

**Universal Amendment to
All Software License Agreements
For
Adobe Systems Incorporated
Software Products**

This Universal Amendment to Software License Agreements for All Adobe Systems Incorporated Software License Agreements (“Amendment”) is effective as of as of the date that it is fully executed (“Effective Date”) and is between Adobe Systems Incorporated (“Adobe”), and the U.S. General Services Administration (“GSA”). In consideration of the mutual promises and covenants contained in this Amendment, the parties agree as follows:

1. Applicability

a. This Amendment, agreed to by both parties, applies to GSA and any agency or organization (“Ordering Activity”) that places an order for an Adobe Software product under Contract No. GS-35F-0119Y (the “GSA Contract”). This Amendment, together with the applicable Software License Agreement or End User License Agreement for the applicable Adobe Software (each such license generally referred to herein as the “License Agreement”), governs the Ordering Activity’s installation and use of such Adobe Software. This Amendment only applies to License Agreements for those Adobe Software products that Adobe expressly authorizes the GSA Contract holder to resell or distribute under the GSA Contract pursuant to a letter of supply between Adobe and such GSA Contract holder. Unless expressly stated to the contrary herein, all capitalized terms in this Amendment shall have the meaning ascribed to them in the applicable License Agreement for the applicable Adobe Software.

b. Pursuant to Section 12.212 of the Federal Acquisition Regulations (“FAR”), Adobe and GSA agree that the modifications to the License Agreements are appropriate to ensure compliance with federal laws and to meet the U.S. Government’s needs. Accordingly, the License Agreements is hereby modified by this Amendment as it pertains to use of Adobe’s software by any Ordering Activity pursuant to a task order placed under the GSA Contract.

c. This Amendment only applies to Ordering Activities of the U.S. Government (including agencies and departments from the Executive Branch, the Congress, or the Military) and independent federal agencies that are authorized to purchase IT Schedule 70 goods and services under the GSA Contract. This Amendment shall not apply to prime contractors, state/local government entities, or other entities authorized to make purchases under the GSA contract. In addition, this Amendment shall apply to the Ordering Activity itself, shall only apply to the installation and use of the Adobe Software for official government business only on behalf of the Ordering Activity, and shall not apply to any individual who utilizes the Adobe Software Products for his or her personal use or for a use.

2. Precedence and Further Amendment: Any provisions restricting additions or modifications to the License Agreement are hereby deleted to the extent they would preclude this Amendment or any valid task orders placed under the GSA Contract. To the extent the License Agreement conflicts with this Amendment or any relevant task orders, the conflict should be resolved according to the following order of precedence: (1) Federal law, (2) the FAR, (3) this Amendment, (4) any other amendment that Adobe and the Ordering Activity may separately enter into to vary the terms of the License Agreement to accommodate unique license terms

under a Task Order, and (5) the License Agreement. This Amendment may only be modified upon written consent of both parties.

3. **Contracting Authority:** Pursuant to FAR 1.601(a) and 43.102, all provisions in the License Agreement which would allow any individual, except for an authorized contracting officer, to bind the U.S. Government to the terms of the License Agreement or any modifications thereto are hereby deleted. Such provisions include the ability of the software manufacturer to unilaterally modify the terms of the License Agreement and any requirement to accept terms by means of use, download, or click-through agreements. Notwithstanding the foregoing, GSA and Ordering Activity expressly agree that when an authorized contracting officer of the Ordering Activity places a task order for the Adobe Software pursuant to the GSA Contract, all terms of the License Agreement in effect at the time the product was added to the GSA Contract shall be legally binding on Ordering Activity and shall be given full force and legal effect. In the event that Ordering Activity receives Adobe Software through a task order that is not authorized by the Ordering Activity's authorized contracting officer or Ordering Activity fails to acknowledge that the License Agreement is binding on Ordering Activity, Ordering Activity shall not be deemed to have any license to the Adobe Software and Adobe reserves all rights, remedies, and enforcement actions and venues available to Adobe under state and federal law, including but not limited to all intellectual property laws without regard to the Dispute Resolution Process or Governing Law provisions of this Amendment.

4. **Costs and Fees:** Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), the U.S. Government does not agree to pay any future costs or fees under the License Agreement or this Amendment. Any provisions of the License Agreement obligating the U.S. Government to pay costs, fees, or damages, or to otherwise expend appropriations, are hereby deleted unless imposed after following the Dispute Resolution Procedures identified hereunder. Any provisions of the License Agreement providing for automatic renewal absent some action by the U.S. Government are hereby deleted.

5. **Installation and Use of the Software:** Installation and use of the software shall be in accordance with the License Agreement, unless an Ordering Activity determines that it requires different terms of use and Adobe agrees in writing to such terms in a valid task order placed pursuant to the GSA Contract.

6. **Indemnification:** Pursuant to 28 U.S.C. § 516, in the event of any claim against an Ordering Activity arising out of use of the Adobe Software, Adobe cannot assume responsibility for or control of the litigation or any settlement negotiations, provided however, that Ordering Activity (i) agrees that any litigation or settlement negotiation shall not bind Adobe, in any way, to the final outcome of any such litigation or settlement; (ii) shall not impair Adobe's own rights, defenses, or claims against the claimant, (iii) shall not have the right to settle any claim, make any admissions, or waive any defenses on behalf of Adobe; and (v) shall in good faith reasonably cooperate and consult with Adobe during the course of settlement negotiations and prosecution of the claim and shall afford Adobe free access to all communications and documentations with all parties, witnesses, and judicial or administrative body(ies) associated with such claim upon Adobe's request. Any contrary provisions in the License Agreement are hereby deleted. In compliance with the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), the U.S. Government does not agree to pay any costs, fees, or damages arising from claims against Adobe relating to use of the software by any Ordering Activity. Any contrary provisions in the License Agreement are hereby deleted.

7. **Limitation of Liability:** Any limitation of liability in the License Agreement is hereby deleted, and the following provision shall apply:

Neither Adobe nor an Ordering Activity shall be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, neither Adobe nor an Ordering Activity shall be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

8. **Governing Law:** The License Agreement and this Amendment shall be governed by the laws of the United States, unless there is no applicable law of the United States which would apply, in which case the laws of the State of California shall apply. Any provisions in the License Agreement stating that the License Agreement shall only be governed by the law of any particular U.S. state, U.S. territory or district, or foreign nation are hereby deleted.

9. **Dispute Resolution and Venue:** Any provisions in the License Agreement requiring the U.S. Government to follow a specific procedure to raise claims or to resolve disputes are hereby deleted. Any provisions in the License Agreement selecting a particular judicial forum or form of alternative dispute resolution for resolving claims relating to the License Agreement are hereby deleted. Any disputes relating to the License Agreement and to this Amendment shall be resolved in accordance with the FAR and the Contract Disputes Act, 41 U.S.C. §§ 601-613. GSA and Ordering Activity expressly acknowledge that Adobe shall have standing to bring such claim under the Contract Disputes Act.

10. **Termination and Performance:** Termination of the License Agreement and this Amendment shall be governed by the FAR and the Contracts Disputes Act, 41 U.S.C. §§ 601-613, and any provisions of the License Agreement relating to termination are hereby deleted, including any provisions permitting Adobe to unilaterally terminate the License Agreement, subject to the following exceptions:

- a. Adobe is entitled to cancel or terminate the License Agreement if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process referenced in Section 9 above or if such remedy is otherwise available to Adobe under United States federal law.
- b. Adobe is entitled to cancel or terminate the License Agreement if one of the events identified in Section 11 below apply.

11. **Remedies:** Pursuant to 28 U.S.C. § 1498, any provisions of the License Agreement providing for equitable remedies against the U.S. Government, including an injunction, in the event of a dispute concerning patent or copyright infringement are hereby deleted (subject to the third sentence of this Section 11). Any provisions of the License Agreement which would preclude continued performance of the contract during resolution of any disputes are hereby deleted, including any provisions requiring the U.S. Government to agree that an injunction is appropriate in the event of a breach of the License Agreement (subject to the third sentence of this Section 11). Notwithstanding the foregoing, any License Agreement clause providing for equitable remedies against the U.S. Government, including an injunction, in the event of a dispute concerning patent or copyright infringement or any other breach of the License Agreement shall continue to apply if an equitable remedy is available under United States

Federal Law, such as (without limitation) the Freedom of Information Act ("FOIA") under one of the exemptions to disclosure under FOIA. If the Ordering Activity breaches one of the following: (a) reverse engineers, decompiles, disassembles, or otherwise attempts to discover the source code of the software, (b) unbundles the constituent component parts of the software, or (c) provides use of the software in a computer service business, third party outsourcing facility or service, service bureau arrangement, or time sharing basis, Adobe may terminate the License Agreement; however prior to terminating this License Agreement, Adobe shall inform the Ordering Activity of one of the breaches named above as soon as possible, and provide Ordering Activity sixty (60) days from notice to cure such breach. If the breach is not cured in sixty (60) days, the Ordering Activity may terminate the Order for convenience of the Government in accordance with FAR 52.212-4(l); however, Ordering Activity has no rights to a refund, in whole or in part of any License Fee paid if this License Agreement is terminated for such breach. Nothing in this paragraph shall prevent Adobe from filing a claim or limit Adobe's damages under the Contract Disputes Act at 41 USC §§7101-7109.

12. **Advertisements and Endorsements:** Any provisions allowing Adobe to use the name or logo of GSA or any Ordering Activity to advertise or to imply an endorsement of Adobe's products or services are hereby deleted. Unless specifically authorized by an Ordering Activity, such use of the name or logo of any U.S. Government entity is prohibited.

13. **Monitoring Use of License and Audits:** Any provision in the License Agreement permitting Adobe to audit, inspect, or monitor use of the software for compliance with the License Agreement shall be binding on Ordering Activity but is contingent upon reasonable notice to the Ordering Activity and adherence to reasonable security measures the Ordering Activity deems reasonably appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities if clearances are required.

14. **Public Access to Information:** Adobe agrees that the License Agreement and this Amendment contain no confidential or proprietary information and acknowledges the License Agreement and this Amendment will be available to the public, provided however, that GSA and Adobe agree that other items identified in the License Agreement (such as, without limitation, source code and other technical data) provided to the Ordering Activity is confidential and proprietary information and shall not be disclosed.

On behalf of Adobe Systems Incorporated:

On behalf of GSA:

Robert E. Selva
Signature

Dorothy Waller
Signature

Robert E. Selva
Printed Name
Sr Director
Information Systems

Dorothy Waller
Printed Name

Title

Contracting Officer
Title

9/19/11
Date

9/20/2011
Date