizations, trade or industry associations, and labor unions are not included. Also excluded are private organizations that conduct work on behalf of or with government agencies. Member represents to Adobe that it and its Affiliates are government entities. Adobe reserves the right to terminate Government

memberships if Member is not a Government Entity.

*Affiliates.* "Affiliate" means any government entity that is subject to the same organizational, political, and regulatory schemes as the government entity that is the Member. For example, where a state government is the Member, counties, boroughs, and/or municipalities are affiliates.

"Affiliates" include Member-listed Affiliates and Self-enrolled Affiliates. An Affiliate that participates in the CLP by ordering through a Member (a "Member-listed Affiliate") may do so provided (i) Member must be aware of these Affiliates and list them under this Agreement and (ii) Member is responsible for Member-listed Affiliates' compliance with the CLP terms and conditions. Member-listed Affiliates do not need to separately enroll, and may purchase under the Member's CLP membership with the same discount level as its Member. Affiliates may also participate by becoming a "Self-enrolled Affiliate". Self-enrolled Affiliate means any eligible Affiliate that enrolls in the CLP separately provided that (i) each such Self-enrolled Affiliate references Member's CLP membership agreement number ("Agreement Number") on its enrollment form and (ii) complies with this Agreement. Self-enrolled Affiliates will receive their own serial numbers, may designate their own Reseller, and choose their own Upgrade Plan payment option. All Affiliate ordering and contact information will be visible and available to Member. Members may refuse to allow an Affiliate to benefit from this Agreement and/or may terminate an Affiliate's participation at any time during the Term. Member hereby confirms on behalf of the Affiliates that Affiliates expressly grant Member the right and authority to renew its participation in the CLP at the time Member renews its membership in the CLP.

*2.2 Agreement and Serial Numbers.* Member will be assigned an Agreement Number, which number must be referenced on any orders. Each Self-enrolled Affiliate, if any, will receive a separate Agreement Number which will be linked to the Member Agreement Number. Each serial number references a single Software product defined by version, language, and platform, except for products available in both Macintosh® and Windows® versions for which Member will receive serial numbers for both platforms, even when only one platform is licensed. Member may use the same serial number for all validly licensed installations of given Software; new serial numbers are issued for upgrades.

*2.3 Confidentiality.* The Agreement and serial numbers are confidential, except as stated in Section 2.2 and Section 3. Member shall treat membership and serial numbers as confidential and not share or disclose such numbers. Member is responsible for Affiliates compliance with these confidentiality terms. Self-enrolled Affiliates are also responsible for protecting their agreement and serial numbers.

*2.4 Licensing Website.* Adobe shall provide Member and Self-enrolled Affiliates with access to the Adobe Licensing Web Site ("LWS") (<http://licensing.adobe.com>) allowing Members access to pertinent information about their membership including expiration dates, comprehensive order details, LWS account information and Software serial numbers. The designated Program Administrator for new Members and Self-enrolled Affiliates will receive a communication containing instructions on setting up their LWS account login and password providing them access to LWS for management of their CLP membership.

### **3. Ordering and Fulfillment.**

*3.1 Ordering and Pricing.* Member and/or Affiliate shall order licenses for Software within thirty (30) days of the date that such Software is installed and/or deployed. All fees are determined by the Reseller. Adobe does not set the pricing that Member or its Affiliates are charged and Adobe cannot guarantee any particular discount. Member is free to negotiate fees directly with its Reseller. Matters such as price, delivery and payment terms must be agreed between Member and Resellers.

*3.2 Intentionally deleted.*

*3.3 Electronic Software Distribution (ESD) and Media.* Adobe offers ESD for selected Software to Members and Affiliates for no additional fee. Member and Affiliates may download via LWS Software for which they are currently licensed. Each license includes the right to print one hard copy version of any electronic user documentation. Member and its Affiliates are not permitted to have more media than licenses. Media and printed documentation orders do not count toward point accumulation. Member and its Affiliates may order hard media from the Reseller.

*3.4 Returns.* Member or Affiliate must request return of purchases made under the Agreement through the same Reseller that placed the original order with Adobe. Requests must be made within thirty (30) days of the original Software order date, and Adobe must approve all return requests before any return is valid. If the return is approved, Member's point totals will be adjusted in the next accumulated point review process. Member or Affiliate must submit a signed Letter of Destruction with each return.

**4. Upgrade Plan.**

**4.1.1 General.** For certain Software, Member or Affiliate may pay to receive future versions of Software (“Upgrades”) by purchasing an upgrade plan (“Upgrade Plan”) during the Term. “Upgrades” mean those versions of the Software that Adobe, at its discretion, deems to be logical improvements or extensions to the Software and that have been released for general commercial distribution. In particular, Upgrades are designated point releases by Adobe (e.g., 4.2 to 4.3 or 4.3 to 5.0 if 5.0 is the next version release in the series). Releases designated by Adobe as third digit releases (e.g., 4.2.2 to 4.2.3) are not considered upgrades, but rather they are considered as fix releases which must be requested by Customer. Fix releases will only be for the current version of each Software. Member may purchase an Upgrade Plan for licenses acquired prior to the Effective Date of the Agreement only during the first three (3) months of the Term. Member may purchase an Upgrade Plan for Software purchased under this Agreement at any time during the Term, provided that the Upgrade Plan is purchased at the same time that the licenses are acquired. Upgrade Plan purchases shall be prorated in three (3) month or less increments (depending on the anniversary or expiration date of the Agreement and the payment option selected upon enrollment) to and until the end of the Term as further described in the Program Guide. Upgrade Plan coverage shall be coterminous with the term of the Agreement. The Program Guide, which is incorporated by reference herein, contains specific prorated coverage periods for Upgrade Plans SKUs purchased during the Term:

SKU Description (Upgrade Plan coverage range)	Definition of Upgrade Plan coverage range
1-3 Months	Each SKU description describes a range of dates in which that particular SKU may be used. For example: For the 1-3 months SKU, purchases made within 1 to 3 months of either the Anniversary date, or the end date of the CLP agreement and depending on the payment option selected during enrollment.
4-6 Months	
7-9 Months	
10-12 Months	
13-15 Months	
16-18 Months	
19-21 Months	
22-24 Months	

The above SKU descriptions reflect that the applicable Upgrade Plan subscription shall co-terminate with the anniversary or expiration date (depending on the payment option selected during enrollment) of the Agreement. The actual SKU range (i.e. the actual start and end dates of any Upgrade Plan) is expressly dependent on when the Upgrade Plan is purchased during the Member’s CLP Agreement, the payment option selected, and when such Agreement ends. For the purpose of clarity, and as an example, if a customer selects the annual payment option during enrollment and if a license purchase is made during the 4th month of the Term, leaving eight (8) months until the anniversary date, and the Member wishes to also purchase Upgrade Plan, the SKU with a seven (7) – nine (9) month coverage range should be purchased. As specified in 4.1.2 below, Member expressly agrees and acknowledges that Member shall not receive a refund or credit for any unused portion of an Upgrade Plan coverage range. Member acknowledges that Adobe has the right to discontinue the manufacture and development of any of the Software, including without limitation the distribution of older Software versions, at any time in its sole discretion. Additional information on Upgrade Plan may be found on the Adobe Volume Licensing Programs Policies page: <http://www.adobe.com/aboutadobe/volumelicensing/policies/>

**4.1.2 Limitations/No Refunds or Credits.** Points are received for the value of Upgrade Plan purchases. The Upgrade Plan can be purchased for all, some, or none of any purchased Software, but the number of Upgrade Plans may not exceed the number of licenses purchased for Software. Member agrees that any and all Upgrades are for replacement of the copies of Software previously licensed to Member, and shall only be provided for such licenses for which Member purchased the Upgrade Plan. Member’s Upgrade Plan terminates upon expiration or termination of this Agreement. As such Member understands that Upgrade Plan costs are non-refundable and that no credits reflecting such costs will be provided to Member, when Agreement is terminated for any reason, including but not limited to the following events: (i) if Adobe discontinues the covered Software before Customer’s Upgrade Plan is due to expire; (ii) if this Agreement is terminated before the two (2) year anniversary date and before the date that Customer’s Upgrade Plan is due to expire; (iii) if any other event causes termination of this Agreement or this Agreement expires

for any reason before the Upgrade Plan term is set to expire, even if Member decides to renew such Agreement (in which case, Member acknowledges that it must order a new Upgrade Plan and that any portion of fees paid for the unused Upgrade Plan prior to such renewal shall not be credited or refunded against the new Upgrade Plan costs); or (iv) if any other event causes termination of Upgrade Plan coverage before the Upgrade Plan coverage is otherwise due to expire (i.e. based on the Upgrade Plan period as provided in the SKU description for the Upgrade Plan ordered). Member expressly understands and acknowledges that Member shall not receive any reimbursement or credit of any portion of Upgrade Plan fees paid by Member in the event that such Upgrade Plan subscription terminates before the Upgrade Plan coverage is otherwise due to expire due to a terminating event.

4.2 *Renewal.* Adobe will use reasonable efforts to notify Member ninety (90) days prior to expiration of the CLP Membership Term and Upgrade Plan coverage. If Member elects to make Upgrade Plan payments in two (2) annual installments, Adobe will notify Member sixty (60) days prior the date the second annual installment payment is due. Member must renew Upgrade Plan prior to the Upgrade Plan anniversary date in order to ensure uninterrupted coverage. Renewal orders may be placed before the anniversary date but early renewal does not change the initial anniversary date.

## **5. Miscellaneous.**

5.1 *Intentionally Omitted.*

5.2 *License Compliance.* Intentionally Omitted.

5.3 *Use of Information.* Adobe may use information about Member or Affiliates for purposes of administering the CLP and for fulfilling its obligations under the Agreement. Such information may be used among Adobe entities worldwide and among ALCs and resellers worldwide. This use includes, but is not limited to, the following: (a) sharing necessary program information of any Member (or Self-enrolled Affiliate) with its Reseller, including member number (End User ID), (b) sharing information about a Member with its Affiliates, or vice-versa, (c) use of the name and contact details including, phone email address and other contact details of a Member or Affiliate designated licensing contact to send program related communications to such licensing contacts including, but not limited to, notices of upgrades, program changes, and notice of discontinuance of SKUs, and (d) allowing Members to view all program and order information for all of its Affiliates. Affiliate members will only have access to information for orders placed by that Affiliate.

5.4 *Governing Law and Venue.* This Agreement shall be governed by the laws of the United States, unless there is no applicable law of the United States which would apply, in which case the laws of the State of California shall apply. Any provisions in the Adobe Licensing Terms stating that the Adobe Licensing Terms shall only be governed by the law of any particular U.S. state, U.S. territory or district, or foreign nation are hereby deleted.

5.5 *General.* No modification will be valid or binding unless in writing and signed by the parties. The parties are independent contractors, and this Agreement will not be construed to imply that either party is the agent, or venturer of the other. If any provision is held unenforceable, this Agreement will continue in full force and effect without said provision and will be interpreted to reflect the parties' original intent. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. Member may not assign this Agreement (by operation of law or otherwise) without the prior written consent of Adobe, and any prohibited assignment will be null and void. This Agreement will be binding upon and will inure to the benefit of any permitted successors or assignees. This Agreement represents the entire agreement between the parties on the subject matter of this Agreement.

5.6 *Hosted Services.* The Software may integrate with a variety of Hosted Services, operated either by Adobe or by third parties, which may contain user-generated content that may be (a) inappropriate for minors, (b) illegal in some countries; or (c) inappropriate for viewing at work. A complete list of integrated services is available here: [www.adobe.com/go/integratedservices](http://www.adobe.com/go/integratedservices). If Member wants to prevent viewing of or access to user-generated content services it may (a) disable service access in the Creative Cloud Packager, where that functionality is made available, or (b) block access to the Hosted Services via its network firewall. Hosted Services are not, under any circumstances, available to users under the age of thirteen (13). Adobe disclaims liability for all user-generated content available via the Hosted Services. Notwithstanding anything to the contrary, any dispute about the Hosted Services or content that is available there shall be governed by the law and take place in the venue designated in the Hosted Service Terms of Use and is not controlled by the Governing Law or Venue clause of this Agreement. Member is not entitled to a refund and Adobe is not liable in the event that access to the Hosted Services is slowed or blocked as a result of government or service provider action, or if Adobe blocks access to some or all of the Hosted Services if it deems, in its sole discretion, that such a block is necessary to comply with local laws.

5.7 Special Solutions and Spot Discounts. DoD customers are encouraged to consolidate their purchases of Adobe products prior to releasing requests for quotes under a DoD Enterprise Software Agreement (ESA). Ordering Officers should contact either an Adobe Authorized ESA program reseller or Adobe directly at their Alias (Adobe.DODESI@adobe.com) for further details. Adobe will evaluate consolidated requirements and may negotiate special terms/solutions and price reductions for specific orders as warranted by large volume purchases or other special circumstances.

IN WITNESS WHEREOF, these terms and conditions, together with the attachment(s), are hereby executed as follows:

**Adobe**

*Eric Pizali*

Authorized Signature

Eric Pizali

Print Name

WW Director of Revenue Operations

Title

Jun 30, 2016

Date

**Program Applicant**

US DEPARTMENT OF DEFENSE

HUBER.WILLIAM.M.1

Digitally signed by HUBER.WILLIAM.M.1229117404  
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI

Authorized Signature

WILLIAM M HUBER

Print Name

CONTRACTING OFFICER

Title

27 JUNE 2016

Date

**Instructions for sending signed original agreements to Adobe:**

Please return your signed original agreement per the appropriate instructions below. Your enrollment will be processed once your signed agreement is received and accepted by Adobe. If you have questions regarding these instructions, please contact your Adobe Account Manager or [Adobe Customer Service](#).

For Members located in the United States, Canada and Mexico only please use <u>one</u> of the following methods to return the signed original agreement to Adobe:		
Mailing Address	Email	FAX
<p><i>Mail <u>two</u> signed agreement originals to:</i></p> <p>Adobe Systems Incorporated 345 Park Avenue San Jose, California 95110-2704 USA Attention: Contract Coordinators</p>	<p><i>Scan and email signed agreement to:</i></p> <p><b>*Email:</b> <a href="mailto:ccoordin@adobe.com">ccoordin@adobe.com</a></p> <p><i>*Please note: This email address is intended for receipt of signed agreements only. If you have further questions, please contact your Adobe Account Manager or Adobe Customer Service.</i></p>	<p><i>FAX signed agreement to:</i></p> <p><b>FAX:</b> 408-537-4568</p>

For Members located in all other countries, please send two (2) signed originals of the agreement by mail or courier to:	
<p>Adobe Systems Software Ireland Limited 4-6 Riverwalk Citywest Business Campus Dublin 24, Ireland Attention: Contract Coordinators</p>	<p><i>On receipt of the two originals, Adobe will return one original of the fully signed agreement to the address indicated by you below:</i></p>

EXHIBIT A  
RETURNING GOVERNMENT CLP MEMBER ENROLLMENT INFORMATION

Unless otherwise indicated, all information is required and any missing information will delay CLP processing.

1. Enrollee Information

Enrollee Name: THAO VU

E-mail: THAO.VU@NAVY.MIL

Tel number: (619) 553-1065

Fax number: (619) 524-9678

2. Program Member Applicant Information.

Organization Name: US DEPARTMENT OF DEFENSE

Department:

Organization Address:

NAVSUP, FLEET LOGISTICS CENTER NORFOLK

5450 CARLISLE PIKE

MECHANICSBURG, PA 17050-2411

US

3. Program Administrator Contact Information.

Administrator Name: THAO VU

Title: Software Product Manager

E-mail: THAO.VU@NAVY.MIL

Telephone Number: (619) 553-1065

Fax number: (619) 524-9678 \_\_\_\_\_

4. Prior CLP Agreement Number.

Enter the CLP Agreement Number of the CLP Membership you are renewing.

Prior CLP Agreement Number: 4400405715

5. New Membership Activation.

If Program Member's current CLP membership has expired, Member's new membership will be activated once this Returning CLP enrollment is approved and processed by Adobe.

If Program Member's current CLP membership is active, indicate below when you want the new membership to begin. (If left unselected, Member's default selection will be "Upon expiration of Member's existing CLP membership").

Immediately

Upon expiration of Member's existing CLP

6. Initial Designated ALC (optional).

Program Member has the option to designate an ALC for their CLP membership. An ALC is an Adobe authorized reseller from whom the Program Member may order Software under their CLP membership.

ALC Information:

- ALC Name: Carahsoft Technology
- CDW Government
- Dell Marketing
- Emergent LLC
- GovConnection
- Insight Public Sector
- SHI
- Softmart

7. Initial Discount Level and Points target.

Member may establish a new Discount Level by renewing with an initial purchase that delivers sufficient points to achieve the desired level.

Member wishes to establish a new Discount Level by renewing with an initial purchase that provides the required points for the Discount Level indicated below. Member must place an initial order for the additional points required to meet the new Discount Level and must indicate the required additional points under **Required Initial Order** below.

- 8,000 – 299,999 Points
- 300,000+ Points

**Required Initial Order:** Not Applicable Points

8. Upgrade Plan Payment Options.

Member has the option to purchase Upgrade Plan with their Software orders. Member may pay its Reseller for Upgrade Plan either in a single payment or in two annual installments. Selected option will apply to all future Upgrade Plan purchases for the duration of the CLP Term. Please select Member's preferred option (making a selection does not create any obligation to purchase Upgrade Plan). *If left unselected, Member's default selection is "single payment".*

- Single payment
- Two annual installments

9. Affiliates.

Members may add Member-listed Affiliates to their membership and allow Member-listed Affiliates to order against Member's CLP Agreement. Affiliates listed on a Member's enrollment are also eligible to enroll as a Self-enrolled Affiliate, but must complete a separate Affiliate Enrollment form in order to do so.

9.1 Self-enrolled Affiliate Management Options.

Choose one of the following options to manage future Self-enrolled Affiliates that want to enroll under the new CLP membership:

- Always Allow (Adobe will automatically accept all qualified Self-enrolled Affiliate enrollments under this CLP membership)
- Never Allow (Adobe will not accept any Self-enrolled Affiliate enrollments under this CLP membership)
- Notify for Approval (Adobe will notify Program Administrator for approval of any Self-enrolled Affiliate enrollments)

**9.2 List of Member-listed Affiliates.**

For each Affiliate that Member wishes to allow to order against its master CLP membership, please provide the Affiliate organization name, street address, city, state/province, ZIP/postal code, and country.

Member's Affiliates:

The following Member Affiliates are hereby authorized to place orders under the DoD Enterprise Software Initiative (ESI) Blanket Purchase Agreements (BPAs) which incorporate the terms and conditions of this Agreement. The DoD ESI BPAs are open for ordering by all Department of Defense (DoD) Components. For the purposes of this Agreement, a "DoD Component" is defined as: the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (DoD IG), the Defense Agencies, the DoD Field Activities, the U.S. Coast Guard, NATO, and the Intelligence Community and as defined by the 48 Code of Federal Regulations, section 202.101.

## EXHIBIT B

## DEPARTMENT OF DEFENSE

## ADOBE (DIGITAL MEDIA) SOFTWARE LICENSE AGREEMENT

This document sets forth the Department of the Defense (DoD) Software License Agreement (“DoD License requirements”) and the Adobe Enterprise Licensing Terms (“Licensing Terms”), collectively the “DoD Software License Agreement” and is entered into by and between Adobe Systems Incorporated (“Adobe” or “Licensor”), a Delaware Corporation having a place of business at 345 Park Avenue, San Jose, California 95110-2704 (Licensor) and the DoD (“Customer” or “Licensee”). The Adobe Enterprise Licensing Terms are attached and made a material part hereof, which consist of:

- Attachment A: Part I General Terms 2016v1
- Attachment B: Part I Product Specific Licensing Terms (PSLT) for Adobe Desktop Software 2016v1
- Part 2 Product Specific Licensing Terms (PSLT) for Adobe ColdFusion 2016v1
- Part 3 Product Specific Licensing Terms (PSLT) for Adobe Creative Cloud and Document Cloud 2016v1
- Part 4 Product Specific Licensing Terms (PSLT) for Adobe Electronic Signature Service 2016v1

To the extent, (1) there is a material change in a Product for which Adobe updated a PSLT or (2) the DoD orders a Product not covered by the attached PSLT, the parties agree to negotiate in good faith an amendment to this Agreement to include such PSLT(s). The terms and conditions set out below in these Software License Requirements, supplement, to the extent a conflict exists, supersede, and take precedence over the terms and conditions of Attachment A – Part I, and Attachment B – Parts I, 2, 3 and 4. For clarification in this agreement, Publisher, and Licensor are synonymous.

1. **Enterprise Language:** The parties agree that more than one agency of the DoD may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the licensed product. The parties agree that, if the Licensee is a “DoD Department or Agency” as defined by the 48 Code of Federal Regulations, section 202.101, the terms and conditions of this Agreement apply to any purchase of products made by the DoD, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the licensed software, terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software, including any Licensor’s published policy or program documentation or Customer ordering documents. It is also understood by both parties that any Licensor policies or educational documents will not be considered part of this license agreement.
2. **Choice of Law/Venue:** The License Agreement shall be governed by the laws of the United States, unless there is no applicable law of the United States, which would apply, in which case the laws of the State of California shall apply. Any provisions in the License Agreement stating that the License Agreement shall only be governed by the law of any particular U.S. state, U.S. territory or district, or foreign nation are hereby deleted.
3. **Indemnification:** The DoD does not have the authority to and shall not indemnify any entity. The DoD agrees to pay for any loss, liability or expense, which arises out of or relates to the DoD’s acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the DoD is established by a court of law or where settlement has been agreed to by the DoD agency. This provision shall not be construed to limit the DoD’s rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the DoD.

4. Patent, Copyright, Trademark, and Trade Secret Protection:

- a) Adobe shall, at its expense, defend, indemnify and hold the DoD harmless from any suit or proceeding which may be brought by a third party against the DoD, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, or trademarks, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (the "Claim"), including all licensed products provided by the Adobe. For the purposes of this Agreement, "indemnify and hold harmless" shall mean the Adobe's specific, exclusive, and limited obligation to (a) pay any judgments, fines, and penalties finally awarded by a court of competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim and (b) reimburse the DoD for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurs in handling the Claim. The DoD agrees to give Adobe prompt notice of any such claim of which it learns. The DoD has the sole authority to represent itself in actions brought against the DoD. The DoD may, however, in its sole discretion, and in accordance with US law, practice and procedure, delegate to Adobe its right of defense of a Claim and the authority to control any potential settlements thereof. Adobe shall not without the DoD's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the DoD has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the DoD to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the DoD to make a payment which Adobe is not obligated by this Agreement to pay on behalf of the DoD. If the DoD delegates such rights to the Adobe, the DoD will cooperate with all reasonable requests of Adobe made in the defense and or settlement of a Claim. In all events, the DoD shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing at its own expense and without derogation of Adobe's authority to control the defense and settlement of a Claim. It is expressly agreed by the Adobe that, in the event it requests that the DoD to provide support to the Adobe in defending any such Claim, Adobe shall reimburse the DoD for all reasonably necessary expenses (including attorneys' fees, if such are made necessary by the Adobe's request) incurred by the DoD for such support. If DoD does not delegate to Adobe the authority to control the defense and settlement of a Claim, Adobe's obligation under this section ceases. If DoD does not delegate the right of defense to Adobe, upon written request from the DoD, Adobe will, in its sole reasonable discretion, cooperate with DoD in its defense of the suit, provided however, that DoD (i) shall not impair Adobe's own rights, defenses, or claims against the claimant or make any admission of liability or fault on behalf of Adobe, (ii) shall not have the right to settle any claim, make any admissions, or waive any defenses on behalf of Adobe; and (iii) shall in good faith reasonably cooperate and consult with Adobe during the course of settlement negotiations and prosecution of the claim and shall afford Adobe free access to all communications and documentations with all parties, witnesses, and judicial or administrative body(ies) associated with such claim upon Adobe request.
- b) If the right of defense of a Claim and the authority to control any potential settlements thereof is delegated to Adobe, Adobe shall pay all damages and costs finally awarded therein against the DoD or agreed to by Adobe in any settlement. If information and assistance are furnished by the DoD at Adobe's written request, it shall be at the Adobe's expense, but the responsibility for such expense shall be only that within Adobe's written authorization.
- c) If, in Adobe's opinion, the licensed products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Adobe's obligation to satisfy any final award, Adobe may, at its option and expense, substitute functional equivalents for the alleged infringing licensed products, or, at the Adobe's option and expense, obtain the rights for the DoD to continue the use of such licensed products.
- d) If any of the licensed products provided by Adobe are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, Adobe shall, at its own expense and at its option, either procure the right to continue use of such infringing products, replace them with non-infringing items, or modify them so that they are no longer infringing.

- e) If use of the licensed products is enjoined and Adobe is unable to do any of the preceding set forth in item (e) above, Adobe agrees to, upon notification of de-install of the licensed Products, refund to the DoD the unused License Term for the Products. The obligations of Adobe under this Section continue without time limit and survive the termination of this Agreement.
  
- f) Notwithstanding the above, Adobe shall have no obligation under this Section for:
  - i. modification of any licensed products provided by the DoD or a third party acting under the direction of the DoD;
  - ii. any material provided by the DoD to Adobe and incorporated into, or used to prepare the product;
  - iii. use of the Software after Adobe recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under (e) or (f) above;
  - iv. use of the licensed products in other than its specified operating environment;
  - v. the combination, operation, or use of the licensed products with other products, services, or deliverables not provided by the Adobe as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Adobe did not provide;
  - vi. infringement of a non- Adobe product alone;
  - vii. the DoD's use of the licensed product beyond the scope contemplated by the Agreement; or
  - viii. the DoD's failure to use corrections or enhancements made available to the DoD by the Adobe at no charge.
  
- g) The obligation to indemnify the DoD, under the terms of this Section, shall be the Adobe's sole and exclusive obligation for the infringement or misappropriation of intellectual property. Adobe's liability under this Section 3 shall be limited to the amount paid by DoD for the Products in the previous twelve (12) months.

**5. Virus, Malicious, Mischievous or Destructive Programming:**

Licensor warrants that as of the day the Software and any subsequent upgrades or updates is delivered by Licensor to Licensee or its designee, either by installation media or electronic download, it has been processed by one or more industry-standard Virus detection programs with the then-current Virus definitions and that it is free of Viruses that were detected by such programs. Licensor warrants that the Software is free of Viruses. The term "Virus" means code that is not a normal feature of the Software that is designed or intended to have any of the following functions: (a) disrupting, disabling, harming or otherwise substantially impeding the normal operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored and installed; or (b) damaging or destroying any data file without the user's consent.

If Adobe is found to have breached this warranty, Adobe's sole obligation and Licensee's sole and exclusive remedy will be for Adobe to provide a replacement copy of the Software that, as of the date the Software is delivered to Licensee, has been processed by one or more industry-standard Virus detection programs and that it is free of Viruses that were detected by such programs provided that:

- a) the licensed products have been installed and used by the DoD in accordance with the Documentation;
- b) the licensed products have not been modified by any party other than Licensor;
- c) The DoD has installed and tested, in a test environment which is a mirror image of the production environment, all new releases of the licensed products and has used a generally accepted antivirus software to screen the licensed products prior to installation in its production environment.

Under no circumstances shall Licensor be liable for damages to the DoD for loss of the DoD's data arising from the failure of the licensed products to conform to the warranty stated above.

6. **Limitation of Liability:** The Licensor's liability to the DoD under this Agreement shall be limited to the greater of (a) the value of any purchase order issued; or (b) \$250,000. This limitation does not apply to damages for:
  - a) Bodily injury;
  - b) death;
  - c) intentional injury; or
  - d) damage to real property or tangible personal property for which the Licensor is legally liable;
  - e) Licensor's indemnity of the DoD for patent, copyright, trade secret or trademark protection for which Licensor's liability shall be limited as provided in Section 3, above.
  
7. **Termination:** Licensor may not terminate this Agreement for non-payment from reseller.
  - a) The DoD may terminate this Agreement without cause by giving Licensor thirty (30) calendar days prior written notice (Notice of Termination) whenever the DoD shall determine that such termination is in the best interest of the DoD (Termination for Convenience).
  
8. **Confidentiality:** Each party shall treat the other party's confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information.
  
9. **Publicity/Advertisement:** The Licensor must obtain DoD approval prior to mentioning the DoD or a DoD agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.
  
10. **Territory:** Any Department of Defense (DoD) civilian or military installation or work site in the Continental United States (CONUS) or outside the Continental United States (OCOUS), regardless of where software was acquired.
  
11. **Backup for User Documentation:** Licensor grants DoD to make a reasonable number of copies for DoD's internal business purposes. DoD is responsible for ensuring that all copyright notices, trademarks and other restrictive legends are maintained on such copies. DoD is also responsible for reporting to Licensor if DoD learns of the misuse or mishandling of User Documentation provided under the contract to DoD personnel, contractors or Government employees.
  
12. **Transfers and Assignments: Except for unlimited deployment rights that may be granted under a particular transaction,** Licensee is authorized to transfer or assign the Software or Licensee's rights in the Software, and such authorization would include sublicensing, assignment or transfer among or between DOD agencies, outsourcers, contractors or Licensee, (in support of the DoD mission) or authorize any portion of the Software to be copied onto or accessed from another individual's or entity's computer, except as may be explicitly provided in this Agreement.
  - a) **Transfers:** within the DoD and in the event that an Authorized User has a valid license under this Agreement and that Authorized User is reorganized or restructured such that its responsibilities and operations are transferred to another Authorized User agency, the agency shall have the right to assign the affected program licenses to a successor.
  - b) **Assignments:** Licensee is authorized to assign ownership of licenses when Licensee intends to designate an outsourcer or contractor (in both cases, in support of the DoD mission), DoD Agency or other, as determined, to assume ownership of the license along with Licensor written concurrence. All activities by such Assignee shall be subject to the Licensor's Software License Agreement as modified herein. Any deviation shall be subject to a separate agreement between Licensor and such Assignee, specifying conditions for the management and maintenance of the Software, which agreement shall not impose any more restrictive covenants than are provided to Licensee in the Licensor's Software License Agreement, as modified herein. The assignment of licenses will be without cost to any party involved in the assignment of licenses. It is further understood that Assignee will be

responsible for all future software maintenance costs of any assigned licenses.

Licensee shall complete any required Licensor documentation required to facilitate the transfer or assignment of license and continuation of support for the transferee or assignee. All license transfers or assignments will be without cost to the Licensee, provided that the licenses are current with regard to Licensor annual maintenance, and the Licensee does not re-market or otherwise intend to resell the licenses to be transferred.

It is inherently understood Licensee and the successor transferee or assignee agrees to be bound to this Software License Agreement.

**13. Functionality Replacement and Extended Support.**

Without prejudice to Licensor's right to determine product planning and product lifecycles, in the event that Licensor merely rebrands, renames or repackages the Software, Licensor agrees that it will grant the Customer a license under the terms of this Agreement, including applicable support terms, to use the rebranded, renamed or repackaged Software to the same extent the Customer is permitted to use the initially licensed version of the Software for no additional fee. For the purposes of this Agreement, "rebrand, rename or repackage" means a new product name or package without additional functionalities.

In the event that Licensor announces the End of Life ("EOL") of a Software product, it shall make such announcement by posting the information on its website ninety (90) days prior to the EOL event. During the ninety (90) days between the date of the announcement and the EOL event, Licensor shall undertake sustaining engineering (provide patches) in accordance with its normal practice. In the event that a Software product is to be upgraded (a new version released), the old version shall enjoy sustaining engineering for a period of up to ninety (90) days after the ship date of the new version, all in accordance with Licensor's normal practice.

**14. Rights of Survivorship of the Agreement.** This Agreement shall survive unto Licensor, its Successor, rights and assigns. The software and agreement terms and conditions as covered under this agreement shall survive this agreement, in perpetuity, notwithstanding the acquisition or merger of Licensor by or with another entity.

**15. Audit Responsibilities:**

- a) General. Notwithstanding Adobe's audit provisions to the contrary, Customer may perform an internal audit of Software use and will use its best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses, users or subscription parameters in use.
- b) Audit Procedure.
  - i. Upon Adobe's prior written request, Customer may provide audit reports to Adobe from Customer's internal audit records as the sole means of satisfying Adobe's requests for audit.
  - ii. Audit requests are limited to no more than one per Period of Performance.
  - iii. Adobe must provide a minimum of 30 days written notice when requesting Customers to provide the results of an internal audit.
  - iv. Customers shall use DoD tools, records, repositories or interviews at Customer's reasonable discretion to perform its internal audit. Each Customer POC will meet virtually with Adobe and provide information about the approach and strategy utilized to conduct the audit and explain the business process and assumptions used to determine total user count.
  - v. Audit results will be reported in a form agreed to between Adobe and Customer for providing compliance information.

- vi. Audit results will be certified in writing by an appropriate Customer POC designated by the Customer for such purposes.
  - vii. At the Customer's option, audit results indicating Customer use is above license parameters will result in one of the following actions by DoD:
    1. Customer shall acquire additional licenses within 60 days of reporting audit results provided there is appropriate funding available to purchase such additional licenses in accordance with FAR 32.703-2.
    2. If funding is not available as provided in Section 1, above, Customer shall immediately reduce software use to license parameters by deleting the Software from Customer's computers and systems, and shall provide Adobe with a letter certifying such destruction within 30 days of reporting audit results
16. **US Government Configuration Baseline.** The Adobe Acrobat Reader X complies with the SCAP the requirements of the US Government Configuration Baseline (USGCB) as identified at <http://web.nvd.nist.gov/view/ncp/repository>. The standard installation, operation, maintenance, updates, and/or patching of software shall not alter the configuration settings from the approved USGCB configuration. Adobe shall maintain operability with USGCB standards as they evolve.
17. **Net-Centricity.** Licensor is aware of the OSD NII DCIO Net-Centric Checklist, located at [http://dodcio.defense.gov/Portals/0/Documents/NetCentric\\_Checklist\\_v2-1-3 .pdf](http://dodcio.defense.gov/Portals/0/Documents/NetCentric_Checklist_v2-1-3.pdf). The Net-Centric Checklist does not apply to individual Licensor product licenses at this time. Software products offered to and purchased by the DoD and Intelligence Community shall be licensed by the software Publisher without restriction to information sharing among the DoD and IC in performing their missions. Information regarding Licensor product license adherence to Internet Protocol v6 (IPv6) can be found at [www.Licensor.com](http://www.Licensor.com).
18. **Section 508 of the Rehabilitation Act Compliance.** General information regarding the Section 508 Act can be found at the website [www.section508.gov](http://www.section508.gov). Adobe Product License Voluntary Product Accessibility Template ("VPATS") for Section 508 can be found at [HTTP://WWW.ADOBE.COM/ACCESSIBILITY/PRODUCTS/COMPLIANCE/](http://www.adobe.com/accessibility/products/compliance/). Adobe is committed to promoting and improving accessibility of its products as specified in Section 508, and invites concerned individuals to review its product accessibility assessments located at [www.adobe.com/accessibility](http://www.adobe.com/accessibility).
19. **Temporary Use of Software During Times of Conflict and/or Natural Disaster.** As part of Temporary Expeditionary Deployments (TEDs), during the term of this Agreement, DoD may temporarily deploy and install or use on, or access from qualified desktops or servers, a reasonable number of Licensor software products in addition to those previously licensed pursuant to this Agreement at no additional cost ("TED Licenses"). TEDs are limited to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), war games, exercises, real world contingencies, and emergency situations similar to the initiated domestic terrorist attacks of 19 April 1995 (i.e., the Timothy McVeigh Terry Nichols perpetrated 'Oklahoma City Bombing' involving the Alfred P. Murrah Federal Building'); the initiated international terrorist attacks, perpetrated on American soil, on 9/11/2001; and finally, the national inclement weather natural disasters perpetrated by Hurricane(s) Katrina and Rita during the August and September months of Calendar Year 2005, where temporary duty stations (TED's) and continuity of operations (COOP) alternative venues or sites were needed, for a substantial period of time, due to the destruction of federal or U.S. Government facilities, infrastructure, offices and work spaces.

For licenses connected to a DoD network server, on a semi-annual basis, Licensor shall provide an additional temporary license pool equal to the quantity of network versions purchased, which may be accessed during a TED event. For computers not connected to a DoD network server, The Licensor shall provide, on a quarterly basis, a pre-activated temporary (ninety) 90 day single seat network license which can be copied for use on any number of computers. After the TED, or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by the Licensor, the DoD will provide a written certification that the TED Licenses have either been removed from service, or payment has been made under this Agreement to purchase additional perpetual licenses equal to the number of TED Licenses not removed from service. DoD agrees to use the TED Licenses in accordance with the terms contained in this Agreement and the applicable version of the Software License Agreement.

20. **Software Asset Management & ISO-IEC 19770:2009 Series:** Licensor considers various security standards in developing and implementing its own security policies and procedures for the installable or distributable software products governed by this Agreement, including but not limited to ISO 19770:2009 and SOC2. Information concerning Adobe's compliance with security standards can be found at <http://www.adobe.com/security.html>.
21. **Authorized Users:** An Authorized User includes, but is not limited to DoD government employees (military, civilian, reserves, national guard), contractors, non-human devices, detailed individuals that are included and accounted for in the DoD in support of DoD missions and those individuals or non-human devices who have access to, use or are tracked by Licensor's programs, provided such Authorized Users are properly accounted for in the license grant from Licensor in accordance with the Adobe Enterprise Licensing Terms, if required.
22. **Shelf Ware:** It is recognized, that in some instances, DoD may have excess Licensor software licenses that are not currently being used or needed by DoD. These licenses are commonly called Shelf Ware. At DoD's sole discretion, the DoD may transfer any these licenses as described in Section 11 of this document or DoD may terminate the license grant, as it deems necessary. The termination or transfer of licenses may result in a reduced license count and will not be charged to Customer in the next annual maintenance payment. In no event, when a subset of licenses is terminated or if the level of support is reduced, support for the remaining licenses will not change in services or result in any type of fee recalculation of refund of fees already paid.
23. **Decommissioning:** When buying Maintenance and Support Services and the Customer has multiple copies of one product, if Customer chooses at its option to renew Maintenance and Support, Customer must purchase Maintenance and Support Services on 100% of those licenses unless Customer certifies to Adobe in writing at the time of Maintenance and Support renewal that they wish to reduce the number of licenses that are in production and covered under Maintenance and Support. In such event, the Maintenance and Support fee will be adjusted accordingly. If Customer renews such Support Services on a lesser number of licenses, Customer will be subject to Adobe's policies on documenting decommissioned licenses set forth below:
- a) Customer must notify Adobe of the number of licenses it wishes to remove from production and coverage under Adobe's Maintenance and Support.
  - b) That entitlement to free-of-charge upgrades on the number of licenses upon which Maintenance and Support is decommissioned terminates at the end of the last Maintenance and Support period for which Maintenance and Support fees were paid.
  - c) That entitlement to technical support on the decommissioned licenses is also terminated at the end of the last Maintenance and Support period for which Maintenance and Support fees were paid.
  - d) The installation of Adobe product(s) continues to adhere to the Licensing Terms referenced in this Agreement.
  - e) Should Customer wish to re-acquire Maintenance and Support for the decommissioned licenses in the future, subject to availability at that time, Customer may be required to:
    - i. Purchase upgrade licenses (if available for the version Customer held at time of Maintenance and Support decommissioning) or new licenses (if no such upgrades are available) and
    - ii. Pay such Maintenance and Support fees as are assessed based on the then-current pricing policy for Maintenance and Support

Adobe cannot guarantee that equivalent products or maintenance and support services will be available in the future.

24. **Third Party Software.** Notwithstanding anything to the contrary, the Government shall not be subject to third party terms and conditions that are contrary to Federal law. The Publisher shall comply with third-party licenses. The DOD shall not be responsible for Adobe's infringement of imbedded 3<sup>rd</sup> party software or intellectual property rights.
25. **GFE Non-Portable Computer Use Rights.** GFE Non-Portable Computer Use Rights. DoD has adopted a Teleworking Policy which implements the requirements of Section 359 of Public Law No. 106-346 which requires each Executive Agency to establish a policy under which eligible employees of the agency may participate in Teleworking to the maximum extent possible without diminished employee performance. Enrolled affiliate shall have the right to grant to those persons participating under the DoD Teleworking Policy and who have been issued a Government Furnished Equipment (GFE) non-portable desktop in lieu of portable computer, the portable use rights under the applicable License Agreement/Product Use Rights. The portable use rights will apply to such GFE desktop or to a portable computer but not both.
26. **License copies for training, evaluation, research and development (including Research Labs) and back-up.** During the term of this agreement (including any renewal term), an agency (as defined locally) may (i) run additional product in a dedicated training facility on their premises as specified in the applicable Adobe Licensing Terms; (ii) run copies of any product that the Licensor make available to license as an additional product for a 90-day evaluation period as specified in the applicable Adobe Licensing Terms; (iii) run complimentary copies of enterprise products and additional products on Authorized Users desktops or processors for research and development purposes as specified in the applicable Adobe Licensing Terms; and (iv) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations as specified in the applicable Adobe Licensing Terms.
27. **DoD Unified Master Gold Disk (UMGD) Distribution.**

The Department of Defense (DoD) is authorized to:

- a) Reproduce Adobe Reader, Flash Player and Shockwave products in object code on DoD gold disks, such as the "DoD Unified Master Gold Disk" (UMGD), which contain Licensor Products and other software applications;
- b) distribute the Licensor Adobe Reader, Flash Player and Shockwave products on the DoD gold disks via government networks and other electronic or physical media to DoD Components (e.g., DoD Agencies, Combatant Commands, DoD Field Activities, Military Services) for access, redistribution, and use by DoD employees and contractors supporting government missions. Permission to reproduce and distribute Adobe Reader, Flash Player and Shockwave products on DoD gold disks includes upgrades and patches and is valid during the term of the active license agreement. It is a requirement that both the DoD Component reproducing and distributing the UMGD or other DoD gold disks and the DoD Components receiving the UMGD or other gold disks shall have an active license agreement; and,

Licensor reserves the right to unilaterally rescind this special use right (as it pertains to (a) and (b) above) by providing DoD with ninety (90) days' notice. In the event that Licensor rescinds the special use rights conveyed in (a) and (b), above, DoD Customers shall retain the distribution and use rights conveyed in this license agreement.

28. **Finality of Terms:** This agreement and any attachments to this agreement will be the sole document governing the granting of licenses between DoD and Licensor. There shall be no changes to this license agreement unless agreed to by both parties in writing.
29. **DoD Enterprise License:** The parties agree, that in the spirit of cooperation, there may be an instance, during the course of this agreement, where DoD desires an Enterprise Agreement with the Licensor. The parties agree that all will work towards implementation of a DoD Enterprise Agreements, that all terms contained in this agreement may become part of the Enterprise Agreement and the DoD and Licensor will work effortlessly on issues that may hamper such an agreement (legacy licenses and the accompanying support, Right-sizing the enterprise and so on).

30. **Intellectual Property:**

- a) Licensor owns or has the right to license the Products being sold or licensed under this agreement.
- b) Licensor represents that, as of the Effective Date, to the best of its knowledge, it either owns or has the right to license the Products to an Authorized Reseller who will extend license rights to DoD. In the event of a breach of this representation, DoD's sole remedy and Licensor's sole obligation is intellectual property indemnity as provided herein.

31. **Product Configuration:** Subject to commercial availability, all products provided under this agreement shall be configurable by Customer's system administrators. Proper configuration will then allow the configured product to be installed and remain fully functional and executable without the need to connect to the Internet, remote call to any Adobe site, or require notification of status. Adobe will provide technical support to ensure configuration can meet this requirement. Exceptions include products that are currently not available in an offline format: Creative Cloud Packager, Muse, Edge Inspect CC, Edge Code and Edge Reflow. When these products become available in an offline version, they will comply with the product verification requirements above. Additionally, Edge Fonts and PhoneGap Build are service offerings with usage requiring Internet access and will not be offered in a form that complies with the requirement to work absent an Internet connection.

32. **DoD Data:**

- a) DoD will provide all data pertaining to software asset management for use in this agreement.
- b) DoD Data is owned by DoD at all times, regardless of location at any point in time. Licensor makes no claim to any right of ownership in DoD data.

33. **Product Warranties:**

- a) Licensor warrants that the Products will function substantially as described in the Documentation for the ninety (90) day period following the date the Products are put into production provided that the Products are put into production within ninety (90) days of delivery of the Products. Therefore, all warranty claims must be made within One hundred and eighty (180) days from delivery of the Products.
- b) If the Products do not function substantially in accordance with the Documentation, the entire liability of Adobe and Customer's exclusive remedy shall be limited to either, at Licensor's option, the replacement of the Product or the refund of the license fee paid to Adobe for the Software.
- c) This is the sole remedy for breach of warranty.

Exhibit B – DoD Adobe (Digital Media) Software License Agreement

Attachment A – Part I

ADOBE GENERAL TERMS (2016v1)

1. DEFINITIONS

1.1 “Adobe” means one or both of the following:

(A) If the Products and Services are licensed in the United States, Canada, Mexico, United States territories and possessions, and United States military bases wherever located: Adobe Systems Incorporated, located in San Jose, California.

(B) If the Products and Services are licensed in all other countries: Adobe Systems Software Ireland Limited, located in Ireland.

1.2 “Adobe Partner” means an entity that is appointed by Adobe to process orders from end users, or a reseller of Products and Services to end users.

1.3 “Adobe Technology” means technology owned by Adobe or licensed to Adobe by a third party (including the Products and Services, Reports, software tools, algorithms, software (in source and object forms), user interface designs, architecture, toolkits, plug-ins, objects and Documentation, network designs, processes, know-how, methodologies, trade secrets, and any related intellectual property rights throughout the world), and suggestions made to Adobe that are incorporated into any of the foregoing (which will be deemed assigned to Adobe), as well as any of the derivatives, modifications, improvements, enhancements, or extensions of the above, whenever developed.

1.4 “Affiliate” means, for a Party, any other entity that controls, is controlled by, or under common control with, the Party. For the purposes of this definition, the term “control” means the direct or indirect power to direct the affairs of the other entity through at least 50% of the shares, voting rights, participation, or economic interest in this entity.

1.5 “Agreement” means these General Terms, the applicable Product Specific Licensing Terms, and the Sales Order.

1.6 “Claim” means a claim, action, or legal proceeding filed against a Party.

1.7 “Computer” means a virtual or physical device for storing or processing data, such as servers, desktop computers, laptops, mobile devices, Internet-connected devices, and hardware products. Where a device contains more than one virtual environment (including virtual machines and virtual processors), each virtual environment will be counted as a separate Computer.

1.8 “Confidential Information” means non-public or proprietary information about a disclosing Party’s business related to technical, commercial, financial, employee, or planning information that is disclosed by the disclosing Party to the other Party in connection with this Agreement, and is (A) identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic, or electronic form; or (B) disclosed in non-tangible form, identified as confidential at the time of disclosure, summarized in a writing labeled as “confidential”, and delivered to the receiving Party within 15 days after disclosure; or (C) Customer Data. “Confidential Information” does not include information that: (1) has become public knowledge through no fault of the receiving Party; (2) was known to the receiving Party, free of any confidentiality obligations, before its disclosure by the disclosing Party; (3) becomes known to the receiving Party, free of any confidentiality obligations, from a source other than the disclosing Party; or (4) is independently developed by the receiving Party without use of Confidential Information.

1.9 “Customer” means the entity identified in the Sales Order as “Customer” or otherwise identified in the Sales Order as the end user customer.

1.10 “Customer Content” means any material, such as audio, video, text, or images, that is imported into the On-demand Services or Managed Services by or on behalf of Customer in connection with Customer’s use of the Products and Services, including for collaboration, content delivery, digital publishing, targeted advertising, or indexing.

1.11 “Customer Data” means any information that is imported by or on behalf of Customer into the On-demand Services or

Managed Services from its internal data stores or other sources not supplied by Adobe, or is collected via the Distributed Code, in connection with Customer's use of the Products and Services.

- 1.12 **"Customer Site"** means any current or future website or application that is owned and operated by Customer, or is hosted or operated by a third party or Adobe on Customer's behalf, and that contains a privacy policy or terms of use governing data collection practices that Customer controls.
- 1.13 **"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.
- 1.14 **"Documentation"** means the technical usage and product descriptions of the Products and Services published by Adobe on <https://helpx.adobe.com/product-descriptions.html>, which may be updated from time to time. "Documentation" does not include any forum or content by any third party.
- 1.15 **"Effective Date"** means the effective date stated in the Sales Order.
- 1.16 **"Enterprise Licensing Terms"** means these General Terms and the applicable Product Specific Licensing Terms.
- 1.17 **"Indemnified Technology"** means On-demand Services, Managed Services or On-premise Software (as applicable), paid for by Customer.
- 1.18 **"License Metric"** means the per-unit metrics specified by Adobe concerning the licensed quantities in the Sales Order, to describe the scope of Customer's license to use the Products and Services.
- 1.19 **"License Term"** means the duration of the license for Products and Services, as stated in the Sales Order, or any shorter term arising from a termination of this Agreement.
- 1.20 **"Managed Services"** means the technology services hosted by or on behalf of Adobe and provided to Customer as a dedicated instance, as set out in the Sales Order.
- 1.21 **"On-demand Services"** means the technology services hosted by or on behalf of Adobe and provided to Customer as a shared instance, as set out in the Sales Order.
- 1.22 **"On-premise Software"** means the Adobe software that is deployed by or on behalf of Customer on hardware designated by Customer, as set out in the Sales Order.
- 1.23 **"Party"** means Adobe or Customer, as applicable.
- 1.24 **"Personal Data"** is given the meaning under the relevant applicable privacy or data protection laws relating to this term or any similar term (such as "personal information" or "personally identifiable information") used in the applicable laws, or where no such laws apply, means any information that by itself or when combined with other information (such as telephone number, e-mail address, precise real-time GPS location, and government-issued identification number) can be used by Adobe to identify a specific natural person.
- 1.25 **"Products and Services"** means the On-premise Software, On-demand Services, Managed Services, or Professional Services, as set out in the Sales Order.
- 1.26 **"Product Specific Licensing Terms"** or **"PSLT"** means the Product Specific Licensing Terms document that describes the additional licensing terms for specific Products and Services.
- 1.27 **"Professional Services"** means any consulting, training, implementation, or technical services provided by Adobe to Customer, as set out in the Sales Order.
- 1.28 **"Report"** means any graphical or numerical display of Customer Data that contains Adobe's proprietary design, look and feel, and is generated by the On-demand Services or Managed Services.
- 1.29 **"Sales Order"** means the sales order form, statement of work, or other written document for the Products and Services that is either (A) executed between Adobe and Customer; or (B) if no such documents are executed between Adobe and Customer and Customer is purchasing through an Adobe Partner, executed between Customer and the Adobe Partner.
- 1.30 **"Sensitive Personal Data"** is given the meaning under relevant privacy or data protection laws relating to this term or any similar term (such as "sensitive personal information") used in the applicable laws, or where no such laws apply,

means an individual's financial information (including financial account information), sexual preferences, medical or health information, and personal information of children protected under any child protection laws (such as the personal information defined under the US Children's Online Privacy Protection Act).

- 1.31 "User" means an individual (either an employee or temporary worker of Customer) who may use or access the Products and Services.

## 2. PAYMENT OF FEES

This section 2 applies only if Customer orders the Products and Services directly from Adobe. If Customer orders the Products and Services from an Adobe Partner, payment terms are agreed between Customer and the Adobe Partner.

- 2.1 **Payment.** Customer must pay the fees according to the payment terms in the Sales Order. All invoices will only be delivered electronically to Customer. Adobe may charge interest at a monthly rate equal to the lesser of 1% 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. Customer 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 no later than the date of payment. If Customer is not a publicly-traded corporation, upon Adobe's request, Customer will provide the necessary financial documents to allow Adobe to ascertain the credit-worthiness of Customer.
- 2.2 **Failure to Pay.** If Customer fails to pay any amount due under this Agreement according to the payment terms in the Sales Order, Adobe will send Customer a reminder notice. If Customer fails to pay within 15 days of the date of the reminder notice, Adobe may, in its sole discretion, terminate the applicable Sales Order or suspend or restrict the provision of the Products and Services.
- 2.3 **Disputes.** If Customer believes in good faith that Adobe has incorrectly billed Customer, Customer must contact Adobe in writing within 30 days of the invoice date, specifying the error. Unless Customer has correctly notified Adobe of the dispute, Customer must reimburse Adobe's reasonable collection costs. Customer must pay the undisputed portions of Adobe's invoice as required by this Agreement.
- 2.4 **Taxes.** Prices do not include applicable taxes. Adobe will invoice Customer for any applicable taxes, and Customer must pay these taxes. Where applicable, Customer must provide a tax-exemption claim to Adobe before placing an order. If Customer is required to withhold income taxes from its payment to Adobe, Customer agrees to send Adobe an official tax receipt within 60 days of payment to Adobe.

## 3. DELIVERY

On-premise Software is deemed to be delivered and accepted by Customer 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.

## 4. LICENSE AND RESTRICTIONS

- 4.1 **License Grant for On-demand Services and Managed Services.** Provided Customer purchases the respective Products and Services, Adobe grants Customer, during the License Term, a non-transferable, non-exclusive license, to:
- (A) permit Users to access the Products and Services and where applicable, Reports, through the applicable interfaces;
  - (B) install, implement, and use the Distributed Code on Customer Sites; and
  - (C) develop and test Customer Customizations (as that term is defined in the PSLT for the applicable Managed Services) to evaluate potential configurations of the Managed Services,

all solely in connection with Customer's use of the Products and Services in accordance with the Documentation for its direct beneficial business purposes. Unless otherwise specifically limited in the Sales Order, User login IDs and passwords will be provided to Customer in a quantity mutually agreed upon by Customer and Adobe. Customer must not share its login IDs and passwords, and is responsible for unauthorized access to its login IDs and passwords. Customer must not allow the use of the same login ID simultaneously by two or more Users.

**4.2 License Grant for On-premise Software.** Provided Customer purchases the respective Products and Services, Adobe grants Customer, during the License Term, a non-exclusive and non-transferable license to:

- (A) install and use the Products and Services in accordance with the Documentation on Computers for its direct beneficial business purposes, for the platforms and quantities set out in the Sales Order; and
- (B) make a reasonable number of copies of the On-premise Software for archival purposes and install and use the copies only when the primary copy has failed or is destroyed. Customer may also install copies of the On-premise Software in a disaster recovery environment, on a cold backup basis, for use solely in disaster recovery, and not for production, development, evaluation, or testing. For purposes of the prior sentence, cold backup basis means that the backup copies are completely disconnected from any use environment and not receiving automatic data updates, and those backup copies require a manual activation process to pick up the use environment load during the failure of the primary copies.

**4.3 License to Documentation.** Customer may make and distribute copies of the Documentation for use by Users in connection with use of the Products and Services in accordance with this Agreement, but no more than the amount reasonably necessary. Any permitted copy of the Documentation must contain the same copyright and other proprietary notices that appear in the Documentation.

**4.4 License Restrictions.** Except as permitted under this Agreement, Customer must not:

- (A) use the Products and Services in (1) violation of any applicable law (including, where applicable, COPPA), or in connection with unlawful material (such as material that violates any obscenity, defamation, harassment, privacy, or intellectual property laws); or (2) a manner that would cause a material risk to the security or operations of Adobe or any of its customers, or to the continued normal operation of other Adobe customers;
- (B) copy, use, distribute, republish, download, display, transmit, sell, rent, lease, host, or sub-license the Products and Services;
- (C) offer, use, or permit the use of the Products and Services in a computer service business, third-party outsourcing service, on a membership or subscription basis, on a service bureau basis, on a time-sharing basis, as part of a hosted service, or on behalf of any third party;
- (D) attempt to interact with the operating system underlying the On-demand Services and Managed Services, or modify, create derivative works of, adapt, translate, reverse engineer, decompile, or otherwise attempt to discover the source code in, any Adobe Technology. This restriction will not apply to the extent it limits any non-waivable right Customer may enjoy under applicable law;
- (E) remove, obscure, or alter any proprietary notices associated with the Products and Services (including any notices in Reports);
- (F) use any software components, modules, or other services that may be delivered with the Products and Services, but which are not licensed to Customer and identified in the Sales Order; or
- (G) unbundle any components of the On-premise Software for use on different Computers as the On-premise Software is designed and provided to Customer for use as a single product.

Adobe reserves all other rights not expressly granted in this Agreement.

**4.5 Third Party Providers.** If Customer uses certain features of the Products and Services in conjunction with third party data, products, services, and platforms (e.g. social media platforms, media partners, wireless carriers, or device operating systems), then Customer is responsible for complying with the terms and conditions required by such third party providers, and all such use is at Customer's own risk.

5. THIRD-PARTY ACCESS

- 5.1 **Use by Affiliates.** Customer may allow its Affiliates to use and access the Products and Services, only if, and as specified in, a Sales Order.
- 5.2 **Outsourcing and Third-Party Access.** Customer may allow a third-party contractor to operate, use or access the Products and Services solely on Customer's behalf, but only if: (A) upon Adobe's request, Customer will certify that third-party access to Products and Services are permitted under the terms of this agreement and will further certify that third-party operation, use or access is only for Customer's direct beneficial business purposes.
- 5.3 **Customer Responsibility.** If Customer allows any person or entity to operate, use or access the Products and Services, including under sections 5.1 (Use by Affiliates) or 5.2 (Outsourcing and Third-Party Access), Customer is responsible for ensuring that such person or entity complies with the terms of this Agreement.
- 5.4 **No Additional Rights.** For clarity, the rights granted under this section 5 (Third-Party Access) do not modify the License Metric or increase the number of licenses granted under this Agreement.

6. CUSTOMER CONTENT AND DATA

- 6.1 **Ownership.** Customer owns (or where applicable, must ensure it has a valid license to) the Customer Data and Customer Content, subject to Adobe's underlying intellectual property in the Adobe Technology.
- 6.2 **Permitted Use.** Customer grants Adobe and its Affiliates a non-exclusive, worldwide, royalty-free license to use, copy, transmit, sub-license, index, store, and display Customer Data and Customer Content solely: (A) to the extent necessary to perform its obligations or enforce its rights under this Agreement; or (B) where required or authorized by law.
- 6.3 **Anonymized and Aggregated Data.** Unless otherwise stated in the PSLT, Customer grants Adobe and its Affiliates a non-exclusive, perpetual, worldwide, royalty-free license to use, copy, transmit, sub-license, index, model, aggregate (including with other customers' data), publish, display and distribute any anonymous information derived from Customer Data (such as, but not limited to, web browser, screen resolution, and mobile device-type information). This section is not applicable to any Customer Content imported into or uploaded to the Adobe Creative Cloud and Adobe Document Cloud On-premise Software solutions.
- 6.4 **Responsibility.** Customer retains complete control over the installation and configuration of Distributed Code, and each Customer Site and Customer Content. Customer is responsible for ensuring that all Customer Sites used with the On-demand Services or Managed Services, and all Customer Data and Customer Content comply with all applicable laws and regulations. Customer will take reasonable steps to identify and promptly remove any Customer Data or Customer Content that violates the requirements of section 4.4(A)(1) ("**Unlawful Content**"), in accordance with applicable laws and regulations. If there is Unlawful Content, Adobe may suspend services or remove the Unlawful Content.
- 6.5 **Consumer Generated Content.** If content generated by consumers of Customer is uploaded to Adobe's On-demand Services and Managed Services, the following terms apply:
  - (A) Adobe does not review all content uploaded to Adobe On-demand Services and Managed Services, but Adobe may use available technologies or processes to screen for certain types of illegal content (for example, child pornography) or other abusive content or behavior (for example, patterns of activity that indicate spam or phishing); and
  - (B) Adobe may access or disclose information about Customer, its consumers, or Customer's use of the On-demand Services and Managed Services when it is required by law (such as when Adobe receives a valid subpoena or search warrant).
- 6.6 **Data Retention.** With respect to On-demand Services, Customer Data may be permanently deleted from Adobe's servers 25 months from the date of its collection or receipt, unless specified otherwise in the respective PSLT.

## 7. CONFIDENTIALITY

- 7.1 No Use or Disclosure.** The receiving Party will only use Confidential Information for the purposes of or as permitted under this Agreement and will not reproduce, disseminate, or disclose Confidential Information to any person, except to its employees and authorized representatives (i.e., temporary employees, consultants, and contractors) who need to know the Confidential Information for the purposes of this Agreement and are bound by confidentiality obligations at least as restrictive as those in this section 7 (Confidentiality).
- 7.2 Protection of Information.** The receiving Party will treat Confidential Information with at least the same degree of care as it treats its own information of similar sensitivity, but never with less than reasonable care. Adobe's sole obligations under this Agreement regarding Personal Data are to treat Personal Data with the degree of care specified in section 8.2 (Security Measures) and comply with those obligations and remedies stated in section 8.3 (Security Claims) through section 8.5 (Remedies).
- 7.3 Permitted Disclosure.** The receiving Party may disclose Confidential Information: (A) as approved in a writing signed by the disclosing Party; (B) as necessary to comply with any law or valid order of a court or other governmental body; or (C) as necessary to establish the rights of either Party, but in the case of (B) and (C), only if the receiving Party promptly notifies the disclosing Party of the details of the required disclosure and gives the disclosing Party all assistance reasonably required by the disclosing Party to enable the disclosing Party to take available steps to prevent the disclosure or to ensure that disclosure occurs subject to an appropriate obligation of confidence.
- 7.4 Responsibility for Representatives and Affiliates.** For the purpose of this section 7 (Confidentiality) and the definition of "Confidential Information", a reference to a Party means a Party and its Affiliates. The receiving Party is responsible for ensuring that its representatives and Affiliates fully comply with the obligations of the receiving Party under this section.

## 8. PRIVACY AND SECURITY MEASURES

- 8.1 Compliance with Privacy Laws.** Adobe will comply with applicable privacy and data protection laws regarding the collection, processing and use of Personal Data in connection with its role as described in the Agreement.
- 8.2 Security Measures.** Adobe has implemented reasonable information security practices regarding the protection of Customer Data, including administrative, technical and physical security processes.
- 8.3 Security Claims.** Adobe will, at its expense, defend or settle any third-party Claim against Customer caused by Adobe's failure to comply with section 8.2 (Security Measures) to the extent such failure results in the unauthorized acquisition by a third-party of Personal Data ("**Security Claim**"). In addition, Adobe will pay: (A) any Adobe-negotiated settlement amounts (to the extent Adobe is permitted to settle); and (B) any damages finally awarded by a court, to the extent directly attributable to Adobe's non-compliance.
- 8.4 Conditions**
- (A) Adobe will have no liability for any Security Claim to the extent such claim arises from:
- (1) any act or omission of Customer that impedes or prevents Adobe's ability to comply with section 8.2 (Security Measures);
  - (2) any Customer Customization (as defined in the applicable PSLT), or any vulnerability in the Customer Content or Customer Data; or
  - (3) Customer's breach of section 4.5 (Third Party Providers).
- (B) Adobe's obligations under section 8.3 (Security Claims) are conditioned upon Customer (to the extent permitted by applicable law):
- (1) promptly notifying Adobe of any Claim in writing;
  - (2) cooperating with Adobe in the defense of the Claim;
  - (3) granting Adobe sole control of the defense or settlement of the Claim; and
  - (4) refraining from making any admissions about the Claim.

- 8.5 Remedies.** The remedies in section 8.3 (Security Claims) are Customer's sole and exclusive remedies and Adobe's sole liability and obligation regarding Adobe's failure to comply with section 8.2 (Security Measures).
- 8.6 Privacy Policy.** In connection with Customer's use of the On-demand Services and Managed Services, Customer will conspicuously display a privacy policy or other notice, from the primary consumer interface, that:
- (A) discloses Customer's privacy practices;
  - (B) identifies the collection (via Distributed Code, where applicable) and use of information gathered in connection with the Products and Services, as applicable; and
  - (C) offers individuals an opportunity to opt out of (or opt-in if applicable law requires) the collection or use of data gathered in connection with the On-demand Services or Managed Services. Adobe reserves the right to recommend to Customer that it modify its privacy disclosures to address updates or changes to applicable law, industry self-regulation, or best practices, and Customer agrees to undertake a good faith effort to address such recommendation(s).
- 8.7 Sensitive Personal Data.** Customer agrees not to collect, process, or store any Sensitive Personal Data using the On-demand Services or Managed Services. Customer agrees not to transmit, disclose, or make available Sensitive Personal Data to Adobe or Adobe's third-party providers.
- 8.8 Professional Services.** For Professional Services, Customer will not provide access to Personal Data unless specifically agreed to in writing.
- 9. THIRD PARTY INTELLECTUAL PROPERTY CLAIMS**
- 9.1 Adobe's Obligations.** Adobe will defend, at its expense, any third-party Claim against Customer 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 that (B) Adobe has misappropriated the third party's trade secret ("**Infringement Claim**"). Adobe will pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by Adobe).
- 9.2 Adobe's Response.** In the defense or settlement of any Infringement Claim, Adobe may, at its sole option and expense:
- (A) procure for Customer a license to continue using the Products and Services under the terms of this Agreement;
  - (B) replace or modify the allegedly infringing Products and Services to avoid the infringement; or
  - (C) terminate Customer's 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, any 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 Customer 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 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.
- 9.3 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 this Agreement;
    - (2) modification of the Products and Services by anyone other than Adobe;
    - (3) failure by Customer to install the latest updated version of the Products and Services as requested by Adobe to avoid infringement; or
    - (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

(B) if Customer 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.

**9.4 Sole and Exclusive Remedy.** The remedies in this section 9 (Third Party Intellectual Property Claims) are Customer's sole and exclusive remedies and Adobe's sole liability regarding the subject matter giving rise to any Infringement Claim.

## 10. OTHER CLAIMS

**10.1 Customer's Obligations.** Customer will, at its expense, defend or settle any third-party Claim against Adobe to the extent it arises from:

- (A) Customer's failure to comply with Customer's data privacy policy, the applicable data protection laws, guidelines, regulations, codes and rules, and its obligations relating to Personal Data contained in this Agreement;
- (B) any Customer Customization (as defined in the applicable PSLT), Customer Content or Customer Data (excluding claims arising from Adobe's failure to comply with section 8.2 (Security Measures)); or
- (C) Customer's breach of section 4.5 (Third Party Providers).

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

**10.2 Conditions.** Customer's obligations under this section 10 (Other Claims) are conditioned upon Adobe (to the extent permitted by applicable law): (1) promptly notifying the Customer of any Claim in writing; (2) cooperating with the Customer in the defense of the Claim; (3) granting the Customer sole control of the defense or settlement of the Claim; and (4) refraining from making any admissions about the Claim.

**10.3 Sole and Exclusive Remedy.** The remedies in this section 10 are Adobe's sole and exclusive remedies and Customer's sole liability regarding the subject matter giving rise to any such Claim.

## 11. LIMITATION OF LIABILITY

**11.1 Neither Party will be liable to the other Party for any special, indirect, moral, consequential, incidental, punitive, or exemplary damages; loss of profits; loss of reputation, use, or revenue; loss or corruption of data; or interruption of business.**

**11.2 The maximum aggregate liability of each Party for each and all Claims (individually and together) under or relating to this Agreement or its subject matter is limited to an amount equal to the aggregate of the fees payable by Customer under this Agreement during the 12 months before the initial Claim.**

**11.3 Sections 11.1 and 11.2 (Limitation of Liability):**

- (A) apply regardless of the form or source of Claim or loss, whether the Claim or loss was foreseeable, and whether a Party has been advised of the possibility of the Claim or loss; and
- (B) do not apply in any breach of Section 7 (Confidentiality), Customer's use of Adobe Technology beyond the scope of any license granted under this Agreement, or Customer's failure to pay any amounts owing to Adobe under this Agreement.

**12. WARRANTIES**

- 12.1 **Limited Warranty and Remedy for On-demand Services and Managed Services.** Adobe warrants that the On-demand Services and Managed Services, as delivered to Customer, 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. Customer 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, Customer's sole and exclusive remedy and Adobe's 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.
- 12.2 **Limited Warranty and Remedies for On-premise Software.** Adobe warrants 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. Customer must make these warranty claims to Adobe within this 90-day period. To the extent permitted by law, Customer'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 the fees Customer paid for the On-premise Software.
- 12.3 **Implied Warranties.** To the maximum extent permitted by law and except for the express warranties in this Agreement, 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. Customer acknowledges that (A) neither Adobe, its Affiliates nor its third party providers controls Customer 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) it is fully responsible to install 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.

**13. LICENSE COMPLIANCE**

- 13.1 Adobe may, at its expense and no more than once every 12 months, appoint its own personnel or an independent third party (or both) to verify that Customer's use, installation, or deployment of the Products and Services (or other Adobe Technology used in conjunction with the Products and Services) comply with the terms of this Agreement.
- 13.2 For On-premise Software and any Distributed Code, the verification will require Customer to provide within 30 days of request (A) raw data from a software asset management tool of all On-premise Software and Distributed Code installed or deployed by or at the direction of Customer, including installation or deployment on servers owned by Customer or provided by third parties; (B) all valid purchase documentation for all On-premise Software and Distributed Code; and (C) any information reasonably requested by Adobe.
- 13.3 Any verification may include an onsite audit conducted at Customer's relevant places of business upon 7 days' prior notice, during regular business hours, and will not unreasonably interfere with Customer's business activities.
- 13.4 If the verification shows that Customer, its Affiliates or third-party contractors of Customer or its Affiliates are deploying, installing or using the Products and Services (or other Adobe Technology used in conjunction with the Products and Services): (A) beyond the quantity that was legitimately licensed; or (B) in any way not permitted under this Agreement, so that additional fees apply, Customer must pay the additional license fees and any applicable related maintenance and support fees within 30 days of invoice date. If use, deployment, or installation exceeds 5% of that which is permitted under this Agreement, Customer must pay Adobe's reasonable costs of conducting the verification, in addition to paying the additional fees.

14. SPECIFIC PROVISIONS FOR PROFESSIONAL SERVICES

14.1 License to Deliverables.

- (A) Without limiting or modifying any license granted to Customer for the On-premise Software, On-demand Services or Managed Services, Adobe grants Customer a non-exclusive, non-sublicensable and non-transferable license to use the materials developed and provided to Customer by Adobe in performing the Professional Services ("Deliverables") solely for Customer's direct beneficial business purposes.
- (B) Adobe retains all rights, title and interest (including intellectual property rights) in and to the Deliverables. To the extent that Customer participates in the creation or modification of any Adobe Technology or Deliverables, Customer 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.

14.2 **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.

14.3 **Warranty.** Adobe warrants the Professional Services will be performed in a professional and workmanlike manner. Customer 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, Customer'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.

14.4 **Use of Subcontractors.** Customer 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 Customer under this Agreement.

15. TERM AND TERMINATION

15.1 **Term.** This Agreement applies to each of the Products and Services from the Effective Date until the expiration of the applicable License Term or the term for Professional Services, unless terminated earlier under this Agreement.

15.2 Termination for Cause

- (A) **Material Breach by Either Party.** If either Party commits a material breach of this Agreement, the non-breaching Party may give written notice describing the nature and basis of the breach to the breaching Party. If the breach is not cured within 30 days of the notice date, the non-breaching Party may immediately terminate this Agreement, in whole or in part.
- (B) **Breach of Confidentiality Provisions.** If a Party is in breach of any confidentiality provisions of this Agreement, the non-breaching Party may terminate this Agreement, in whole or in part, immediately by giving the breaching Party written notice of the breach.
- (C) **Other Breaches.** Adobe may terminate this Agreement, in whole or in part, immediately upon written notice to Customer, if required by law; or Customer breaches section 4.4 (D) of these General Terms.

15.3 Effect of Termination or Expiration.

- (A) Upon termination or expiration of this Agreement or any License Term for the Products and Services:
  - (1) the license and associated rights for the Products and Services will immediately terminate;
  - (2) Customer must, at its expense: (a) remove and delete all copies of the On-premise Software and Distributed Code; and (b) remove all references and links to the On-demand Services or Managed Services from the Customer Sites. 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) Customer will be liable for any fees for any On-demand Services and Managed Services that are still in use or which remain active after termination or expiration of this Agreement. These fees will be invoiced to Customer at the rate set out in the Sales Order.
- (C) If Adobe reasonably determines that Customer's deployment of the On-demand Services or Managed Services contains 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 Customer, immediately suspend or terminate Customer's 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.

**15.4 Survival.** The termination or expiration of this Agreement will not affect any provisions of this Agreement which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: definitions, payment obligations, confidentiality, term and termination, effect of termination, intellectual property, license compliance, limitation of liability, privacy, content monitoring, and the "General Provisions" section in these General Terms.

## **16. GENERAL PROVISIONS**

### **16.1 Assignment.**

- (A) Customer may assign this Agreement in its entirety to a surviving person or entity under a merger or acquisition of Customer, upon written notice to Adobe, if the assignment does not expand the scope of the license granted in the Products and Services.
- (B) Adobe may assign this Agreement (or a part of it) to its Affiliates or a surviving person under a merger or acquisition of Adobe or the assets of the business to which this Agreement relates, upon written notice to Customer.
- (C) Except as provided in this section 16.1 (Assignment), Customer may not assign, voluntarily, by operation of law or otherwise, any rights or obligations under this Agreement without the prior, written consent of Adobe.
- (D) Any (attempted) assignment in derogation of this section will be null and void.

**16.2 Governing Law, Venue.** This Agreement is governed by and construed under the laws of the state of California, without regard to any conflict of law rules or principles, and excluding the application of the United Nations Convention on Contracts for the International Sale of Goods. The Parties irrevocably submit to the exclusive jurisdiction of the courts of competent jurisdiction in the County of Santa Clara, state of California, provided however, Adobe will have the right to pursue claims against Customer in any other jurisdiction worldwide to enforce its rights under this Agreement or to enforce its intellectual property rights.

**16.3 Force Majeure.** Neither Party is liable for failure to perform its obligations under this Agreement (except for any payment obligations) to the extent that performance is delayed, prevented, restricted or interfered with as a result of any causes beyond its reasonable control, including acts of God, terrorism, labor action, fire, flood, earthquake, failure of third-party providers, denial of service attacks and other malicious conduct, utility failures, power outages, or governmental acts, orders, or restrictions.

**16.4 Injunctive Relief.** Actual or threatened breach of certain sections of this Agreement (such as, without limitation, provisions on intellectual property (including ownership), license, privacy, data protection and confidentiality) may cause immediate, irreparable harm that is difficult to calculate and cannot be remedied by the payment of damages alone. Either Party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any such breach.

**16.5 Notices.** Any notice given under this Agreement must be in writing by email to the following addresses (or addresses notified in writing by either Party): to Adobe: [ContractNotifications@adobe.com](mailto:ContractNotifications@adobe.com); and to Customer: at Customer's email address stated on the Sales Order, or if Customer's Sales Order is with an Adobe Partner, at Customer's registered address.

- 16.6 No Agency.** Nothing in this Agreement is intended to constitute a fiduciary relationship, agency, joint venture, partnership, or trust between the Parties. No Party has authority to bind the other Party.
- 16.7 Customer's Purchase Order.** Any terms or conditions in Customer's purchase order or any other related documentation submitted by or on behalf of Customer to Adobe (or any other party, such as an Adobe Partner) do not form part of this Agreement and are void, unless otherwise expressly agreed in writing and signed by both Customer and Adobe.
- 16.8 Waiver, Modification.** Neither Party's waiver of the breach of any provision constitutes a waiver of that provision in any other instance. This Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing signed by the Parties.
- 16.9 Order of Precedence.** The Sales Order will prevail over the applicable Product Specific Licensing Terms, which will prevail over the General Terms (to the extent of any inconsistency).
- 16.10 Entire Agreement.** This Agreement contains the entire understanding of the Parties relating to the subject matter and supersedes all earlier agreements, understandings, proposals, discussions, negotiations, representations and warranties, both written and oral, regarding the subject matter.
- 16.11 Counterpart.** This Agreement (or a component) may be executed in one or more counterparts, each of which constitutes an original and all of which taken together constitutes the same agreement. Each Party may sign this Agreement using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies.
- 16.12 Severability.** If any term of this Agreement is held invalid or unenforceable for any reason, the remainder of the term and this Agreement will continue in full force and effect.
- 16.13 Trade Rules.** Customer acknowledges that the Products and Services may be subject to the trade control laws and regulations of the United States and other national governments, and Customer will comply with them.
- 16.14 Adobe Partner Transactions.** If Customer orders Products and Services from an Adobe Partner under a Sales Order with the Adobe Partner ("**Customer Order**"): (A) the terms of this Agreement apply to Customer's use of the Products and Services; (B) the Enterprise Licensing Terms (or any part of it) prevail over any inconsistent provisions in the Customer Order; and (C) the Adobe Partner is solely responsible for any variations or inconsistencies between the Customer Order and the order between the Adobe Partner and Adobe for the transaction. If Customer does not accept the terms of this Agreement, then Customer must not use, or must immediately cease using, the relevant Products and Services.
- 16.15 U.S. Government Licensing.** For US Government end users: Customer acknowledges that Products and Services are "Commercial Item(s)," as that term is defined at 48 C.F.R. section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as the terms are used in 48 C.F.R. section 12.212 or 48 C.F.R. section 227.7202, as applicable. Customer agrees, consistent with 48 C.F.R. section 12.212 or 48 C.F.R. sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (A) only as Commercial Items; and (B) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights are reserved under the copyright laws of the United States.

Exhibit B – DoD Adobe (Digital Media) Software License Agreement

Attachment B – Part I

ADOBE PSLT – Adobe Desktop Products (2016v1)

1. Multiple-User Access.

- 1.1 If On-Premise Software licensed on a per-User basis is installed on a Computer accessible by more than one User, then the total number of Users (not the concurrent number of users) capable of accessing the On-premise Software must not exceed the license quantity stated in the Sales Order.
- 1.2 Customer may not install or access (either directly or through commands, data, or instructions) the On-premise Software for operations not initiated by an individual user (e.g., automated server processing).

- 2. **Activation; Simultaneous Use.** If Customer licenses the On-Premise Software on a per-User basis, then each User may activate the On-premise Software on up to 2 Computers within Customer's direct control. Customer may not use the On-premise Software on these 2 Computers simultaneously. If Customer licenses the On-Premise Software on a per-Computer basis, then Customer may install the On-Premise Software on only 1 Computer.
- 3. **Update.** The On-premise Software may automatically download and install updates from time to time. Customer agrees to receive such updates from Adobe as part of Customer's use of the On-premise Software.
- 4. **Content Files.** Customer may use, display, modify, reproduce, and distribute any of the Adobe-provided sample files such as stock images or sounds ("Content Files"), except Customer must not distribute Content Files on a stand-alone basis. Customer may not claim any trademark rights in, or derivative works of, the Content Files.
- 5. **Embedded Use.** Customer may embed or distribute, as applicable, any software made available to Customer through the On-Premise Software (including runtimes, add-ins, and utilities provided with the On-premise Software, for example as part of an application that is packaged to run on the Apple iOS or Android™ operating systems) as part of developer applications, electronic documents or content, and may only permit use of such software in connection with such application, document or content. No other embedding rights are implied or permitted.
- 6. **On-demand Services Accessible Through On-premise Software.** The On-premise Software may facilitate Customer's access to content, websites and services that are provided by Adobe or third parties. Use of Adobe On-demand Services is subject to the applicable Adobe Product Specific Licensing Terms associated with the Adobe On-demand Services.
- 7. **Font Software.** As applied to fonts in the On-premise Software, any commercial printer or service bureau that Customer uses to process Customer's file must have a valid license to use the font software included in the file.
- 8. **After Effects Render Engine.** Customer may install an unlimited number of Render Engines on Computers within its intranet that includes at least one Computer on which the full version of the Adobe After Effects software is installed. The term "Render Engine" means an installable portion of the On-premise Software that enables the rendering of After Effects projects, but which may not be used to create or modify projects and does not include the complete After Effects user interface.
- 9. **Acrobat.** The On-premise Software may include technology that allows Customer to enable certain features of PDF documents through the use of digital credentials ("Key"). Customer may not access, attempt to access, control, disable, remove, use, or distribute the Key for any purpose. Digital certificates may be issued by third party certificate authorities, or can be self-signed. Customer is solely responsible for deciding whether or not to rely on a certificate and for the purchase, use, and reliance upon digital certificates.
- 10. **Adobe Runtime.** If the On-premise Software includes Adobe AIR, Adobe Flash Player, Shockwave Player, Authorware Player, or portion of the On-premise Software embedded in a presentation, information, or content created and generated using the On-premise Software (collectively "Adobe Runtime"), then Customer may not use Adobe Runtime on any non-PC devices.

Distributions of the resulting output file or developer application on a non-PC device may require Customer to obtain licenses and be subject to additional royalties, for which Customer is solely responsible.

- 11. Flash Builder with LiveCycle Data Services (LCDS) Data Management Library.** Adobe Flash Builder may include the fds.swc library. Customer must not use fds.swc for any purpose other than to provide client-side data management capabilities and as an output file within software Customer develops, subject to the following: Customer must not (a) use fds.swc to enable associations or offline capabilities within software or (b) incorporate fds.swc into any software that is similar to Adobe LiveCycle Data Services or BlazeDS.
- 12. Adobe FrameMaker or RoboHelp.** If the On-premise Software includes Adobe FrameMaker or RoboHelp software, use of the Adobe PDF Creation Add-On software that may be installed with FrameMaker or RoboHelp software is permitted only in conjunction with the FrameMaker or RoboHelp software. All other uses of the Adobe PDF Creation Add-on software under this license, including use with other software or applications, are prohibited.
- 13. Redistributables in Adobe RoboHelp.** Customer may reproduce and distribute, in object code form only, any code designated as available for redistribution ("Redistributables"), provided, that Customer (a) does not distribute the Redistributables as a stand-alone product and (b) agrees to indemnify, defend and hold Adobe harmless from any and all liabilities (including attorney's fees) arising from any claims, lawsuits, or other legal proceedings that arise from or are related to the use or distribution of any software application product that incorporates the Redistributables.
- 14. Third-Party Notices.**
  - 14.1 Third Party Notices.** The creators or third party licensors of certain public standards and publicly available code ("Third Party Materials"), require that certain notices be passed through to the end users of the On-premise Software. These third party notices are located at [www.adobe.com/products/eula/third\\_party/index.html](http://www.adobe.com/products/eula/third_party/index.html) (or a successor website thereto) ("Third Party Notice Page"). The inclusion of these third party notices does not limit Adobe's obligations to the Customer for Third Party Materials integrated into the On-premise Software.
  - 14.2 AVC DISTRIBUTION.** The notices applicable to On-premise Software containing AVC import and export functionality are located on the Third-Party Notice Page.

Exhibit B – DoD Adobe (Digital Media) Software License Agreement

Attachment B – Part 2

ADOBE PSLT – Adobe ColdFusion (2016v1)

1. License Terms.

**1.1. Enterprise License for Physical/Virtual Machine Deployment.** Adobe grants Customer the right to run a single physical machine/single VM instance for each valid license of Production Software that Customer has obtained, as long as the number of Cores in such single physical machine is less than or equal to eight (8) or as long as number of Cores assigned in such Single VM is less than or equal to eight (8). For clarity, each Production Software License can run on a maximum of single Physical machine/single VM instance, provided that the number of Core exist in a physical machine/assigned to such VM instance is less than or equal to eight. For example, if Customer has 17 Cores in a single physical machine or if Customer assigned 17 cores to a single VM instance, in each case, Customer would need three (3) Production Software License.

**1.2. Standard License for Physical/Virtual Machine Deployment.** Adobe grants Customer the right to run a single physical machine/single VM instance for each valid license of Production Software that Customer has obtained, as long as the number of Cores in such single physical machine is less than or equal to two (2) or as long as number of Cores assigned in such Single VM is less than or equal to two (2). For clarity, each Production Software Customer can run on a maximum of single Physical machine/single VM instance, provided that the number of Core exist in a physical machine/assigned to such VM instance is less than or equal to two. For example, if Customer has 5 Cores in a single physical machine or if Customer assigned 5 cores to a single VM instance, in each case, Customer would need three (3) Production Software License.

2. **Development License.** This section applies only if Customer has obtained one or more separate Production Software licenses and for each Enterprise License of Software, Customer may install and use the On-premise Software as Development Software. If Customer has obtained more than one license for Standard version of the On-premise Software, Customer may use one of such license as Development Software. Customer’s use of the Development Software shall be governed by terms below:

- (A) Customer may install and use the On-premise Software as Development Software on one Server for each license of Production Software purchased by Customer. Customer’s use of the Development Software is limited to use in Customer’s technical environment strictly for testing, development, and staging purposes, to be used and accessed by Users over the Customer’s intranet.
- (B) Customer may not (a) use the Development Software for any application deployment in a live or standby production environment; or (b) use the Development Software to deploy applications that are accessed by end users.
- (C) Customer may install and use the Developer Edition Software on one Computer Customer’s use of the Developer Edition Software is limited to use in Customer’s technical environment strictly for testing and development purposes and not for staging or live or standby production purposes.
- (D) Customer may not use or access the Developer Edition Software (a) for any application deployment in a live or standby production environment; (b) from more than two IP addresses at any given time; or (c) to deploy applications that are accessed by end users. **The Developer Edition Software is provided on an “AS-IS” basis without any warranties or obligations to Customer.**

3. **Prohibited Use.** Customer is prohibited from: (a) renting, leasing, lending, or granting other rights in the On-premise Software including rights on a membership or subscription basis; (b) providing use of the On-premise Software in a computer service business, third party outsourcing facility or service, service bureau arrangement, time sharing basis, or as part of a hosted service; or (c) using any component, library, or other technology included with the On-premise Software other than solely in connection with its use of the On-premise Software.

**4. Third Party Notices for On-premise Software.** The creators or third party licensors of certain public standards and publicly available code ("Third Party Materials"), require that certain notices be passed through to the end users of the On-premise Software. These third party notices are located at [www.adobe.com/products/eula/third\\_party/index.html](http://www.adobe.com/products/eula/third_party/index.html) (or a successor website thereto). The inclusion of these third party notices does not limit Adobe's obligations to Customer for Third Party Materials integrated into the On-premise Software.

**5. Definitions.**

**5.1 "Additional Enterprise Software Component"** means a ColdFusion API Manager which helps manage application programming interface and available with Enterprise Edition of the On-premise Software only.

**5.2 "CPU"** is each distinct central processing unit (physical) within the Computer. Each CPU may contain one or multiple processing Cores.

**5.3 "Core"** means a physical or virtual core on a Physical or Virtual Machine and is capable of independently manipulating and operating the On-premise Software. In Physical deployment, Core refers to one of smaller processing units of the CPU in a Computer, and in virtual deployment, it refers to the unit of processing power in a Virtual Machine. A virtual Core is the virtual representation of a single hardware thread in underlying processing core. The total number of Cores operating the On-premise Software in the Computer may not exceed the licensed quantity, and will be the greater of (a) the exact number of Cores operating the On-premise Software in the case when Customer configures the Computer (using a reliable and verifiable means of hardware or software partitioning) such that the total number of Cores that actually operate the On-premise Software is less than the total number of Cores on that Computer; or (b) the sum of all the Cores contained in every CPU on the Computer. The total number of Cores assigned to the Virtual Machine may not exceed the licensed quantity.

**5.4 "Developer Edition Software"** means On-premise Software licensed for local host development of applications and can be accessed from a maximum of two simultaneous remote IP addresses.

**5.5 "Development Software"** means On-premise Software licensed solely for (a) internal development and testing; and (b) for use on a Staging Server, when Customer is using the On-premise Software with respect to a valid license to the Production Software. In each case the Development Software may only be accessed by Users over the Customer's intranet.

**5.6 "Staging Server"** means a Server used to assemble, test, and review new or newer versions of applications, to deploy such applications over Customer's intranet, and only to be accessed by Users before the applications are moved into live, standby production, or production environments.

**5.7 "Production Software"** means On-premise Software licensed for productive business use. Production Software is licensed on a Core basis deployed on a physical and Virtual Machine.

**5.8 "Server"** means a Computer designed or configured for access by multiple users through a network.

**5.9 "Virtual Machine" (or "VM")** means a technical environment that contains the components necessary to operate multiple instances of software installed on a single Computer as if any instance of such software was separately installed on a separate Computer. VM also means a technical environment operating one or more instances of the software to deliver hosted services and resources over the internet or intranet in which the services and resources can be accessed in a manner that permits such services and resources to be made available "on demand", scaling up or down, to the processing needs of the user over time.

Exhibit B – DoD Adobe (Digital Media) Software License Agreement

Attachment B – Part 3

ADOBE PSLT – Adobe Creative Cloud and Adobe Document Cloud (2016v1)

**PRODUCT SPECIFIC LICENSING TERMS FOR ON-PREMISE SOFTWARE**

1. **Multiple-User Access.**
  - 1.1 If On-premise Software licensed on a per-User basis is installed on a Computer accessible by more than one User, then the total number of Users (not the concurrent number of users) capable of accessing the On-premise Software must not exceed the license quantity stated in the Sales Order.
  - 1.2 Customer must not install or access (either directly or through commands, data, or instructions) the On-premise Software for operations not initiated by an individual user (e.g., automated server processing).
2. **Activation; Simultaneous Use.** Each User may activate the On-premise Software on up to 2 Computers within Customer’s direct control. Customer is not permitted to use the On-premise Software on these 2 Computers simultaneously. If Customer licenses the On-premise Software on a per Computer basis, then Customer may install the On-premise Software on only 1 Computer.
3. **Update.** The On-premise Software may automatically download and install updates from time to time. Customer agrees to receive such updates from Adobe as part of Customer’s use of the On-premise Software.
4. **Content Files.** Customer may use, display, modify, reproduce, and distribute any of the Adobe-provided sample files such as fonts, stock images or sounds (“Content Files”), except Customer must not distribute Content Files on a stand-alone basis. Customer may not claim any trademark rights in, or derivative works of, the Content Files.
5. **Embedded Use.** Customer may embed or distribute, as applicable, any software made available to Customer through the On-premise Software (including fonts, runtimes, add-ins, and utilities provided with the On-premise Software, for example as part of an application that is packaged to run on the Apple iOS or Android™ operating systems) as part of developer applications, electronic documents or content, and may only permit use of such software in connection with such application, document or content. No other embedding rights are implied or permitted.
6. **After Effects Render Engine.** Customer may install an unlimited number of Render Engines on Computers within its intranet that includes at least one Computer on which the full version of the Adobe After Effects software is installed. The term “**Render Engine**” means an installable portion of the On-premise Software that enables the rendering of After Effects projects, but which may not be used to create or modify projects and does not include the complete After Effects user interface.
7. **Digital Certificates.** The On-premise Software or On-demand Services may include technology that allows Customer to enable certain features of electronic signatures or PDF documents through the use of digital credentials (“**Key**”). Customer may not access, attempt to access, control, disable, remove, use, or distribute the Key for any purpose. Digital certificates may be issued by third party certificate authorities, or can be self-signed. Customer is solely responsible for deciding whether or not to rely on a certificate and for the purchase, use, and reliance upon digital certificates.
8. **Adobe Runtime.** If the On-premise Software includes Adobe AIR, Adobe Flash Player, Shockwave Player, Authorware Player, or portion of the On-premise Software embedded in a presentation, information, or content created and generated using the On-premise Software (collectively “**Adobe Runtime**”), then Customer may not use Adobe Runtime on any non-PC devices. Distributions of the resulting output file or developer application on a non-PC device may require Customer to obtain licenses and be subject to additional royalties, for which Customer is solely responsible.
9. **Flash Builder with LiveCycle Data Services (LCDS) Data Management Library.** Adobe Flash Builder may include the fds.swc library. Customer must not use fds.swc for any purpose other than to provide client-side data management capabilities and as an output file within software Customer develops, subject to the following: Customer must not (a) use fds.swc to enable associations or offline capabilities within software or (b) incorporate fds.swc into any software that is similar to Adobe LiveCycle Data Services or BlazeDS.
10. **AVC DISTRIBUTION.** The notices applicable to On-premise Software containing AVC import and export functionality are located on the Third-Party Notice Page.

**PRODUCT SPECIFIC LICENSING TERMS FOR ON-DEMAND SERVICES**

**11. Use of Service.**

**11.1 User-Generated Content.** The On-demand Services may contain user-generated content that is: (a) inappropriate for minors, (b) illegal in some countries; or (c) inappropriate in certain circumstances. If Customer wants to prevent viewing of or access to user-generated content, it should either (a) disable On-demand Services access in the Creative Cloud Packager, where that functionality is made available, or (b) block access to the On-demand Services via its network firewall. Adobe disclaims liability for all user-generated content available via the On-demand Services.

**11.2 Additional License Restrictions.** Customer must not:

- (A) place advertisement of any products or services through the On-demand Services;
- (B) use any data mining or similar data gathering and extraction methods;
- (C) circumvent any access or use restrictions; or
- (D) impersonate any person or entity, or falsely state or otherwise misrepresent Customer's affiliation with a person or entity.

**12. Modification.** Adobe may modify or discontinue the On-demand Services or any portions or service features thereof at any time without liability to Customer or anyone else. However, Adobe will make reasonable effort to notify Customer before Adobe makes the change. If Adobe discontinues an On-demand Service in its entirety, then Adobe will provide Customer with a pro rata refund of prepaid fees or similar service for that On-demand Service.

**13. Storage and Retention.**

**13.1** Adobe will store Customer Content and Customer Data so long as the size of that storage does not exceed the amount of storage associated with Customers account, if any. Adobe may create reasonable limits on the use and storage of Customer Content and Customer Data, such as limits on file size, storage space, and other technical limits. If Customer exceeds those limits, Adobe will make reasonable commercial efforts to notify Customer and provide Customer with an opportunity to transition Customer Content and Customer Data out of the On-demand Service prior to deleting Customer Content and Customer Data pursuant to this clause.

**13.2** Customer Content and Customer Data may be deleted any time, if required by law and also at the end of any termination or expiration of this Agreement.

**PRODUCT SPECIFIC LICENSING TERMS FOR ON-PREMISE SOFTWARE AND ON-DEMAND SERVICES**

**14. Use of Customer Content.** Section 6.3 of the General Terms is not applicable to any Customer Content imported into or uploaded to the Adobe Creative Cloud and Adobe Document Cloud On-premise Software solutions.

**15. Third-Party Notices.** The creators or third party licensors of certain public standards and publicly available code ("Third Party Materials"), require that certain notices be passed through to the end users of the On-premise Software. These third party notices are located at [www.adobe.com/products/eula/third\\_party/index.html](http://www.adobe.com/products/eula/third_party/index.html) (or a successor website thereto). The inclusion of these third party notices does not limit Adobe's obligations to the Customer for Third Party Materials integrated into the On-premise Software.

**PRODUCT SPECIFIC LICENSING TERMS FOR ADOBE CREATIVE CLOUD**

**16. Managed Services.**

**16.1** If Customer has purchased Creative Cloud for enterprise with managed services ("CCMS"), then Customer may only use the Adobe Experience Manager Assets ("AEM") included as part of the CCMS as follows:

- (A) Customer may not use AEM other than to facilitate file sharing within its organization using CCMS.
- (B) Customer may access the AEM system console only for the purpose of managing access within its organization to the AEM system.

(C) Customer may use the application program interface (API) included in AEM for the purpose of storing and retrieving content as relates to CCMS and for the purpose of managing access to the AEM system.

- 16.2 Adobe provides recommended configuration and user count for CCMS. The performance of CCMS may not be optimal if Customer deviates from the recommended configuration or user count.
17. **Use Limitation.** Customer may only use the Products and Services specified in the Sales Order, even if it has access to other products and services through the licensed Products and Services.
18. **Exception to General Terms for Customer Data.** Customer Data, as defined in section 1.11 of the General Terms does not apply to Customer's use of the Adobe Creative Cloud On-premise Software solution.

**PRODUT SPECIFIC LICENSING TERMS FOR ADOBE DOCUMENT CLOUD**

**19. Additional Definitions.**

- 19.1 **"Electronic Document"** means any document uploaded into the electronic signature service.
- 19.2 **"Electronic Signature"** means the capability of the electronic signature service to include an electronic sound, symbol, or process attached to or logically associated with an Electronic Document and executed or adopted by a person with the intent to sign the Electronic Document.
- 19.3 **"Participant"** means any individual or entity who electronically reviews, accepts, signs, approves, transmits, or delegates action to a third party regarding Electronic Documents via Customer's electronic signature service account.
- 19.4 **"Transaction"** means when an Electronic Document or a collection of related Electronic Documents is sent to a recipient through the electronic signature service. Each 100 pages or 10 MB is a Transaction.

**20. Privacy, Information Security, and Compliance.**

- 20.1 **Sensitive Personal Data.** The Sensitive Personal Data section of the General Terms do not apply to Customer's use of the electronic signature service.
- 20.2 **Information.** Information received by Adobe in connection with the Electronic Signature Service is governed by the Adobe Privacy Policy <http://www.adobe.com/privacy/echosign.html>.
- 20.3 **Customer's Responsibilities Regarding Information of Participants.** Customer is responsible for complying with (including giving any notifications, obtaining any consents and making any disclosures required under) applicable privacy, security, electronic signature and data protection laws, guidelines, regulations or industry standards or codes applicable to Personal Data of Participants. Customer is responsible for obtaining and maintaining consent from Participants to Customer's access, use, or disclosure of Personal Data of Participants. Customer is responsible for obtaining authorizations, if any, from Participants required to enable Adobe to provide the On-demand Service. The use of the electronic signature service is conditioned on Participant's acceptance of the terms of use presented when using the electronic signature service.
- 20.4 **Customer Security.** Customer is responsible for configuring and using the security features of the electronic signature service to meet Customer's obligations to Participants under applicable privacy, security, and data protection laws. Adobe is not responsible for the security of Electronic Documents that are emailed to Participants from the electronic signature service, downloaded from the electronic signature service, or which are transferred to a non-Adobe system via a third party integration feature of the electronic signature service. Adobe is not liable for damages arising out of unauthorized access to Customer's account or to Customer Content and Customer Data if Customer fails to follow secure password composition, management, and protection practices for Customer's account.
- 20.5 **Health Insurance Portability and Accountability Act ("HIPAA").** Customer is solely responsible for compliance with HIPAA and Health Information Technology for Economic and Clinical Health ("HITECH"). Adobe is not acting on Customer's behalf as a Business Associate, as that term is defined in HIPAA, when providing the On-demand Service unless separately agreed to in writing.

**20.6 Payment Card Industry Data Security Standard (PCI DSS).** The Payment Card Industry Data Security Standard (PCI DSS) prohibits the transmission of any Account Data (including Cardholder Data, Card Verification Code or Value) using the fax signature capability. PCI DSS also prohibits using the electronic signature service to store Sensitive Authentication Data, including Card Verification Code or Value after authorization, even if encrypted. Capitalized terms in this Section are defined in the PCI DSS.

- 21. Legal Counsel.** Customer will solely rely on its own legal counsel and determinations as to the use and viability of Electronic Signatures in a particular country or for a particular use. It is Customer's responsibility to ensure that its use of the On-demand Service conforms and complies with applicable laws, regulations or policies relevant to a particular country or for a particular product use.
- 22. User Transactions for Electronic Signature Service.** For Customers billed on a per User or FTE basis, during each twelve month period, each licensed User or FTE is permitted to send an aggregate number of Transactions equal to two times the average number of annual Transactions sent through the Electronic Signature Service. Transactions do not carry over from the previous twelve month period to the next.

**PRODUCT SPECIFIC LICENSING TERMS FOR ADOBE TYPEKIT**

**23. Typekit Service.**

**23.1 Desktop Publishing.**

- (A) Customer may only use Typekit Desktop (including any Distributed Code that Adobe permits to be synced or otherwise made available to Customer through Typekit Desktop) on the permitted number of Computers;
- (B) Customer may activate the On-demand Service on up to 2 Computers within Customer's direct control, but may not use the On-demand Service on these 2 Computers simultaneously;
- (C) Customer may use Typekit Desktop that have been synchronized to Customer's Computer to design and develop Customer Documents and Customer may embed and distribute Typekit Desktop within Customer's Customer Documents so that when others view, print or interact with Customer's Customer Documents they will see Customer's content displayed (and can edit portions of Customer's Customer Documents like inputting text into form fields, if applicable) with Typekit Desktop as Customer intended; and
- (D) Customer may only embed those characters (i.e. subset) of Typekit Desktop that are necessary to display, print and view (or edit, if applicable) the Customer Document.

**23.2 Obligations, Limitations, Restrictions and Prohibited Uses of the Distributed Code.**

- (A) **Continuing access to the Distributed Code.** On-going access to the Distributed Code may require a recurring Internet connection to provision, activate, or synchronize the Distributed Code, or to authorize, renew or validate Customer's access to the Distributed Code. In some cases, Typekit Font that Customer designs into certain published documents or published websites (collectively "Published Media") will be viewable by Customer and by third parties that access or view the Published Media only for as long as Customer maintains an uninterrupted subscription plan (including payment of all subscription plan fees, if applicable).
- (B) **Prohibited Uses of the Distributed Code.** Customer is expressly prohibited from:
  - (1) Hosting the Distributed Code on Customer's own server or other self-hosting option or service;
  - (2) Allowing external output of the Distributed Code from within Customer's Published Media, or distributing any portion of the Distributed Code on a standalone basis or in any way that would allow another person to use the Distributed Code to author new content outside of Customer's Published Media;
  - (3) Adding any functionality to, or otherwise changing, altering, adapting, translating, converting, modifying, creating, or making or having made any Derivative Works of any portion of the Distributed Code; and
  - (4) Attempting to copy, move or remove Distributed Code from the locations or folders on Customer's Computer where Adobe has installed such Distributed Code, or otherwise attempting to access or use the Distributed Code other than by subscribing directly to the Service Using the means Adobe provides for such purposes.

The prohibited uses above may not apply to certain components included with the Distributed Code that are under an open source license.

**24. Website Publishing.** Customer may only use Typekit Web to design and develop the Customer Site and to encode a link to selected Typekit Web within the Customer Site design so that visitors to the Customer Site will see the content displayed with Typekit Web as intended.

**25. Use Restrictions.**

**25.1** If Customer is an Agency, Adobe grants a limited right to Customer to use Typekit Web only in connection with services Customer provides as an Agency to its customers.

**25.2** Customer may not use any portion of the Distributed Code in a Reseller Platform without express prior written permission from Adobe.

**25.3** Customer may not allow external output of the Distributed Code from within Customer Site or Customer Document.

**26. Definitions.**

**26.1** “**Agency**” means an individual or commercial business that provides web or graphic design, advertising, marketing, or similar services to its own customers or clients and which services may include creating or maintaining Customer Content.

**26.2** “**Customer Documents**” mean any publicly distributed form of digital document that uses Typekit Fonts, whether or not embedded, including for display, viewing, or consumption by anyone accessing the Customer Documents.

**26.3** “**Customer Site**” as used in this PSLT means respectively websites, webpages or webpage content that Customer designs, develops, or creates and that are published and integrate, access, and publicly display Typekit Fonts.

**26.4** “**Distributed Code**” as used in this PSLT means the software files containing Typekit Fonts and any script or code provided by Adobe to enable Customer to receive the On-demand Service.

**26.5** “**Reseller Platform**” is any service that allows its customers or clients to choose fonts for websites or other products that it provides on their behalf (e.g., blogging platforms, social network profiles, etc.)

**26.6** “**Typekit Desktop**” means those Typekit Fonts designated as desktop fonts made available for syncing to Customer’s Computer use solely for desktop publishing purposes (i.e., for creating Customer Documents).

**26.7** “**Typekit Fonts**” means the fonts licensed by Adobe to Customer made available from the On-Demand Services comprising the Adobe Typekit Desktop and Typekit Web.

**26.8** “**Typekit Web**” means those Typekit Fonts that facilitate Customer’s access and use of the Distributed Code for creating a Customer Site.

Exhibit B – DoD Adobe (Digital Media) Software License Agreement

Attachment B – Part 4

ADOBE PSLT – Adobe Electronic Signature Service (2016v1)

1. **Content Files.** Customer may use, display, modify, reproduce, and distribute any of the Adobe-provided sample files such as fonts, stock images, sounds or templates (“Content Files”), except Customer must not distribute Content Files on a stand-alone basis. Customer may not claim any trademark rights in, or derivative works of, the Content Files.
2. **Modification.** Adobe may modify or discontinue the On-demand Services or any portions or service features at any time without liability to Customer or anyone else. However, Adobe will make reasonable effort to notify Customer before Adobe makes the change. If Adobe discontinues an On-demand Service in its entirety, then Adobe will provide Customer with a pro rata refund for any unused fees for that On-demand Service that Customer may have prepaid.
3. **Third-Party Software Notices.** The creators or third party licensors of certain public standards and publicly available code (“Third Party Materials”), require that certain notices be passed through to the end users of the On-demand Service. These third party notices are located at [www.adobe.com/products/eula/third\\_party/index.html](http://www.adobe.com/products/eula/third_party/index.html) (or a successor website thereto). The inclusion of these third party notices does not limit Adobe’s obligations to the Customer for Third Party Materials integrated into the On-demand Service.
4. **Storage, Retention and Transition of Customer Content and Customer Data.** Adobe will store Customer Content and Customer Data so long as the size of that storage is not unreasonable in Adobe’s discretion. Adobe may create reasonable limits on the use and storage of Customer Content and Customer Data, such as limits on file size, storage space, processing capacity, and other technical limits. However, Adobe will make reasonable commercial efforts to notify Customer and provide Customer with an opportunity to transition Customer Content and Customer Data out of the On-demand Service prior to deleting Customer Content or Customer Data pursuant to this clause. Customer Content and Customer Data may be deleted any time, if required by law and also at the end of any termination or expiration of this Agreement.
5. **Privacy, Information Security, and Compliance.**
  - 5.1 **Customer’s Responsibilities Regarding Information of Participants.** Customer is responsible for complying with (including giving any notifications, obtaining any consents and making any disclosures required under) applicable privacy, security, electronic signature and data protection laws, guidelines, regulations or industry standards or codes applicable to Personal Data of Participants. Customer is responsible for obtaining and maintaining consent from Participants to Customer’s access, use, or disclosure of Personal Data of Participants. Customer is responsible for obtaining authorizations from Participants, if any, required to enable Adobe to provide the On-demand Service. The use of the electronic signature service is conditioned on Participant acceptance of the terms of use presented when using the electronic signature service.
  - 5.2 **Customer Security.** Customer is responsible for configuring and using the security features of the electronic signature service to meet Customer’s obligations to Participants under applicable privacy, security, and data protection laws. Adobe is not responsible for the security of Electronic Documents that are emailed to Participants from the electronic signature service, downloaded from the electronic signature service, or which are transferred to a non-Adobe system via a third party integration feature of the electronic signature service. Adobe is not liable for damages arising out of unauthorized access to Customer’s account or to Customer Content and Customer Data if Customer fails to follow secure password composition, management, and protection practices for Customer’s account.
  - 5.3 **Information.** Information received by Adobe in connection with the electronic signature service is governed by the Adobe Privacy Policy ([adobe.com/privacy/policy.html](http://adobe.com/privacy/policy.html)), including the “Applications” section.
  - 5.4 **Payment Card Industry Data Security Standard (PCI DSS).** The Payment Card Industry Data Security Standard (PCI DSS) prohibits the transmission of any Account Data (including Cardholder Data, Card Verification Code or Value) using the fax signature capability. PCI DSS also prohibits using the electronic signature service to store Sensitive Authentication Data, including Card Verification Code or Value after authorization, even if encrypted. Capitalized terms in this Section are defined in the PCI DSS.

- 5.5 Health Insurance Portability and Accountability Act ("HIPAA").** Customer is solely responsible for compliance with HIPAA and Health Information Technology for Economic and Clinical Health ("HITECH"). Adobe is not acting on Customer's behalf as a Business Associate, as that term is defined in HIPAA, when providing the On-demand Service, unless separately agreed to in writing.
- 5.6 Sensitive Personal Information.** The Sensitive Personal Data section of the General Terms does not apply to Customer's use of the electronic signature service.
- 6. Legal Counsel.** Customer will solely rely on its own legal counsel and determinations as to the use and viability of Electronic Signatures in a particular country or for a particular use. It is Customer's responsibility to ensure that its use of the On-demand Service conforms and complies with applicable laws, regulations, or policies relevant to a particular country or for a particular use.
- 7. Digital Certificates.** Digital certificates may be issued by third party certificate authorities, including Adobe Certified Document Services vendors, Adobe Approved Trust List vendors (collectively "Certificate Authorities"), or may be self-signed. Customer and the Certified Authority are responsible for the purchase, use, and reliance upon digital certificates. Customer is solely responsible for deciding whether or not to rely on a certificate. Unless a separate written warranty is provided to Customer by a Certificate Authority, Customer's use of digital certificates is at Customer's sole risk.
- 8. User Transactions.** For Customers billed on a per User or FTE basis, during each twelve month period, each licensed User or FTE is permitted to send an aggregate number of Transactions equal to two times the average number of annual Transactions sent through the electronic signature service. Transactions do not carry over from the previous twelve month period to the next.
- 9. Additional Definitions.**
- 9.1 "Electronic Document"** means any document uploaded into the electronic signature service.
- 9.2 "Electronic Signature"** means the capability of the electronic signature service to include an electronic sound, symbol, or process attached to or logically associated with an Electronic Document and executed or adopted by a person with the intent to sign the Electronic Document.
- 9.3 "Participant"** means an individual or entity that electronically reviews, accepts, signs, approves, transmits, or delegates action to a third party regarding Electronic Documents via Customer's electronic signature service account.
- 9.4 "Transaction"** means when an Electronic Document or a collection of related Electronic Documents are sent to a recipient through the electronic signature service. Each 100 pages or 10 MB is a Transaction.

