

**ADOBE SYSTEMS INCORPORATED**  
**Adobe® Digital Publishing Services — Terms of Use**

These terms of use ("**Adobe Digital Publishing Services TOU**") govern Customer's use of the Digital Publishing Services (as defined below). By using any component of the Digital Publishing Services, Customer agrees to these Adobe Digital Publishing Services TOU. Notwithstanding the foregoing, if Customer has entered into a master service or license agreement with Adobe or an Adobe reseller concerning Digital Publishing Solution, Digital Publishing Suite, or Digital Publishing Services, then the terms of that master service or license agreement remain unchanged except that these Adobe Digital Publishing Services TOU supersede any Digital Publishing Suite TOU referenced or incorporated in such master service or license agreement.

**1. GOVERNING LAW; VENUE.**

The Adobe Digital Publishing Services TOU is governed by and construed in accordance with: **(A) the laws of the State of California and the laws of the United States** if the Customer is located in North America, and **(B) the laws of Ireland** if the Customer is located outside of North America. The respective courts of Santa Clara County, California, when California law applies, and the competent courts of Dublin, Ireland, when the law of Ireland applies, each have non-exclusive jurisdiction over all disputes relating to the Adobe Digital Publishing Services TOU. The conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods does not apply.

**2. DEFINITIONS.**

2.1 "**Adobe**" means Adobe U.S. if Customer enters into these Adobe Digital Publishing Services TOU while Customer is in North America; otherwise it means Adobe Ireland.

2.2 "**Adobe Ireland**" means Adobe Systems Software Ireland Limited, an Irish corporation with offices located at 4-6 Riverwalk, Citywest Business Campus, Dublin 24, Ireland.

2.3 "**Adobe Analytics Essentials for Apps**" means (A) the limited Adobe Analytics hosted services offering that allows Customer access to LifeCycle metrics (such as Launches, Crashes and Upgrades) and Publish metrics (such as article views, collection views, notifications, and overlay interactions, including video start/stop) through the Adobe Analytics Mobile Apps User Interface; and (B) Software that is provided for use with the Adobe Analytics hosted services.

2.4 "**Adobe U.S.**" means Adobe Systems Incorporated, a Delaware corporation with its main office located at 345 Park Avenue, San Jose, California 95110-2704, USA.

2.5 "**Affiliate**" means any corporation, company, or other entity in which more than fifty percent (50%) of the voting shares or outstanding capital stock are owned or controlled, directly or indirectly, by a Party.

2.6 "**Application(s)**" means Customer-branded Authorized Viewer intended to display a Project to Customer's users that is either (A) submitted to an app store supported by Digital Publishing Services; (B) in use within Customer's organization solely for the benefit of Customer; and/or (C) distributes Customer Content through the Web Viewer.

2.7 "**Authorized Viewer**" means a viewer application that is authorized by Adobe to display .folio file content for Digital Publishing Suite and .article file content for Digital Publishing Solution. Authorized Viewer also means any Adobe-branded viewer applications.

2.8 "**Customer**" means either the entity listed in an Ordering Document or an individual who has otherwise purchased a license to use Digital Publishing Services pursuant to the Adobe Digital Publishing Services TOU or other written agreement with Adobe.

2.9 "**Customer Content**" means (A) Customer's publications or materials generated by or distributed using the Digital Publishing Services intended for use with Testing Applications, Applications, and/or Authorized Viewer,

including without limitation the files in Adobe's proprietary file format for Digital Publishing Suite (".folio") or for Digital Publishing Solution (".article"); (B) anything Customer provides to Adobe or distributes, posts, or uploads to the Digital Publishing Services (including without limitation products, images, videos, fonts, photographs, and trademarks of Customers or its end users); and (C) content that Customer's end users distribute, share, or upload to the Digital Publishing Services.

2.10 "**Customer Data**" means: (A) any and all data and information collected from the Authorized Viewer or Digital Publishing Services, including any and all data contained in the Reports(s); and (B) any and all data and information that the Customer chooses to import from Customer's internal data stores or other sources (including offline sources) into the Reports via the Digital Publishing Services.

2.11 "**Digital Publishing Services**" means (A) Digital Publishing Solution; (B) Digital Publishing Suite; (C) Software; and (D) any mobile device applications configured through Digital Publishing Solution and/or Digital Publishing Suite.

2.12 "**Digital Publishing Solution**" means the On-demand Services that allow Customers to generate and distribute mobile applications with Customer Content as accessed through <http://publish.adobe.com> (or other URLs specified by Adobe).

2.13 "**Digital Publishing Suite**" means Adobe's Digital Publishing Suite, the precursor to Digital Publishing Solution that allows Customers to generate and distribute mobile applications with Customer Content as accessed through <http://digitalpublishing.acrobat.com> (or other URLs specified by Adobe).

2.14 "**Documentation**" means any written technical materials (if any) describing the features and functionality of the Digital Publishing Services provided by Adobe. "**Documentation**" does not include any forum or content contributed by any third party.

2.15 "**Fulfillment**" means each completed fulfillment or distribution of Customer's digital publications (such as .folio files) or designated section of such publication to the Authorized Viewer across supported platforms and devices. If Customer enables the functionality to distribute certain sections within the publication, as designated by Customer, the publication is deemed to have been completely fulfilled (i.e., a Fulfillment has occurred) when such designated section is fulfilled or distributed to the Authorized Viewer. However, the fulfillment or distribution of other sections within such publication is not considered an additional Fulfillment.

2.16 "**Fulfillment Bundle**" means the available bundle of Fulfillment stated in Adobe's then-current fee schedule.

2.17 "**Ordering Document**" means a direct sales order, a reseller service order, an Adobe.com store receipt, or a subscription agreement.

2.18 "**Project**" means (A) for Digital Publishing Solution, a Customer created repository intended to deliver Customer Content to an Authorized Viewer; and (B) for Digital Publishing Suite, a set of accounts to deliver a single body of Customer Content to an Authorized Viewer.

2.19 "**Proprietary Rights**" means any patent, copyright, trademark, service mark, mask work, moral rights, trade secret, or other intellectual property or proprietary right.

2.20 "**Reports**" means all graphical or numerical displays of Customer Data that contain Adobe's proprietary design, look, and feel and that is generated by the Customer's and its end users' use of Digital Publishing Solution Services.

2.21 "**Software**" means HTML tags, JavaScript code, object code, plugins, SDKs, APIs, or other code provided by Adobe for use with Digital Publishing Suite and/or Digital Publishing Solution.

2.22 "**Testing Application**" means a Customer-branded Authorized Viewer intended to display a Project only for internal testing and development purposes.

2.23 "**Term**" means the duration of the license granted for Digital Publishing Suite, Digital Publishing Solution, and/or Digital Publishing Services (as applicable) as stated in the Ordering Document or separate written agreement, or any shorter term arising from a termination of this Adobe Publishing Services TOU.

2.24 **"Territory"** means the territory or region where Customer (A) obtains, uses, or accesses the Distributed Code and Digital Publishing Services from Adobe; (B) delivers Customer Content; or (C) as otherwise stated in the applicable Ordering Document; in each case (A), (B), and (C), unless the laws, regulations or codes of the territory or region prohibit the use of any component of the Digital Publishing Services. **Unless otherwise stated in a separate addendum, the People's Republic of China is expressly excluded from "Territory"**.

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

### 3. LICENSES.

#### 3.1 Software and Trial Licenses.

(A) **License.** Subject to Customer's compliance with the Adobe Digital Publishing Services TOU, Adobe grants Customer a nonexclusive, nontransferable, limited license during the Term to install, implement and use the Software within the Territory solely for the purposes of (1) testing and developing Testing Applications; (2) testing and developing Applications; and (3) publishing and distributing the Customer Content with Applications (up to the maximum number and for the purposes as stated in the Ordering Document).

(B) **Restrictions.** Unless explicitly authorized by Adobe, Customer is not authorized to distribute Software to any third party. If Customer Content includes files in the .folio format for Digital Publishing Suite, or .article format for Digital Publishing Solution, then Customer may only distribute, and Adobe is only obligated to fulfill such Customer Content, through an Authorized Viewer, or, for .folio content, an Adobe licensee of the .folio specification. Customer may not distribute the files in (1) .folio format to a third party (other than a licensee of the .folio specification) for the purpose of creating a viewer to such file format, distributing such file through a third-party viewer, or otherwise circumvent any digital rights management related to such file or the Software; and (2) .article format. to a third party for the purpose of creating a viewer to such file format, distributing such file through a third-party viewer, or otherwise circumvent any digital rights management related to such file or the Software.

(C) **Font Software.** If Customer has licensed, directly from Adobe, any Adobe font that is identified as "available for licensed Digital Publishing Suite users" or "available for licensed Digital Publishing Solution Users" on Adobe's website at [http://www.adobe.com/go/font\\_licensing](http://www.adobe.com/go/font_licensing) (or other URL provided by Adobe), then Customer may embed copies of the font software into Customer Content solely for the purpose of distributing such embedded font in Adobe's proprietary file format for Digital Publishing Suite (.folio) or for Digital Publishing Solution (.article), which is made available to end users for viewing purposes only as part of the Application. No other embedding rights are implied or permitted under this license.

(D) **Trial Version.** For Digital Publishing Services made available to Customer under a trial or evaluation basis ("**Trial Version**") and except as otherwise stated in an agreement or Ordering Document, Adobe grants Customer a nonexclusive, non-transferable, non-assignable, limited license for a period of 60 days (unless otherwise agreed to in writing by Adobe) from the date such Trial Version is made available to the Customer to access and use the Trial Version within the Territory solely for internal evaluation of the Trial Version. Any Applications created with the Trial Version may not be able to be migrated upon completion of the trial. Without limitation and except as otherwise stated in a separate agreement, Customer cannot (1) purchase Fulfillment Bundles for the Trial Version; (2) make its Customer Content generally available through the Trial Version or (3) submit an Application to a third-party marketplace or app store or distribute an internal Application for productive use through the Trial Version. Unless otherwise agreed to in writing, the Trial Version will not include Adobe Analytics Essentials for Apps. **Except as otherwise expressly stated in a separate agreement, such Trial Version is provided "AS-IS" and is not eligible for the support programs. Notwithstanding anything stated to the contrary, Customer agrees that Customer may use the Trial Version at its own risk and Adobe makes no warranties whatsoever, whether express or implied, with regard to such Trial Version and is not liable for any claims or damages related to the Trial Version.**

3.2 **No Modification or Reverse Engineering.** Except as expressly provided in the Adobe Digital Publishing Services TOU, Customer may not modify, adapt, translate, or create derivative works based upon the Digital

Publishing Services. Customer will not, and will not allow a third party to, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Digital Publishing Services. Notwithstanding the foregoing, decompiling the Software is permitted to the extent the applicable law allows Customer to do so to obtain information necessary to render the Software interoperable with other software, provided, however, that Customer must first request the information from Adobe and Adobe may, at its discretion, either provide such information to Customer or impose reasonable conditions, including reasonable fees, on use of the Digital Publishing Services to ensure that Adobe's Proprietary Rights in the Software are protected.

### 3.3 Digital Publishing Services, Application, and Testing Application Licenses and Restrictions.

(A) **Digital Publishing Services Licenses.** During the Term and subject to Customer's compliance with this Agreement, Customer may use and access Digital Publishing Services within the Territory for the sole purposes of (1) testing and developing Applications; (2) testing and developing Testing Applications; and (3) publishing and distributing the Customer Content with Applications (up to the maximum number and for the purposes as stated in the Ordering Document (if such an Ordering Document exists)).

(B) **Distribution License for Applications.** During the Term and subject to Customer's compliance with this Agreement, Customer may distribute the Application(s) (up to the maximum number and for the purposes as stated in the Sales Order) to end users on all platforms then-currently supported by the Digital Publishing Services in the Territory.

(1) If Customer has a valid license to Digital Publishing Suite under the Application model, Customer may develop and distribute Applications generated by Digital Publishing Suite, Digital Publishing Solution, or both, within the Territory, up to the maximum number stated in the Ordering Document (if so stated) (e.g., if Customer previously purchased a license to two Digital Publishing Suite-generated Applications, then Customer could distribute (a) two Digital Publishing Suite-generated Applications; (b) two Digital Publishing Solution-generated Applications; or (c) one Digital Publishing Suite-generated Application plus one Digital Publishing Solution-generated Application; but for (a), (b) and (c) in no event would Customer be permitted to distribute more than two Applications). One Application may run on multiple platforms (e.g., iOS and Android) if it includes the same Customer Content.

(2) If Customer stops using Digital Publishing Solution or Digital Publishing Suite for an Application, then Customer is prohibited from launching a substitute Application without prior written agreement from Adobe and Customer may be required to pay additional fees and agree to additional terms.

(3) Customer remains liable for any obligations or liabilities to Adobe arising or resulting from acts or omissions in breach of these terms and conditions by Customer's distributors.

(C) **Testing Applications Limitations.** Testing Applications may only be used for development and testing purposes. Customer may distribute any Testing Applications only for internal non-production use by the Customer. Without Adobe's prior written consent, Customer must stop distribution of any Testing Application 60 days from the date of first distribution of that Testing Application to an internal end user. Customer is prohibited from submitting any Testing Application to any device app store or marketplace and/or distributing any Testing Application internally for productive level use.

(D) **Customer EULA.** Customer will ensure that any Application and Testing Application is distributed or made available to the end users under an enforceable end user license agreement in favor of Customer and its licensors and containing at least the following terms: (1) a prohibition against distribution and copying; (2) a prohibition against modifications and derivative works; (3) a prohibition against decompiling, reverse engineering, disassembling, and otherwise reducing the software to a human-perceivable form; (4) a provision indicating ownership of the Software by Customer and its licensors; (5) a disclaimer of indirect, special, incidental, punitive, and consequential damages; (6) industry standard disclaimers and limitations, such as a disclaimer of all applicable statutory warranties, to the full extent allowed by law, a limitation of liability not to exceed the price of the Application, and a provision that the end user's sole remedy is return and refund, if any, from Customer; (7) terms of conditions notifying the end user of any restrictions including, but not limited to, the reporting of abuse, copyright infringement, and any other violations related to

Customer's Content; and (8) for Testing Applications, a prohibition against using the Testing Application for commercial purposes and for a time period longer than 60 days.

(E) **Upgrades.** Customer must use reasonable efforts to update any Application with any updates or upgrades to the Software or Digital Publishing Services provided to Customer by Adobe within a reasonable period of time after Customer first receives the applicable update or upgrade. By not implementing any updates or upgrades (A) components of the Digital Publishing Services may not continue to effectively operate on the user's device (e.g., due to a change or update to the operating system on the user's device); and (B) Applications may not function and Customer may have to plan and create new Applications.

### 3.4 Adobe Analytics Essentials for Apps Product Limitations and Use Restrictions.

(A) **Software Restriction.** Digital Publishing Solution includes use of Adobe Analytics Essentials for Apps and such use is restricted to use that is in combination with and directly related to the Customer's use of Digital Publishing Solution .article files.

(B) **Use Restrictions.** Adobe Analytics Essentials for Apps does not include a license to access or use and Customer agrees that it will not access or use the Adobe Marketing Cloud, the Adobe Analytics User Interface, Ad Hoc Analysis, Data Workbench, ReportBuilder, ClickMap, or any functionality or capability that is available only through the Adobe Marketing Cloud, or the Adobe Analytics User Interface, including but not limited to Adobe Analytics reporting functionality available in the Adobe Analytics User Interface, Acquisition, Messaging, Location/points of interest features, or any additional features, functionality, services, or enhancements available as part of the regular Adobe Analytics Products and Services. Adobe Analytics Essentials for Apps is not for use with Digital Publishing Suite. Any use of Adobe provided analytics with Digital Publishing Suite is limited to use which is in combination with and directly related to Customer's use of Digital Publishing Suite .folio files pursuant to the Ordering Document. Adobe Analytics Essentials for Apps may only be used with any current or future Digital Publishing Solution created application: (A) that is owned and operated by Customer, or is hosted or operated by a third party of Adobe on Customer's behalf; (B) that contains Customer's brand or logo; and (C) that maintains a privacy policy or terms of use governing data collection practices that Customer maintains and controls, and that complies with applicable privacy or data protection laws that mandate the privacy disclosures and data collection practices for such application.

#### (C) Product Limitations.

(1) Reports. Adobe provides many reports such as: Retention, Funnel, and Users. Each Report may contain up to 500,000 unique values or data elements per month.

(2) Props. This feature allows Customer to determine the amount of traffic that a certain dimension of the Application has received, and can be used to report on paths through such site. Props do not persist beyond a page. This feature is limited to 75 Props per Report Suite.

(3) eVars. This feature allows Customer to determine which dimension of the Application has contributed the most to a Success Event. This feature is limited to 75 eVars per Report Suite.

(4) Events. This feature allows Customer to mark a point on the Application in which a successful conversion event occurs. This feature is limited to 100 Events per Report Suite.

3.5 **Documentation.** Customer may make copies of the Documentation for its own internal use in connection with Customer's access to the Software in accordance with the Adobe Digital Publishing Services TOU, but no more than the amount reasonably necessary.

3.6 **Development Subcontractors.** Customer may sub-license development of its Application to a third-party subcontractor or development contractor to develop the Application on Customer's behalf, provided that: (A) Customer is responsible for ensuring that any such subcontractor agrees to abide by and fully complies with the terms of the Adobe Digital Publishing Services TOU as they relate to the use of the Software on the same basis as applies to Customer; (B) such use is only in relation to Customer's direct beneficial business purposes; (C) such use does not represent or constitute an increase in the scope or number of licenses provided

hereunder; and (D) Customer remains fully liable for any and all acts or omissions by the subcontractor related to the Adobe Digital Publishing Services TOU.

**3.7 Agency License.** If expressly permitted in the Sales Order, then Adobe grants Customer a non-exclusive right to create and distribute Customer Viewers and Customer Content on behalf of Customer's clients pursuant to this PDM and the terms at

<http://www.images.adobe.com/content/dam/Adobe/en/legal/terms/enterprise/pdfs/PUBLISHAGENCYTERMS-2015JUN16> (or other URL provided by Adobe).

### **3.8 Licenses from Customer.**

(A) 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 Digital Publishing Services and Reports to Customer and enforce its rights under this Agreement.

(B) Customer grants Adobe and its Affiliates a non-exclusive, perpetual, worldwide, and royalty-free license to use, copy, transmit, sub-license, index, model, aggregate (including combination with similar data of other customers of Adobe or its Affiliates), publish, display, and distribute any anonymous information derived from Customer Data, such as, but not limited to, web browser, screen resolution, and mobile device-type information.

**3.9 Feedback.** Customer has no obligation to provide Adobe with ideas, suggestions, or proposals ("**Feedback**"). However, if Customer submits Feedback to Adobe, Adobe may use it for any purpose without compensation to Customer.

**3.10 Affiliates.** For Customer's Affiliates identified on Customer's Ordering Document, if any, Adobe agrees that such Affiliates may place orders under the Adobe Digital Publishing Services TOU for the Digital Publishing Services by executing a mutually agreed-to Ordering Document. Each such Affiliate that executes an Ordering Document is considered a Customer as that term is used in the Adobe Digital Publishing Services TOU. The Adobe Digital Publishing Services TOU, insofar as it relates to any such Ordering Document or addendum, is deemed to be a three-party agreement between Adobe U.S., Adobe Ireland, and such Affiliate; provided, however, that Customer retains ultimate liability for any acts or omissions of such Affiliate.

**3.11 Proprietary Notices.** Any permitted copy of the Software or Documentation that Customer makes must contain the same copyright and other proprietary notices that appear on or in the Software or Documentation.

**3.12 Support.** Adobe provides 24x7x365 unlimited access to Adobe Client Care for a maximum of five named Customer technical support contacts. Support includes: Live Phone, Chat, and Email Support from Adobe Client Care; access to the Online Interface for Support Issue Management; access to the Searchable Knowledge Base; and access to On-demand Training Modules.

## **4. CUSTOMER OBLIGATIONS.**

**4.1 Device-Specific Programs.** Customer is responsible for enrolling in any device-specific developer programs as well as any fees or expenses related to such developer systems. Customer is also responsible for completing any application submission process, including but not limited to the payment of associated fees, required for Application to appear on the specific device app store or marketplace.

**4.2 Customer Content.** Customer is solely responsible for: (A) ensuring that Customer Content complies with the laws of all jurisdictions where Customer hosts and distributes the Customer Content and where the Customer Content is being delivered; and (B) promptly removing such content if Customer is notified or otherwise has reason to believe that such content violates relevant laws. Adobe will not remove Customer Content that Adobe hosts on Customer's behalf until: (x) Adobe is put on actual notice that such content violates the law; (y) Adobe provides Customer a reasonable opportunity to remove the content; and (z) Customer fails to do so. Upon Customer's failure to cure within a reasonable time upon notice, Adobe has the sole discretion to determine whether to remove the Customer Content stated in the notice or suspend or terminate Customer's license to

access and use the Services. Notwithstanding the foregoing, Adobe may remove any Customer Content without notice and without any liability to Customer if Adobe reasonably believes that the Customer Content violates any applicable laws.

**4.3 Web Viewer.** Customer may not embed the Web Viewer in an iFrame (or equivalent) without using the library associated with the Web Viewer. Customer may not reverse engineer or modify any library associated with the Web Viewer

#### **4.4 Fulfillment Terms.**

(A) If Customer is currently licensing Digital Publishing Suite on a Fulfillment model, then these terms apply only to Digital Publishing Suite and not to Digital Publishing Solution:

(1) **Additional Web Viewer Terms.** If Customer elects to use certain features within the Authorized Viewer to allow end users to share Customer Content, including without limitation, via social media, email or web address, then Fulfillments to the Web Viewer will be calculated against Customer's Fulfillment Bundle as follows: "**Counted Number**" means the number of articles in a folio. Whenever Adobe delivers Counted Number of articles into the Web Viewer on a device, Adobe will deduct one Fulfillment against Customer's Fulfillment Bundle. For example, if a folio contains ten articles, then Adobe will deduct one Fulfillment when ten articles (any articles) are delivered into the Web Viewer.

(2) **Article Preview.** If Customer elects to use certain features within the Authorized Viewer to allow end users to preview certain designated Customer Content ("**Preview Features**"), then Fulfillments related to the Preview Features will be calculated against Customer's Fulfillment Bundle as follows: "**Preview Number**" means the number of articles in a folio that are not indicated as free content. Whenever Adobe delivers Preview Number of articles from the folio into each Authorized Viewer on a device, Adobe will deduct one Fulfillment against Customer's Fulfillment Bundle.

(3) **Unused Fulfillments.** Any unused Fulfillments will expire 1 year from the date that such Digital Publishing Services commence and will not carry over or be valid for any other purpose past the end of such year.

(4) Customer may track Customer's available Fulfillments through the Digital Publishing Portal. "**Digital Publishing Portal**" means the singular launch point for Customers to use and access Digital Publishing Suite. If at any time Customer's Fulfillment number is zero (i.e., there is no available Fulfillment; such event is referred to as "**Fulfillment Renewal**"), then Adobe may advance additional Fulfillments or Fulfillment Bundles pursuant to the then-current fee schedule during a Grace Period determined at Adobe's sole discretion (typically the "**Grace Period**" would be 30 days). Such advancement of Fulfillments is effective as of the date that Fulfillment Renewal occurs and not the day of advancement or purchase. Customer must purchase additional Fulfillment Bundles pursuant to the current fee schedule prior to the end of the Grace Period so that the total available Fulfillments is more than zero. These additional Fulfillment Bundles expire on the 1<sup>st</sup> anniversary of the date of Fulfillment Renewal. Any advancement during the Grace Period will be deducted from these additional Fulfillment Bundles. Customer is solely responsible and liable for any outstanding payments and fees related to Fulfillment Renewal, including without limitation fees for advancing Fulfillments or Fulfillment Bundles to Customer during the Grace Period. Upon Customer's failure to make payment as stated in this Agreement, Adobe may (a) suspend publication of folios; (b) restrict Fulfillments; (c) suspend Fulfillments; and/or (d) terminate Customer's account. This Section 4.4(A)(4) does not apply to Customers based in Russia.

(B) The Fulfillment limitations do not apply to Digital Publishing Solution Applications.

## **5. USE OBLIGATIONS AND RESTRICTIONS.**

**5.1 Notice and Takedown.** Customer agrees that it may make available only content that originates with or is licensed by Customer for distribution by Customer and does not violate any applicable law or regulation. It is Customer's sole responsibility to manage any reports of violations reported to Customer (including without

limitation privacy notice violations and takedown requests under the Digital Millennium Copyright Act, Title 17, United States Code, Section 512(C)(2)).

**5.2 Use Restrictions.** Customer may not (A) rent, lease, sublicense, assign, or transfer Customer's rights in the Digital Publishing Services, or authorize all or any portion of the Software to be copied onto another user's computer except as may be expressly permitted by the Adobe Digital Publishing Services TOU; (B) make the Customer's Log-in IDs or passwords, Reports and Software available to any third party, except as expressly permitted by the Adobe Digital Publishing Services TOU; (C) introduce a virus, worm, Trojan horse, or other harmful software code or similar files that may damage the operation of a third party's computer or property or information; (D) use the Digital Publishing Services in any manner that could damage, disable, overburden, or impair any Adobe server, or the network(s) connected to any Adobe server, or interfere with any other party's use and enjoyment of the Digital Publishing Services; (E) attempt to gain unauthorized access to Digital Publishing Services, materials, other accounts, computer systems or networks connected to any Adobe server or to the Digital Publishing Services, through hacking, password mining, or any other means; (F) engage in any systematic extraction of data or data fields, including without limitation email addresses; (G) disclose, harvest, or otherwise collect information, including email addresses, or other private information about any third party without that party's express consent; (H) defraud, defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others; (I) upload, or otherwise make available, files that contain images, photographs, software, or other material protected by intellectual property laws, including, for example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) unless Customer owns or controls the rights thereto or has received all necessary consent to do the same; or (J) reverse engineer .folio files and/or .article files directly output from any Adobe-branded application or service.

**5.3 Log-in Information.** Customer may be required to create and use an Adobe ID or Enterprise ID to access Digital Publishing Services ("**Adobe ID**" and "**Enterprise ID**" means "**Log-In ID**") Customer is responsible for all activity occurring under any Log-in ID created by Customer or generated on Customer's behalf. Customer must not share it with third parties (including without limitation its clients). Adobe has no obligation or responsibility with regard to the Customer's use, distribution, disclosure, or management of Log-in ID. Unless Adobe expressly allows Customer the right to create and manage Adobe IDs through a user account administration panel, Customer may not use another person's account information.

## **6. PAYMENT.**

**6.1 Fees.** Customer will pay all fees described in the Ordering Document(s) ("**Fees**"). Unless otherwise stated, the Fees are due within 30 days from the date of the invoice if an invoice is provided by Adobe. Fees are not refundable. The Fees stated in an Ordering Document are based on factors such as the size of expected audience and Customer's intended use. The Fees may change at renewal or future purchases if the factors above change.

**6.2 Disputes; Late Fee; Collection.** If Customer has a good faith belief that it has been incorrectly billed by Adobe, Customer must contact Adobe in writing, within 30 days of the applicable invoice, specifying the calculation error and the amount of the adjustment or credit requested. Unless Customer has notified Adobe of such dispute, payments not received by Adobe by the due date may bear interest at the lesser of a monthly rate of 1.5% or the maximum rate allowable by law. Customer will reimburse Adobe for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting any overdue amounts.

**6.3 Taxes; Third-Party Fees.** Customer must pay any applicable taxes and any applicable third-party fee (including, for example, telephone toll charges, mobile carrier fees, ISP charges, data plan charges, fees related to the procurement of SSL certificates or similar credentials, fees related to submitting its Application to third-party marketplace or app store, credit card fees, and foreign exchange fees). Adobe is not responsible for these fees.

## **7. OWNERSHIP.**

**7.1 Customer Intellectual Property.** Customer owns the Customer Data and Customer Content, subject to Adobe's underlying intellectual property described in Section 7.2 below.



**7.2 Adobe Intellectual Property.** The Digital Publishing Services, including without limitation the look and feel of the Reports, Software, and user interface, functionalities included in the Digital Publishing Services, and any authorized copies that Customer makes are the intellectual property of and are owned by Adobe Systems Incorporated and its suppliers ("**Adobe IP**"). The structure, organization, and source code of the Digital Publishing Services are valuable trade secrets and confidential information of Adobe Systems Incorporated and its suppliers. Adobe IP is protected by law, including but not limited to the copyright laws of the United States and other countries, and by international treaty provisions. Except as expressly stated herein, these Adobe Digital Publishing Services TOU do not grant Customer any Proprietary Rights in Adobe IP. All rights not expressly granted are reserved by Adobe and its suppliers.

## **8. CONFIDENTIALITY.**

**8.1 Definition. "Confidential Information"** means a Discloser's or Discloser's Affiliates' non-public information (including copies, summaries, and extracts) that is: (A) identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic, or electronic form; or (B) disclosed in non-tangible form, identified as confidential at the time of disclosure, summarized in a writing labeled as "confidential", and delivered to Recipient or Recipient's Affiliate (as applicable) within 15 days after disclosure. The Party disclosing Confidential Information is referred to as "Discloser" and the Party receiving Confidential Information is referred to as "Recipient".

**8.2 Exclusions.** Confidential Information does not include information that: (A) is or becomes generally or publicly available at or after the time of disclosure through no fault of either Recipient or Recipient's Affiliate; (B) was known to Recipient or Recipient's Affiliate (as applicable), free of any confidentiality obligations, before its disclosure by either Discloser or Discloser's Affiliate; (C) becomes known to Recipient or Recipient's Affiliate (as applicable), free of any confidentiality obligations, from a source other than either Discloser or Discloser's Affiliate; or (D) is independently developed by either Recipient or Recipient's Affiliate without use of Confidential Information.

**8.3 No Use or Disclosure.** Recipient will only use Confidential Information for the purposes of these Adobe Digital Publishing Services TOU and will not reproduce, disseminate, or disclose Confidential Information to any person, except to its employees and authorized representatives (e.g., temporary employees, consultants, or contractors) who need to know the Confidential Information for the purposes of these Adobe Digital Publishing Services TOU and are bound by confidentiality obligations at least as restrictive as those in this Section 8 (Confidentiality). Recipient 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.

**8.4 Required Disclosure.** Recipient may disclose Confidential Information: (A) as approved in a writing signed by Discloser; (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 only if, in the case of Section 8.4 (B) and Section 8.4 (C), Recipient (1) notifies Discloser of the particulars of the required disclosure; and (2) gives Discloser all assistance reasonably required by Discloser to enable Discloser to take available steps to prevent the disclosure or to ensure that disclosure occurs subject to an appropriate obligation of confidence.

**8.5 Responsibility for Representatives and Affiliates.** Recipient is responsible for ensuring that its representatives and Affiliates fully comply with the obligations of the Recipient under this Section 8 (Confidentiality).

## **9. PUBLICITY.**

Adobe may identify Customer on Adobe's customer lists and in its marketing and advertising materials; announce that Customer is an Adobe customer; and reproduce Customer's company name, logo, trademark, trade name, service mark, or other commercial designations in connection therewith. With Customer's prior written consent, Adobe may develop and publish a case study based upon Customer's use of the Digital Publishing Services. Such prior consent is not required for Adobe to disclose information about Customer in connection with any filings or disclosures required by Adobe under applicable state or federal securities laws.

## 10. PRIVACY.

**10.1 Privacy Statement.** Adobe may process the Customer Data and serve the Customer Content on behalf of Customer. If required by applicable data protection legislation or government guidelines, Customer will inform third parties of the processing and serving of such data and content and ensure that such third parties have given any required consents. Adobe is not liable for any inconsistencies or inaccuracies within any such statements.

**10.2 Privacy Policy.** Every Application will feature a privacy policy or other notice, displayed conspicuously from the primary interface, that:

(A) discloses Customer's privacy practices;

(B) identifies the collection (e.g., via cookies, web beacons, or similar technologies) and use of information gathered in connection with Digital Publishing Services (including the uses described in Customer's license grant to Adobe contained herein); and

(C) offers individuals an opportunity to opt out of (or opt into, if applicable law requires) the collection or use of data gathered in connection with the Digital Publishing 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).

**10.3** Customer is responsible for ensuring and certifying that Customer's privacy statement accurately reflects Customer's data collection practices (including use of third-party services) and its general privacy policy as made available to end users. Adobe is not liable for any inconsistencies or inaccuracies within any such privacy statements.

## 11. SECURITY.

As part of the Digital Publishing Services, Adobe will implement reasonable security measures consistent with industry standards to protect Customer Data from unauthorized access, and, in any event, in a manner at least as protective as Adobe uses to protect its own information of a similar nature. Adobe is not, under any circumstances, liable for situations in which the security, stability, or availability of the Digital Publishing Services is compromised by: (A) Customer; (B) software, programs, data, or other computer information, if any, provided to Adobe by Customer; or (C) actions Adobe undertakes at the request of Customer.

## 12. TERM AND TERMINATION.

**12.1 Term.** Unless otherwise terminated as provided below:

(A) **Enterprise Customers.** The Term for Digital Publishing Services will begin when Adobe delivers instructions to the Administrator designated by Customer on how to log-in to the Digital Publishing Services, and will continue for the period specified in the Ordering Document.

(B) **Professional Edition.** For Customers who have purchased Professional Edition from Adobe.com, the Term will commence upon the earlier of (1) initial access of the Services or (2) payment of Fees as stated in an applicable Ordering Document. Additional fees may apply with Customer purchases of additional Fulfillment Bundles or additional Software. Professional Edition Services may be suspended or terminated if such Customer is not current with its payment obligations associated with such Services. Additional fees may apply if Customer lapses in its subscription of Services and later wishes to reactivate the Services.

**12.2 Termination or Suspension.**

(A) If either party breaches Sections 8 (Confidential Information) or 10 (Privacy) of the Adobe Digital Publishing Services TOU, then the non-breaching party may terminate the Adobe Digital Publishing Services TOU and, for Adobe's direct Customer, any corresponding Ordering Documents immediately upon written notice to the breaching Party.

(B) If either party breaches any other material obligation under the Adobe Digital Publishing Services TOU, the non-breaching Party may provide written notice to the breaching party indicating: (1) the nature and basis of such breach, with reference to the applicable provisions of the Adobe Digital Publishing Services TOU; and (2) the non-breaching party's intention to terminate the Adobe Digital Publishing Services TOU and all or a portion of the corresponding Ordering Document. If the breach described in the previous sentence is not cured within 30 days after receipt of written notice thereof, the non-breaching Party may terminate the Adobe Digital Publishing Services TOU and all or a portion of the corresponding Ordering Document immediately upon written notice to the breaching party.

(C) Subject to Customer's good faith dispute of amounts invoiced as Fees, Adobe has the right to: (1) suspend Customer's access to the online interface to the Digital Publishing Services if Customer or Adobe-authorized reseller through which Customer procured the Digital Publishing Services fails to pay Fees within five days following the payment due date; and (2) suspend the Digital Publishing Services if Customer, or the Adobe-authorized reseller through which Customer procured the Digital Publishing Services, fails to pay Fees within 30 days following the payment due date. If Customer breaches Sections 3 (Licenses), 4 (Customer Obligations), or 5 (Use Obligations and Restrictions) of the Adobe Digital Publishing Services TOU, Adobe may immediately suspend or terminate the Digital Publishing Services, and terminate all or a portion of the Adobe Digital Publishing Services TOU including but not limited to all or a portion of the corresponding Ordering Document at Adobe's sole discretion within five days of such uncured breach.

(D) Termination for Insolvency. In the event a party receives notice that the other Party is insolvent or fails to pay its obligations as they arise or upon any proceeding being commenced by or against a Party under any law providing relief to the Party (an "**Insolvency Event**"), that Party that is not the subject of the Insolvency Event may terminate the Adobe Digital Publishing Services TOU immediately upon notice to the Party that is the subject of the Insolvency Event.

### 12.3 Effect of Termination; Survival.

(A) Upon any termination or expiration of the Adobe Digital Publishing Services TOU or an applicable Ordering Document: (1) the rights and licenses granted to Customer under the Adobe Digital Publishing Services TOU will automatically terminate; (2) Customer will, at its expense, cease developing or distributing any new Customer Content and will uninstall all Software; (3) the rights and licenses granted to Adobe under Section 3.8(A) (Licenses from Customer) will terminate; and (4) the rights and licenses granted to Adobe under Section 3.7(B) (Licenses from Customer) will survive.

(B) As applicable, upon expiration or termination of the Adobe Digital Publishing Services TOU, for a period of 30 days thereafter, Adobe will make available the Customer Data and Customer Content in the form and format then available through the Digital Publishing Services. If Customer does not remove the Customer Data, Customer Content, and references or links to the Digital Publishing Services within 30 days of termination or expiration of the Adobe Digital Publishing Services TOU, Customer will be liable for any reasonable associated legal fees and collection expenses incurred by Adobe in recovering amounts due, and Adobe has the right to remove Customer Data and Customer Content from its servers without liability. Customer Data may be permanently deleted from Adobe's servers 25 months from the date of collection or receipt. All provisions of the Adobe Digital Publishing Services TOU which by their nature must survive termination in order to achieve the fundamental purposes of the Adobe Digital Publishing Services TOU will survive any termination or expiration of the Adobe Digital Publishing Services TOU.

## 13. WARRANTIES; DISCLAIMERS.

### 13.1 Warranties.

(A) **Adobe Warranties.** Adobe warrants that the Digital Publishing Services will operate in substantial conformance with the Documentation (if any) for Digital Publishing Services. For avoidance of doubt, the Adobe-authorized reseller is responsible to Customers who purchase from such reseller any warranties provided in the applicable agreement related to Digital Publishing Suite, Digital Publishing Solution, and/or Digital Publishing Services.

(B) **Customer Warranties.** Customer warrants and represents to Adobe that Customer has sufficient rights to the Customer Content and Customer Data, including but not limited to any necessary authorization, release, or clearance related to any rights of ownership, privacy, publicity, or intellectual property, and Customer will not provide Adobe with any Customer Content, Customer Data, or any other materials that: (1) infringe any third party's Proprietary Rights; (2) violate any law, statute, ordinance, or regulation, including without limitation the laws and regulations governing export control and email or spam and laws governing content and data privacy; (3) are defamatory or trade libelous; (4) are obscene or promote, solicit or comprise inappropriate, harassing, abusive, profane, defamatory, libelous, threatening, indecent, vulgar, or otherwise objectionable or unlawful content or activity; (5) are harmful to minors; (6) contain any viruses, Trojan horses, worms, time bombs, or any other similar software, data, or programs that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, information, or property of another; or (7) otherwise violate the Adobe Digital Publishing Services TOU.

**13.2 Disclaimer.** To the maximum extent permitted by law and except for the express warranties stated in the Adobe Digital Publishing Services TOU, Adobe provides the Digital Publishing Services on an "AS-IS" basis. Adobe disclaims all warranties express or implied, including the implied warranties of non-infringement, merchantability, and fitness for a particular purpose. Adobe makes no commitments about the content within the Services. Adobe further disclaims any warranty that (A) the Digital Publishing Services will meet Customer's requirements or will be constantly available, uninterrupted, timely, secure, or error-free; (B) the results that may be obtained from the use of the Digital Publishing Services will be effective, accurate, or reliable; (C) the quality of the Digital Publishing Services will meet Customer's expectations; or that (D) any errors or defects in the Digital Publishing Services will be corrected. Adobe specifically disclaims any liability for any actions resulting from Customer's use of any Digital Publishing Services.

**13.3 Customer's Sole and Exclusive Remedies.** The exclusive remedies for uncured breach of the foregoing warranties in Section 13.1(A) are: (A) in the case of nonconforming Digital Publishing Suite, or Digital Publishing Solution, to terminate the Digital Publishing Suite, or Digital Publishing Solution portion (as applicable) in accordance with Section 12 above; and (B) in the event of nonconforming software portion of the Software, to provide replacement access for download of the Software, or to terminate the Software portion of the Digital Publishing Services in accordance with Section 12 above. If any warranty remedy is held to fail its essential purpose, the limitation of liability herein will be enforced to the full extent permitted by law. Customer has no right to withhold payment or make setoffs or deductions from any payment due by Customer as a result of any claims that Customer may have or allege to have against Adobe under the Adobe Digital Publishing Services TOU.

## **14. INDEMNIFICATIONS.**

### **14.1 Adobe's Duty to Indemnify.**

(A) Adobe will defend against any claim or lawsuit by a third party (a "**Claim**") against Customer to the extent such Claim alleges that the Digital Publishing Services directly infringe any U.S. patent, copyright, or trademark, or misappropriate a trade secret of a third party, and will indemnify Customer for all judgments finally awarded against Customer ("**Damages**") by a court of competent jurisdiction, or agreed to in a written settlement agreement signed by Adobe, arising out of such Claim. Adobe will pay attorneys' fees and court costs incurred in connection with the action. Adobe has no indemnification obligation or other liability for any Claim of infringement arising from: (1) use of the Digital Publishing Services other than in accordance with the Adobe Digital Publishing Services TOU; (2) modification of the Software; (3) the combination of any component of the Digital Publishing Services with any other products, services, or materials if the Digital Publishing Services or Software would not be infringing without such combination; (4) any third-party products, services, or materials; or (v) failure by Customer to install updated Software as requested by Adobe to avoid infringement.

(B) If Customer's use of the Digital Publishing Services under the Adobe Digital Publishing Services TOU is enjoined or Adobe determines that such use may be enjoined, then Adobe may, at its sole option and expense, either: (1) procure for Customer a license to continue using the Digital Publishing Services in

accordance with the terms of the Adobe Digital Publishing Services TOU; (2) replace or modify the allegedly infringing Digital Publishing Services to avoid the infringement; or (3) terminate the licenses and access to the corresponding Digital Publishing Services, and refund any prepaid unused fees as of the date of termination.

**14.2 Customer's Duty to Indemnify.** Customer agrees to defend any Claim against Adobe (A) that Customer's actions in connection with the Digital Publishing Services violate Customer's privacy policy or any third party's rights of privacy, or violate any privacy laws; or (B) arising from or relating to the Customer Data or Customer Content. Customer will, in each case, indemnify Adobe (and its directors, employees, and agents) against all Damages awarded against Adobe or agreed to in a written settlement agreement signed by Customer arising out of such Claim.

**14.3 Conditions to Indemnification.** The obligations set forth in this section apply only if: (A) the indemnified Party notifies the indemnifying Party in writing of a claim promptly upon learning of or receiving the same; (B) the indemnified Party provides the indemnifying Party with reasonable assistance requested by the indemnifying Party, at the indemnifying Party's expense, for the defense and settlement, if applicable, of any claim; and (C) the indemnified Party provides the indemnifying Party with the exclusive right to control and the authority to settle any claim, provided, however, that the indemnified Party has the right to participate in the matter at its own expense.

**14.4 Sole and Exclusive Remedies.** THE RIGHTS AND OBLIGATIONS IN THIS SECTION 14 ARE THE INDEMNIFYING PARTY'S SOLE AND EXCLUSIVE OBLIGATIONS, AND THE INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO ANY SUCH CLAIMS.

## **15. LIMITATION OF LIABILITY.**

**15.1** In no event is either Party liable for any of the following arising out of or concerning these Adobe Digital Publishing Services TOU, however caused: special, indirect, moral, consequential, incidental, punitive, or exemplary damages; loss of profits, use, or revenue; business interruption; or loss or corruption of data.

**15.2** The maximum aggregate liability of Adobe for each and all Claims (individually and together) under or relating to these Adobe Digital Publishing Services TOU or its subject matter is limited to an amount equal to the aggregate of the fees that must be paid by Customer under these Adobe Digital Publishing Services TOU during the 12 months before the initial Claim.

**15.3** Sections 15.1 and 15.2:

(A) apply regardless of the form or source of Claim or damages, losses, costs, expenses, or liabilities (collectively "Loss"), whether or not the Claim or Loss was foreseeable, and whether or not a Party has been advised of the possibility of the Claim or Loss; and

(B) do not apply in any breach of any confidentiality provisions of these Adobe Digital Publishing Services TOU, Customer's use of the Digital Publishing Services beyond the scope of any license granted under Adobe Digital Publishing Services TOU, Customer's breach of Section 10 (Privacy), Customer's indemnity obligations or Customer's failure to pay any amounts owed to Adobe under these Adobe Digital Publishing Services TOU.

## **16. GENERAL PROVISIONS.**

**16.1 Modification.** Adobe may modify the Adobe Digital Publishing Services TOU, for example, to reflect changes to the law or changes to the Digital Publishing Services. Customer should look at the terms regularly. Adobe will post modifications to these terms on adobe.com. By continuing to use or access any component of the Digital Publishing Services after the revisions come into effect, Customer agrees to be bound by the revised terms.

**16.2 Non-Assignment.** Customer may not assign or otherwise transfer these terms or the rights and obligations under these Adobe Digital Publishing Services TOU, in whole or in part, without Adobe's written consent. Adobe may transfer its rights under these Adobe Digital Publishing Services TOU to a third party.

**16.3 Force Majeure.** Neither Party is liable for any default or delay in the performance of its obligations under the Adobe Digital Publishing Services TOU (except for any payment obligations) if such default or delay results from causes beyond its reasonable control, including but not limited to power outages or failures of third-party service providers.

**16.4 Injunctive Relief.** Actual or threatened breach of Sections 3 (Licenses), 5 (Use Obligations and Restrictions), 8 (Confidentiality), or 10 (Privacy) may cause immediate or irreparable harm that would be difficult to calculate and could not be remedied by the payment of damages alone. Accordingly, the non-breaching Party will be entitled to seek preliminary and permanent injunctive relief or other equitable relief for any such breach.

**16.5 Notice.** Adobe may give notice to Customers by means of a general notice on the online reporting interface(s) for the Services and notices specific to Customer, or by electronic mail to Customer's email address on record in Adobe's account information, or by written communication sent by first-class mail or prepaid post to Customer's address on record in Adobe's account information. Customer may give notice to Adobe at any time by certified or registered mail sent to the attention of the Adobe address(es) set forth in the Ordering Document(s), with a copy sent by certified or registered mail to the attention of General Counsel at 345 Park Avenue, San Jose, California 95110-2704, with returned receipt requested.

**16.6 Compliance.** Adobe may, at its expense, and no more than once every 12 months, appoint its own personnel or an independent third party to verify that Customer's use of the Digital Publishing Services complies with the terms of these Adobe Digital Publishing Services TOU and, for Adobe's direct Customers, the Ordering Document. Any such verification will be conducted upon at least seven business days' prior notice, during regular business hours at Customer's offices, and will not unreasonably interfere with Customer's business activities. Both Adobe and its auditors will execute a commercially reasonable non-disclosure agreement with Customer before proceeding with the verification. If such verification shows that Customer is deploying or using the Software or Services in any way not permitted under Adobe Digital Publishing Services TOU and, for Adobe's direct Customers, the Ordering Document, Adobe may further determine that Customer owes additional license fees. For Adobe's direct Customers, if an audit determines that Customer is required to pay additional license fees, such Customer will pay the applicable fees within 30 days of invoice date, with such underpaid fees being the license fees as per Adobe's then-current, country-specific, license fee list. If such underpaid fees are in excess of 5% of the value of the Fees due under the Ordering Document, then Customer will pay such underpaid fees and Adobe's reasonable costs of conducting the verification. Additionally, throughout the Term, Adobe may generate reports (A) from Digital Publishing Suite solely to ensure that Customer is in compliance with its Fulfillment limits; and (B) from Digital Publishing Solution solely to ensure that Customer is in compliance with (1) the number of Applications permitted in the Sales Order; and/or (2) the purposes and limitations for the Applications as stated in the Sales Order.

**16.7 Export Control.** The Digital Publishing Services and Customer's use of Digital Publishing Services is subject to U.S. and international laws, restrictions, and regulations that may govern the import, export, and use of the Digital Publishing Services, Software, and Customer Content. Customer agrees to comply with all such laws, restrictions, and regulations.

**16.8 Independent Contractors.** The parties expressly agree that they are independent contractors and do not intend for the Adobe Digital Publishing Services TOU to be interpreted as an employment, agency, joint venture, or partnership relationship.

**16.9 Waiver; Modification.** Adobe's failure to enforce or exercise any of these terms is not a waiver of that section. The Adobe Digital Publishing Services TOU may not be modified nor any rights under it waived, in whole or in part, except in writing, signed by the parties.

**16.10 Purchase Order; Ordering Document.** The terms of this Adobe Digital Publishing Services TOU and any Ordering Document supersede any different or additional terms of any purchase order submitted by Customer. Any terms or conditions in a purchase order are void and have no legal effect.

**16.11 Entire Agreement.** The Adobe Digital Publishing Services TOU constitute the entire agreement between Customer and Adobe regarding Customer's use of the Digital Publishing Services and supersedes any prior agreements between Customer and Adobe relating to the Digital Publishing Services, including any prior Digital Publishing Suite Terms of Use. Notwithstanding the foregoing, if Customer has entered into a master service or license agreement with Adobe or an Adobe reseller concerning Digital Publishing Solution, Digital Publishing Suite, or Digital Publishing Services, then the terms of that master service or license agreement remain unchanged except that these Adobe Digital Publishing Services TOU supersede any Digital Publishing Suite TOU referenced or incorporated in such master service or license agreement.

**16.12 Order of Precedence.** In the event of any inconsistency between the provisions of these Adobe Digital Publishing Services TOU and any applicable Ordering Document, the provisions of the Ordering Document govern.

**16.13 Counterpart.** The Adobe Digital Publishing Services TOU may be executed in one or more counterparts, each of which constitutes an original and all of which taken together constitute one and the same agreement. Each party may agree to these Adobe Digital Publishing Services TOU using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies.

**16.14 Severability.** If any term of the Adobe Digital Publishing Services TOU is held invalid or unenforceable for any reason, the remainder of the provision will continue in full force and effect.

**16.15** If Customer obtains the Software in Australia, then the following provision applies, notwithstanding anything stated to the contrary in this Agreement:

NOTICE TO CONSUMERS IN AUSTRALIA: Adobe's goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Customer is also entitled to have the goods repaired or replaced if the goods or services fail to be of acceptable quality and the failure does not amount to a major failure. Adobe's goods and services also come with a limited warranty given by Adobe Ireland. If Customer's products do not provide the general features and functions described in the Documentation, please call the Adobe Customer Support Department at 1 800 614 863 with details of Customer's product, serial number, and proof of purchase. Customer may be required to return the software product to the address Adobe provides to Customer at that time, in which case such return will be at Customer's own cost. The benefits under this warranty are in addition to other rights and remedies that Customer may have at law.

## **17. NOTIFICATION OF COPYRIGHT INFRINGEMENT.**

Adobe will, in appropriate circumstances, terminate Customer's license to use the Digital Publishing Services if Customer infringes the Proprietary Rights of others. Adobe will investigate notices of copyright infringement and take appropriate actions under the Digital Millennium Copyright Act, Title 17, United States Code, Section 512(C)(2) ("DMCA"). Takedown notice process and requirements are stated in Section 17 of the Adobe General Adobe Terms, available at <http://www.adobe.com/go/terms>, which is incorporated herein by reference.