

CONTRACT #10
RFS # NA
Edison # NA

Tennessee Board of Regents
East Tennessee State
University

VENDOR:
Adobe Systems, Inc.



TENNESSEE BOARD OF REGENTS

Office of Business & Finance | Division of Purchasing & Contracts

1415 Murfreesboro Road, Suite 346 | Nashville, TN 37217-2833 | Phone 615.366.4436 | Fax 615.366.2243 | www.tbr.edu

Memorandum

To: Krista Lee, Director, State Fiscal Review Committee

From: Dale Sims,  Vice Chancellor for Business and Finance

Date: 3/1/16

RE: Explanation for Late Submittal of ETSU Adobe Agreement Request

Please consider this a request to grant an exception for a late contract to be presented before the Fiscal Review Committee at its March 16, 2016 meeting. The TBR System Office learned of this potential agreement between ETSU and Adobe on Friday, 2/25/16. It is our understanding that although discussions had been taking place between ETSU and Adobe for several months, no formal offer was made to the university until February 2016. Once that offer was made and an executable contract was negotiated between the university and Adobe, the Fiscal Review documents were prepared.

The reason for the rush request is the significant cost savings that Adobe is willing to offer ETSU and a deadline imposed by Adobe for said offer. By becoming an Adobe partner, the three (3) year pricing is \$825,060.00, in lieu of the non-partnership rate of \$1,947,015. This is a unique opportunity for the university, with Adobe's interest in the university's vision by the faculty in its production of a digital publication utilizing Adobe products. This bundle of products was designed exclusively for ETSU and not offered to any other institution or available for purchase from any other vendor.

Your consideration for our request is greatly appreciated. We do understand that Chancellor Gregory must attend this meeting because of its lateness and that this will require a 2/3rds affirmative vote of the committee. If you or staff have additional

questions, please feel free to reach out to myself or Angela Gregory Flynn (angela.flynn@tbr.edu or 615-366-4436).

Thank you.



TENNESSEE BOARD OF REGENTS

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1415 Murfreesboro Road, Suite 346 | Nashville, TN 37217-2833 | Phone 615.366.4436 | Fax 615.366.2243 | www.tbr.edu

March 1, 2016

Ms. Leni S. Chick
Fiscal Analyst
Rachel Jackson Building, 8th Floor
Nashville, TN 37243

Dear Ms. Chick:

Per Fiscal Review's request to see non-competitive agreements/amendments, enclosed please find an Agreement between East Tennessee State University and Adobe Systems Inc. providing for a license for the Adobe Digital Marketing Platform which includes Adobe Experience manager, Analytics, Targeting and Social. We realize that this packet was not submitted in a timely fashion but are respectfully requesting an exception for this to be heard at the March Fiscal Review Committee Meeting.

Please contact me regarding the date this will go before the Fiscal Review Committee, and I will inform the appropriate representatives to insure they are present for the meeting in which the contract will be discussed. If you have any questions or need additional information, please feel free to contact me at (615) 366-4436 or by email at angela.flynn@tbr.edu.

Sincerely,

A handwritten signature in black ink that reads "Angela Gregory Flynn".

Angela Gregory Flynn
Assistant Vice Chancellor for Purchasing and Contracts

cc: Chancellor Gregory
Dale Sims
Karen King, ETSU

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Karen King	*Contact Phone:	423-439-7068		
*Presenter's name(s):	Karen King				
Edison Contract Number: (if applicable)		RFS Number: (if applicable)			
*Original or Proposed Contract Begin Date:	March 1 2016 or ASAP	*Current or Proposed End Date:	February 28, 2019		
Current Request Amendment Number: (if applicable)					
Proposed Amendment Effective Date: (if applicable)	April 1, 2016				
*Department Submitting:	East Tennessee State University				
*Division:	Academic Affairs				
*Date Submitted:	February 29, 2016				
*Submitted Within Sixty (60) days:	No				
If not, explain:	Exclusive partnership offer directly from Adobe Systems Incorporated. Dollar amounts were unknown until the offer was made to the university in early February 2016. As soon as an executable contract was available the fiscal review documents were prepared.				
*Contract Vendor Name:	Adobe Systems Incorporated				
*Current or Proposed Maximum Liability:	\$825,060.00				
*Estimated Total Spend for Commodities:	\$825,060.00				
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY: 2015-16	FY: 2016-17	FY: 2017-18	FY:	FY	FY
\$327,000.00	\$239,058.00	\$259,002.00	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the					

Supplemental Documentation Required for
Fiscal Review Committee

carry forward provision:			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			
*Contract Funding Source/Amount:			
State:	\$825,060.00	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If "other" please define:			
If "interdepartmental" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>		Sole-source/partnership	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		\$1,947,015 is the non-partnership educational price over the 3 year contract. Price determined by Adobe.	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		This is an exclusive partnership offer from Adobe and is not available from other sources.	



EAST TENNESSEE STATE
UNIVERSITY

Office of the President

February 26, 2016

David Gregory, Acting Chancellor
Tennessee Board of Regents
1415 Murfreesboro Road, Suite 350
Nashville, TN 37217-2833

Dear Chancellor Gregory:

Please find enclosed the appropriate forms and documents requesting approval for a non-competitive contract with Adobe Systems Incorporated. East Tennessee State University (ETSU) has a unique opportunity for a partnership agreement with Adobe that provides opportunities for ETSU students and faculty as well as opportunities for Adobe. ETSU will purchase strategic components of the Adobe Digital Marketing Cloud at a significant discount and will deliver to Adobe a model for embedding the Digital Marketing Cloud into curricula. The components included in this platform available to ETSU are the Adobe Experience Manager, Analytics, Social, and Targeting. In addition, Adobe will provide ETSU with the following items:

1. Funding and corporate support for an on-site kickoff event
2. Providing a Customer Success Manager
3. Adobe MAX and Summit passes
4. An annual Adobe campus showcase
5. Guaranteed place for ETSU to participate in Adobe's higher education Analytics Challenge
6. Internship pipeline with Adobe and Adobe-affiliated partners
7. Adobe Certified Training
8. Student access to Adobe Marketing Cloud Core Services
9. Ramp model for pricing of software
10. Adobe funded and co-branded webinars/roadshows
11. Guest lectures from current Adobe employees for ETSU Faculty and Students
12. Access to a community of support
13. Faculty and students represent ETSU at Adobe WWSC 2017
14. Create professional development for faculty
15. Establish criteria and create certification for Adobe DMA solutions
16. Create a video for our WWSC once ETSU DMA program is up and running
17. Appropriate use of Adobe logo in marketing and recruitment
18. General gift of \$25,000.00

The products and services offered by Adobe regarding the Digital Marketing Cloud products are an exclusive combination of software tools and integration tools that were put together exclusively for ETSU. The combination of tools and pricing offered by Adobe is not available to other institutions, nor is it available from other vendors. The products and services offered are a unique and rare opportunity to establish a partnership with an industry leader in digital marketing. ETSU students will graduate with highly marketable skills and abilities that will ensure excellent preparation for the workforce. The Adobe partnership positions ETSU as a leader in digital innovation through enhanced student experiences, connections to industry, and the creation of signature academic programs. Enhancement of the University's website, mobile applications, branding, digital publications and apps, social media strategy, data-driven decision-making, and marketing automation will be supported by the Adobe partnership.

The partnership also has significant potential for positive impact on ETSU's enrollment and growth agenda. In the undergraduate Mass Communication Program alone, we are confident a minimum of 135 new student enrollments will occur over the rollout cycle. Projections for specific programmatic and enrollment growth in other programs such as Computer Science, Global Sport Leadership, and Digital Media also have significant potential.

Partnerships with business and education that leads to quality jobs is a statewide goal being visibly pursued. Access to Adobe training resources for faculty and staff, an internship pipeline with Adobe and Adobe-affiliated customers, a natural connection with industry partners, creation of a recruiting hub for workforce ready professionals are all outcomes that will emerge from the Adobe partnership. Digital marketing software is in its diffusion infancy and is on a growth trajectory for which ETSU students could be on the cutting edge. Adobe is the top web platform in the industry and 80% of all global digital content is either designed or distributed with Adobe solutions.

In summary, the value pricing and scope of features that comprise the Adobe "offer" to ETSU represents an affordable path to a range of outcomes that, if not pursued, are unlikely to occur in other opportunities.

Sincerely,

A handwritten signature in blue ink, appearing to read "BNoland", is positioned above the typed name.

Brian Noland
President

EAST TENNESSEE STATE UNIVERSITY
JUSTIFICATION FOR NON-COMPETITIVE PURCHASES AND CONTRACTS

(1) Description of service to be acquired:

Adobe Systems Incorporated Digital Marketing Cloud products as follows:
Adobe Experience Manager which includes Sites, Assets, and Mobile
Adobe Analytics
Adobe Targeting
Adobe Social

The above listed products combine to form a Digital Marketing platform.

(2) Explanation of the need for or requirement placed on the procuring institution to acquire the service:

East Tennessee State University faculty from the Department of Mass Communications and Digital Media have been using Adobe Creative Cloud and Adobe DPS to create digital materials. Recently, the two departments collaborated to produce a digital publication called *EVOXE*. The publication won several American Advertising Awards (ADDY) and conversations between ETSU faculty and Adobe soon moved to discussion of the Adobe Digital Marketing Cloud, which is the portion of Adobe dedicated to content distribution. As these conversations developed, ETSU faculty developed a vision and strategy to embed Digital Marketing Cloud products into curricula to ensure students graduate with industry standard skills and enhanced marketability. Adobe was interested in the vision of our faculty and the discussion escalated to a partnership offer from Adobe to ETSU.

(3) Name and address of the proposed contractor's principal owner(s):

Adobe Systems Incorporated
345 Park Avenue
San Jose, California 95110-2704

(4) Evidence that the proposed contractor has experience in providing the same or similar service and evidence of the length of time the contractor has provided the same or similar service:

Adobe Systems Incorporated was founded in 1982 and have become the industry standard in digital content creation and digital content distribution and analytics. According to Drew Burns, Adobe's Principle Product Marketing Manager indicated Adobe is the top web platform in the industry and the company works with 60% of all Fortune 50 companies. Eighty percent (80%) of all global digital content is either designed or distributed with Adobe solutions.

(5) Explanation of whether the service was ever bought by the procuring institution in the past, and if so, what method was used to acquire it and who was the contractor:

East Tennessee State University has not previously purchased Adobe Digital Marketing Cloud products.

(6) Description of procuring institution's efforts to used existing institutional employees and resources or, in the alternative, to identify reasonable, competitive, procurement alternatives (rather than to use non-competitive negotiation):

This unique opportunity was a partnership offer from Adobe to East Tennessee State University. This particular bundle of Adobe products was designed exclusively for ETSU and is not offered to any other institution or available for purchase from any other vendor.

(7) Justification of why the state institution should acquire the service through non-competitive negotiation (list the applicable factor(s) from Section XIV(B) of TBR Policy No. 4:02:10:00):

- a. Whether the vendor possesses exclusive and/or predominant capabilities or the items contain a patented feature providing superior utility not obtainable from similar products.

The partnership offer from Adobe is the only solution with the unique combination of tools and services along with the tangible items Adobe will donate to the university. The software, services, and additional partnership offerings are not available to other institutions nor are they available to ETSU through any other vendor.

- b. Whether the product or service is unique and easily established as one of a kind.

Although Adobe does sell the digital marketing cloud, this packaged offer was made exclusively to ETSU and includes additional tangible items that will benefit ETSU students. The partnership pricing, services, and other offer items are described in the supporting documents and Summary Letter document.

- c. Whether the program requirements can be modified so that competitive products or services may be used.

NA

- d. Whether the product is available from only one source and not merchandised through wholesalers, jobbers, and retailers.

Because this is an offer from the Adobe corporate office, no other retailers, wholesalers, jobbers can make a similar offer.

- e. Whether items must be interchangeable or compatible with in-place items.

NA

- f. Whether the cost of conversion, including but not limited to disruption, re-training, and replacement precludes bidding competitively.

NA

- g. Whether the product is to be used in an instructional setting and the intent is to provide instruction on the specific product or diversity of products.

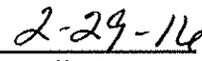
The product will be used in an instructional setting. The intent is to provide instruction on the Digital Marketing Cloud platform. This will enable ETSU to be the first university to embed the industry standard in digital marketing tools into the curricula.

- h. For personal, professional and consultant services, whether the use of non-competitive negotiation is in the best interests of the institution. (F&A Rule 0620-3-3-.03)

NA



**(Signature of person completing form)
(Karen King, CIO and Senior Vice Provost)**



Date

CONTRACT SUMMARY SHEET

021406

RFS #		Contract #			
State Agency		State Agency Division			
East Tennessee State University		Academic Affairs			
Contractor Name		Contractor ID # (FEIN or SSN)			
Adobe Systems Incorporated		<input type="checkbox"/> C- or <input type="checkbox"/> V-			
Service Description					
Adobe Digital Marketing Cloud including Adobe Experience Manager, Analytics, Social, and Targeting.					
Contract BEGIN Date		Contract END Date		Subrecipient or Vendor?	CFDA #
3/1/2016 or ASAP		28-Feb-19		Vendor	
Mark Each TRUE Statement					
<input type="checkbox"/> Contractor is on STARS			<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts		
Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2015-16	\$ 327,000.00				\$ 327,000.00
2016-17	\$ 239,058.00				\$ 239,058.00
2017-18	\$ 259,002.00				\$ 259,002.00
					\$ -
					\$ -
					\$ -
TOTAL:	\$ 825,060.00	\$ -	\$ -	\$ -	\$ 825,060.00
— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #		
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Dr. David Collins, 423-239-5885		
			State Agency Budget Officer Approval		
			Vice President for Finance and Administration		
			Funding Certification (certification, required by T.C.A. § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)		
TOTAL:	\$ -	\$ -			
End Date					
Contractor Ownership (complete only for base contracts with contract # prefix: FA or GR)					
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> NOT disadvantaged	
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—		
Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)					
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation		<input type="checkbox"/> Alternative Competitive Method		
<input checked="" type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government(eg.ID,GG,GU)		<input type="checkbox"/> Other		
Procurement Process Summary (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)					

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

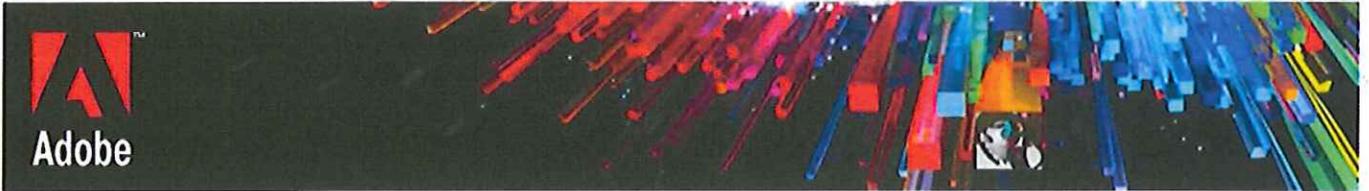
Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #		
2) State Agency Name :	East Tennessee State University	
3) Service Caption :	Adobe Partnership	
4) Proposed Contractor :	Adobe Systems Incorporated	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	March 1, 2016 or ASAP	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	February 28, 2019	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	825,060.00	
8) Approval Criteria : (select one)	<input type="checkbox"/>	use of Non-Competitive Negotiation is in the best interest of the state
	<input checked="" type="checkbox"/>	only one uniquely qualified service provider able to provide the service
9) Description of Service to be Acquired:		
Adobe Digital Marketing Platform to include: Adobe Experience Manager, Analytics, Targeting, and Social.		
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service:		
This partnership is a unique opportunity for ETSU to embed industry standard digital marketing tools into curricula. Adobe is responsible for 80% of the digital content creation and distribution in the country. Without the partnership effort ETSU would not have the financial resources to provide this platform for our students.		
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used:		
There is no previous purchase of the Adobe Digital Marketing Cloud.		
12) Name & Address of the Proposed Contractor's Principal Owner(s): (not required if proposed contractor is a state education institution)		
Adobe Systems Incorporated, 345 Park Avenue, San Jose, California 95110-2704		
13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service:		
Adobe was established in 1982 and is a leader in digital content creation and distribution.		

14) Documentation of Office for Information Resources Endorsement: (required <u>only</u> if the subject service involves information technology)		
select one:	<input checked="" type="checkbox"/> Documentation Not Applicable to this Request	<input type="checkbox"/> Documentation Attached to this Request
15) Documentation of Department of Personnel Endorsement : (required <u>only</u> if the subject service involves training for state employees)		
select one:	<input checked="" type="checkbox"/> Documentation Not Applicable to this Request	<input type="checkbox"/> Documentation Attached to this Request
16) Documentation of State Architect Endorsement : (required <u>only</u> if the subject service involves construction or real property related services)		
select one:	<input checked="" type="checkbox"/> Documentation Not Applicable to this Request	<input type="checkbox"/> Documentation Attached to this Request
17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :		
<p>Adobe products are the industry standard for digital content creation and distribution. Many Adobe products are available through third party vendors. However, this offer is an exclusive offer directly from Adobe. The bundle offered for the ETSU/Adobe partnership is not available from any third party vendors. The bundled platform included in this offer is not available for purchase except through this partnership. The platform offered in this bundle includes Adobe Experience Manager, Analytics, Social, and Targeting. This is a unique configuration of the Digital Marketing Platform that was created specifically by Adobe for the ETSU partnership.</p>		
18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process : (Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)		
<p>Discussions with Adobe executives regarding the ETSU vision for embedding the Adobe Digital Marketing platform into curricula led to a partnership proposal from Adobe. The offer from Adobe was proposed and is not available for purchase except through this exclusive direct offer from Adobe Systems Incorporated.</p>		
REQUESTING AGENCY HEAD SIGNATURE & DATE : (<u>must</u> be signed & dated by the <u>ACTUAL</u> procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)		
		<p>2-29-16</p>
Agency Head Signature		Date



February 25, 2016

Karen King, PhD
Professor
CIO & Sr Vice Provost
Information Technology Services
East Tennessee State University
118 Sherrod Library | PO Box 70427
Johnson City, TN 37614
423-439-6809

Dear Karen King:

Under an Adobe Sales Order Agreement and as a result of the unique licensing, custom bundling and pricing that will be required to meet the anticipated requirements of East Tennessee State University, Adobe has decided to only offer this unique bundle of Marketing Cloud products and services with associated unique terms and pricing directly from Adobe Systems Incorporated. The pricing and special terms and conditions offered under this direct proposal are not available through any authorized Adobe reseller.

Sincerely,

Adobe Systems Incorporated
345 Park Avenue San Jose, CA 95110-2704 USA



Authorized Signature

Matt Hemmert

Print Name

Senior Legal Counsel

Title

Feb 25, 2016

Date





EAST TENNESSEE STATE UNIVERSITY DR1728982

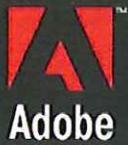
Adobe Document Cloud Document
History

2/25/16

Created:	2/25/16
By:	Lehi Contract Operations (ormcoord@adobe.com)
Status:	SIGNED
Transaction ID:	CBJCHBCAABAABarioS_hftGHequfpzllkAduGZiYsH2

“EAST TENNESSEE STATE UNIVERSITY DR1728982” History

-  Document created by Lehi Contract Operations (ormcoord@adobe.com)
2/25/16 - 3:49:32 MST - IP address: 192.150.9.200
-  Document emailed to Matt Hemmert (mhemmert@adobe.com) for signature
2/25/16 - 3:49:54 MST
-  Document viewed by Matt Hemmert (mhemmert@adobe.com)
2/25/16 - 3:50:30 MST - IP address: 74.81.237.8
-  Document e-signed by Matt Hemmert (mhemmert@adobe.com)
Signature Date: 2/25/16 - 3:50:39 MST - Time Source: server - IP address: 74.81.237.8
-  Signed document emailed to Lehi Contract Operations (ormcoord@adobe.com) and Matt Hemmert (mhemmert@adobe.com)
2/25/16 - 3:50:39 MST



Adobe Contact: Ashley McKenzie

Tel: 1-385-345-0000

Contracting Entity
Agreement Number
Currency

EAST TENNESSEE STATE UNIVERSITY
DR1728982
USD

Products and Services Pricing Detail:

Adobe On-demand Services

Except as otherwise specified in this Sales Order, these On-Demand Services automatically renew for successive periods of 12 months not to exceed five (5) years including the initial License Term, unless either Party provides written notice to the other Party of its intent not to renew at least 30 days before expiration of any then-current License Term. Support Services are described at: <https://helpx.adobe.com/support/programs/support-policies-terms-conditions.html>

Line Number	SKU	Product Description	Billing Cycle	Quantity	Unit of Measure/ Metric	License Term Start Date	License Term End Date	Unit Price	Total Fees
0010	38051945	ADOBE ANALYTICS:OD ¹	Advance Quarterly - In	1.00	Millions/ SERVER CALLS Per Month	1 Mar 2016	28 Feb 2017	700.00	8,400.00
0020	38051945	ADOBE ANALYTICS:OD ¹	Advance Annually - In	1.00	Millions/ SERVER CALLS Per Month	1 Mar 2017	28 Feb 2018	834.00	10,008.00
0030	38051945	ADOBE ANALYTICS:OD ¹	Advance Annually - In	1.00	Millions/ SERVER CALLS Per Month	1 Mar 2018	28 Feb 2019	971.00	11,652.00
0040	38049701	ADOBE TARGET STANDARD ²	Advance Quarterly - In	12.00	Millions/ PAGE VIEWS Per Year	1 Mar 2016	28 Feb 2017	850.00	10,200.00
0050	38049701	ADOBE TARGET STANDARD ²	Advance Annually - In	12.00	Millions/ PAGE VIEWS Per Year	1 Mar 2017	28 Feb 2018	1,000.00	12,000.00
0060	38049701	ADOBE TARGET STANDARD ²	Advance Annually - In	12.00	Millions/ PAGE VIEWS Per Year	1 Mar 2018	28 Feb 2019	1,150.00	13,800.00
0070	38049424	ADOBE SOCIAL ³	Advance Quarterly - In	10.00	Each/ SOCIAL PROFILES Per Year	1 Mar 2016	28 Feb 2017	4,635.00	46,350.00
0080	38049424	ADOBE SOCIAL ³	Advance Annually - In	10.00	Each/ SOCIAL PROFILES Per Year	1 Mar 2017	28 Feb 2018	5,300.00	53,000.00
0090	38049424	ADOBE SOCIAL ³	Advance Annually - In	10.00	Each/ SOCIAL PROFILES Per Year	1 Mar 2018	28 Feb 2019	5,950.00	59,500.00

Adobe On-demand Services (Year 1):	64,950.00
Adobe On-demand Services (Year 2):	75,008.00
Adobe On-demand Services (Year 3):	84,952.00
Adobe On-demand Service Total:	224,910.00

¹Fees associated with Adobe Analytics Primary Server Calls in excess of the Annual Primary Server Call commitment shall be billed @ \$700.00 CPMM in Year 1, \$834.00 CPMM in year 2, and \$971.00 CPMM in year 3. These fees are billed monthly in arrears as incurred. For a period up to 30 days prior to the Start Date (the "Implementation Period"), but in no event earlier than the Effective Date, Customer is granted a limited license to access the Products and Services for the sole purpose of implementation and testing at no additional cost to Customer, subject to all other terms and conditions of the Agreement. Further, Adobe may provide consulting services, as further described in this Sales Order, for Adobe Analytics during the Implementation Period. In the event that Customer

does not have a Secondary Server Call Commitment, any Secondary Server Calls generated by Customer shall be billed at 75% of the Primary Server Call Overusage rate set forth above. Such fees are billed monthly in arrears as incurred.

²Adobe Target Standard does not include the functionality provided by ADOBE TARGET STANDARD:OD MOBILE APP, which is available separately. After each 12 month period of the License Term, if Customer's actual Annual Page View Traffic is higher than the estimated Annual Page View Traffic for the previous year, then Adobe may increase the estimated Annual Page View Traffic for subsequent years in the License Term to match the Actual Page View Traffic and increase the annual flat fee for the remainder of the License Term in proportion to the increased revised estimated Annual Page View Traffic. Customer will not receive any credit, reduction in flat fee, or revision of the estimated Annual Page View Traffic when the Actual Page View Traffic for any 12 month period is below the estimated Annual Page View Traffic for any prior year. During the first 12 months of the initial License Term only (and no renewal Terms), Adobe will assist the Customer in use of the Adobe Target Standard interface, which may include: phone or web-based enablement sessions delivering best practices for the Adobe Target Standard environment; assisting Customer to create and run up to 5 A/B tests per quarter; or reviewing with Customer test results for the chosen primary success metric for each A/B test. During this period, Customer will be required to: select one person who will engage with Adobe for this offering; choose one test type (e.g. swap text/imagery or hide/show existing page elements) from Top 10 Industry List provided by Adobe; specify one success metric and alternate recipe per test; provide all required assets (Imagery, HTML, CSS, custom JavaScript, etc.) to run the test; and set up the required Adobe Target code in advance, set up any additional metrics and recipes, perform QA, and launch the tests. These services will be performed remotely by Adobe. These services are not interchangeable with any other Adobe Professional Services project. For a period up to 30 days prior to the Start Date (the "Implementation Period"), but in no event earlier than the Effective Date, Customer is granted at no additional cost a limited license to access the Products and Services for the sole purpose of implementation and testing.

³Each Social Profile includes access for two Social Users to manage two Twitter handles and one account for each of the other social networks supported by Adobe Social. During the first twelve months of the initial License Term only (and no renewal Terms), Adobe will engage with one person selected by the Customer to configure the basic functionality of the Adobe Social solution interface. Any unused hours of Adobe Social product training or Adobe Social Enablement services included with the initial order of Adobe Social Profile(s) are not interchangeable with any other products or services, expire, and may not be carried over or used for any other purpose one year after the Effective Date. For a period of up to 30 days prior to the Start Date (the "Implementation Period"), but in no event earlier than the Effective Date, Customer is granted at no additional cost a limited license to access Adobe Social for the sole purpose of implementation and testing.

Adobe On-premise Software

The dates below therefore represent best estimates of Start and End Dates of the License Term. Platinum Maintenance and Support Services are described at: <https://helpx.adobe.com/support/programs/support-policies-terms-conditions.html>

Line Number	SKU	Product Description	Billing Cycle	Quantity	Unit of Measure/ Metric	License Term Start Date	License Term End Date	Unit Price	Total Fees
0100	58051628	AEM SITES:OPT ¹	Advance Quarterly - In	1.00	Each/ BASE Per Year	1 Mar 2016	28 Feb 2017	65,750.00	65,750.00
0110	58051628	AEM SITES:OPT ¹	Advance Annually - In	1.00	Each/ BASE Per Year	1 Mar 2017	28 Feb 2018	65,750.00	65,750.00
0120	58051628	AEM SITES:OPT ¹	Advance Annually - In	1.00	Each/ BASE Per Year	1 Mar 2018	28 Feb 2019	65,750.00	65,750.00
0130	38052385	AEM ASSETS:OPT ADD TO SITES INSTANCE ²	Advance Quarterly - In	1.00	Each/ INSTANCE Per Year	1 Mar 2016	28 Feb 2017	5,000.00	5,000.00
0140	38052385	AEM ASSETS:OPT ADD TO SITES INSTANCE ²	Advance Annually - In	1.00	Each/ INSTANCE Per Year	1 Mar 2017	28 Feb 2018	5,000.00	5,000.00
0150	38052385	AEM ASSETS:OPT ADD TO SITES INSTANCE ²	Advance Annually - In	1.00	Each/ INSTANCE Per Year	1 Mar 2018	28 Feb 2019	5,000.00	5,000.00
0160	58051590	AEM:OPT USERS ³	Advance Quarterly - In	20.00	Each/ USER Per Year	1 Mar 2016	28 Feb 2019	165.00	3,300.00
0170	58051590	AEM:OPT USERS ³	Advance Annually - In	20.00	Each/ USER Per Year	1 Mar 2016	28 Feb 2019	165.00	3,300.00
0180	58051590	AEM:OPT USERS ³	Advance Annually - In	20.00	Each/ USER Per Year	1 Mar 2016	28 Feb 2019	165.00	3,300.00
0190	38052699	AEM MOBILE:OPT STANDARD ⁴	Advance Quarterly - In	1.00	Each/ BASE Per Year	1 Mar 2016	28 Feb 2017	80,000.00	80,000.00
0200	38052699	AEM MOBILE:OPT STANDARD ⁴	Advance Annually - In	1.00	Each/ BASE Per Year	1 Mar 2017	28 Feb 2018	90,000.00	90,000.00
0210	38052699	AEM MOBILE:OPT STANDARD ⁴	Advance Annually - In	1.00	Each/ BASE Per Year	1 Mar 2018	28 Feb 2019	100,000.00	100,000.00

Adobe On-premise Software (Year 1):	154,050.00
Adobe On-premise Software (Year 2):	164,050.00

Adobe On-premise Software (Year 3):	174,050.00
Adobe On-premise Software Total:	492,150.00

¹⁻³**Renewal Term:** Notwithstanding any term herein to the contrary, the Products and Services listed on this Line Number does not renew.

⁴AEM Mobile combines On-premise Software with On-demand Services. The AEM Mobile On-demand Services are subject to the On-demand Services-specific terms and conditions of the Agreement. Support Services for the On-demand Services are described at: <https://helpx.adobe.com/support/programs/support-policies-terms-conditions.html>. For a period of up to 30 days prior to the License Term Start Date, but in no event earlier than the Effective Date, Customer is granted a limited license to access the AEM Mobile On-demand Services for the sole purpose of creating Preflight apps, subject to all other terms and conditions of the Agreement. The Master Account Admin Email for AEM Mobile On-demand Services is: [insert email address]. Customer is limited to up to 3 Applications.

Renewal Term: Notwithstanding any term herein to the contrary, the Products and Services listed on this Line Number does not renew.

Adobe Professional Services

Customer will be responsible for all reasonable travel expenses, hotel accommodations, and any other out of pocket expenses properly and reasonably incurred by Adobe in connection with the Services. Such expenses will be charged to Customer at cost and will be included on the relevant invoice for the Professional Services. Adobe shall provide the Professional Services purchased hereunder on a schedule mutually agreed to by the Parties but in no event sooner than the start date set forth herein.

Line Number	SKU	Product Description	Billing Cycle	Quantity	Unit of Measure/ Metric	Start Date	End Date	Unit Price	Total Fees
0160	38051059	SR CONSULTANT SW ¹	Advance Total - In	144.00	Hours/ One Time	1 Mar 2016	28 Feb 2017	250.00	36,000.00
0170	38051059	SR CONSULTANT SW ¹	Advance Total - In	144.00	Hours/ One Time	1 Apr 2016	31 Mar 2017	250.00	36,000.00
0180	38051059	SR CONSULTANT SW ¹	Advance Total - In	144.00	Hours/ One Time	1 May 2016	30 Apr 2017	250.00	36,000.00

Adobe Professional Services:	108,000.00
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¹Custom Adobe Professional Services project providing services and resources as set forth in the attached Professional Services Description up to the hours purchased herein. Customer will be invoiced on the Start Date for all services purchased and any unused hours will expire on the End Date and may not be extended, credited, or otherwise carried over or used for any purpose. Additional hours may be purchased via the execution of a new Sales Order or an Amendment to the Agreement.

Summary of Fees

Total Sales Order Fees:	825,060.00
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Sales Order Terms and Conditions

- All Products and Services are provided under the terms of this Sales Order, the General Terms and the applicable Product Specific Licensing Terms as amended (2015v2) attached hereto (the "Agreement").
- East Tennessee State University is a public institution of higher learning. As an entity of the State of Tennessee, under the Constitution and laws of the State of Tennessee it possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has such authority as is granted to it under the Constitution and laws of the State of Tennessee. Notwithstanding any other provision to the contrary, nothing in this Agreement is intended to be, nor shall it be construed to be, a waiver of the sovereign immunity of the State of Tennessee or a prospective waiver or restriction of any of the rights, remedies, claims and privileges of the State of Tennessee. Moreover, notwithstanding the generality or specificity of any provision herein, the provisions of this Agreement as they pertain to East Tennessee State University are enforceable only to the extent authorized by the Constitution and laws of the State of Tennessee.
- Customer agrees to purchase the Products and Services set out in the Products and Services Pricing Detail section. All pricing and discounts described in this Sales Order are contingent upon Customer's execution and return of this Sales Order no later than 24 Feb 2016 (unless countersigned by Adobe).

4. As of the Start Date, this Sales Order terminates, replaces and novates the existing Adobe Sales Order made effective between Customer and Adobe Systems, Inc. on 25 November 2014 and associated Service Order(s) and Statement(s) of Work (together, the "Old Agreement(s)"). Prior to the Start Date Customer understands and acknowledges that it will be invoiced in accordance with the Old Agreement(s) for all products and services set forth under such Old Agreement(s) and that Customer will be obligated to pay in accordance with such invoices. If Customer is due to renew any products and/or services prior to the Start Date, then such renewal will be governed by the same terms and conditions that existed prior to that renewal from the date of such renewal through the Start Date, and Customer will be invoiced and will pay for the pro-rata value of the products and services set forth on the Old Agreement(s) for such period. As of the Start Date, Customer will be entitled to a credit under the Old Agreement(s) for invoiced but unused fees. The credit will be applied to this sales order.
5. All fees will be invoiced beginning on the applicable Start Date in accordance with the Billing Cycle, as noted in the Products and Services Pricing Detail section. Payment terms are net 30 days and will be measured from the date of electronic invoice.
6. Purchase Order ("PO") required? Yes -> tick . If this box is not ticked, Adobe may invoice directly referencing the Adobe Agreement Number on any applicable invoices.

By signing below, each Party acknowledges that it has carefully read and fully understood this Agreement, and each agrees to be bound by the terms of this Agreement. This Agreement becomes effective upon the date of last signature (the "Effective Date"). The individuals signing this Agreement represent that they have the authority to bind the respective Parties to the terms of this Agreement.

Customer: EAST TENNESSEE STATE UNIVERSITY		Adobe Systems Incorporated	
Sign:		Sign:	
Name:		Name:	
Title:		Title:	
Date:		Date:	
Address:	BOX 70732 JOHNSON CITY, TN 37614 UNITED STATES	Address:	Adobe Systems Incorporated 345 Park Avenue San Jose, California 95110-2704 USA
Contact:		Contact:	
Purchase Order Number:			
Sold-To ECCID:	0001425058		

Customers in USA, Canada & Mexico: Please send executed documents directly to Adobe Systems Incorporated for processing via email at rgcordus@adobe.com or fax at (408) 537-4568. Please send all PO via email to uspo@adobe.com and include the Agreement Number on the PO.

End-User: 1425058	Bill-To: 0001425058	Ship-To: 1425058
EAST TENNESSEE STATE UNIVERSITY	EAST TENNESSEE STATE UNIVERSITY	EAST TENNESSEE STATE UNIVERSITY
BOX 70732 JOHNSON CITY, TN 37614 UNITED STATES	BOX 70732 JOHNSON CITY, TN 37614 UNITED STATES	BOX 70732 JOHNSON CITY, TN 37614 UNITED STATES
		Karen King KINGK@mail.etsu.edu

WW Deal Desk
Certification

Digitally signed by WW Deal
Desk Certification
Date: 2016.02.26 12:04:03
-07'00'



1. INTRODUCTION

0.0 Definitions

- (A) **"Adobe"** means one or both of the following:
- (1) 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.
 - (2) If the Products and Services are licensed in all other countries: Adobe Systems Software Ireland Limited, located in Ireland.
- (B) **"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.
- (C) **"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.
- (D) **"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.
- (E) **"Agreement"** means these General Terms and the applicable Product Specific Licensing Terms, and the Sales Order.
- (F) **"Claim"** means a claim, action, or legal proceeding made against a Party.
- (G) **"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.
- (H) **"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 (1) identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic, or electronic form; or (2) 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. "Confidential Information" does not include information that: (a) has become public knowledge through no fault of the receiving Party; (b) was known to the receiving Party, free of any confidentiality obligations, before its disclosure by the disclosing Party; (c) becomes known to the receiving Party, free of any confidentiality obligations, from a source other than the disclosing Party; or (d) is independently developed by the receiving Party without use of Confidential Information.
- (I) **"Customer"** means the entity identified in the Sales Order as "Customer" or otherwise identified in the Sales Order as the end user customer.
- (J) **"Customer Content"** means any material, such as audio, video, text, or images that is provided to Adobe by Customer or on Customer's behalf in connection with Customer's use of the Products and Services for content delivery, digital publishing, targeted advertising, or indexing.
- (K) **"Customer Data"** means any information collected from the Customer Site or Customer's search engine providers via the Distributed Code; and any information that Customer imports into the On-demand Services or Managed Service from its internal data stores or other sources not supplied by Adobe.
- (L) **"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.
- (M) **"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.

- (N) **“Documentation”** means the technical user manuals made generally available by Adobe that accompanies the Products and Services, and the 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.
- (O) **“Effective Date”** means the effective date stated in the Sales Order.
- (P) **“Enterprise Licensing Terms”** means these General Terms and the applicable Product Specific Licensing Terms.
- (Q) **“Indemnified Technology”** means On-demand Services, Managed Services or On-premise Software (as applicable), paid for by Customer.
- (R) **“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.
- (S) **“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.
- (T) **“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.
- (U) **“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.
- (V) **“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.
- (W) **“Party”** means Adobe or Customer, as applicable.
- (X) **“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.
- (Y) **“Products and Services”** means the On-premise Software, On-demand Services, Managed Services, or Professional Services, as set out in the Sales Order.
- (Z) **“Product Specific Licensing Terms”** or **“PSLT”** means the Product Specific Licensing Terms document that describes the additional licensing terms for specific Products and Services.
- (AA) **“Professional Services”** means any consulting, training, implementation, or technical services provided by Adobe to Customer, as set out in the Sales Order.
- (BB) **“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, and which Customer may use and distribute within Customer’s internal operations.
- (CC) **“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.
- (DD) **“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 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).
- (EE) **“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. Any fees that are unpaid as of the date of termination or expiration will be due and payable within thirty (30) days of of electronic invoice. 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, 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 **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.. 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 makes a purchase for the respective Products and Services, Adobe grants Customer, during the License Term, a non-transferable, non-exclusive, to:

- (A) permit Users to access the Products and Services, 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 for its internal operations. 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 makes a purchase for 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 on Computers for its internal operations, 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 and 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;
- (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 **Update Requirements.** Customer must possess a valid license to the On-premise Software to purchase an upgrade to that On-premise Software. All upgrades and updates are provided to Customer on a license-exchange basis. Upon installing an upgrade or update, Customer may only continue to use a simultaneous installation of the previous version of the On-premise Software to assist Customer in the transition to the upgrade or update for a reasonable period of time (not to exceed 180 days), after which period, Customer must uninstall and cease using the previous version. Except for this limited right to simultaneous installation and use, this right does not otherwise constitute an increase in the scope of use granted to Customer under this Agreement. Such upgrades and updates constitute On-premise Software, and are subject to the terms of this Agreement and the then-current version of the applicable PSLT.
- 4.6 **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.
- 4.7 **License Grant from Customer.**

Customer owns or has a valid license to the Customer Data and Customer Content, subject to Adobe's underlying intellectual property in the Adobe Technology.

During the License Term, 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 to the extent necessary to provide the On-demand Services or Managed Services, and Reports to Customer, and to enforce its rights under this Agreement.

Customer grants Adobe and its Affiliates a non-exclusive, perpetual, worldwide, and royalty-free license to use, copy, transmit, sub-license, index, model, aggregate (including combination with similar data of other customers of Adobe or its Affiliates), 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.

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 provides Adobe with the identity of the contractor and the purpose for the contractor's use or access to the Products and Services; and (B) the use or access by the contractor is only for Customer's internal operations.
- 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 **Monitoring.** Customer will: (A) implement a process through which infringing, abusive, or otherwise unlawful content (“Unlawful Content”) can be reported to Customer; (B) promptly remove any Unlawful Content from Customer Site(s) in accordance with applicable laws and regulations; and (C) promptly notify Adobe if Customer becomes aware of a possible violation regarding any Customer Content that is uploaded to the On-demand Services or Managed Services.
- 6.2 **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);
 - (B) Adobe may access or disclose information about Customer, its consumers, or Customer’s use of the On-demand Services and Managed Services; (1) when it is required by law (such as when Adobe receives a valid subpoena or search warrant); or (2) when Adobe, in its reasonable discretion, believes it is necessary to protect the rights, property, or personal safety of Adobe, consumers, or the public.
- 6.3 **Responsibility.** Customer retains complete control over (A) the installation and configuration of Distributed Code; (B) each Customer Site and Customer Content. Customer remains fully responsible for ensuring that all Customer Sites used with the On-demand Services or Managed Services, and all Customer Data and Customer Content: (1) comply with all applicable laws and regulations; and (2) do not infringe any person’s or entity’s rights. Customer must ensure that the Customer Data and Customer Content provided to Adobe is accurate. Adobe may suspend services or remove Customer Data and Customer Content that violates the requirements of the foregoing.
- 6.4 **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 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). The receiving Party will treat all 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.
- 7.2 **Required 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.
- 7.3 **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 established and 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 a confirmed, unauthorized acquisition by a third-party of Customer Data provided by Customer to Adobe in connection with the Agreement (“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) To the extent permitted by law, Adobe will have no liability for any Security Claim to the extent such claim arises from any of the Customer obligations specified in section 11.1 below:
- (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) to the extent permitted by applicable law, granting Adobe sole control of the defense or settlement of the Claim; and
 - (4) refraining from making any admissions about the Claim.

8.5 Sole and Exclusive Remedy. The remedies in section 8.3 (Security Claims) are Customer's sole and exclusive remedies and Adobe's sole liability regarding the subject matter giving rise to any Security Claim.

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 cookies, web beacons, and similar technologies, 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 use the On-demand Services or Managed Services to collect, process, or store any Sensitive Personal Data of its employees, customers, partners, site visitors, or any third party. 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. TERM AND TERMINATION

9.1 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.

9.2 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.

9.3 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; and
 - (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 and Managed 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) Any continued use of the Products and Services after termination or expiration of this Agreement constitutes a breach of this Agreement. Customer will be liable for any fees for any Products and Services utilized by Customer after the termination or expiration. 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 terminate or suspend 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.

9.4 **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.

10. THIRD PARTY INTELLECTUAL PROPERTY CLAIMS

10.1 **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).

10.2 **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.

10.3 **Conditions.** To the extent permitted by law, 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) to the extent permitted by applicable law, 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.

10.4 Sole and Exclusive Remedy. The remedies in this section 10 (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.

11. OTHER CLAIMS

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

- (A) Adobe's compliance with Customer's written notification, approval or direction;
- (B) modification of the On-demand Services or Managed Services by anyone other than Adobe or a party authorized in writing by Adobe to make such modifications;
- (C) a vulnerability in a previous version of the On-demand Services or Managed Services, if such vulnerability would have been mitigated or remedied by a later release made available to Customer, if Customer failed, for any reason, to use such later release; or
- (D) any use of the On-demand Services or Managed Services for purposes not contemplated by this Agreement or the applicable Documentation; or
- (E) Customer's failure to comply with Customer's data privacy policy, the applicable data protection laws, guidelines, regulations, codes and rules and their privacy obligations contained in this Agreement;
- (F) any Customer Customization (as defined in the applicable PSLT) or Customer Content or Customer Data (excluding claims arising from Adobe's failure to comply with Section 8.2 (Security Measures), as set forth above); or
- (G) Customer's breach of section 4.6 (Third Party Providers)

The Limitation of Liability provision in the General Terms does not apply to Customer's liability or obligations under this section.

11.2 Conditions. Customer's obligations under this section 11 (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.

11.3 Sole and Exclusive Remedy. The remedies in sections 11.1 are the sole and exclusive remedies and sole liability of the Customer regarding the subject matter giving rise to any such Claim.

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

- (A) Adobe's compliance with Customer's written notification, approval or direction;
- (B) modification of the On-demand Services or Managed Services by anyone other than Adobe or a party authorized in writing by Adobe to make such modifications;
- (C) a vulnerability in a previous version of the On-demand Services or Managed Services, if such vulnerability would have been mitigated or remedied by a later release made available to Customer, if Customer failed, for any reason, to use such later release; or
- (D) any use of the On-demand Services or Managed Services for purposes not contemplated by this Agreement or the applicable Documentation; or
- (E) Customer's failure to comply with Customer's data privacy policy, the applicable data protection laws, guidelines, regulations, codes and rules and their privacy obligations contained in this Agreement;
- (F) any Customer Customization (as defined in the applicable PSLT) or Customer Content or Customer Data (excluding claims arising from Adobe's failure to comply with Section 8.2 (Security Measures), as set forth above); or
- (G) Customer's breach of section 4.6 (Third Party Providers)

The Limitation of Liability provision in the General Terms does not apply to Customer's liability or obligations under this section.

11.5 Conditions. Customer's obligations under this section 11 (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.

11.6 Sole and Exclusive Remedy. The remedies in sections 11.1 are the sole and exclusive remedies and sole liability of the

Customer regarding the subject matter giving rise to any such Claim.

12. LIMITATION OF LIABILITY

12.1 Limitation of Damages

- (A) To the extent permitted by law, neither Party shall 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.
- (B) 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 two (2) times the aggregate of the fees that must be paid by Customer under this Agreement during the 12 months before the initial Claim.
- (C) Sections 12.1 (A) and 12.1 (B) (Limitation of Liability) of these General Terms:
 - (1) 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
 - (2) 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.

13. WARRANTIES

- 13.1 **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.
- 13.2 **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.
- 13.3 **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. To the extent permitted by law, 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. To the extent permitted by law, 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.

14. LICENSE COMPLIANCE

- 14.1 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.
- 14.2 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.

- 14.3 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.
- 14.4 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 electronic invoice. If use, deployment, or installation exceeds 10% 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.

15. SPECIFIC PROVISIONS FOR PROFESSIONAL SERVICES

15.1 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.

15.2 **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.

15.3 **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.

15.4 **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.

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) of these General Terms, 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 Tennessee, 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.

16.3 **Force Majeure.** Neither Party is liable for failure to perform its obligations under this Agreement 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 may not 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; 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.** If there is any inconsistency between any of these above parts, the Sales Order will prevail over the applicable Product Specific Licensing Terms, which will prevail over the General Terms (to the extent of the 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. The attached Addendum to General Terms is hereby incorporated and shall be considered part of this Agreement.
- 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 ("Partner Sales 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) prevails over any inconsistent provisions in the Partner Sales Order; and (C) the Adobe Partner is solely responsible for any variations or inconsistencies between the Partner Sales 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 reserved under the copyright laws of the United States.

0. **Customer Implementation of Adobe Target Java Script Library.** Customer must install a minimum of one Adobe Target Java Script Library on every webpage of each of the Customer Sites where Adobe Target Standard or Adobe Target Premium is deployed.
1. **Data Retention.** Notwithstanding any clause to the contrary in the General Terms, the following Customer Data for Adobe Target may be permanently deleted by Adobe from Adobe's servers:
 - (A) Visitor profile data that is collected by Adobe Target Java Script Libraries for use with Adobe Target functionality may be deleted after 90 days of profile inactivity; and
 - (B) Customer Site activity data, which is data related to the use of the Adobe Target functions, features, and campaigns, may be deleted after 12 months.
2. **Definitions.**
 - 3.1 **"Adobe Target Java Script Library"** means an Adobe Target java script library or class (e.g. target.js or mbox.js) installed on the webpages or applications for the Customer Sites where Adobe Target Standard or Adobe Target Premium is deployed.

1. **License Grant.** Adobe grants Customer a license to use the On-demand Services with Customer's games, surveys, contests, and other product and company pages, as configured and branded specifically for Customer ("**Web Applications**") on social networks and online communities (each a "**Social Media Platform**").
2. **Compliance.** Customer must comply with all applicable laws, guidelines, regulations, codes and rules relating to Web Applications. As between Customer and Adobe, Customer is responsible for obtaining the necessary clearances, consents and approvals from consumers of Web Applications under all applicable laws, guidelines, regulations, codes and rules for Adobe to collect and use metrics or other data collected via Social Media Platform accounts ("**Social Media Platform Data**") and Customer Data gathered on Customer's behalf via the Adobe Social platform, which includes Web Applications. Customer Data includes Social Media Platform Data. Adobe is only acting as a "data processor" or a "data intermediary" on behalf of Customer, and Customer is the "data controller" or equivalent under applicable privacy and data protection laws (including EU Directive 95/46 if Customer is a resident of the EU).
3. **Limited License.** Unless Adobe has expressly granted Customer a separate license to the full functionality of Adobe Analytics, Customer's use of the analytics component contained within Adobe Social will contain limited functionality. Customer's use of Adobe Social does not create for Customer an implied license to access or use the full functionality of Adobe Analytics.

PSLT – Adobe Experience Manager: On-demand Services – AEM Mobile (2015v2)

1. **Licensing Terms.** AEM Mobile combines On-demand Services with either Managed Services or On-premise Software. This PSLT relates exclusively to the On-demand Services component of AEM Mobile. The Managed Services or On-premise Software component of Customer's AEM Mobile license (as identified in the Sales Order) is subject to the respective AEM Managed Services PSLT or AEM On-premise Software PSLT.
2. **Distribution.** Customer will ensure that each Application is distributed, or made available, to the end users under an end user license agreement that is no less protective of Adobe's interests than the terms of this Agreement, including provisions regarding warranties and damages. Customer is responsible for any obligations to Adobe arising from the acts or omissions in breach of these terms and conditions by Customer's distributors. Customer acknowledges that its use of, and Adobe's ability to provide, the AEM Mobile On-demand Services in certain countries may be limited or prohibited by applicable laws and regulations. Except as stated in a separate addendum to the Sales Order, use of AEM Mobile in the People's Republic of China is expressly prohibited.
3. **Reports.** Adobe may generate Reports to ensure that Customer is in compliance with the license scope and limitations identified in the applicable Sales Order.
4. **Font Software.** Adobe grants Customer a license to embed copies of the font software generally available through the On-demand Services user interface into Customer's .folio files or .article files only.
5. **Upgrades.** Customer must use reasonable efforts to update the Application with any updates or upgrades to the Distributed Code and On-demand Services provided to Customer by Adobe within a reasonable period of time after Customer first receives the applicable update or upgrade. By not migrating to the latest updates or upgrades (A) components of the On-demand Services may not continue to effectively operate on the end user's device (e.g., due to a change or update to the operating system on the end user's device); and (B) Applications may not function and Customer may have to plan and create new Applications.
6. **Digital Publishing Suite.** Customers licensing active Digital Publishing Suite Applications, as of the execution date of Customer's AEM Mobile Sales Order, may, at Adobe's sole discretion, continue to access and use the Digital Publishing Suite as part of the AEM Mobile On-demand Services. Customer acknowledges that Customer's ability to access and use the Digital Publishing Suite can be terminated by Adobe upon reasonable notice. Any Applications managed through the Digital Publishing Suite will count against Customer's licensed Application limit. All of the terms of this PSLT apply to Customer's use of the Digital Publishing Suite and its .folio files. Notwithstanding anything to the contrary in the Agreement, Customer's use of Adobe Analytics Distributed Code in conjunction with the Digital Publishing Suite is limited to use which is in combination with and directly related to Customer's use of Adobe Digital Publishing Suite .folio files. Upon termination or expiration of Customer's rights to utilize the Digital Publishing Suite for any reason, Customer's license to use Adobe Analytics Distributed Code under this section will also terminate.

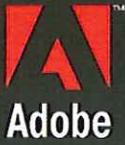
7. Definitions

7.1 **"Application" or "App"** means a unique Customer-branded Authorized Viewer intended to display Customer Content to Customer's users that is distributed (A) through an app store supported by the On-demand Services; (B) internally within Customer's organization solely for the benefit of Customer; or (C) through a Web Viewer. Customer's use of the AEM Mobile On-demand Services Preflight app for internal development and testing purposes will not be considered an Application under this Agreement.

7.2 **"Authorized Viewer"** means a viewer application that is authorized by Adobe to display .folio files or .article files. Authorized Viewer includes Adobe-branded viewer applications.

7.3 **"Web Viewer"** means an internet browser-based version of the Application.

1. **License for Development Software.** Customer may install and use a reasonable number of copies of the On-premise Software in a development environment only, strictly for testing and quality assurance purposes and not for production purposes.
2. **Use of Fonts.** Except as otherwise detailed in the Agreement, Adobe’s proprietary or licensed fonts are embedded with the Products and Services only for use within the user interface of the Products and Services.
3. **Remote Verification.** The On-premise Software may contain functionality that allows Adobe to receive reports about Customer’s number of active Instances of the On-premise Software for the purpose of verifying Customer’s compliance with the terms of this Agreement. Adobe does not receive any data regarding any individual’s use of the On-premise Software, nor does Adobe have the ability to remotely disable the system or monitor any level of activity or transactions, other than receiving a notification that an Instance is active. Customer may disable this functionality at Customer’s discretion. Instructions for disabling the remote verification will be provided to Customer by Adobe after Customer submits a support ticket to Adobe requesting such instructions.
4. **Definitions.**
 - 4.1 **“Instance”** means one copy of the On-premise Software instantiated and running within a java virtual machine process on one physical Computer or virtual environment. Each Instance can be designated as either an Author Instance or Publish Instance, but each will be counted separately as one Instance.



Professional Services Description

This Professional Services Description ("PSD") is attached to and forms a part of the Sales Order between Adobe and Customer.

DR1728982

Professional Services provided under SKU#: 38051050, 38051051

This Customer Services Engagement will be delivered as follows:

1. PRODUCTS AND SERVICES

In this PSD, the term "Products and Services" means specifically, each of the Products and Services selected below:

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Adobe Experience Manager | <input type="checkbox"/> Adobe Analytics | <input type="checkbox"/> Adobe Media Optimizer |
| <input type="checkbox"/> Adobe Social | <input type="checkbox"/> Adobe Target | <input type="checkbox"/> Adobe Campaign |
| <input type="checkbox"/> Other: <please specify> | | |

2. DESCRIPTION OF PROFESSIONAL SERVICES

2.1 Scope and Nature of Professional Services

This PSD sets out the description of Professional Services provided by Adobe. Adobe provides such Professional Services subject to the assumptions in section 2.2 of this PSD. As part of the Professional Services, Adobe's consultant(s) will provide general guidance and assistance to Customer regarding its deployment of the Products and Services, so that Customer may use the Products and Services in Customer's nominated system environment. As this engagement is led by Project Management (PM) from the Customer and tasking will come directly from the Customer's PM team, the level of staffing identified in the Sales Order is not intended to specifically solve a particular business need but rather to support PM requests.

The goal of this engagement is to provide expert assistance on a monthly retainer to the Customer to help implement their AEM environment. Adobe will provide resources for no more than the equivalent number of hours invoiced to the Customer on a monthly basis.

As part of this engagement, Adobe Professional services may perform following services related to the scope defined above:

- (A) Conduct research for Customer and participate in meetings, interviews and technical discovery.
- (B) Assist Customer to develop strategies to use the Products and Services in a manner that is relevant to Customer's business;
- (C) Review current and go-forward architecture, implementation practices, and strategies for integrating with external systems.
- (D) Review hardware platform & configurations, and validate architecture for future sites and regions.
- (E) Review authoring practices, testing and QA practices, build & deployment procedures, and recovery procedures.
- (F) Provide assistance to install and configure the core AEM CMS Environment.
- (G) Provide assistance for basic setup of Adobe Analytics and Adobe Target Environment.
- (H) Provide assistance to build AEM components and templates.
- (I) Assist Customer to design testing strategies and assist Customer to carry out testing of Customer's implementation of the Products and Services.
- (J) Present review results and recommendations.
- (K) Consider and provide feedback on Customer's use of the Products and Services (including reviewing documentation maintained by Customer);
- (L) Assist Customer to prepare reports and documentation to facilitate its use of the Products and Services;
- (M) Support knowledge transfer to assist Customer in its ongoing use of the Products and Services (including providing ad hoc question and answer sessions regarding Customer's configuration options and practices)
- (N) Provide general, ad hoc guidance and support to Customer's personnel regarding the Products and Services.

If the Professional Services include additional services to be provided by Adobe, then such services, will be described in an attachment to this PSD.

2.2 Assumptions

- (A) Adobe only provides Professional Services in relation to the applicable Products and Services.
- (B) As part of the Professional Services, Adobe's consultant(s) will work under the reasonable supervision and direction of Customer. Customer will prioritize the tasks to be performed by the Adobe consultant(s). Customer acknowledges that there is no express or implied commitment from Adobe that all tasks can be completed in the hours of Professional Services that Customer purchases under the Sales Order.
- (C) Customer is ultimately responsible for developing all scripts, components or templates.
- (D) Customer must provide all necessary information, resources and work requirements to Adobe before Adobe commences providing the Professional Services under this engagement. If any information, resources, work requirements or decisions to be made by Customer are delayed, Adobe will not be responsible for the consequences of such delays.
- (E) The rates specified herein will apply to this PSD only, rates for any additional Professional Services/work are subject to change and shall be established by the parties under a new Sales Order.

ADDENDUM TO GENERAL TERMS
BETWEEN
ADOBE SYSTEMS INCORPORATED
AND
EAST TENNESSEE STATE UNIVERSITY

February 26, 2016

The following terms and conditions, as applicable, shall serve as an addendum to the above-referenced agreement (the "Agreement") between Adobe Systems Incorporated, a Delaware corporation ("Contractor"), and East Tennessee State University ("University"), a Tennessee Board of Regents ("TBR") institution, and are incorporated by reference and made an integral part of that Agreement. The terms and conditions of this Addendum shall control in the event of any conflict with any term or condition of the Agreement. Those terms and conditions of the Agreement not amended herein shall remain in full force and effect.

THEREFORE, the parties agree as follows:

- A. The State of Tennessee is self-insured, and the University does not carry or maintain commercial general liability insurance or medical, professional or hospital liability. Any and all claims against the University for personal injury and/or property damage resulting from the negligence of the university in performing any responsibility specifically required under the terms of the Agreement shall be submitted to the Board of Claims or Claims Commission for the State of Tennessee. Damages recoverable against the University shall be expressly limited to claims paid by the Board of Claims or Claims Commission pursuant to Tennessee Code Annotated Section 9-8-301 et. seq.
- B. Neither party shall be responsible for personal injury or property damage or loss except that resulting from its own negligence or the negligence of those within its control or employ.
- C. Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as office, agent, employee, subcontractor, or consultant to Contractor in connection with any work contemplated or performed relative to this Agreement.
- D. The parties agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, sex, age, disability, veteran status or national origin.

The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, disability or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.

- E. Contractor shall maintain documentation for all charges against the University under the Agreement. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three full years from the date of the final payment, and shall be subject to audit, during regular business hours and upon 10 business days prior notice, by the institution or the Comptroller of the Treasury, or their duly appointed representatives.
- F. Compensation to Contractor for travel, meals or lodging shall be in the amount of actual cost to Contractor, subject to maximum amounts and limitations specified in the Tennessee Board of Regents policies, attached below.
- G. **Non-appropriation of Funds.** University is entering into an agreement for a time period greater than the confines of University's fiscal year. University represents that as of the date of the applicable Sales Order, funds sufficient to pay immediate financial obligations under the applicable Sales Order have been allocated and are available. The Parties acknowledge that University is a publicly funded entity and University's on-going financial obligations in the applicable Sales Order are subject to allocation of funds by the legislative body of University's State. If, through no action initiated by University, the legislative body of University's State does not appropriate sufficient funds allowing for the continuation of an applicable Sales Order for any

fiscal year, and University reasonably and in good faith determines that there are no funds from other sources to continue, then University may terminate this Sales Order upon not less than thirty (30) days written notice to Adobe. Such termination will only be effective on a go forward basis. All amounts due and owing prior to the termination effective date will become due in accordance with the payment terms of the Agreement.

- H. Contractor represents that it will not knowingly utilize the services of illegal immigrants in the performance of this Agreement and will not knowingly utilize the services of any subcontractor, if permitted under this Agreement, who will utilize the services of illegal immigrants in the performance of this Agreement.
- I. Contractor represents that it will not knowingly utilize the services of any individual required to register as a sex offender under Title 40, Chapter 39 of the Tennessee Code Annotated or any similar law.
- J. Contractor agrees that in the course of providing Professional Services on TBR's property it will follow the data security and access standards promulgated by the Tennessee State Office of Information Resources when performing Professional Services for the Institution
- K. Contractor will endeavor to meet the standards set forth in WCAG 2.0 AA (also known as ISO standard, ISO/IEC 40500:2012) and Section 508 of the Vocational Rehabilitation Act. Upon University's prior written request, Contractor will provide documentation of performance testing against the accessibility standards set forth above. Contractor will also provide documentation of support for the EPUB3 format.
- L. If, through no action initiated by University, an unaffiliated third party makes a claim against the University alleging that the Products and Services do not meet accessibility standards, or through State or other legal action University's compliance with required standards is challenged, and University reasonably and in good faith determines that there is no other option to continue the License Term, then University may terminate the applicable Sales Order upon not less than thirty (30) days written notice to Adobe. Such termination will only be effective on a go forward basis. All amounts due and owing prior to the termination effective date will become due in accordance with the payment terms of the Agreement. Any amounts prepaid but unused by University will be credited back to University. To the extent permitted by law, this will be the University's sole remedy and Contractor's sole obligation as it relates to third party claims arising out of accessibility.
- M. The University will comply with the Tennessee Open Records Law in performing its duties under this Agreement.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have caused these presents to be executed on the dates below indicated.

EAST TENNESSEE STATE UNIVERSITY

ADOBE SYSTEMS INCORPORATED

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

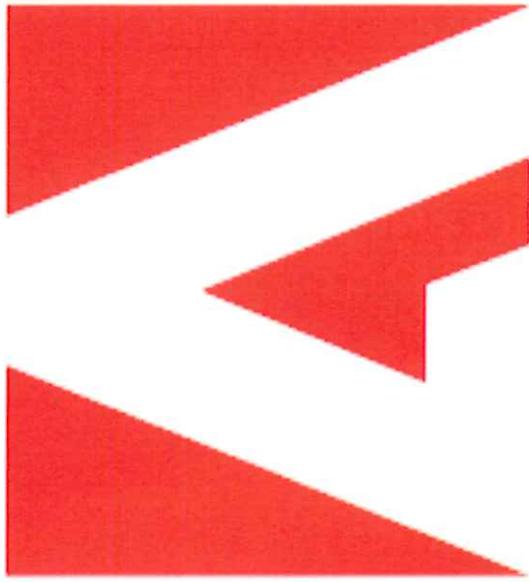


EAST TENNESSEE STATE
UNIVERSITY

Please find attached, the copy of the Power Point presented by Adobe to East Tennessee State University.



EAST TENNESSEE STATE
UNIVERSITY



Adobe

Agenda

- Introductions
- Adobe partnership offerings
- Introduction to R2i
- Description of Adobe solutions proposed
- Description of r2i services proposed
- Pricing without partnership
- Proposed partnership pricing with ramp

Adobe Partnership Offerings:

1. Funding & corporate support for an on-site kick-off event
 - Adobe Public Relations can assist with announcement of ETSU partnership
 - Field Sales will assist on an on – going basis using channels like LinkedIn and Twitter
2. Providing a Customer Success Manager
 - Patrick Koster has been assigned
3. Adobe MAX and Summit passes
 - 4 Summit General Passes & 1 VIP Executive Track Pass
 - 2 MAX Passes
4. An annual Adobe campus showcase
5. Guaranteed place for ETSU to participate in Adobe's higher education Analytics Challenge
 - Adobe begins to reach out to schools in August with kickoff in September
 - 3 students from each school have access to real company data for 2-3 weeks (past companies were Starwood, Comcast, Lenovo, etc.)
 - Each team will submit a 10 minute presentation; 25 teams are invited to continue on and present live via Adobe Connect
 - 6 teams are chosen to be flown out to Adobe's offices in Utah to present to the customer
 - Significant cash prizes are awarded for 1st, 2nd, and 3rd place with additional prizes for other participants
 - Prizes last year were very aggressive:
 - 1st place: \$15K
 - 2nd place: \$7.5K
 - 3rd place: \$3K
 - Almost 1,000 students participated last year

Adobe's Partnership Offerings (cont'd):

6. Internship pipeline with Adobe & Adobe-affiliated partners
 - Adobe can broker conversations while helping to build internship pipeline internally & with our customers.
7. Adobe Certified Training
 - Meeting this week concerning specifics of delivery
8. Student access to Adobe Marketing Cloud Core Services
9. Ramp model for pricing of software
10. Adobe funded & co-branded webinars / roadshows
11. Guest lectures from current Adobe employees for ETSU Faculty & Students
12. Access to a community of support
 - Invitations to User Group Meetings, Leaders & Learners Community Meetings, etc.
13. Stephen and students represent ETSU at Adobe WWSC 2017
14. Collaboration to create professional development for faculty
15. Collaboration in establishing the criteria & creating certification for Adobe DMA solutions
16. Commitment to create a video for our WWSC once ETSU DMA program is up and running
17. Appropriate use of Adobe logo in marketing

Adobe's Partnership Offerings (cont'd) :

17. General gift of \$25,000 up front to be used for any of the following
 - Naming rights for Culp ETSU Student Media Center
 - Funding for an Adobe *Instructor of Content Strategy*
 - Funding for research support
 - Adobe Branded Scholarships

Introduction to R2i

Who is R2i?

R2i partnership offerings

1. Retained Services Model
2. 2 seats at the r2i Adobe Boot Camp

Summary of Solutions

- Adobe Experience Manager (AEM)
 - Sites
 - Assets
 - Mobile
- Adobe Analytics
- Adobe Social
- Adobe Target
- Rzi Implementation Services

R2i Description of Services

- Retained services model contract
- Description of services included in proposal

Price without Partnership Estimate:

- AEM
 - Sites: \$201,150
 - Assets: \$60,000
 - Mobile: \$180,000
- Analytics: \$30,253
- Social: \$91,584
- Target: \$36,018
- Services: \$150,000 **Year 1 only
- Total per year: \$599,005/year
- Total contract value over 3 years + services: \$1,947,015

Ramp pricing proposal:

- Year 1: \$219,000 (software) + \$108,000 (services)
- Year 2: \$239,000 (software)
- Year 3: \$259,000 (software)
- Total contract value over 3 years + services: \$825,000

Thank you!