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EAST TENNESSEE STATE  
UNIVERSITY

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**Fiscal Review Committee**

**Contract Number:** \_\_\_\_\_

**Tracking Number:** \_\_\_\_\_

1. Contract Amendment Summary Letter
2. Supplemental Documentation Form
3. Non-Competitive Amendment Form
4. Original Contract Document
5. Proposed Amendment Document
6. Expenditures Query
7. Justification



EAST TENNESSEE STATE  
UNIVERSITY

Office of the President

September 26, 2019

Ms. Krista Lee Carsner, Director  
Fiscal Review Committee  
G-102 Cordell Hull Bldg.  
Nashville, TN 37243  
Phone (615) 741-2564

Dear Ms. Carsner:

East Tennessee State University respectfully requests Fiscal Review's consideration for approval of Amendment One, Adobe Contract Number 00775434 to increase the maximum liability on the Adobe Systems Inc. Contract number 00737346 from \$489,588.56 to \$891,339.42 for the addition of "Adobe Managed Services".

In February of 2019, Fiscal Review approved Contract number 00737346 for the Adobe Partnership for the provision of Adobe Experience Cloud; including LiveFyre, Target, Analytics, Assets, Sites, and Users with a three-year term, which is set to expire in March 31, 2022.

The Contract extended Adobe's on demand services and use of on-premise software technology for utilization within the University's curricula. The software is currently hosted on the University's servers with account management, websites, and content deployment handled by ETSU's Information Technology Services department. The addition of the Adobe Managed Services will deploy their propriety software into a cloud environment shifting the majority of functions to Adobe realizing a significant cost savings in anticipated future internal costs.

ETSU Office of Information Technology has hosted the software and our student's websites internally for the past three years. There is limited resources available internally to manage and execute website maintenance, administer user account rights, implement software and hardware upgrades, deploy security protocols, and provide help desk support.

ETSU is entering its fourth year of an exclusive partnership with Adobe within the education space, where we have integrated the software solution into the academic curriculum. This partnership includes advantaged software pricing as well as additional partnership benefits providing support, program promotion, and industry interfaces.

The addition of Adobe's Managed Services will unlock additional potential in this partnership, allowing ETSU to continue to grow the website deployment program and grow the University's enrollment in the related academic areas.

Your consideration of this amendment is very much appreciated.

Sincerely,

Brian Noland  
President

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Randal J. Jones	*Contact Phone:	423-439-4803		
*Presenter's name(s):	Dr. Stephen Marshall				
Edison Contract Number: <i>(if applicable)</i>		RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	March 9, 2019	*Current End Date:	March 31, 2022		
Current Request Amendment Number: <i>(if applicable)</i>	Amendment Number 1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	February 5, 2020				
*Department Submitting:	East Tennessee State University				
*Division:	Academic Affairs				
*Date Submitted:	October 04, 2019				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Adobe, Inc.				
Proposed Amendment Maximum Liability:	\$401,750.86				
*Estimated Total Spend for Commodities:	\$891,339.42				
<b>*Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY:2019-20	FY:2020-21	FY:2020-21	FY:	FY	FY
\$48,950.86	\$176,400	\$176,400	\$	\$	\$
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)</b>					
FY:2018-19	FY:2019-20	FY:2020-21	FY:	FY	FY
\$153,001.46	\$167,850.00	\$168,737.10	\$	\$	\$
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					
<b>*Contract Funding Source/Amount:</b>					

Supplemental Documentation Required for  
Fiscal Review Committee

State:	\$401,750.86	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” 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>	N/A		
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?	N/A		
*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.	While offsite hosting of the software is available, it would only export all of the issues ETSU has experienced in the deployment and maintenance of the software and websites to a third party. It is Adobe's proprietary cloud based application that will address our ongoing issues and provide a seamless transition for new site builds, a very active and changing student user base, allow for remote access, and address very resource intensive software version upgrades.		

# REQUEST: NON-COMPETITIVE AMENDMENT

APPROVED

Commissioner of Finance & Administration  
Date:

EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED.

1) RFS #		
2) State Agency Name :	East Tennessee State University – Academic Affairs	
<b>EXISTING CONTRACT INFORMATION</b>		
3) Service Caption :		
4) Contractor :	Adobe Inc.	
5) Contract #	Adobe Contract 00737346	
6) Contract Start Date :		March 09, 2019
7) <u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :		March 31, 2022
8) <u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :		\$489,588.56
<b>PROPOSED AMENDMENT INFORMATION</b>		
9) <u>Proposed</u> Amendment # Number 1		\$401,750.86
10) <u>Proposed</u> Amendment Effective Date : (attached explanation required if date is < 60 days after F&A receipt)		February 05, 2020
11) <u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :		March 31, 2022
12) <u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :		\$891,339.42
13) 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
14) Description of the Proposed Amendment Effects & Any Additional Service :		
Addition of managed services to contract scope covering software hosting, account management, and website management for both development and production environments.		

<b>15) Explanation of Need for the Proposed Amendment :</b>	
Moving to managed services as an alternative to internal hosting and administration of the software is a more cost effective solution due to pending software versioning upgrades and increasing student user account turnover along with increased demand for new website development.	
<b>16) Name &amp; Address of Contractor's Current Principal Owner(s) :</b>	
Adobe Inc., 345 Park Avenue, San Jose, CA 95110-2704 USA Attn: Contract Operations Group	
<b>17) Documentation of Office for Information Resources Endorsement :</b> (required <u>only</u> if the subject service involves information technology)	
<b>select one:</b>	<input type="checkbox"/> Documentation Not Applicable to this Request <input type="checkbox"/> Documentation Attached to this Request
<b>18) Documentation of Department of Personnel Endorsement :</b> (required <u>only</u> if the subject service involves training for state employees)	
<b>select one:</b>	<input type="checkbox"/> Documentation Not Applicable to this Request <input type="checkbox"/> Documentation Attached to this Request
<b>19) Documentation of State Architect Endorsement :</b> (required <u>only</u> if the subject service involves construction or real property related services)	
<b>select one:</b>	<input type="checkbox"/> Documentation Not Applicable to this Request <input type="checkbox"/> Documentation Attached to this Request
<b>20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :</b>	
No alternatives available to gain direct access to Adobe software versioning upgrades and Adobe's proprietary cloud software environment.	
<b>21) Justification for the Proposed Non-Competitive Amendment :</b>	
Adobe provides the best and most efficient software and application hosting using a proprietary cloud environment to manage software versioning upgrades, user account management, and website development and deployment. Managed services provide a more cost effective solution versus the continuation of an internal deployment model where challenges in securing the necessary skills in personnel exist under the university pay scale, and ongoing software and hardware needs require significant ongoing resources	
<b>REQUESTING AGENCY HEAD SIGNATURE &amp; DATE :</b> ( <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)	
	September 30, 2019
<b>Agency Head Signature</b>	<b>Date</b>



## Adobe Sales Order

**Customer** EAST TENNESSEE STATE UNIVERSITY  
**Agreement Number** DR2259881  
**Currency** USO

### Adobe Inc.

#### Products and Services Pricing Detail:

#### Adobe On-demand Services

Except as otherwise specified in this Sales Order, these On-demand Services terminate on the identified License Term End Date. Support Services are described at: [https:// helpx.adobe.com/ support / programs/ support-policies-terms -conditions.html](https://helpx.adobe.com/support/programs/support-policies-terms-conditions.html)

Line Number	SKU	Product Description	Billing Cycle	Quantity	Unit Of Measure	License Term Start Date	License Term End Date	Unit Price	Annualized Fees	Total Fees
01	380S2997	AEM LIVEFYRE:OD LICENSE	Advance   Annua lly - In	1.00	Each BASE Per Year	9 March 2019	31 March 2022	25,000.00	25,000.00	76,545.70
02	38052998	AEM LIVEFYRE: OD STANDARD	Advance   Annua lly - In	1.00	Each Activation Per Year	9 March 2019	31 March 2022	25,000.00	25,000.00	76,545.70
03	38049701	ADOBE TARGET STANDARD	Advance   Annua lly - In	12.00	Million PAGE VIEWS Per Year	21 March 2019	31 March 2022	1,150.00	13,800.00	41,808.06
04	38051945	ADOBE ANALYTICS:OD	Advance   Annua lly - In	1.0 0	Million SERVER CALLS Per Month	21 March 2019	20 March 2020	971.00	11,652.00	11,652.00
05	38053542	ANALYTICS SELECT:OD	Advance   Annua lly - In	5.00	Mil ion SERVER CALLS Per Month	21 March 2020	31 March 2022	500.00	30,000.00	60,887.10

Adobe On-demand Services Annualized Fees (Year 1)	75,452.00
Adobe On-demand Services Annualized Fees (Year 2)	93,800.00
Adobe On-demand Services Annualized Fees (Year 3)	93,800.00
<b>Total Adobe On-demand Services</b>	<b>267,438.56</b>

- 01 AEM LIVEFYRE:OD LICENSE:  
Livefyre Base Package. The Livefyre Base Package does not include the ability to publish Third Party Materials viewed through the Livefyre user interface to Livefyre Activations. Customer must license Activations separately. Each Livefyre Base Package includes up to 1 million Third Party Material Mentions per month.
- 02 AEM LIVEFYRE:OD STANDARD:  
Each Standard Activation includes 1 Activation and up to 250 thousand Page Views per month. Standard Activations may only be added to an actively licensed Livefyre Base Package. Bundled Page Views are tied to a specific Activation and may not be used to offset Page View usage by other Activations. After each 12-month period of the License Term, if an Activation exceeds the total number of bundled Page Views for that period, then Adobe may elevate Customer's Activation commitment to an Activation commitment corresponding to the Page View volume for that period for the remainder of the License Term (and any renewals thereof). Additional fees for the elevated commitment will be invoiced in accordance with the Billing Terms of this Agreement. Customer will not receive any credit, reduction in flat fee, or revision of the Activation if Customer does not use the bundled Page Views included with each Activation.
- 03 ADOBE TARGET STANDARD:  
Adobe 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.

**Renewal Terms:**

Notwithstanding any term herein to the contrary, the Products and Services listed on this Line Number may be renewed by mutual agreement of the Parties.

04

**ADOBE ANALYTICS:0 0:**

Fees associated with Adobe Analytics Primary Server Calls in excess of the Annual Primary Server Call commitment shall be billed @ 971.00 USOCPM. These fees are billed monthly in arrears as incurred. 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.

**Renewal Terms:**

Notwithstanding any term herein to the contrary, the Products and Services listed on this Line Number may be renewed by mutual agreement of the Parties.

05

**ANALYTICS SELECT:0 0:**

Fees associated with Adobe Analytics Select Primary Server Calls in excess of the Annual Primary Server Call commitment shall be billed @ 500.00 USOCPM. 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 100% of the Primary Server Call Overusage rate set forth above. Such fees are billed monthly in arrears as incurred.

**Renewal Terms:**

Notwithstanding any term herein to the contrary, the Products and Services listed on this Line Number may be renewed by mutual agreement of the Parties.

## Adobe On-premise Software

Support services for the On-premise Software 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	License Term Start Date	License Term End Date	Unit Price	Annualized Fees	Total Fees
OS	38052385	AEM ASSETS:OPT ADD TO SITES INSTANCE	Advance   Annually - In	1.00	Each INSTANCE Per Year	1 April 2019	31 March 2022	5,000.00	5,000.00	15,000.00
06	58051628	AEM SITES:OPT	Advance   Annually - In	1.00	Each BASE Per Year	1 April 2019	31 March 2022	65,750.00	65,750.00	197,250.00
07	58051590	AEM:OPT USERS	Advance   Annually - In	20.00	Each USER Per Year	1 April 2019	31 March 2022	165.00	3,300.00	9,900.00

Adobe On-premise Software Annualized Fees (Years 1, 2, & 3):-

Total Adobe On-premise Software:-

## Summary of Fees

Sales Order Annualized Fees (Year 1)	149,502.00
Sales Order Annualized Fees (Year 2)	167,850.00
Sales Order Annualized Fees (Year 3)	167,850.00
<b>Total Sales Order Fees</b>	<b>489,588.56</b>

## es Order Terms and Conditions

1. All Products and SeNices listed on this Sales Order are provided under: (A) the Adobe General Terms (2015v2) made effective by and between Adobe and Customer on 29 March 2016 under Agreement Number 00473190.0 attached as Exhibit A; (B) the Product Specific Licensing Terms ("PSLT") for Livefyre, Part of Adobe Experience Manager: On-demand Services (2017v1) attached as Exhibit B; (C) the Product Specific licensing Terms for Adobe Target (2015v2) attached as Exhibit C; (D) the Product Specific Licensing Terms for Adobe Experience Manager : On-premise Software (2015v2) attached as Exhibit D; (E) the Product Specific licensing Terms for Adobe Experience Manager : Managed Services Basic (2017v1.1) attached as Exhibit E; (F) the Addendum to Agreement Between Adobe Inc and East Tennessee State University attached as Exhibit F; and (G) this Sales Order (collectively, the "Agreement"). In the event of conflict between any components of this Agreement, such conflict will be resolved according to the following hierarchy: this Sales Order, then the PSLTs, then the applicable Exhibits, and then the General Terms.
2. Additional Terms. For the purposes of this Sales Order (and any future Sales Order referencing these terms), the Parties agree to the following:
  - 2.1. **Modified Definitions.** The following defined terms in the General Terms are deleted and replaced as follows:
    - 2.1.1. "**Customer Data**" means any information that is imported by or on behalf of Customer into the On-demand Services or Managed Services from Customer's internal data stores or other third-party data providers, or is collected via the Distributed Code, in connection with Customer's use of the Products and Services.
    - 2.1.2. "**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.
  - 2.2. **Regional Service Limitations.** Unless specifically licensed in the Sales Order, Customer is not permitted to use or allow its Users to use the On-demand Services and Managed Services in mainland China, Russia and any other country where usage is restricted by local laws.
  - 2.3. **Usage Analytics.** Adobe may develop, modify, improve, support, and operate its Products and Services based on Customer's use, as applicable, of any Products and Services.
3. Provisions of Sales Order DR1728982 notwithstanding, line Numbers 0030, 0060, and 0090 (SKU # 38051945, 38049701, 38049424) will not automatically renew and will expire on their respective License Term End Dates.
4. 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 9 March 2019 (unless countersigned by Adobe).
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 invoice.
6. Purchase Order (PO) required? Yes  } Customer may submit the purchase order to Adobe via email at [uspo@adobe.com](mailto:uspo@adobe.com). If this box is not ticked, Adobe may invoice directly using the Adobe Agreement Number as the reference 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.

**Adobe Inc. (ADUS)**  
 345 Park Avenue,  
 San Jose CA 95110, United States



Authorized Signature

Andy Payne

Print Name

Director, WW Order Management

Title

Mar 27, 2019

Date

**EAST TENNESSEE STATE UNIVERSITY**  
 CENTRAL RECEIVING, 325 TREASURE LANE,  
 JOHNSON CITY, TN 37614-6597 UNITED STATES

Authorized Signature

Brian E. Noland



President

3/15/19

Date

Purchase Order Number:  
 ECC ID Number: 0001425058

**North America**

<b>End User : 1425058</b> EAST TENNESSEE STATE UNIVERSITY CENTRAL RECEIVING, 325 TREASURE LANE, JOHNSON CITY, TN, 37614 UNITED STATES	<b>Bill-To : 1509343</b> EAST TENNESSEE STATE UNIVERSITY PO BOX 70729 JOHNSON CITY, TN, 37614-1710 UNITED STATES	<b>Ship-To : 1425058</b> EAST TENNESSEE STATE UNIVERSITY CENTRAL RECEIVING, 325 TREASURE LANE, JOHNSON CITY, TN, 37614 UNITED STATES
	Invoicing Contact Name: Jayne Morrell Contact Email: morjayne@etsu.edu	Customer Admin Name: Stephen Marshall Contact Email: marshals@mail.etsu.edu

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

**Please return your signed original agreement per the appropriate instructions below. If you have questions regarding these instructions, please contact your Adobe Account Manager or [Adobe Customer Service](#).**

For Customers located in the United States, Canada and Mexico only please use one of the following methods to return the signed original agreement to Adobe:		
Mailing Address	Email	FAX
Mail two signed agreement originals to: Adobe Inc. 345 Park Avenue San Jose, California 95110-2704 USA Attention: Contract Operations Group	Scan and email signed agreement to : * Email: <a href="mailto:rgcordus@adobe.com">rgcordus@adobe.com</a>	FAX signed agreement to: FAX: (801) 437-2883

For Customers located in Japan, Asia, Australia or New Zealand please email your contract to <a href="mailto:ccordap@adobe.com">ccordap@adobe.com</a> For customers located in EMEA or Latam please email your contract to <a href="mailto:ccordir@adobe.com">ccordir@adobe.com</a> If your customer requires originals/wet signatures and is located in <b>Australia</b> please send your contract by courier to the Adobe Australia office (see postal address below) If your customer is located in EMEA or LATAM please send originals by courier to the Adobe Dublin office (see postal address below)		
Mailing Address	Email	Mailing address for Australia contracts only
Mail two signed agreement originals to: Adobe Systems Software Ireland Limited 4-6 Riverwalk City West Business Campus Dublin 24, Ireland Attention: Contract Operations Group	Scan and email signed agreement to : * Email: <a href="mailto:ccordir@adobe.com">ccordir@adobe.com</a>	Mail two signed agreement originals to: Adobe Systems Pty Ltd. Tower 2, 27th floor 201 Sussex Street Sydney, NSW 2000 Australia Tel: +61(2)9778-4100
	Or	
	*Email: <a href="mailto:ccordap@adobe.com">ccordap@adobe.com</a>	

## EXHIBIT A



## GENERAL TERMS (2015v2)

## L. 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 the Addendum to Agreement Number PRI 728982, the 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 form 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) "Indemified 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 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 Sales Order, the following terms apply:

Adobe Sales Order  
DR1728982

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DDCERT: mid • 16/03/16 - 7 of 23  
Confidential

Agreement Number

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 electronic invoice. Customer agrees to provide clear indication with its check (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 sjair@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 creditworthiness 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.** Price; 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 PSIT 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 specified in the Sales Order, User logins 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 such 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 the 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 Service 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, privacy, or other applicable law);

- (B) copy, use, distribute, republish, download, display, transmit, sell, rent, lease, host, or sub-license the Products and Services;
- (C) offer, use, or permit the use of the Products and Services in a computer service business, third-party outsourcing service, on a membership or subscription basis, on a service bureau basis, on a time-sharing basis, as part of a hosted service, or on behalf of any third party;
- (D) attempt to interact with the operating system underlying the On-demand Services and Managed Services, or modify, create derivative works of, adapt, translate, reverse engineer, decompile, or otherwise attempt to discover the source code in, any Adobe Technology. This restriction will not apply to the extent it limits any non-writable 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, 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 its 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, modify, 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 (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 Solo 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 with in 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.
- (C) The maximum aggregate liability of Adobe for each and all Claims (individually and together) arising out of Adobe's breach of Section 8 (Security Measures) or Section 10 (Third Party Intellectual Property Claims) is limited to five million dollars.
- (D) Sections 12.1 (A) and 12.1 (B) (Limitation of liability) of those 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 pro-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

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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.

## 5. 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 contract(s) 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, or deS, 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 preliminary and permanent injunctive relief and other equitable relief for any such breach.
- 16.5 **Noticos.** Any notice given under this Agreement must be in writing by email to the following addresses (or addresses notified in writing by either Party): to Adobe: [ContractNotifications@adobe.com](mailto:ContractNotifications@adobe.com); and to Customer: at Customer's email address stated on the Sales Order, or if Customer's Sales Order is with an Adobe Partner, at Customer's registered address.
- 16.6 **No Agency.** Nothing in this Agreement is intended to constitute a fiduciary relationship, agency, joint venture, partnership, or trust between the Parties. No Party has authority to bind the other Party.
- 16.7 **Customer's Purchase Order.** Any terms or conditions in Customer's purchase order or any other related documentation submitted by or on behalf of Customer to Adobe (or any other party, such as an Adobe Partner) do not form part of this Agreement and are void, unless otherwise expressly agreed in writing and signed by both Customer and Adobe.
- 16.8 **Waiver, Modification.** Neither Party's waiver of the breach of any provision constitutes a waiver of that provision in any other instance. This Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing signed by the Parties.
- 16.9 **Order of Precedence.** If there is any inconsistency between any of these above parts, the Addendum will prevail over the Sales Order which 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.
- 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 constitute 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 **Sovereignty.** If any term of this Agreement is held irrevocable 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 user: 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.

## EXHIBIT B

## PSLT- Uvefyre, Part of Adobe Experience Manager: On-demand Services (2017v1)

1. **Customer Terms of Use.** In connection with Customer's use of Livefyre, Customer will conspicuously display terms of use that grant Customer a license to any user-generated content posted on the Customer Site, including the right to sub-license such user-generated content to Adobe as necessary for Adobe to perform its obligations or enforce its rights under this Agreement.
2. **Third Party Material.** Customer acknowledges and agrees that:
  - (A) Livefyre may incorporate or provide Customer with access to Third Party Materials;
  - (B) Third Party Materials may only be used in conjunction with Uvefyre;
  - (C) Customer's use of the Third Party Materials is subject to the Third Party Terms, which are incorporated into this Agreement by reference; and
  - (D) The "Third Party Providers" section of the General Terms applies to the third party providers identified in the Third Party Terms.
3. **Public Comments.** Customer will ensure that Customer Site visitors acknowledge that Public Comments may be made publicly available via search results displayed by third party search providers. Through its administrator privileges, Customer may delete any Public Comments posted via livefyre in connection with the Customer Sites.
4. **Definitions.**
  - 4.1 **"Customer Content"** has the meaning set forth in the General Terms, but also includes Public Comments and Third Party Materials.
  - 4.2 **"Distributed Code"** has the meaning set forth in the General Terms, but also includes applications hosted by Livefyre.
  - 4.3 **"Public Comments"** means content, posts, comments, information, data, audio or video provided by end users to a public forum or commenting platform on the Customer Site via Livefyre, as well as any metadata generated or recorded by Livefyre with respect to the foregoing.
  - 4.4 **"Third Party Materials"** means any material, such as audio, video, text or images received from third party providers. Content generated by consumers of Customer, as described in the "Consumer Generated Content" section of the General Terms, includes Third Party Materials.
  - 4.5 **"Third Party Terms"** means any terms of use required by a third party provider, including, but not limited to, the third party terms and conditions set forth at [www.adobe.com/go/livefyre\\_third\\_party\\_terms](http://www.adobe.com/go/livefyre_third_party_terms) which may be updated from time to time.

EXHIBIT C

PSLT -Adobe Target (20iSv2}

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.

EXHIBIT D

PSLT - Adobe Experience Manager: On-premise Software (2015v2)

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 or may be used for use with in 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.

## EXHIBIT E

## PSLT-Adobe Experience Manager: Managed Services Basic (2017v1.1)

**1. Pre-Production Phase**

1.1 During the Pre-Production Phase, Customer will:

- (A) create and provide a complete and accurate Runbook to Adobe for review and obtain Adobe's written approval of such Runbook;
- (B) create and test Customer Customizations for the purpose of evaluating potential configurations of the Managed Services;
- (C) submit Customer Customization source code to Adobe for storage in, and processing through, the Cloud Manager Framework;
- (D) conduct additional quality and security testing of those Customer Customizations and configurations by performing bug elimination, simulations, and integration with other Customer systems.

**2. Production Phase**

2.1 If Customer desires to make any Customer Customizations to the Managed Services once the Managed Services are in the Production Phase:

- (A) Customer will request that Adobe launch a cloned staging server, implement such Customer Customizations, and request that such Customer Customizations be reviewed and approved by Adobe;
- (B) the Managed Services Will then revert to the Pre-Production Phase *in* connection with such Customer Customizations on such cloned server; and
- (C) Adobe will continue to simultaneously run the Managed Services in the Production Phase while such Customer Customizations are in the Pre-Production Phase.

**3. Customer Customizations**

3.1 Adobe will not be responsible for any defect or failure in the Managed Services caused by Customer Customizations or by Customer's failure to meet the obligations in sections 1 and 2 (Pre-Production Phase and Production Phase) . Customer acknowledges and agrees that any testing of Customer Customization source code via the Cloud Manager Framework represents *only* a subset of the overall testing that needs to be completed by Customer. Customer is solely responsible for all testing (security and quality) of Customer Customizations.

3.2 Should Customer fail to implement source code or configuration changes required by the Cloud Manager Framework, Customer may need to license additional Managed Production Capacity.

**4. Development Consultant.** Any Development Consultant(s) appointed by Customer under this PSLT works expressly and exclusively at Customer's direction and Customer is responsible for any acts or omissions of such Development Consultant(s) . Adobe may deny access to any Development Consultant it deems is adversely impacting the Managed Services or other Managed Services customers. References to Customer in this PSLT refer to both Customer and its Development Consultant(s).

**5. Runbook.** Customer's Runbook must, at a minimum, include the subject matters listed below in the format provided by Adobe. Customer must promptly update the Runbook each time it creates new Customer Customizations that are accepted by Adobe for use in the Production Phase. Adobe may, in its sole discretion, from time to time during the License Term, change or modify the subject matters required to be included in the Runbook, and Customer will promptly update its Runbook to include such new subject matters. Customer will immediately update the Runbook upon any Adobe request.

5.1 Runbook Table:

Runbook Subject Matter	Description
System Configuration	Adobe may provide Customer with information regarding the configuration of the Managed Services, and Customer must verify whether this information is correct.
Customizations	<p>A list of all Customer Customizations.</p> <p>A list and description of the functionality of all software (including of any bugs) installed by Customer in connection with the Managed Services.</p> <p>A list of all AEM Forms Reader Extensions credentials or PKI certificates applied to the Managed Services by Customer,</p> <p>Any Customer-specific backup schedule for Customer's implementation of the Managed Services.</p>
System Monitoring	<p>A list of any connections between the Managed Services and any other systems on which the Managed Services is dependent.</p> <p>A list of parameters for such connections that should be monitored by Adobe to ensure functioning of the Managed Services.</p> <p>A list of parameters associated with any Customer Customizations that should be monitored by Adobe to ensure functioning of the Managed Services.</p>
User Acceptance Testing Documentation	<p>Describe the load testing scenarios conducted by Customer.</p> <p>Describe the user acceptance testing scenarios conducted by Customer.</p> <p>Describe the positive and negative outcomes of such testing.</p>
Post Production Changes	Describe the changes to the Managed Services' Production Phase, which were requested by Customer and approved and implemented by Adobe.
Events and Responses	<p>List all known weaknesses in Customer Customizations to the Managed Services.</p> <p>Recommend actions to be taken by Adobe when providing support for the Managed Services.</p> <p>Include the following information, at a minimum:</p> <ul style="list-style-type: none"> <li>• all log files created by Customer;</li> <li>• all information source or recipient repositories;</li> <li>• all data bases and other info storage occurring in the Managed Services;</li> <li>• any encryption models implemented in the Managed Services;</li> <li>• all communications with any upstream data sources, including forms;</li> <li>• any additional executables/WAR Files added to the Managed Services;</li> <li>• all information required for long-term administration of the Customer Customizations; and</li> <li>• the most common failure modes and recommendations for recovery from such failures.</li> </ul>
Contacts and Contracts	<p>Specify a Customer contact who Adobe should notify if the system goes down .</p> <p>Specify a Customer resource who has technical knowledge of the Managed Services and who can answer questions from Adobe .</p> <p>Specify any links between Customer's IT gate keeper for the Managed Services and other Customer systems (e.g., LDAP, data repositories, etc.).</p>

Runbook Subject Matter	Description
	<p>Specify the Customer relationship manager for Development Consultant .</p> <p>Specify the Development Consultant contact who Adobe can contact in a support emergency.</p> <p>Specify the Development Consultant contact for management escalation .</p> <p>Specify the Development Consultant contact with whom Adobe will work to test upgrades to the Managed Services.</p> <p>Describe the agreement between Customer and Development Consultant . Include details on Development Consultant 's response time requirements and other special instructions from Customer regarding such response times .</p>

**6. LongTerm Storageand Encryption**

- 6.1 Adobe stores all long-term Customer Content , Customer Data and related operational data on mechanisms external to the virtual machines supporting Customer's Managed Services deployment .
- 6.2 Adobe encrypts all Customer Content, Customer Data and related operational data stored outside the virtual machine at a standard of no less than AES-256.

**7. Backup**

- 7.1 Adobe backs-up long-term Customer Content, Customer Data and related operational data such that Adobe can make a rapid recovery of the Managed Services in the event of a loss of the primary data within a system.
- 7.2 Adobe encrypts all backups at the same standard or better as set forth above for long-term storage. All backed-up Customer Data, Customer Content and related operational data will , after encryption, be distributed across multiple data centers within a given cloud region to allow for recovery within these data centers in the event of the loss of function of the primary data center.
- 7.3 All backups will be taken at a frequency specified by Customer in Customer's Runbook, or daily if no specification is made.
- 7.4 Adobe will retain all backups for a period specified in Customer's Runbook, or for one week if no specification is made. Adobe may delete and overwrite all backup files from media seven days after the end of the retention period unless Adobe is otherwise requested to retain these files, in writing, by Customer or lawenforcement.
- 7.5 Customer Data, Customer Content and Customer Customization source code stored within the Managed Services will be available to Customer until the expiration or termination of the License Term in the same format then available within the Managed Services. Customer acknowledges and agrees that the Managed Services should not be Customer's only repository for Customer Data, Customer Content and Customer Customization source code.

**8. Adobe Experience Targeting - Data Retention.** To the extent that Customer has licensed Managed Services that include bundled Adobe Experience Targeting, Customer Data collected by Adobe Experience Targeting may be permanently deleted from Adobe's servers (a) 90 days after collection for visitor profile data, and (b) 12 months after collection for Customer Site activity data. Customer Data and Customer Content associated with Adobe Experience Targeting are stored outside of the Managed Services, in the Adobe Experience Targeting On-demandService environment.

**9. License for Development Software.** Customer may install and use a reasonable number of copies of the On-premise Software versions of the licensed Managed Services in a development environment only, strictly for testing and quality assurance purposes and not for production purposes.

10. **Permitted Use.** Adobe may access, use, copy and store Customer Data, Customer Content, Customer Customizations, User interactions, and Managed Services system performance to develop, modify, improve, support, test, and operate AEM and the Managed Services.
11. **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.
12. **Patches:** Customer is prohibited *from* applying patches to the Managed Services, unless expressly approved by Adobe in the Runbook.
13. **Service Level Agreement.** Adobe's Minimum Uptime Percentage obligations are detailed in the Service Level Agreement and the Service Commitment Exhibit for AEM Managed Services Basic found here: <http://www.adobe.com/legal/service-commitments.html> (together the "Service Level Agreement").
14. **Support Services.** All priority issues and issues related to the performance of the Managed Services should be submitted pursuant to the Support Policies: Terms and Conditions described at: <https://helpx.adobe.com/support/programs/support-policies-terms-conditions.html> (each a "Service Request"). If a Service Request relates to a problem in the usage of the Managed Services, Customer will provide Adobe with sufficient access and detail to permit Adobe to understand and reproduce the problem. If it is mutually determined by Customer and Adobe that the problem represents an error in the Managed Services that causes it to not operate in substantial conformity with applicable Documentation, Adobe will process the Service Request as detailed in the Support Policies: Terms and Conditions. In addition, Adobe may, at its sole discretion and from time to time, implement fix releases.
15. **Software Updates and Upgrades.** During the license Term, all Managed Services include the updates and upgrades that are released to the general Adobe customer base.
  - (A) **Types of Upgrades.** From time to time during the License Term, Adobe may Implement upgrades to the Managed Services. Those upgrades may include a Customer-specific upgrade, an emergency upgrade necessary for the security of the Managed Services or to address issues causing Adobe not to meet the Minimum Uptime Percentage (each an "**Emergency Upgrade**"), a minor upgrade (i.e., a maintenance release or a new minor version change to the Managed Services for purposes including but not limited to, error correction), or a major Upgrade (i.e., a new version of the Managed Services).
  - (B) **Upgrade Events Sequence.** Adobe will make all reasonable efforts to first install all upgrades on a server in the Pre-Production Phase at a mutually agreed upon time described in section 15(C) (Upgrade Timing) below. Once Adobe performs such installation, Customer will work with Adobe to test the upgrade's implementation in a timely fashion and will notify their Adobe contacts, as listed in the Runbook, of the success or failure of such testing. In the event of successful test results, Adobe will install the upgrade on server(s) in the Production Phase on a schedule described in section 15(C) (Upgrade Timing) below. In the event of the failure of the upgrade, Adobe will take corrective action if the issue is with Adobe's software. If the issue is Customer Customizations, Adobe will take reasonable steps to support Customer in Customer's efforts to make adjustment to the code underlying Customer Customizations. Upon successful resolution of any such issues, Adobe will install the upgrade on the Production Phase server(s) as described above. A Customer may elect to defer or decline any such upgrade (excluding Emergency Upgrades) as set forth in section 15(0) (Upgrade Deferrals) below.
  - (C) **Upgrade Timing.** Emergency Upgrades will be implemented by Adobe as needed. All other upgrades will be implemented by Adobe throughout the License Term upon prior written notice to Customer as specified in the Runbook. Adobe will notify Customer, with as much lead time as possible, of the availability of such upgrades. After Adobe provides such notification, Adobe will work with Customer to determine a mutually agreed upon time to provide a Pre-Production Phase system for Customer to start testing the upgrade. Unless Adobe agrees in writing to a

longer test period, Customer must finish its testing within 5 business days after Adobe makes the upgraded Managed Services available. In the event that Customer notifies Adobe that the tests on the Pre-Production Phase system have passed, Adobe will work with Customer to determine a mutually agreed upon maintenance window or other time period to implement the upgrade.

- (D) **Upgrade Deferrals.** A Customer may elect to defer or decline any upgrade (excluding Emergency Upgrades). If Customer defers or declines an upgrade that is required to maintain the Managed Services within at least 1 major upgrade of the then-current, generally commercially available version of the Adobe Experience Manager Managed Services (each a "**Support Upgrade**") for any reason (including but not limited to, unwillingness to accept the Support Upgrade or unwillingness to make Customer Customizations that enable the Managed Services to become compatible with a Support Upgrade), Customer agrees to pay Adobe an additional Extended Operations Uplift Fee calculated as an additional 50% increase to any fees incurred after the effective date of Customer's deferral or declining of the Support Upgrade. Notwithstanding the foregoing, Customer is not obligated to pay to Adobe any such Extended Operations Uplift Fees if Customer is willing to install the Support Upgrade, but an action by Adobe causes such Support Upgrade to fail to be backward compatible with the then-current version of the Managed Services; however, Customer will work with Adobe to install the applicable Support Upgrade within a reasonable period of time.
- (E) **Emergency Upgrades.** Notwithstanding anything to the contrary herein, Customer must accept all Emergency Upgrades.

## 16. Additional Definitions

- 16.1 **"Cloud Manager Framework"** means Adobe's continuous integration, development and testing framework. The Cloud Manager Framework may:
- (A) store Customer Customization source code (Customer agrees that it will not upload any code other than Customer Customizations to the AEM Managed Services to the Cloud Manager Framework repository);
  - (B) test the quality of Customer Customization *source* code;
  - (C) provide recommended or required updates or changes to Customer Customization sourcecode;
  - (D) provide Customer with access to Adobe's identity management system (Customer agrees that it will notify Adobe regarding any desire to use an alternative identify management system);
  - (E) compile approved Customer Customizations; and
  - (F) allow authorized Users to make self-service increases to Managed Services system infrastructure.
- 16.2 **"Customer Customizations "** means the customizations made to the Managed Services at Customer's direction. Customer Customizations do not constitute Indemnified Technology. Customer owns (or, where applicable, must ensure it has a valid license to) Customer Customizations, subject to Adobe's underlying intellectual property in the Adobe Technology. Customer acknowledges and agrees that Adobe's access to Customer Customizations does not preclude Adobe from independently developing (without use of Customer Customizations) or acquiring similar technology without obligation to Customer.
- 16.3 **"DevelopmentConsultant"** means a third-party systems integrator that (a) Customer has authorized, under section 5 of the General Terms, to access, test and customize the Managed Services during the Pre-Production Phase, and (b) has a minimum of one individual on the development team who has an AEM 6 Architecture Certification and will be significantly engaged and involved in the Managed Services development project.

- 16.4 "**Minimum Uptime Percentage**" means the minimum Uptime Percentage (as defined in the Service Level Agreement) identified in the Sales Order and Documentation for each Managed Service licensed by Customer. Generic Non-Production Instances have no guaranteed Minimum Uptime Percentage.
- 16.5 "**Pre-Production Phase**" means the period of time before the Production Phase.
- 16.6 "**Production Phase**" means the period of time when Managed Services Users use the Managed Services (A) on Customer Sites; or (B) for its internal operations.
- 16.7 "**Runbook**" means a document written by Customer that provides Adobe with a list of Customer Customizations and configurations Customer made to the Managed Services. Such list is intended to assist Adobe in running and supporting the Managed Services in the Production Phase.

**EXHIBIT F**

ADDENDUM TO AGREEMENT  
 BETWEEN  
 ADOBE INC.  
**AND**  
 EAST TENNESSEE STATE UNIVERSITY

November 8, 2018

The following terms and conditions, as applicable, shall serve as an addendum to the above-referenced agreement (the "Agreement") between Adobe Inc. ("Contractor"), and East Tennessee State University ("University"), 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:

Add the following:

- 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. 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.

- C. 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, at any reasonable time and upon notice, by the institution or the Comptroller of the Treasury, or their duly appointed representatives.
- D. This Agreement is subject to the allocation of state funds.
- E. The Parties agree that it should be responsible for each party to knowingly use staff who have proper citizenship or legal residency as required by applicable law.
- F. Adobe is committed to promoting and improving the accessibility of its products (i) in accordance with Section 508 of the Rehabilitation Act of 1973, and (ii) as recommended by the Web Content Accessibility Guidelines 2.0 AA (<http://w3.org/TR/WCAG20>), as published by the Web Accessibility Initiative of the World Wide Web Consortium. Adobe publishes its corporate accessibility policy at <http://www.adobe.com/accessibility.html>. Product accessibility assessments in the form of Accessibility Conformance Reports (ACRs) are published at <http://www.adobe.com/accessibility/compliance.html>. If Customer encounters an accessibility issue, Customer may so notify Adobe at [ContractNotifications@adobe.com](mailto:ContractNotifications@adobe.com). In response, Adobe will forward the information to a member of its

accessibility department who will review the issue and work with the appropriate product team to prioritize and address the issue.

G. This Agreement shall be governed by the laws of the State of Tennessee.

H. 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.

**Adobe Inc. (ADUS)**  
345 Park Avenue,  
San Jose CA 95110, United States

**EAST TENNESSEE STATE UNIVERSITY**  
CENTRAL RECEIVING, 325 TREASURE LANE,  
JOHNSON CITY, TN 37614-6597 UNITED STATES



Authorized Signature

Authorized Signature

Andy Payne

Print Name

Brian E. Noland

Director, WW Order Management



Title

President

Mar 27, 2019

3/15/19

Date

Date

Purchase Order Number:  
ECC ID Number: 0001425058



## Adobe Sales Order

**Customer** EAST TENNESSEE STATE UNIVERSITY  
**Agreement Number** DR2388545  
**Currency** USD

### Adobe Inc.

#### Products and Services Pricing Detail:

### Adobe Managed Services

Except as otherwise specified in this Sales Order, these Managed Services terminate on the identified License Term End Date. Support Services are described at: <https://helpx.adobe.com/support/programs/support-policies-terms-conditions.html>

The dates set forth in the pricing table represent the best estimates of the License Term Start Date; such date will be adjusted to be the later of the estimated dates or the actual delivery date of login credentials to access the Products and Services.

Line Number	SKU	Product Description	Billing Cycle	Quantity	Unit of Measure	License Term Start Date	License Term End Date	Unit Price	Total Fees
01	38054739	AEM ASSETS:MS FOR SITES/FORMS CUSTOMERS	Advance   Annually - In	1.00	Each Per Deployment Per Year	5 February 2020	31 March 2020	28,700.00	4,453.45
02	38054701	AEM SITES:MS BASIC HR 99.5%	Advance   Annually - In	1.00	Each BASE Per Year	5 February 2020	31 March 2020	96,250.00	14,935.34
03	38055792	AEM:MS DEV/QA	Advance   Annually - In	3.00	Each INSTANCE Per Year	5 February 2020	31 March 2020	9,800.00	4,562.07
04	38054739	AEM ASSETS:MS FOR SITES/FORMS CUSTOMERS	Advance   Annually - In	1.00	Each Per Deployment Per Year	1 April 2020	31 March 2022	32,800.00	65,600.00
05	38054701	AEM SITES:MS BASIC HR 99.5%	Advance   Annually - In	1.00	Each BASE Per Year	1 April 2020	31 March 2022	110,000.00	220,000.00
06	38055792	AEM:MS DEV/QA	Advance   Annually - In	3.00	Each INSTANCE Per Year	1 April 2020	31 March 2022	11,200.00	67,200.00

Adobe Managed Services: from 5 February 2020 to 31 March 2020								23,950.86
Adobe Managed Services: from 1 April 2020 to 31 March 2022								352,800.00
<b>Total Adobe Managed Services:</b>								<b>376,750.86</b>

### On-premise Software

Except for perpetual licenses, these licenses to Products and Services and any applicable Support terminate on the identified License Term End Date. The License Term commences from the date of delivery of the Products and Services. The dates below represent best estimates of Start Date of the License Term. "Support" services for the Products and Services are described here: <https://helpx.adobe.com/support/programs/support-policies-terms-conditions.html>.

Line Number	SKU	Product Description	Billing Cycle	Quantity	Unit of Measure	License Term Start Date	License Term End Date	Unit Price	Total Fees
07	38054655	AEM DEV LICENSE FOR MS FULFILLMENT	Advance   Total - In	1.00	Each One-Time	5 February 2020	31 March 2022	0.00	0.00

<b>Creative Cloud, Document Cloud and Software:</b>								<b>0.00</b>
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07 AEM DEV LICENSE FOR MS FULFILLMENT:  
This product consists solely of On-premise Software.

## Adobe Professional Services

Adobe will provide the Professional Services on a mutually agreeable schedule but in no event sooner than the identified start date. These Professional Services terminate on the identified end date and will not renew.

Line Number	SKU	Product Description	Billing Cycle	Quantity	Unit of Measure	Start Date	End Date	Unit Price	Total Fees
08	38055572	LAUNCH FOUNDATION: AEM:T3: NS	Advance   Total - In	1.00	Each One-Time	5 February 2020	4 February 2021	25,000.00	25,000.00

<b>Adobe Professional Services:</b>	<b>25,000.00</b>
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08 LAUNCH FOUNDATION: AEM:T3:NS:  
 Adobe Professional Services will provide expert guidance on the Customer’s implementation of AEM during the following phases: (a) LFS Kickoff; (b) Define; (c) Design; (d) Go-Live; and (e) Value. Unless expressly set forth otherwise in the Sales Order, Adobe will deliver Launch Foundation Services as set out in the Statement of Work ("SOW") available at [http://www.images.adobe.com/content/dam/acom/en/legal/terms/enterprise/pdfs/SOW\\_LFS\\_AEM\\_T3\\_2019FEB4.pdf](http://www.images.adobe.com/content/dam/acom/en/legal/terms/enterprise/pdfs/SOW_LFS_AEM_T3_2019FEB4.pdf).

Limitations: Where travel is included with the Launch Foundation Services, there will be no travel expenses incurred by the Customer under this Sales Order. Any additional Professional Services (including onsite travel) required by the Customer may be purchased via separate Sales Order. Launch Foundation Services are not interchangeable with any other Adobe Professional Services engagement. If these Launch Foundation Services are being sold to an Adobe Partner on behalf of an Adobe licensee, such Adobe Partner must deliver all Adobe-provided materials to the Adobe licensee no later than 5 business days after the Partners receipt of such materials from Adobe. Upon request, such Adobe Partner will provide Adobe with evidence of such delivery within 2 business days.

## Summary of Fees

<b>Total Sales Order Fees:</b>	<b>401,750.86</b>
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## Sales Order Terms and Conditions

1. This Sales Order is an addendum to the Sales Order between Adobe and Customer made Effective on 27 March 2019 with Agreement Number DR2259881 (ECM#00737346) (the "Existing Agreement"). The Existing Agreement includes the applicable Sales Order(s) and related master terms, including any and all exhibits, appendices, addenda, and attachments. In the event of conflict between this Sales Order and the Existing Agreement, the terms of this Sales Order will control. Except as expressly modified by this Sales Order, the Existing Agreement shall remain unmodified and in full force and effect. Customer indicates its agreement to the terms of this Sales Order and the Existing Agreement.
2. 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 31 October 2019 (unless countersigned by Adobe).
3. As per the Provisioning date of the Adobe Managed Services mentioned in the product table above, the Parties agree to terminate the Adobe AEM On-premise Software in Line Numbers 05 to 07 in the Existing Agreement in consideration for the purchase contained in this Sales Order. If a credit for the portion of the Products and Services already paid for but not used as result of this termination is required, this shall be provided to the Customer.
4. 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 receipt of electronic invoice.
5. Purchase Order (PO) required? Yes → tick:  Customer may submit the purchase order to Adobe via email at [uspo@adobe.com](mailto:uspo@adobe.com). If this box is not ticked, Adobe may invoice directly using the Adobe Agreement Number as the reference 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.

**Adobe Inc. (ADUS)**  
 345 Park Avenue,  
 San Jose CA 95110,  
 United States

**EAST TENNESSEE STATE UNIVERSITY**  
 CENTRAL RECEIVING, 325 TREASURE LANE,  
 JOHNSON CITY, TN 37614-6597  
 UNITED STATES

\_\_\_\_\_  
 Authorized Signature

\_\_\_\_\_  
 Authorized Signature

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Date

Purchase Order Number:  
 ECC ID Number: 0001425058

**North America**

<b>End User:</b> 1425058	<b>Bill-To:</b> 0001509343	<b>Ship-To:</b> 1425058
EAST TENNESSEE STATE UNIVERSITY CENTRAL RECEIVING 325 TREASURE LANE JOHNSON CITY, TN, 37614-6597 UNITED STATES	EAST TENNESSEE STATE UNIVERSITY PO BOX 70729 JOHNSON CITY, TN 37614-1710 UNITED STATES	EAST TENNESSEE STATE UNIVERSITY CENTRAL RECEIVING325 TREASURE LANE JOHNSON CITY, TN, 37614-6597 UNITED STATES
	Invoicing Contact Name: Contact Email: <a href="mailto:morjayne@etsu.edu">morjayne@etsu.edu</a>	Customer Admin Name: Stephen Marshall Contact Email: <a href="mailto:marshals@mail.etsu.edu">marshals@mail.etsu.edu</a>

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

**Please return your signed original agreement per the appropriate instructions below. If you have questions regarding these instructions, please contact your Adobe Account Manager or [Adobe Customer Service](#).**

For Customers located in the United States, Canada and Mexico only please use one of the following methods to return the signed original agreement to Adobe:		
Mailing Address	Email	FAX
Mail two signed agreement originals to: Adobe Inc. 345 Park Avenue San Jose, California 95110-2704 USA Attention: Contract Operations Group	Scan and email signed agreement to: *Email: <a href="mailto:rgcordus@adobe.com">rgcordus@adobe.com</a>	FAX signed agreement to: FAX: (801) 437-2883

For Customers located in Japan, Asia, Australia or New Zealand please email your contract to <a href="mailto:ccordap@adobe.com">ccordap@adobe.com</a> For customers located in EMEA or Latam please email your contract to <a href="mailto:ccordir@adobe.com">ccordir@adobe.com</a> If your customer requires originals/wet signatures and is located in <b>Australia</b> please send your contract by courier to the Adobe Australia office (see postal address below) If your customer is located in EMEA or LATAM please send originals by courier to the Adobe Dublin office (see postal address below)		
Mailing Address	Email	Mailing address for Australia contracts only
Mail two signed agreement originals to: Adobe Systems Software Ireland Limited 4-6 Riverwalk City West Business Campus Dublin 24, Ireland Attention: Contract Operations Group	Scan and email signed agreement to: *Email: <a href="mailto:ccordir@adobe.com">ccordir@adobe.com</a> Or *Email: <a href="mailto:ccordap@adobe.com">ccordap@adobe.com</a>	Mail two signed agreement originals to: Adobe Systems Pty Ltd. Tower 2, 27th floor 201 Sussex Street Sydney, NSW 2000 Australia Tel: +61(2)9778-4100



# Adobe Managed Services

## Supporting Adobe Experience Manager (AEM)

### East Tennessee State University

September 23, 2019

# Background

- Current Adobe AEM licenses provide access to industry leading website development and deployment tools
- Current AEM Licenses: Livefyre, Target, Analytics, Assets, Sites, Users
- Currently hosted internal on premises at ETSU under our Information Technology Services (ITS) group
- Deployed sites (5)
  - Creative Arts Scholarships, Media and Communications, Medical Professions Advisement, Bluegrass, Oldtime, Celtic, and Country, Global Sports Leadership
- Challenges (current and pending) include
  - high user account management due to student semester rotations
  - retaining skilled employees familiar with needed back office support
  - Increasing hardware and software maintenance demand
  - Increased internal demand for website development
  - Offsite student access to tools and environment
  - Managing 2 enterprise level web platforms

# Why Managed Services?

- Cost effective access to Adobe's proprietary cloud environment
- AEM patches, updates, and software version upgrades included
- 24/7 customer support and automated monitoring and alerting
- Complete security protocol for physical, network, systems, and data
- Direct support from skilled Adobe personnel
- Better scalability and integration of Adobe products in website development and production
- Efficient off-site access for students

# ETSU ITS Cost to Execute

(One Time and Recurring through March 31, 2022)

ETSU Cost to Execute					One Time	Recurring
Upgrade AEM on premises software version					\$ 60,000.00	
Integrate marketing components					\$ 20,000.00	
Hardware upgrades					\$ 40,000.00	
Hire Server Administrator, salary and benefits, Yr 2 and Year 3, Ongoing						\$ 97,000.00
Hire Web Developer, salary and benefits, Yr 2 and Year 3, Ongoing						\$ 133,000.00
Hardware and Software Maintenance, Yr 2 & Year 3, Ongoing						\$ 163,000.00
<b>Total</b>					<b>\$ 120,000.00</b>	<b>\$ 393,000.00</b>

# Adobe Managed Services

## Cost Savings (through March 31, 2022)

Cost to Execute vs. Managed Services				Managed Services	Internal Cost to Execute
Start	End				
2/5/2020	3/31/2020	Year 1	\$ 48,950.86	\$ 120,000.00	
4/1/2020	3/31/2021	Year 2	\$ 176,400.00	\$ 393,000.00	
4/1/2021	3/31/2022	Year 3	\$ 176,400.00	\$ 393,000.00	
			\$ 401,750.86	\$ 906,000.00	
<b>ETSU Cost Savings with Managed Services</b>				\$ 504,249.14	

# Adobe Managed Services Summary

- Access to Adobe's proprietary cloud environment including needed conversion to latest software version and updates
- Accessing direct support from skilled Adobe personnel
- Cost effective leveraging of required software and hardware infrastructure
- \$ 504,249.14 cost savings through March 31, 2022 versus internal on premises hosted option