

SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM: 3.16  
(ID # 13731)

MEETING DATE:

FROM: RIVERSIDE COUNTY INFORMATION TECHNOLOGY:

Tuesday, October 27, 2020

**SUBJECT:** RIVERSIDE COUNTY INFORMATION TECHNOLOGY (RCIT): Approve the Adobe Sign Customer Licensing Terms Agreement with Adobe Inc., and approve the Reseller Agreement with SHI International Corp. to provide Adobe Sign Enterprise Transactions to participating County departments from November 1, 2020 through October 31, 2021 with the option to renew for two additional one-year terms with the annual amount not to exceed \$166,777; up to \$50,000 in additional compensation; All Districts. [Three Year Total Not to Exceed \$500,331, up to \$150,000 in additional compensation for future purchases of Adobe Sign, Federal Grant Fund- 35%, General Fund- 33%, Realignment Fund- 18%, State Grant Fund -11%, Enterprise Fund- 3%, State Fund – 0.2%]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Adobe Sign Customer Licensing Terms Agreement (the "Adobe Agreement") and the HIPAA Business Associate Agreement with Adobe Inc. for the license to Adobe Sign Enterprise Transactions and related support services, which will be made available to participating County departments from November 1, 2020 through October 31, 2021, with the option to renew for two additional one-year terms, and authorize the Chairman of the Board to execute both agreements on behalf of the County;

**ACTION:** Policy

*Lee*  
Jewell Lee, Director of Office on Aging 10/15/2020  
*Peter Aldana*  
Peter Aldana, Assessor-County-Clerk Recorder 10/15/2020  
*Jim Smith*  
Jim Smith, Chief Technology Officer 10/15/2020

*Jeff Crutshaw*  
Jeff Crutshaw, Chief Executive Officer - Health System 10/15/2020  
*Tammi Graham*  
Tammi Graham, EXECUTIVE DIRECTOR CPC, FIRST FIVE 10/16/2020  
*Julie Bank*  
Julie Bank, Director of Animal Services 10/16/2020

*Rebecca Spencer*  
Rebecca Spencer 10/16/2020  
*Teresa Summers*  
Teresa Summers, Director of Purchasing 10/19/2020  
*Sayori Baldwin*  
Sayori Baldwin, DSSS Director 10/19/2020

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Jeffries, seconded by Supervisor Washington and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
Nays: None  
Absent: None  
Date: October 27, 2020  
xc: RCIT

Kecia R. Harper  
Clerk of the Board  
By: *[Signature]*  
Deputy



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2. Approve the Reseller Agreement with SHI International Corp. for the purchase of the aforementioned Adobe Sign Enterprise Transactions license and services, to be coterminous with the Adobe Agreement for the annual contract amount of \$166,777; and
3. Authorize the Purchasing Agent, in accordance with Ordinance 459, based on the availability of fiscal funding and as approved by County Counsel to sign amendments that exercise the annual renewal options that stay within the intent of the Agreement and amendments to increase the compensation provisions that do not exceed \$50,000 annually for future purchases of Adobe Sign Transactions.

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 216,777	\$ 216,777	\$ 650,331	\$ 0
<b>NET COUNTY COST</b>	\$ 55,946	\$ 55,946	\$ 167,837	\$ 0
<b>SOURCE OF FUNDS:</b> Federal Grant Fund- 35%, General Fund- 33%, Realignment Fund-18%, State Grant Fund -11%, Enterprise Fund- 3%, State Fund – 0.2%			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> 20/21-22/23	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

The request before the Board is for electronic signature cloud services, Adobe Sign, with Adobe Systems, Inc. Adobe Sign provides participating County departments the option to allow residents and businesses the ability to sign documents online that require legally binding signatures without the need to visit a County building, such as marriage licenses, contracts related to services provided for social services, and documents that require signature from the constituent participants. Currently, there are eight (8) departments prepared to implement this software immediately, with many others considering this option within their business practices. This item includes action to increase the compensation provisions that do not exceed \$50,000 annually for future purchases of Adobe Sign Transactions as other departments decide to implement this software for digital signature capabilities within their business practices.

The COVID-19 pandemic impacted multiple county department's ability to conduct "business as usual". It required the County to quickly adapt and find a solution which allows departments to continue to deliver services while ensuring the safety of staff and the public. Adobe Sign addresses the immediate need brought on by COVID-19 while the overall benefits and improvements to service delivery will be realized long-term.

RCIT recommends the implementation of the Adobe Sign electronic signature service following an extensive review of Adobe Sign's capabilities, compared with the County's requirements. This agreement streamlines the availability of Adobe Sign for all departments that have a need along with cost savings realized by pooling participating department transactions together.



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Adobe is an authorized provider of digital signatures which are issued in conjunction with an authorized certification authority according to the California Secretary of State.

**Impact on Residents and Businesses**

There is no negative impact on citizens or business in the County. This solution will allow residents and businesses to sign documents online that require legally binding signatures, eliminating or reducing the need to visit a County building. This saves time, reduces traffic on our roads and greenhouse gas emissions.

**Additional Fiscal Information**

County departments and their usage of this Adobe Sign Enterprise Transactions:

<b>County Department</b>	<b>Number of Transactions</b>	<b>Source of Fund</b>	<b>Total for FY 20/21</b>	<b>Total for FY 21/22</b>	<b>Total for FY 22/23</b>
Animal Services	15,000	General Fund	\$11,845	\$11,845	\$11,845
Assessor County Clerk Recorder	45,000	General Fund	\$35,535	\$35,535	\$35,535
DPSS Internal Services Unit	134,000	48.69% Federal Grant, 17.17% State Grant, 28.07% Realignment Fund, 6.08% General Fund	\$105,815	\$105,815	\$105,815
First 5	500	State Fund	\$395	\$395	\$395
Office on Aging	8,000	Federal Grant Fund	\$6,317	\$6,317	\$6,317
Purchasing	1,500	General Fund	\$1,184	\$1,184	\$1,184
Registrar of Voters	1,200	General Fund	\$948	\$948	\$948
RUHS	6,000	Enterprise Fund	\$4,738	\$4,738	\$4,738
Future Adobe Sign Purchases			\$50,000	\$50,000	\$50,000
<b>Not to Exceed Annual Total Amount</b>	<b>211,200</b>		<b>\$216,777</b>	<b>\$216,777</b>	<b>\$216,777</b>

**Contract History and Price Reasonableness**

RCIT engaged Adobe and DocuSign for product demonstrations and negotiations for an electronic signature platform to keep County's business operational. After a lengthy process of comparing product functionality and pricing, RCIT determined Adobe to be the most cost-effective solution that would provide the best value to the County. RCIT engaged Gartner Research for their expertise in reviewing Adobe Sign agreements. Gartner confirmed that the cost and terms provided by Adobe is the best they have seen for this size contract. Pricing is provided by Adobe through SHI International Corp. at a discounted price. SHI

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International Corp. is an Adobe Authorized Platinum Large Account Reseller that is the current county awarded contractor for all products in Adobe Cumulative Licensing Program (CLP) and Value Incentive Program (VIP) approved by the Board on November 6, 2018 Minute Order 3.25. The SHI Adobe award that was approved in November 2018 was for the purchase of Adobe products through a period ending October 31, 2022. As RCIT negotiated a three-year fixed pricing, the department is requesting Board approval for the Adobe Sign product through October 31, 2023.

**Attachments:**

- A. Adobe Sign Customer Licensing Terms Agreement
- B. HIPAA Business Associate Agreement
- C. SHI Internal Corp. Reseller Agreement

  
Venus Brambila

10/21/2020

  
Gregory H. Priamos, Director County Counsel

10/20/2020



## CUSTOMER LICENSING TERMS

COUNTY OF RIVERSIDE, a political subdivision of the State of California ("Customer") will be placing an order through a reseller awarded the relevant contract ("Reseller") for the purchase of the following Adobe On-demand Services, (collectively, "Products and Services").

Products and Services Details**Adobe On-demand Services**

Support Services are described at: <https://helpx.adobe.com/support/programs/support-policies-terms-conditions.html>

Year One:

Line Number	SKU	SKU Description	Billing Cycle	Quantity	License Metric / Unit of Measure	License Term Start Date	License Term End Date
01	65272754	Adobe Sign for enterprise Transactional	Advance   Annually - In	211,200	Each Transaction Per Year	01 November 2020	31 October 2021

Option Year Two:

Line Number	SKU	SKU Description	Billing Cycle	Quantity	License Metric / Unit of Measure	License Term Start Date	License Term End Date
02	65272754	Adobe Sign for enterprise Transactional	Advance   Annually - In	211,200	Each Transaction Per Year	01 November 2021	31 October 2022

Option Year Three:

Line Number	SKU	SKU Description	Billing Cycle	Quantity	License Metric / Unit of Measure	License Term Start Date	License Term End Date
03	65272754	Adobe Sign for enterprise Transactional	Advance   Annually - In	211,200	Each Transaction Per Year	01 November 2022	31 October 2023

- 01, Adobe Sign for enterprise Transactional:  
 02, During the License Term, including Option Years, Customer is able to send a total of 633,600 Transactions ("Pooled Transactions"). Customer must report to  
 03, Adobe any usage in excess of the quantity of Pooled Transactions purchased under this Sales Order 14 days prior to each anniversary of the License Term Start Date, and again within 14 days following expiration of the License Term. Customer will be billed for over-usage in accordance with the terms of this Sales Order and at the unit price per Transaction agreed between customer and reseller. Any unused Pooled Transactions will expire upon the expiration or termination of the License Term and may not be carried over to any subsequent sales order. Customer is not entitled to a credit or refund for any unused Pooled Transactions. The dates set forth in the pricing table represent the best estimates of the License Term Start Date and License Term End Date but such dates will be adjusted based on the actual delivery date of login credentials to access the Products and Services.

## Adobe Professional Services

All services will be done remotely.

Year One:

Line Number	SKU	SKU Description	Billing Cycle	Quantity	License Metric / Unit of Measure	License Term Start Date	License Term End Date
4	65310025	Adobe Sign for ent ProSvcs Subs:SVCS T3	Advance   Annually - In	1.00	Each Per Year	01 November 2020	31 October 2021

Option Year Two:

Line Number	SKU	SKU Description	Billing Cycle	Quantity	License Metric / Unit of Measure	License Term Start Date	License Term End Date
5	65310025	Adobe Sign for ent ProSvcs Subs:SVCS T3	Advance   Annually - In	1.00	Each Per Year	01 November 2021	31 October 2022

Option Year Three:

Line Number	SKU	SKU Description	Billing Cycle	Quantity	License Metric / Unit of Measure	License Term Start Date	License Term End Date
6	65310025	Adobe Sign for ent ProSvcs Subs:SVCS T3	Advance   Annually - In	1.00	Each Per Year	01 November 2022	31 October 2023

04, Adobe Sign for ent ProSvcs Subs:SVCS T3: Adobe Sign Professional Services Subscription includes expert advice to guide implementation, configuration, integration, administration, onboarding of use cases, and usage of Adobe Sign during the License Term. These Professional Services may include the services as described in the SOW at <https://www.adobe.com/content/dam/cc/en/legal/terms/enterprise/pdfs/SOW-SignforEnterprise-ProfessionalServices-2020MAR05.pdf>. Customer and Adobe will jointly define the schedule for the delivery of the Professional Services defined in this SOW. In addition, Adobe and Customer will meet at mutually agreeable intervals to refine this schedule based on Customer priorities. Adobe will exercise its discretion on the most optimal set of services to support Customer's objectives. Adobe may require up-to four business weeks to schedule the delivery of the requested services. Customer will receive the Professional Services for up to two concurrent service requests at a time. Adobe will perform Professional Services remotely unless stated otherwise in this Sales Order. If Customer requests that any Professional Services be delivered on-site at Customer's premises, Customer will reimburse Adobe for any incurred travel related expenses. The dates set forth in the pricing table represent the best estimate of the License Term Start Date and License Term End Date, but Adobe will adjust such dates based on the actual delivery date of login credentials to access the Service

### Terms and Conditions:

- All use of the Products and Services specified above will be governed by the terms of these Customer Licensing Terms, and the version of the Adobe Enterprise Licensing Terms in effect as of the date Customer issues a purchase order to Reseller and available at [www.adobe.com/legal/terms/enterprise-licensing.html](http://www.adobe.com/legal/terms/enterprise-licensing.html) including the General Terms and the applicable Product Specific Licensing Terms ("PSLT(s)") and attached hereto for reference purposes (collectively, the "Agreement"). If there is any inconsistency between the parts of this Agreement, then the part listed earlier will prevail to the extent of the inconsistency: (i) these Customer Licensing Terms; (ii) the applicable PSLT(s); and (iii) the General Terms. Capitalized terms used in these Customer Licensing Terms have the meanings set out in applicable modules of the Adobe Enterprise Licensing Terms, unless otherwise specified.
- Adobe is not entering into a direct purchasing relationship with Customer for the Products and Services. Reseller is solely responsible for setting the terms of payment with Customer (including but not limited to when payments by Customer are due to Reseller).
- During the License Term and up to two Option Years, Customer is able to send a total of 633,600 Transactions ("Pooled Transactions") beginning the first day of the License Term through the end of Option Year Three, if Customer elects to exercise both of the Option Years.
- Customer must report to Adobe any usage in excess of the quantity of annual quantity purchased as identified in the Product and Services Pricing Detail above (i.e. 211,200 Transactions) at least 14 days prior to each anniversary of the Start Date of the License Term (including Base Year and up to two Option Years if Customer elects to renew).
- If Customer elects to exercise Option Year Two and Option Year Three, Customer will be billed for Transactions in excess of the Pooled Transaction amount (i.e. 633,600) in accordance with the terms of this Sales Order and at the unit prices agreed between Reseller and Customer. Any unused Pooled Transactions will expire upon the expiration or termination of the License Term and/or up to two Option Years and may not be carried over to any subsequent Sales Order. Customer is not entitled to a credit or refund for any unused Pooled Transactions.
- If Customer does not elect to renew Option Year Two and Option Year Three, Customer will be billed for any excess Transactions



used beyond the annual quantity as identified in the Product and Services Pricing Detail above (i.e. 211,200 annual Transactions). If Customer renews Option Year Two, but not Option Year Three, Customer will be billed for any excess Transactions used beyond the annual quantity as identified in the Product and Services Pricing Detail above for the Year One and Option Year Two (i.e. 422,400 annual Transactions).

7. Adobe will provide support services for the Products and Services as described at <https://helpx.adobe.com/support/programs/support-policies-terms-conditions.html>
8. The License Term for the Products and Services extends for twelve months ("Base Year") and may be renewed for up to two successive one-year terms (each, an "Option Year") by providing Reseller 30 days prior written notice. Any renewal of the License Term or exercise of an Option Year must reflect the quantities set forth herein plus any excess quantities that were added on and/or trued up during the entire License Term and any exercised Option Years. If Customer desires to renew the License Term or exercise an Option Year with a reduction of the quantities described above, then Customer and Reseller must enter into an addendum to their agreement, which may reflect revised unit pricing.
9. Customer acknowledges and agrees that it may not assign or otherwise transfer licenses to the Products and Services to any other government or other entity without Adobe's prior written approval.
10. By placing an order with Reseller for the Products and Services, Customer will be deemed to have accepted these Customer Licensing Terms and the applicable Adobe Enterprise Licensing Terms. Customer must also attach a copy of these Customer Licensing Terms to its corresponding purchase order to Reseller.

This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement. Adobe certifies that the appropriate person(s) have executed this Agreement on behalf of Adobe as required by applicable articles, bylaws, resolutions, or ordinances.

COUNTY OF RIVERSIDE, a political  
subdivision of the State of California

Sign By: \_\_\_\_\_

Print Name: V. Manuel Perez

Print Title: Chairman, Board of Supervisors

Date Signed: OCT 27 2020

APPROVED AS TO FORM:

Gregory P. Priamos

County Counsel

By: \_\_\_\_\_

Susanna Oh,

Deputy County Counsel

Adobe, Inc., a Delaware corporation authorized to conduct  
business in the State of California as Adobe Systems Incorporated

Sign By: \_\_\_\_\_

Print Name: Garrett Holbrook

Print Title: Director Technical Revenue Ops

Date Signed: Oct 7, 2020

ATTEST:

KECIA R. HARPER, Clerk

By: [Signature]  
DEPUTY

used beyond the annual quantity as identified in the Product and Services Pricing Detail above (i.e. 211,200 annual Transactions). If Customer renews Option Year Two, but not Option Year Three, Customer will be billed for any excess Transactions used beyond the annual quantity as identified in the Product and Services Pricing Detail above for the Year One and Option Year Two (i.e. 422,400 annual Transactions).

7. Adobe will provide support services for the Products and Services as described at <https://helpx.adobe.com/support/programs/support-policies-terms-conditions.html>
8. The License Term for the Products and Services extends for twelve months ("Base Year") and may be renewed for up to two successive one-year terms (each, an "Option Year") by providing Reseller 30 days prior written notice. Any renewal of the License Term or exercise of an Option Year must reflect the quantities set forth herein plus any excess quantities that were added on and/or trued up during the entire License Term and any exercised Option Years. If Customer desires to renew the License Term or exercise an Option Year with a reduction of the quantities described above, then Customer and Reseller must enter into an addendum to their agreement, which may reflect revised unit pricing.
9. Customer acknowledges and agrees that it may not assign or otherwise transfer licenses to the Products and Services to any other government or other entity without Adobe's prior written approval.
10. By placing an order with Reseller for the Products and Services, Customer will be deemed to have accepted these Customer Licensing Terms and the applicable Adobe Enterprise Licensing Terms. Customer must also attach a copy of these Customer Licensing Terms to its corresponding purchase order to Reseller.

This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement. Adobe certifies that the appropriate person(s) have executed this Agreement on behalf of Adobe as required by applicable articles, bylaws, resolutions, or ordinances.

COUNTY OF RIVERSIDE, a political  
subdivision of the State of California

Adobe, Inc., a Delaware corporation authorized to conduct  
business in the State of California as Adobe Systems Incorporated

Sign By: \_\_\_\_\_

Print Name: V. Manuel Perez

Print Title: Chairman, Board of Supervisors

Date Signed: \_\_\_\_\_

APPROVED AS TO FORM:

Gregory P. Priamos

County Counsel

By: \_\_\_\_\_

Susanna Oh,

Deputy County Counsel

Sign By:   
Garrett Holbrook (Oct 7, 2020 13:08 MDT)

Print Name: Garrett Holbrook

Print Title: Director Technical Revenue Ops

Date Signed: Oct 7, 2020



## GENERAL TERMS (2020v1)

### 1. DEFINITIONS

- 1.1 **"Adobe"** means one or both of the following:
- (A) If the Products and Services are licensed in the United States (including its territories and possessions and military bases wherever located), Canada, or Mexico: Adobe Inc., located in San Jose, California.
  - (B) If the Products and Services are licensed in any other country(ies): Adobe Systems Software Ireland Limited, located in Ireland.
- 1.2 **"Adobe Partner"** means an entity that is appointed by Adobe to process orders from end users, or a reseller of Products and Services to Customers.
- 1.3 **"Adobe Technology"** means technology owned by Adobe or licensed to Adobe by a third-party (including the Products and Services, Reports, software tools, algorithms, software (in source and object forms), user interface designs, architecture, toolkits, plug-ins, objects and Documentation, network designs, processes, know-how, methodologies, trade secrets, and any related intellectual property rights throughout the world), and feedback made to Adobe that are incorporated into any of the foregoing (which are hereby irrevocably assigned to Adobe), as well as any of the modifications, or extensions of the above, whenever or wherever developed.
- 1.4 **"Affiliate"** means, for a Party, any other entity that controls, is controlled by, or under common control with, the Party. For the purposes of this definition, the term "control" means the direct or indirect power to direct the affairs of the other entity through at least 50% of the shares, voting rights, participation, or economic interest in this entity.
- 1.5 **"Agreement"** means these General Terms, the applicable Product Specific Licensing Terms, and the Sales Order.
- 1.6 **"Claim"** means a claim, action, complaint, or legal regulatory body, administrative or judicial proceeding filed against or made to a Party.
- 1.7 **"Computer"** means a virtual or physical device for storing or processing data, such as servers, desktop computers, laptops, mobile devices and hardware products. Where a device contains more than one virtual environment (including virtual machines and virtual processors), each virtual environment will be counted as a separate Computer.
- 1.8 **"Confidential Information"** means non-public or proprietary information about a disclosing Party's business related to technical, commercial, financial, employee, or planning information that is disclosed by the disclosing Party to the other Party in connection with this Agreement, and (A) is identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic, or electronic form; or (B) is not identified as confidential at the time of disclosure, but is by its nature confidential or the receiving Party knows, or ought reasonably to know, is confidential (which may include Customer Content). Any Adobe Technology and the terms and conditions of this Agreement will be deemed Confidential Information of Adobe without any marking or further designation. Any Customer Data will be deemed Confidential Information of Customer without any marking or further designation. "Confidential Information" does not include information that: (1) has become public knowledge through no fault of the receiving Party; (2) was known to the receiving Party, free of any confidentiality obligations, before its disclosure by the disclosing Party; (3) becomes known to the receiving Party, free of any confidentiality obligations, from a source other than the disclosing Party; or (4) is independently developed by the receiving Party without use of Confidential Information.
- 1.9 **"Customer"** means the entity identified in the Sales Order as "Customer" or otherwise identified in the Sales Order as the end user customer.
- 1.10 **"Customer Content"** means any material, such as audio, video, text, or images, that is imported into the On-demand Services or Managed Services by or on behalf of Customer in connection with Customer's use of the Products and Services, including for collaboration, content delivery, digital publishing, targeted advertising, or indexing.
- 1.11 **"Customer Data"** means any information that is imported by or on behalf of Customer into the On-demand Services or Managed Services from 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.
- 1.12 **"Customer Site"** means any current or future website or application that is owned and operated by Customer, or is hosted or operated by a third-party or Adobe on Customer's behalf, and that contains a privacy policy or terms of use governing data collection practices that Customer controls.
- 1.13 **"Data Privacy Claim"** means a Claim arising from (a) a Party's failure to comply with the applicable data security and privacy laws as clarified by the roles, responsibilities and obligations set forth in the applicable Data Protection Terms



or (b) Customer's failure to comply with section 4.4 (Third-Party Providers) or Customer's terms of use and privacy policy.

- 1.14 **"Data Protection Terms"** means the applicable Data Protection Terms or E.U. Data Processing Agreement found at <https://www.adobe.com/legal/terms/enterprise-licensing.html> or as otherwise agreed by the Parties.
- 1.15 **"Distributed Code"** means HTML tags, JavaScript code, object code, plugins, SDKs, APIs, or other code provided by Adobe for use of the On-demand Services or Managed Services.
- 1.16 **"Documentation"** means the applicable technical specification and usage documentation for the Products and Services as such materials are made generally available on [www.adobe.com](https://www.adobe.com). "Documentation" does not include any third-party content posted to <https://helpx.adobe.com/product-descriptions.html> content published in user forums hosted or moderated by Adobe, content related to any future functionality, or communications exchanged between Adobe and Customer, unless such communications are specifically incorporated by reference within the applicable Sales Order.
- 1.17 **"Enterprise Licensing Terms"** means these General Terms and the applicable Product Specific Licensing Terms.
- 1.18 **"Indemnified Party"** means (i) Customer when Adobe is the Indemnifying Party and (ii) Adobe when Customer is the Indemnifying Party.
- 1.19 **"Indemnified Technology"** means On-demand Services, Managed Services or On-premise Software (as applicable), paid for by Customer.
- 1.20 **"Indemnifying Party"** means (i) Adobe with respect to Claims (a) arising from Adobe's failure to comply with the applicable data security and privacy laws as clarified by the roles, responsibilities and obligations set forth in the applicable Data Protection Terms or (b) arising under section 8.2; and (ii) Customer with respect to Claims arising from Customer's failure to comply with (a) the applicable data security and privacy laws as clarified by the roles, responsibilities and obligations set forth in the applicable Data Protection Terms, (b) section 4.4 (Third-Party Providers); or (c) Customer's terms of use and privacy policy.
- 1.21 **"License Term"** means the earlier of the duration of the license for Products and Services as stated in the Sales Order, or any shorter term arising from a termination or expiration of this Agreement.
- 1.22 **"Managed Services"** means the technology services hosted by or on behalf of Adobe and provided to Customer as a dedicated instance, as set out in the Sales Order.
- 1.23 **"On-demand Services"** means the technology services hosted by or on behalf of Adobe and provided to Customer as a shared instance, as set out in the Sales Order.
- 1.24 **"On-premise Software"** means the Adobe software that is deployed by or on behalf of Customer on hardware designated by Customer, as set out in the Sales Order.
- 1.25 **"Party"** means Adobe or Customer, as applicable.
- 1.26 **"Products and Services"** means the On-premise Software, On-demand Services, Managed Services, or Professional Services, as set out in the Sales Order.
- 1.27 **"Product Specific Licensing Terms" or "PSLT"** means the Product Specific Licensing Terms document that describes the additional licensing terms for specific Products and Services.
- 1.28 **"Professional Services"** means any consulting, training, implementation, or technical services provided by Adobe to Customer, as set out in the Sales Order.
- 1.29 **"Report"** means any graphical or numerical display of Customer Data that contains Adobe's proprietary design, look and feel, and is generated by the On-demand Services or Managed Services.
- 1.30 **"Sales Order"** means the sales order form, statement of work, or other written document for the Products and Services that is either (A) executed between Adobe and Customer; or (B) if no such documents are executed between Adobe and Customer and Customer is purchasing through an Adobe Partner, executed between Customer and the Adobe Partner.
- 1.31 **"Sensitive Personal Data"** means an individual's financial information, sexual preferences, medical or health information protected under any health data protection laws, biometric data (for purposes of uniquely identifying an individual), 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 ("COPPA")) and any additional types of information included within this term or any similar term (such as "sensitive personal information" or "special categories of personal information") as used in applicable data protection or privacy laws.



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

## 2. PAYMENT OF FEES

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

- 2.1 **Payment.** Customer must pay the fees according to the payment terms in the Sales Order. All invoices will only be delivered electronically to Customer. Adobe may charge interest at a monthly rate equal to the lesser of 1% per month or the maximum rate permitted by applicable law on any overdue fees, from the due date until the date the overdue amount (plus applicable interest) is paid in full. Any fees that are unpaid as of the date of termination or expiration will be immediately due and payable. Customer agrees to provide clear indication within its form of payment, or emailing to [sjar@adobe.com](mailto:sjar@adobe.com) as to which invoices payment should be applied no later than the date of payment. If Customer is not a publicly-traded corporation, upon Adobe's request, Customer will provide the necessary financial documents to allow Adobe to ascertain the credit-worthiness of Customer.
- 2.2 **Failure to Pay.** If Customer fails to pay any amount due under this Agreement according to the payment terms in the Sales Order (and not disputed as described in section 2.3), 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 any and all Products and Services.
- 2.3 **Disputes.** If Customer believes in good faith that Adobe has incorrectly billed Customer, Customer must contact Adobe in writing within 30 days of the invoice date, specifying the error. Unless Customer has correctly notified Adobe of the dispute, Customer must reimburse Adobe's reasonable collection costs. Customer must pay the undisputed portions of Adobe's invoice as required by this Agreement.
- 2.4 **Taxes.** Prices do not include applicable taxes. Adobe will invoice Customer for any applicable taxes, and Customer must pay these taxes. Where applicable, Customer must provide a tax-exemption claim to Adobe before placing an order. If Customer is required to withhold income taxes from its payment to Adobe, Customer agrees to send Adobe an official tax receipt within 60 days of payment to Adobe.

## 3. DELIVERY

On-premise Software is deemed to be delivered and accepted by Customer on the earlier of the date the On-premise Software is made available for electronic download or, physical shipment, if applicable. On-demand Services and Managed Services are deemed to be delivered and accepted by Customer on the License Term start date.

## 4. LICENSE AND RESTRICTIONS

- 4.1 **License Grant for On-demand Services and Managed Services.** Subject to the terms and conditions of this Agreement, Adobe grants Customer for its direct beneficial business purposes, during the License Term, a non-transferable, non-exclusive license, to:
- (A) permit Users to access the On-demand Services and Managed Services and where applicable, Reports, through the applicable interfaces;
  - (B) install, implement, and use the Distributed Code on Customer Sites;
  - (C) develop and test Customer Customizations (as that term is defined in the applicable PSLT) to evaluate potential configurations of the On-demand Services or Managed Services; and
  - (D) use the On-demand Services and Managed Services in accordance with the Documentation.

Unless otherwise specifically limited in the Sales Order, User login IDs and passwords will be provided to Customer in a quantity mutually agreed upon by Customer and Adobe.

- 4.2 **License Grant for On-premise Software.** Subject to the terms and conditions of this Agreement, Adobe grants Customer for its direct beneficial business purposes, during the License Term, a non-transferable, non-exclusive license to:
- (A) install and use the On-premise Software in accordance with the Documentation on Computers, for the platforms and quantities set out in the Sales Order; and

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

**4.3 License Conditions.** Except to the extent expressly permitted under this Agreement, Customer agrees as a condition of the licenses that it must not:

- (A) use the Products and Services in (1) violation of any applicable law or regulation (including, where applicable, COPPA and FISMA), or in connection with unlawful material (such as material that violates any obscenity, defamation, harassment, privacy, publicity or intellectual property laws); or (2) a manner that would cause a material risk to the security or operations of Adobe or any of its customers, or to the continued normal operation of other Adobe customers.
- (B) copy, use, distribute, republish, download, display, transmit, sell, rent, lease, host, or sub-license the Products and Services;
- (C) offer, use, or permit the use of the Products and Services in a computer service business, third-party outsourcing service, on a membership or subscription basis, on a service bureau basis, on a time-sharing basis, as part of a hosted service, or on behalf of any third-party;
- (D) attempt to interact with the operating system underlying the On-demand Services and Managed Services, or modify, create derivative works of, adapt, translate, reverse engineer (including monitoring or accessing the inputs and output flowing through a system or an application), decompile, or otherwise attempt to discover within any Adobe Technology, the source code, data representations, or underlying algorithms, processes and methods. This restriction will not apply to the extent it limits any non-waivable right Customer may enjoy under applicable law;
- (E) remove, obscure, or alter any proprietary notices associated with the Products and Services (including any notices in Reports);
- (F) use any software components, modules, or other services that may be delivered with the Products and Services, but which are not licensed to Customer and identified in the Sales Order;
- (G) decouple 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; or
- (H) share its login IDs and passwords, or allow use of the same login ID simultaneously by two or more Users, and Customer is responsible for unauthorized access to its login IDs.

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

**4.4 Third-Party Providers.** Customer is responsible for complying with any applicable terms and conditions of any third-party data, products, services, and platforms used by Customer in conjunction with the Products and Services.

**4.5 Regional Service Limitations.** Unless use in a Restricted Country is specifically authorized in the Sales Order, or the Products and Services are part of the Limited Subset listed by Adobe at <https://www.adobe.com/legal/terms/enterprise-licensing.html> or other similar country-specific licensing terms document (incorporated herein by reference), Customer is not permitted to use or allow its Users to use the On-demand Services and Managed Services in any Restricted Country. **"Restricted Country"** means mainland China, Russia and any other country where access or usage is restricted by local laws.

## 5. THIRD-PARTY ACCESS

- 5.1 Use by Affiliates.** Where specified in a Sales Order, Customer may allow its Affiliates to use and access the Products and Services.
- 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, provided such use or access is only for Customer's direct beneficial business purposes. Customer is responsible for ensuring that any third-party or Affiliate operating, using or accessing the Products and Services on Customer's behalf complies with the terms of this Agreement. Customer is responsible for and liable for the acts or omissions of such Affiliate or third-party as if they were Customer's acts or omissions.



## 6. CUSTOMER CONTENT AND CUSTOMER DATA

- 6.1 **Ownership.** As between Adobe and Customer, Customer owns (or where applicable, must ensure it has a valid license to) the Customer Data and Customer Content, subject to Adobe's underlying intellectual property in the Adobe Technology.
- 6.2 **Permitted Use.**
- (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 : (1) to the extent necessary to perform its obligations (including, but not limited to, developing, modifying, improving, supporting, customizing, and operating the Products and Services) or enforce its rights under this Agreement; or (2) where required or authorized by law.
  - (B) Adobe may use, copy, transmit, index, model, aggregate (including with other customers' data) Customer Data and Customer Content for the purpose of (1) developing, improving or customizing the Products and Services, and (2) publishing, displaying and distributing any anonymous information (i.e., information where neither Customer nor its site visitors are capable of being identified) derived from Customer Data and Customer Content (such as, but not limited to, web browser, screen resolution, mobile device-type information, image resolution and number of pages in a document).
- 6.3 **Responsibility.**
- (A) Customer will conspicuously display a privacy policy that discloses Customer's privacy practices, identifies the collection, use and sharing of information gathered in connection with the Products and Services, including types of data collected, and offers an opportunity to opt out of (or opt-in if applicable law requires) the collection, use and sharing of data gathered in connection with the Products and Services.
  - (B) Customer retains complete control over the installation and configuration of Distributed Code, and each Customer Site and Customer Content. Customer must comply with its privacy policy, and is responsible for ensuring that all Customer Sites used with the On-demand Services or Managed Services and all Customer Data and Customer Content comply with all applicable laws and regulations. Customer will take reasonable steps to identify and promptly remove any Customer Data or Customer Content that violate the requirements of section 4.3(A) ("Unlawful Content"), in accordance with applicable laws and regulations. If there is Unlawful Content, Adobe may suspend services and remove the Unlawful Content.
  - (C) **Sensitive Personal Data.** Customer agrees not to collect, process, or store any Sensitive Personal Data using the On-demand Services or Managed Services. Customer agrees not to transmit, disclose, or make available Sensitive Personal Data to Adobe or Adobe's third-party providers.
  - (D) **Professional Services.** For Professional Services, Customer will not provide access to Customer Data to Adobe unless specifically agreed to by Adobe in writing.
- 6.4 **Consumer Generated Content.** If content generated by consumers of Customer is uploaded to Adobe's On-demand Services or Managed Services, the following terms apply:
- (A) Adobe does not review all content uploaded to Adobe On-demand Services and Managed Services, but Adobe may use available technologies or processes to screen for certain types of illegal content (for example, child pornography) or other abusive content or behavior (for example, patterns of activity that indicate spam or phishing); and
  - (B) Adobe may access or disclose information about Customer, its consumers, or Customer's use of the On-demand Services and Managed Services when it is required by law or regulation (such as when Adobe receives a valid subpoena or search warrant).
- 6.5 **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.
- 6.6 **Usage Analytics.** Adobe may develop, modify, improve, support, customize and operate its products and services based on Customer's use, as applicable, of any Products and Services.

## 7. CONFIDENTIALITY

- 7.1 **Confidentiality.** The receiving party will treat Confidential Information with reasonable care, and disclose only on a need to know basis or as permitted under this Agreement. The receiving party will only use Confidential Information

for the purposes of performing its obligations or as permitted under this Agreement. However, a receiving party may disclose Confidential Information: (a) if approved by the other party in writing; (b) if required by law or regulation; (c) in the event of dispute between the parties, as necessary to establish the rights of either party; or (d) as necessary to provide the Products and Services licensed by Customer. In the case of (b) and (c), the disclosing party will provide reasonable advance notice to the other party and provide reasonable assistance to limit the scope of the disclosure unless prohibited by law or regulation.

- 7.2 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. INDEMNITIES

### 8.1 Data Privacy and Security Claims.

- (A) **Cooperation and Mutual Assistance.** Both Parties will co-operate in good faith to avoid and mitigate Data Privacy Claims keeping in consideration the rights of affected data subjects and the reputation and brand of each Party. Each Party agrees to mitigate its losses in relation to any such Data Privacy Claims. In the event of a Data Privacy Claim, both Parties agree to provide each other reasonable assistance in investigating, mitigating, and resolving such Data Privacy Claim. Any information and materials exchanged or discovered in the course of investigations, mitigation and resolution will be considered Confidential Information of the disclosing Party as set forth in section 1.8(B) and may not be disclosed by the receiving Party except as permitted in section 7, Confidentiality.
- (B) **Data Privacy and Security Claims.** Indemnifying Party will at its expense indemnify the Indemnified Party against those losses of the Indemnified Party set out below in this section 8.1(B) to the extent directly attributable to a third-party Data Privacy Claim against the Indemnified Party:
- (1) settlement amounts negotiated by Indemnifying Party (to the extent Indemnifying Party is permitted to settle);
  - (2) damages finally awarded by a court;
  - (3) administrative fines or penalties imposed by a regulatory authority;
  - (4) reasonable attorney's fees,
  - (5) reasonable out-of-pocket expenses associated with satisfying applicable statutory requirements related to forensic analysis, credit monitoring, and notifying affected individuals of the incident giving rise to the Data Privacy Claim, as applicable.
- (C) **Exception.** Indemnifying Party will have no liability for any Data Privacy Claim to the extent such Claim arises from any act or omission of Indemnified Party that impedes or prevents Indemnifying Party's ability to comply with applicable data security and privacy laws.

### 8.2 Intellectual Property Claims

- (A) **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 (1) the Indemnified Technology directly infringes the third-party's patent, copyright, or trademark; or that (2) 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).
- (B) **Adobe's Response.** In the defense or settlement of any Infringement Claim, Adobe may, at its sole option and expense:
- (1) procure for Customer a license to continue using the Products and Services under the terms of this Agreement;
  - (2) replace or modify the allegedly infringing Products and Services to avoid the infringement; or
  - (3) where (1) or (2) are not reasonably or commercially feasible, terminate Customer's license and access to the Products and Services (or its infringing part) and refund:
    - (a) in the case of Products and Services licensed for a limited term, any prepaid unused fees as of the date of termination; or



(b) 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 destroys all copies of the alleged infringing Products and Services from all computer systems on which it was stored.

(C) **Exceptions.** Adobe will have no liability for any Infringement Claim that arises from any:

- (1) use of the Products and Services in violation of this Agreement;
- (2) modification of the Products and Services by Customer (or any third-party acting on Customer's behalf);
- (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.

8.3 **Conditions.** Indemnifying Party, as applicable, will have no liability for any Claim under section 8.1 or 8.2 that arises from any failure of Indemnified Party to:

- (A) notify Indemnifying Party in writing of the Claim promptly upon the earlier of learning of or receiving a notice of it, to the extent that Indemnifying Party is prejudiced by this failure;
- (B) provide Indemnifying Party with reasonable assistance requested by Indemnifying Party for the defense or settlement (as applicable) of the Claim;
- (C) provide Indemnifying Party with the exclusive right to control and the authority to settle the Claim; or
- (D) refrain from making admissions or statements about the Claim without Indemnifying Party's prior written consent.

8.4 **Sole and Exclusive Remedy.** The remedies in this section 8 (Indemnities) are, in addition to any termination or suspension remedies expressly set forth in this Agreement, Indemnified Party's sole and exclusive remedies and Indemnifying Party's sole liability regarding the subject matter giving rise to any Claim, including any claims regarding confidentiality obligations involving Customer Data that may arise from an incident resulting in a Data Privacy Claim (notwithstanding anything to the contrary in section 9.3.2).

## 9. LIMITATION OF LIABILITY

9.1 Subject to section 9.3, neither Party will be liable to the other Party for any special, indirect, moral, consequential, incidental, punitive, or exemplary damages; loss of profits; loss of reputation, use, or revenue; or interruption of business.

9.2 Subject to section 9.3, the maximum aggregate liability of each Party for all Claims under this Agreement is limited to an amount equal to the aggregate of the fees payable by Customer under this Agreement during the 12 months before the initial Claim, provided however, each Party's maximum aggregate liability for all Claims under section 8 is limited to the greater of \$3,000,000.00 or two times the aggregate of the fees payable by Customer under the applicable Sales Order.

9.3 Sections 9.1 and 9.2 (Limitation of Liability):

9.3.1 apply regardless of the form or source of Claim or loss, including negligence, whether the Claim or loss was foreseeable, and whether a Party has been advised of the possibility of the Claim or loss;

9.3.2 do not apply to any breach of section 7 (Confidentiality), Customer's liability for claims arising out of 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; and

9.3.3 the disclaimer of damages in section 9.1 do not apply to those amounts expressly recoverable by the Indemnified Party under section 8 regardless of how such amounts are classified for damages purposes.

## 10. WARRANTIES

10.1 **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 45 days of the date on which the condition giving rise to the claim first appeared. To the extent permitted by law, Customer's sole and exclusive remedy and Adobe's sole liability under or in connection with this warranty will be a replacement of the Distributed Code (as applicable), or if replacement is not commercially reasonable, a termination of the applicable On-demand Service or Managed Service and a refund of any pre-paid fees for the unused portion of the license (calculated at the date of termination) for the applicable On-demand Service or Managed Service.

- 10.2 **Limited Warranty and Remedies for On-premise Software.** Adobe warrants that the On-premise Software will substantially conform to the applicable Documentation for 120 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 120-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 any pre-paid fees for the unused portion of the license (calculated at the date of termination) for the On-premise Software.
- 10.3 **Implied Warranties.** To the maximum extent permitted by law and except for the express warranties in this Agreement, Adobe provides the Products and Services on an "as-is" basis. Adobe, its Affiliates, and third-party providers disclaim and make no other representation or warranty of any kind, express, implied or statutory, including representations, guarantees or warranties of merchantability, fitness for a particular purpose, title, non-infringement, or accuracy. Customer acknowledges that (A) neither Adobe, its Affiliates nor its third-party providers controls Customer equipment or the transfer of data over communications facilities (including the Internet); (B) the Products and Services may be subject to limitations, interruptions, delays, cancellations, and other problems inherent in the use of the communications facilities (including search engines and social media channels); and (C) it is fully responsible to install appropriate security updates and patches. Adobe, its Affiliates, and its third-party providers are not responsible for any interruptions, delays, cancellations, delivery failures, data loss, content corruption, packet loss, or other damage resulting from these problems.

## 11. LICENSE COMPLIANCE

- 11.1 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.
- 11.2 For On-premise Software and any Distributed Code, the verification will require Customer to provide within 30 days of request (A) raw data from a software asset management tool of all On-premise Software and Distributed Code installed or deployed by or at the direction of Customer, including installation or deployment on servers owned by Customer or provided by third parties; (B) all valid payment documentation for all On-premise Software and Distributed Code; and (C) any information reasonably requested by Adobe.
- 11.3 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.
- 11.4 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, without limiting Adobe's rights at law or in equity, Customer must pay the additional license fees and any applicable related maintenance and support fees within 30 days of invoice date. If use, deployment, or installation exceeds 5% of that which is permitted under this Agreement, Customer must pay Adobe's reasonable costs of conducting the verification, in addition to paying the additional fees.

## 12. PROFESSIONAL SERVICES

- 12.1 **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 in connection with use of the Products and Services for Customer's direct beneficial business purposes during the License Term.
- (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 irrevocably assigns to Adobe all right, 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.

- 12.2 **Employment Taxes and Obligations.** Adobe is responsible for all taxes and any employment obligations arising from its employment of personnel and contractors to perform the Professional Services.
- 12.3 **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 performance 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 Services.
- 12.4 **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.

### 13. TERM AND TERMINATION

- 13.1 **Term.** This Agreement applies to each of the Products and Services from the effective date of the Sales Order until the expiration of the applicable License Term or the term for Professional Services, unless terminated earlier under this Agreement.
- 13.2 **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) **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 4.3 (D) of these General Terms.
- 13.3 **Effect of Termination or Expiration.**
  - (A) Upon termination or expiration of this Agreement or any License Term for the Products and Services:
    - (1) the licenses and associated rights to the Products and Services will immediately terminate;
    - (2) Customer must, at its expense: (a) remove and delete all copies of the On-premise Software and Distributed Code; and (b) remove all references and links to the On-demand Services or Managed Services from the Customer Sites. Some or all of the Products and Services may cease to operate without prior notice upon expiration or termination of the License Term;
    - (3) Customer Data and Customer Content stored within the On-demand Services will be available to Customer for 30 days after the termination or expiration in the same format then available within the reporting interface(s).
  - (B) Customer will be liable for any fees for any On-demand Services and Managed Services that are still in use or which remain active after termination or expiration of this Agreement. These fees will be invoiced to Customer at the rate set out in the Sales Order.
  - (C) If Adobe reasonably determines that Customer's deployment of the On-demand Services or Managed Services is causing a material risk to the security or operations of Adobe or any of its customers or to the continued normal operation of other Adobe customers (each a "Deployment Risk"), then Adobe may, at any time, upon written notice to Customer:
    - (1) immediately suspend Customer's access, in whole or in part, to the On-demand Services or Managed Services causing the Deployment Risk, until such Deployment Risk is resolved; or
    - (2) as a final option, where Adobe has first used all commercially reasonable efforts to mitigate the Deployment Risk, Adobe may terminate the affected On-demand Services or Managed Services.
- 13.4 **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

ownership, permitted use, license compliance, limitation of liability, privacy, usage analytics and the "General Provisions" section in these General Terms.



## 14. GENERAL PROVISIONS

### 14.1 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 and provided that the assignee agrees in writing, for the benefit of Adobe, to assume all of Customer's obligations under this Agreement.
- (B) Adobe may assign this Agreement or delegate its obligations, in whole or in part, to its Affiliates or in connection with a merger, change of control, 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 14.1 (Assignment), Customer may not assign, voluntarily, by operation of law or otherwise, any rights or obligations under this Agreement without the prior, written consent of Adobe.
- (D) Any (attempted) assignment in derogation of this section will be null and void.

**14.2 Governing Law, Venue.** This Agreement is governed by and construed under the laws of the State of California, without regard to any conflict of law rules or principles, and excluding the application of the United Nations Convention on Contracts for the International Sale of Goods.

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

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

**14.5 Notices.** Any notice given under this Agreement must be in writing by email to the following addresses (or addresses notified in writing by either Party): (A) to Adobe at [contractnotifications@adobe.com](mailto:contractnotifications@adobe.com) and (B) 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.

**14.6 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.

**14.7 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.

**14.8 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.

**14.9 Order of Precedence.** The Sales Order will prevail over the applicable Product Specific Licensing Terms, which will prevail over the General Terms (to the extent of any inconsistency).

**14.10 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.

**14.11 Counterpart.** This Agreement (or a component) may be executed in one or more counterparts, each of which constitutes an original and all of which taken together constitutes the same agreement. Each Party may sign this Agreement using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies.

**14.12 Severability.** If any term of this Agreement is held invalid or unenforceable for any reason, the remainder of the term and this Agreement will continue in full force and effect.

- 14.13 **Trade Rules.** Customer acknowledges that the Products and Services may be subject to trade control laws and regulations, and Customer will comply with them.
- 14.14 **Adobe Partner Transactions.** If Customer orders Products and Services from an Adobe Partner under a Sales Order with the Adobe Partner ("**Customer Order**"): (A) the terms of this Agreement apply to Customer's use of the Products and Services; and (B) the Adobe Partner is solely responsible for any variations or inconsistencies between the Customer Order and the order between the Adobe Partner and Adobe for the transaction. If Customer does not accept the terms of this Agreement, then Customer must not use, or must immediately cease using, the relevant Products and Services.
- 14.15 **U.S. Government Licensing.** For US Government end users: Customer acknowledges that Products and Services are "Commercial Item(s)," as that term is defined at 48 C.F.R. section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as the terms are used in 48 C.F.R. section 12.212 or 48 C.F.R. section 227.7202, as applicable. Customer agrees, consistent with 48 C.F.R. section 12.212 or 48 C.F.R. sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (A) only as Commercial Items; and (B) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights are reserved under the copyright laws of the United States.
- 14.16 **Insurance Requirements for IT Contractor Services:**

Adobe shall maintain Commercial General Liability Insurance for the duration of the contract against claims for injuries to person or damages to property which may directly arise from or in connection with the performance of the work hereunder by Adobe, or its employees; and Technology based Professional Liability (errors & omissions) and Computer/Network Security & Privacy Liability (aka cyber) with a limit of \$2,000,000 per claim, and \$2,000,000 aggregate providing coverage where permissible by law for Adobe's errors, omissions, negligence or damages in rendering or failing to render computer or information technology services and technology products and/or from (a) data theft and/or loss, (b) unauthorized dissemination and/or unauthorized disclosure and/or unauthorized access or use of non-public personally identifiable information, confidential non-public corporate information, (c) credit monitoring, notification expenses, and other related costs associated with mitigating a data security or privacy breach, (d) the failure to prevent the introduction of a computer virus into, or otherwise causing damage to the County's computer, computer system, network or similar computer-related property and the electronic data used thereon, (e) infringement of copyright, trademark, trade dress, invasions of privacy, and (f) denial of service arising from Adobe's performance of services under the Agreement.



1. **Content Files.** "Content Files" means Adobe assets provided as part of Adobe Sign. Unless stated otherwise in a separate agreement, Adobe grants Customer a non-exclusive, non-sublicensable and non-transferable license to use the Content Files to create Customer's end use (i.e., derivative application or product authored by Customer) into which the Content Files, or derivations thereof, are embedded for Customer's use ("End Use"). Customer may modify the Content Files prior to embedding them in the End Use. Customer may reproduce and distribute Content Files only in connection with Customer's End Use, however, under no circumstances can Customer distribute the Content Files on a stand-alone basis outside of the End Use.
2. **Modification.** Adobe will make reasonable effort to notify Customer of any modification or discontinuation of Adobe Sign or any portions thereof. If Adobe discontinues Adobe Sign in its entirety, Adobe will provide Customer with a pro rata refund of prepaid fees or with a service similar to Adobe Sign.
3. **Third-Party Notices.** The creators or third-party licensors of certain public standards and publicly available code ("Third-Party Materials"), require that certain notices be passed through to the end users of Adobe Sign. These third-party notices are located at <http://www.adobe.com/go/thirdparty> (or a successor website thereto). The inclusion of these third-party notices does not limit Adobe's obligations to the Customer for Third-Party Materials integrated into Adobe Sign.
4. **Storage and Retention.** Adobe will store Customer Content and Customer Data during the License Term up to any storage limit specified in the applicable Sales Order. Adobe may create reasonable storage limits, such as limits on file size, storage space, and other technical limits. If Customer exceeds those limits, Adobe will make reasonable efforts to notify Customer to permit transition of Customer Content and Customer Data prior to deletion.
5. **Configurable Controls.** Adobe makes certain security controls available and configurable by Customer, or Adobe's customer support. It is Customer's responsibility to determine what notices, consents, and controls Customer requires in order to comply with laws, standards, regulations, or obligations that Customer may have to Customer's End Users. Once Customer downloads or otherwise transfers an Electronic Document out of Adobe Sign, or to a third-party provider, that Electronic Document leaves Adobe's servers, and Adobe's security controls no longer apply.
6. **Security.** Adobe has implemented reasonable information security practices regarding the protection of Customer Data received through Adobe Sign, including administrative, technical and physical security measures consistent with the information found at [www.adobe.com/go/cloudcompliance](http://www.adobe.com/go/cloudcompliance).
7. **Sensitive Personal Information.** The Sensitive Personal Data section of the General Terms does not apply to Customer's use of Adobe Sign. Notwithstanding the foregoing, Customer specifically acknowledges and agrees that in connection with Customer's use of Adobe Sign:
  - 7.1 Customer is solely responsible for compliance with the Children's Online Privacy Protection Act of 1998 ("COPPA"), if applicable, including not collecting information from children under the age of thirteen without first obtaining parental consent;
  - 7.2 Customer must not to collect, process, or store any protected health information, electronic or otherwise, pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") and the Health Information Technology for Economic and Clinical Health ("HITECH"), unless Customer has entered into a Business Associate Agreement with Adobe for Adobe Sign; and
  - 7.3 Customer is solely responsible for compliance with the Payment Card Industry Data Security Standard ("PCI DSS"), if applicable. PCI DSS prohibits using Adobe Sign to store Sensitive Authentication Data, including Card Verification Code or Value after authorization, even if encrypted. Capitalized terms in this section are defined in the PCI DSS.
8. **Legal Counsel.** Customer will rely on its own legal counsel and determinations as to the use and viability of electronic signatures in a particular country or for a particular use.
9. **Digital Certificates.** Adobe Sign may include technology that allows Customer to apply digital signatures to PDF documents through the use of digital certificates. Adobe Sign also applies a certification signature to PDF documents as a proof of their integrity and origin through the use of digital certificates owned by Adobe. Customer may not access, attempt to access, circumvent, control, disable, tamper with, remove, use, or distribute such certificates or their corresponding encryption keys for any purpose.
10. **Account Activity.** Each User has an account associated with his or her login ID. Customer is responsible for all activity that occurs via a User's account(s).

11. **User License Transfers.** If Adobe Sign is licensed on a per User basis, Customer may only deploy Adobe Sign to an individual(s) (either an employee or contractor of Customer) through a unique login ID and password. Customer may not allow the use of the same login ID by more than one User, nor may Customer deploy Adobe Sign in any shared license model or similar license deployment (including, but not limited to, floating, generic user, leased, or shift license deployment). Customer may transfer a license from one User to another individual (either an employee or contractor of Customer) without such transfer being deemed an additional User deployment, subject to any reporting requirements that may be contained in the applicable Sales Order, and provided Customer de-activates the Adobe Sign account of that User, and the new employee or contractor then uses a new ID and password.
12. **Additional License Restrictions.** Customer must not: (A) place advertisement of any products or services through Adobe Sign; (B) use any data mining or similar data gathering and extraction method; (C) circumvent any access or use restrictions; or (D) impersonate any person or entity, or falsely state or otherwise misrepresent Customer's affiliation with a person or entity.
13. **Throttling.** Customer agrees to work with Adobe to create a plan to manage any spikes in demand for system resources driven by Customer's use ("**Spikes**"). In the absence of such collaboration, Customer agrees that Adobe may throttle or otherwise queue Customer's Transactions to manage any such Spikes.
14. **Additional Definitions.**
  - 14.1 "**Electronic Document**" means any document uploaded or imported into Adobe Sign.
  - 14.2 "**End User**" means any individual or company that receives, reviews, accepts, signs, approves, transmits, delegates action to a third party or otherwise interacts with Adobe Sign.
  - 14.3 A "**Transaction**" occurs each time an Electronic Document, or collection of related Electronic Documents up to 100 pages or 10 MB are sent to an End User through Adobe Sign



## HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is by and between Adobe Inc., having a principal place of business at 345 Park Avenue, San Jose, CA 95110, USA ("Adobe") on the one hand as a Business Associate, and the County of Riverside, a political subdivision of the State of California, having a principal place of business at 4080 Lemon Street, Riverside, California 92501 ("Customer") as a Covered Entity, and describes the obligations and responsibilities of the parties in accordance with the Health Insurance Portability and Accountability Act ("HIPAA"). More specifically, this BAA applies to the Customer's use of Protected Health Information ("PHI") with one or more Adobe HIPAA-Ready Solutions (as defined below) as licensed in the applicable license or services agreement (the "Agreement") between Adobe and Customer. This BAA is incorporated by reference into the Agreement and supplements the Agreement.

### DEFINITIONS

Except as otherwise defined in this BAA, capitalized terms shall have the definitions set forth in HIPAA, and if not defined by HIPAA, such terms shall have the definitions set forth in the Agreement.

- a) "Adobe" means Adobe Inc., or its wholly owned subsidiary Marketo, Inc., as specified in an order for Adobe HIPAA-Ready Services.
- b) "Adobe HIPAA-Ready Solution", for this BAA only, means the Adobe Connect Managed Services, the Adobe Experience Manager Managed Services, the Adobe Electronic Signature Services, and the Marketo Engage service, as applicable and as licensed in the Agreement, and used in accordance with the limitations described in this BAA (including the corresponding implementation checklist(s) attached hereto).
- c) "Breach" has the meaning given to such term in 45 C.F.R. § 164.402.
- d) "Breach Notification Rule" means the rule related to breach notification for Unsecured Protected Health Information at 45 C.F.R. Parts 160 and 164.
- e) "Business Associate" has the meaning given to the term in 45 C.F.R. § 160.103 and in this BAA, refers to Adobe.
- f) "Covered Entity" has the meaning given to such term in 45 C.F.R. § 160.103, and refers to the Customer in this BAA.
- g) "Customer", for this BAA only, means Customer and Customer's Affiliates to the extent any such Affiliate is a Covered Entity, and is licensed to access and use the HIPAA Ready Solutions under the Agreement.
- h) "Designated Record Set" has the meaning given to such term under the Privacy Rule at 45 C.F.R. § 164.501.
- i) "Electronic Protected Health Information" or ("EPHI") has the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. § 160.103.
- j) "HIPAA" collectively means the administrative simplification provision of the Health Insurance Portability and Accountability Act enacted by the United States Congress, and its implementing regulations, including the Privacy Rule, the Breach Notification Rule, and the Security Rule, as

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amended from time to time, including by HITECH Act and by the Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under HITECH and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule.

- k) "HITECH" means the Health Information Technology for Economic and Clinical ("HITECH") Health Act (Division A, Title XIII and Division B, Title IV of Public L. 111-5) (which was part of the American Recovery and Reinvestment Act of 2009 ("ARRA")).
- l) "Individual" has the meaning given to such term under the Privacy Rule at 45 C.F.R. § 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- m) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. Parts 160 and Part 164, Subparts A and E.
- n) "Protected Health Information" or "PHI" has the meaning given to such term under the Privacy and Security Rules at 45 C.F.R. § 160.103, limited to the information created or received, transmitted or maintained by Adobe from or on behalf of Customer via the Services.
- o) "Required by Law" has the meaning given to such term under the Privacy Rule at 45 C.F.R. § 164.103.
- p) "Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. § 164 Subparts A and C.
- q) "Secretary" means the Secretary of the Department of Health and Human Services or his or her designee.
- r) "Security Incident" has the meaning given to such phrase under the Security Rule at 45 C.F.R. § 164.304.
- s) "Unsecured PHI" has the meaning given to such phrase under the Breach Notification Rule at 45 C.F.R. § 164.402.

## **1. APPLICABILITY**

This BAA is applicable to Adobe HIPAA-Ready Solutions only. It is Customer's obligation to ensure that it does not store or process PHI in any other online service, or provide PHI to Adobe for performance of support obligations or a professional service. If Customer discloses, creates, receives, transmits or processes PHI via any Adobe product or service other than Adobe HIPAA-Ready Services, Adobe will, upon Customer request, promptly destroy such PHI, but it is Customer's sole responsibility to analyze the disclosure to determine if a reportable Breach has occurred.

## **2. PRIVACY RULE PERMITTED USES AND DISCLOSURES BY ADOBE**

- a) Permitted Uses and Disclosures of PHI. Except as provided in this Section 2, Adobe is only permitted to use or disclose PHI to perform functions, activities or services for, or on behalf of Customer, as specified in the Agreement and as permitted by this BAA.



- b) Use for Management and Administration. Except as otherwise limited in this BAA and consistent with 45 C.F.R. 164.504(e)(4), Adobe is permitted to use PHI solely as necessary (i) for the proper management and administration of Adobe, or (ii) to carry out the legal responsibilities of Adobe.
- c) Disclosure for Management and Administration. Except as otherwise limited in this BAA and consistent with 45 C.F.R. 164.504(e)(4), Adobe is permitted to disclose PHI for the proper management and administration of Adobe, provided (i) the disclosure is Required by Law, or (ii) Adobe obtains reasonable assurances from the person to whom the information is disclosed ("Person") that it will be held confidentially and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the Person, and that the Person agrees to immediately notify Adobe in writing of any instances of which it becomes aware in which the confidentiality of the information has been breached or is suspected to have been breached.
- d) Reporting Violations. Adobe may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).
- e) Data Aggregation. Adobe may use PHI to provide Data Aggregation services to Customer as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).
- f) De-Identification. Adobe may de-identify PHI received from Customer, consistent with the Privacy Rule's standards for de-identification in accordance with 45 C.F.R. § 164.514.

### **3. PRIVACY RULE OBLIGATIONS AND ACTIVITIES OF ADOBE**

- a) Limitations on Disclosure. Adobe is not permitted to use or disclose PHI other than as permitted or required by this BAA, the Agreement, or as Required by Law. Adobe is not permitted to use or disclose PHI in any manner that would violate the Privacy Rule if done by Customer, unless expressly permitted to do so pursuant to the Privacy Rule, the Agreement, and this BAA.
- b) Appropriate Safeguards. Adobe must use appropriate safeguards to prevent use or disclosure of PHI except as provided for by the Agreement and this BAA or as Required by Law.
- c) Mitigation. Adobe must reasonably mitigate to the extent practicable, any harmful effect that is known to Adobe of a use or disclosure of PHI by Adobe in violation of the requirements of HIPAA, the Agreement, or this BAA.
- d) Adobe's subcontractors. Adobe must ensure that any subcontractor that creates, receives, maintains, or transmits PHI on behalf of Adobe agrees in writing to the same restrictions and conditions required by HIPAA Laws that apply through this BAA to Adobe with respect to such PHI, consistent with 45 C.F.R. § 164.502(e)(1)(ii).
- e) Obligations on Behalf of Customer. To the extent Adobe carries out an obligation on behalf of Customer under the Privacy Rule, Adobe must comply with the requirements of the Privacy Rule that apply to Customer in the performance of such obligation.
- f) Access to PHI. Adobe must provide access, at the request of Customer, and in the time and manner reasonably designated by Customer, to PHI in a Designated Record Set, to Customer in order for Customer to meet the requirements under the Privacy Rule at 45 C.F.R. § 164.524.



- g) Amendment of PHI. Adobe must make any PHI contained in a Designated Record Set available to Customer for purposes of amendment per 45 C.F.R. § 164.526. Adobe shall make any amendment(s) to PHI in a Designated Record Set that Customer directs or agrees to pursuant to the Privacy Rule, at the request of Customer, and in the time and manner reasonably designated by Customer. If an Individual requests an amendment of PHI directly from Adobe or its subcontractors, Adobe must notify Customer in writing promptly after receiving such request. Any denial of amendment of PHI maintained by Adobe or its subcontractors shall be the responsibility of Customer.
- h) Accounting of Disclosures. Adobe must provide to Customer information collected in accordance with Section 3(i) of this BAA, to permit Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. In the event that the request for an accounting is delivered directly to Adobe or its subcontractors, Adobe must provide a copy of such request to Customer, in writing, promptly after Adobe's receipt of such request. Adobe cannot, for certain Adobe HIPAA-Ready Solutions, readily identify which Individuals are identified or what types of PHI Customer transmits or stores as part of the Adobe HIPAA-Ready Solution ("Customer Content"), and Customer is solely responsible for identifying which Individuals, if any, may have been included in Customer Content that Adobe has disclosed and for providing a brief description of the PHI disclosed.
- i) Documentation of Disclosures. Adobe must document disclosures of PHI and information related to such disclosures as would be required for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. At a minimum (and to the extent known to Adobe), the documentation must include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure. Notwithstanding anything to the contrary, Adobe cannot, for certain Adobe HIPAA-Ready Solutions, readily identify which Individuals are identified or what types of PHI Customer transmits or stores as part of Customer Content, and Customer is solely responsible for identifying which Individuals, if any, may have been included in Customer Content that Adobe has disclosed and for providing a brief description of the PHI disclosed.
- j) Retention of PHI. Notwithstanding Section 6(c) of this BAA, Adobe and its subcontractors must retain all PHI throughout the term of the Agreement. Adobe will maintain the Documentation of Disclosures required under Section 3(i) this BAA for a period of six years after termination of the Agreement.
- k) Governmental Access to Records. Adobe must make its internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI available to the Secretary for purposes of determining Customer's compliance with the Privacy Rule.
- l) Minimum Necessary. Adobe is permitted to request, use and disclose PHI in accordance with the minimum necessary standards at 45 C.F.R. § 164.502(b).

#### **4. SECURITY RULE OBLIGATIONS OF ADOBE**

- a) Compliance with the Security Rule. Adobe agrees to comply with the Security Rule with respect to Electronic Protected Health Information and have in place reasonable and appropriate



administrative, physical, and technical safeguards designed to protect the confidentiality, integrity, and availability of EPHI and to prevent the use or disclosure of EPHI other than as provided for by the Agreement and this BAA or as Required by Law.

- b) Subcontractors. Adobe must ensure that any subcontractor that creates, receives, maintains, or transmits EPHI on behalf of Adobe agrees in writing to comply with the Security Rule with respect to such EPHI.
- c) Security Incident Reporting. Adobe must report to Customer any successful Security Incident promptly upon becoming aware of such incident.

## **5. BREACH NOTIFICATION RULE OBLIGATIONS OF ADOBE**

- a) Notification Requirement. Adobe shall, without unreasonable delay, notify Customer of any Use or Disclosure of PHI not provided for by this BAA of which it becomes aware in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(C) and a Security Incident of which it becomes aware of in accordance with 45 C.F.R. § 164.314(a)(2)(i)(C). Adobe shall notify Customer without unreasonable delay and within 60 days after Discovery of a Breach of Unsecured PHI. Adobe's notification of a Breach under this section shall comply with each applicable provision of 45 C.F.R. § 164.410 and related guidance issued by the Secretary from time to time to the extent possible. The Parties agree that this Section 5 constitutes notice by Adobe to Customer of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to Customer shall be required. "Unsuccessful Security Incidents" means, without limitation: pings and other broadcast attacks on its firewall; port scans; attempts to log on to a system or enter a database with an invalid password or username; denial-of-service attacks that do not result in a server being taken off-line; malware (e.g. worms, viruses) that is detected and neutralized by Adobe's anti-virus and other defensive software; and any combination of the foregoing, so long as no such incident results in unauthorized access, use or disclosure of PHI.
- b) Contents of Notification. Any notice referenced above in paragraph 5(a) of this BAA will include (to the extent known to the Adobe) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Adobe to have been accessed, acquired, or disclosed during such Breach. Adobe will also provide to Customer other available information that the Customer is required to include in its notification to the individual pursuant to the Breach Notification Rule. Because Adobe cannot readily identify Customer Content, Customer is solely responsible for identifying which Individuals, if any, may have been included in the Customer Content that Adobe has disclosed and for providing a brief description of the PHI disclosed.

## **6. TERM AND TERMINATION**

- a) Term. The term of this BAA commences as of the BAA Effective Date, and terminates when all PHI provided by Customer to Adobe, or created or received by Adobe on behalf of Customer, is destroyed or returned to Customer or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the provisions of this Section.
- b) Termination for Cause.

(i) Upon Customer's knowledge of a material breach of the terms of this BAA by Adobe, Customer has the option to:

- A. Provide an opportunity for Adobe to cure, and, if Adobe does not cure the breach within forty-five days, Customer may immediately terminate this BAA and the Agreement; or
- B. Immediately terminate this BAA if the Agreement has been terminated.

(ii) Upon Adobe's knowledge of any pattern of activity or practice of the Customer that constituted a material breach or violation of the Customer's obligation under this BAA, Adobe has the option to:

- A. Provide an opportunity for Customer to cure, and, if Customer does not cure the breach within forty-five days, Adobe may immediately terminate this BAA and the Agreement; or
- B. Immediately terminate this BAA if the Agreement has been terminated.

c) Effect of Termination.

(i) Except as provided in paragraph (ii) of this Section 6(c), upon termination of this BAA for any reason, Adobe must either return or destroy all PHI received from Customer, or created or received by Adobe on behalf of Customer, and retain no copies of the PHI except as permitted by the Agreement. This provision applies to PHI that is in the possession of subcontractors of Adobe.

(ii) In the event that Adobe determines that returning or destroying the PHI is infeasible, Adobe must provide to Customer notification of the conditions that make return or destruction infeasible, and Adobe must extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Adobe maintains such PHI.

**7. CUSTOMER OBLIGATIONS**

- a) To the extent that Customer has agreed to further limitations on uses and disclosures, Customer must notify Adobe in writing of such additional restrictions, including any limitation(s) in Customer's notice of privacy practices that are produced in accordance with 45 C.F.R. § 164.520 (as well as any changes to that notice), to the extent that such limitation(s) may affect Adobe's use or disclosure of PHI.
- b) Customer must promptly provide Adobe with any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes affect Adobe's use or disclosure of PHI.
- c) Customer must promptly notify Adobe of any restriction as to the use or disclosure of PHI that Customer has agreed to in accordance with 45 C.F.R. 164.522, only to the extent that such restriction may affect Adobe's use or disclosure of PHI.



- d) Marketo Engage. Only the Marketo Engage license entitlements that are accompanied by encryption for data at rest can maintain and transmit PHI. The purchase of such encryption will be indicated on the applicable Sales Order.
- e) Customer represents and warrants that it has provided all notices and obtained and will maintain any necessary authorizations, consents, and other permissions that may be required under applicable law prior to making available any PHI to Adobe under this the Agreement. Customer must provide Adobe only the minimum necessary amount of data for Adobe to accomplish the intended purpose of the disclosure.
- f) Customer is responsible for implementing appropriate privacy and security safeguards, both within the Adobe HIPAA-Ready Service and with regard to how it uses the Adobe HIPAA-Ready Service, in order to protect PHI in compliance with HIPAA and this BAA. Adobe shall have no liability for any Breach enabled by Customer's failure to comply with its obligations in this paragraph. Customer agrees that the requirements set forth in Exhibit A are minimum requirements for Customer's implementation of safeguards.
- g) This BAA applies only to Customer's use of the aspects of a HIPAA-Ready Solution that are hosted on Adobe's servers and not to any third party services that integrate with the Solution or that transfer data to or from the Solution outside of Adobe's control and independent of Adobe's services (for example, Salesforce.com, SAP, etc.) ("Third Party Integrations"), including the use of any fax-related features ("Fax Service") or to any features or products included in the Agreement. Accordingly, Customer agrees to not transmit any PHI via Third Party Integrations, the Fax Service, or any features or products that it has not independently confirmed to be HIPAA compliant.

## 8. MISCELLANEOUS

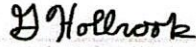
- a) Regulatory References. A reference in this BAA to a section in the Privacy, Security, or Breach Notification Rule means the section as in effect or as amended, and for which compliance is required.
- b) Survival. The respective rights and obligations of Adobe under Section 7(c) of this BAA survive the termination of the BAA.
- c) No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer or does confer upon any person other than Customer, Adobe and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- d) Amendment. The parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Customer to comply with the requirements of the Privacy, Security or Breach Notification Rule as well as HIPAA and the HITECH Act.
- e) Effect on Agreement. Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement remain in force and effect.
- f) Interpretation. Any ambiguity in this BAA is resolved to permit Customer to comply with the Privacy, Security, and Breach Notification Rules, as well as HIPAA and the HITECH Act.

- g) Counterparts. This BAA may be executed in multiple counterparts, each of which is deemed an original but all of which together constitute one and the same instrument. Facsimile or electronic (PDF) signatures are to be treated as original signatures. This BAA is binding when one or more counterparts hereof, individually or taken together, which bear the signatures of all of the parties reflected on this BAA.
- h) No Agency Relationship. It is not intended that an agency relationship (as defined under the Federal common law of agency) be established hereby expressly or by implication between Customer and Adobe under HIPAA or the Privacy Rule, Security Rule, or Breach Notification Rule. No terms or conditions contained in this BAA shall be construed to make Adobe an agent of Customer.
- i) Entire Agreement. This BAA, together with the Agreement, constitute the entire agreement between the parties. In the event of a conflict between this BAA and the terms of the Agreement, this BAA shall control with respect to the permitted uses and disclosures of PHI.

By signing below, each Party acknowledges that it has carefully read and fully understood this BAA, and each agrees to be bound by its terms. This BAA will become effective on the date of last signature ("BAA Effective Date").



ADOBE INC.



Authorized Signature

Garrett Holbrook

Print Name

Director Technical Revenue Ops

Title

Oct 7, 2020

Date

gholbroo@adobe.com

E-mail

COUNTY OF RIVERSIDE, a political  
subdivision of the State of California



Authorized Signature

V. Manuel Perez

Print Name

Chairman, Board of Supervisors

Title

Date

OCT 27 2020

E-mail

APPROVED AS TO FORM:  
Gregory P. Priamos, County Counsel

By:   
Susanna Oh  
Deputy County Counsel

ATTEST:

KECIA R. HARPER, Clerk

By 

DEPUTY

07 October 2020 10:08:31 AM

ADOBE INC.

COUNTY OF RIVERSIDE, a political  
subdivision of the State of California



Garrett Holbrook (Oct 7, 2020 13:08 MDT)

Authorized Signature

Authorized Signature

Garrett Holbrook

Print Name

Print Name

Director Technical Revenue Ops

—  
Title

Title

Oct 7, 2020

—  
Date

Date

gholbroo@adobe.com

—  
E-mail

\_\_\_\_\_  
E-mail



**EXHIBIT A**  
**(For Adobe Sign)**

Customer agrees to implement the following settings for the account groups in its account that will use the electronic signature Service in connection with PHI:

Settings	Notes
Require authentication to view agreements	Configuration can be enforced by the account administrator through the Account/Send Settings (under "Signed Document Password Protection")
Turn off links in email Turn off thumbnails in email	Customer needs to contact Adobe customer support in order to change this configuration
Do not transmit attachments in email	Configuration can be enforced by the account administrator through the Account/Global Settings
Do not transmit any PHI in the content of the email	

Security Setting	What Is It?	Range	Requirement	Notes
Session Timeout	How many minutes of inactivity cause a user to be logged out?	A setting greater than 0	Not more than 10 minutes	Customer needs to contact Adobe customer support in order to change this configuration

Security Setting	What Is It?	Range	Requirement	Notes
Minimum password strength for agreements	What is the minimum strength for agreement passwords?	>0	No less than 8 ("Strong")	Configuration can be enforced by the account administrator through the Account/Security Settings
Minimum password strength for user passwords	What is the minimum strength for users' passwords?	Strong	Change value to "Strong"	Configuration can be enforced by the account administrator through the Account/Security Settings
Password Duration	How long should passwords be allowed to remain unchanged?	>0	Passwords must be changed at least every 10 months	Configuration can be enforced by the account administrator through the Account/Security Settings
Password History Size	How many past password should be remembered and disallowed?	>0	Not less than 10	Configuration can be enforced by the account administrator through the Account/Security Settings
Security Setting in	What Is It?	Range	Requirement	Notes

the Service				
Maximum Login Failures	How many failed login attempts cause the user to be locked out of its account?	>0	Not more than 5	Configuration can be enforced by the account administrator through the Account/Security Settings
Maximum SSO Verification Failures	How many failed single sign-on (SSO) verification attempts cause the user to be locked out of its account?	>0	Not more than 5; applies only to customers that are using SSO	Customer needs to contact Adobe customer support in order to change this configuration.



This Adobe Sign Reseller Agreement is made and entered into this 20th day of October 2020, by and between SHI International Corp., a New Jersey corporation ("RESELLER"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, ("COUNTY").

WHEREAS, RESELLER desires to provide product and support service to COUNTY for said product and support service under this Agreement and hereby represents that it has the skills, experience, and knowledge necessary to perform under this Agreement; and

WHEREAS, COUNTY desires to accept RESELLER's services under this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. This Agreement covers all products licensed and support service under SHI International quotation #19501804 dated October 2, 2020.
2. This Agreement shall be effective from the date the product is delivered and continued for twelve (12) months, with the option to renew for two additional one-year terms, unless terminated earlier (the "Term").
3. Compensation:

The COUNTY shall pay the RESELLER for product and support service provided by RESELLER incurred in accordance with the terms of this Agreement. Maximum payments by COUNTY to RESELLER shall not exceed one hundred sixty-six thousand seven hundred seventy-seven dollars (\$166,777) annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products.

4. Hold Harmless/Indemnification:
  - 4.1 RESELLER shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim or damage whatsoever, based or asserted upon any services, or acts or omissions, of RESELLER, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature. RESELLER shall defend the Indemnitees at its sole expense including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services.
  - 4.2 With respect to any action or claim subject to indemnification herein by RESELLER, RESELLER shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes RESELLER indemnification to Indemnitees as set forth herein.

4.3 RESELLER's obligation hereunder shall be satisfied when RESELLER has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

5. Alteration or Changes to the Agreement:

The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

6. Contract Management: The contacts for this Agreement for COUNTY shall be both RCIT and Purchasing as listed below.

COUNTY Primary Contact:  
Martin Perez  
3450 14th Street  
Riverside, CA 92501

COUNTY Secondary Contact:  
Rick Hai  
2980 Washington Street  
Riverside, CA 92504

RESELLER contact:  
Contracts Department  
290 Davidson Avenue  
Somerset, NJ 08873

6.1 Should Contract Management contact information change, RESELLER shall provide written notice with the updated information to the COUNTY no later than 10 business days after the change.

7. Termination:

7.1 COUNTY may terminate this Agreement without cause upon thirty (30) days written notice served upon RESELLER stating the extent and effective date of termination.

7.2 Either Party may, upon five (5) days written notice terminate this Agreement for default, if RESELLER refuses or fails to comply with the terms of this Agreement or fails to make progress that may endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

7.3 RESELLER's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by RESELLER; or in the event of RESELLER's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement.

8. Conduct of RESELLER:

8.1 RESELLER covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would



conflict in any manner or degree with RESELLER's performance under this Agreement. RESELLER further covenants that no person or subcontractor having any such interest shall be employed or retained by RESELLER under this Agreement. The RESELLER agrees to inform the COUNTY of all RESELLER's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

- 8.2 The RESELLER shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom RESELLER is doing business or proposing to do business, in accomplishing the work under this Agreement.
- 8.3 RESELLER or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.
- 8.4 RESELLER shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate RESELLER's performance under this Agreement at any time, upon reasonable notice to RESELLER.

9. Independent Contractor/Employment Eligibility/Non-Discrimination:

- 9.1 RESELLER is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that RESELLER (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and RESELLER shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that RESELLER in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.
- 9.2 RESELLER warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees performing work under this Agreement meet the citizenship or alien status requirement set forth in federal statutes and regulations. RESELLER shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. RESELLER shall retain all such documentation for all covered employees, for the period prescribed by the law.
- 9.3 RESELLER shall not discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the



extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

10. Insurance:

Without limiting or diminishing the RESELLER'S obligation to indemnify or hold the COUNTY harmless, RESELLER shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

A. Workers' Compensation:

If the RESELLER has employees as defined by the State of California, the RESELLER shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of RESELLER'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. General Insurance Provisions - All lines:

- 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- 2) The RESELLER must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the Country's Risk Manager, RESELLER'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which



guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

- 3) RESELLER shall cause RESELLER'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. RESELLER shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.
- 4) It is understood and agreed to by the parties hereto that the RESELLER'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.
- 5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the RESELLER has become inadequate.
- 6) RESELLER shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.
- 8) RESELLER agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.



11. General:

11.1 This Agreement, including any attachments or exhibits, constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

11.2 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

11.3 The following documents are attached to and incorporated into this Agreement:

- a. Attachment A: SHI International quotation #19501804.

In the event of any conflict or inconsistency between the terms and conditions of this Agreement and any terms or conditions set forth in any of the attachments, purchase order(s), or other document relating to the transactions contemplated by this Agreement, the terms and conditions set forth in this Agreement shall prevail.

12. Limitation of Liability

- A. NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO DATA, LOSS OF ANTICIPATED REVENUE OR PROFITS, WORK STOPPAGE OR IMPAIRMENT OF OTHER ASSETS, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- B. EXCEPT IN THE CASE OF A PARTY'S OBLIGATION TO INDEMNIFY FOR THIRD PARTY CLAIMS UNDER ARTICLE 4 INDEMNIFICATION, OR BREACH OF CONFIDENTIAL INFORMATION EITHER PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHER THEORY, WILL NOT EXCEED TWO TIMES THE TOTAL AMOUNT OF FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER TO RESELLER UNDER THIS AGREEMENT FOR THE YEAR PREVIOUS TO THE INCIDENT WHICH GAVE CAUSE FOR SUCH LIABILITY. CUSTOMER ACKNOWLEDGES THAT SUCH AMOUNT REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT RESELLER WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

13. Entire Agreement: This Agreement, including any attachments or exhibits, constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement




may be changed or modified only by a written amendment signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement.

**COUNTY OF RIVERSIDE**, a political  
subdivision of the State of California

**SHI International Corp.**, a New Jersey corporation

By:   
V. Manuel Perez, Chairman  
Board of Supervisors

By:   
Kristina Mann  
Sr. Lead Contract Specialist

Dated: OCT 27 2020

Dated: 10/14/20

ATTEST:  
Kecia Harper  
Clerk of the Board

By:   
Deputy

APPROVED AS TO FORM:  
Gregory P. Priamos  
County Counsel

By:   
Susanna Oh  
Deputy County Counsel

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IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement.

**COUNTY OF RIVERSIDE**, a political  
subdivision of the State of California

**SHI International Corp.**, a New Jersey corporation

By: \_\_\_\_\_

V. Manuel Perez, Chairman  
Board of Supervisors

By: Kristina Mann

Kristina Mann  
Sr. Lead Contract Specialist

Dated: \_\_\_\_\_

Dated: 10/14/20

ATTEST:

Kecia Harper  
Clerk of the Board

By: [Signature]

Deputy

APPROVED AS TO FORM:

Gregory P. Priamos  
County Counsel

By: \_\_\_\_\_

Susanna Oh  
Deputy County Counsel



**Attachment:**

Attachment A – SHI International Quotation #19501804