ADOBE INC.
PRERELEASE SOFTWARE LICENSE AGREEMENT

Last updated September 16, 2020. Replaces all prior versions of the Prerelease Software License Agreement.

This Prerelease Software License Agreement (this “Agreement”) is entered into by Adobe and the Licensee and provides restrictions and obligations governing the use of Confidential Information provided to Licensee (capitalized terms defined in section 1 below). The “Effective Date” of this Agreement is the date Licensee electronically accepts this Agreement. Adobe and Licensee agree as follows:

1. Definitions.

1.1. “Adobe” means Adobe Inc., a company incorporated in Delaware, U.S.

1.2. “Confidential Information” means, whether in written, verbal, graphic, or electronic form, (A) any information Adobe marks as confidential or orally designates as confidential at the time of disclosure; (B) the Prerelease Software, including its existence, features and functionality, trade secrets, source code, and any other associated information, whether or not marked confidential; (C) all Evaluation Feedback; (D) Adobe’s bug database; (E) discussions of potential features, product changes, the existence of any business discussions, negotiations, or agreements in progress between Licensee and Adobe; (F) Evaluation Feedback, and opinions stemming from the Evaluation Feedback; (G) opinions stemming from the customer advisory boards organized by Adobe; (H) the terms and conditions of this Agreement; and (I) any derivative works of the above.

1.3. “Evaluation Feedback” means information and materials provided by Licensee to Adobe relating to Licensee’s access to, use of, and evaluation of the Prerelease Software and includes Licensee Content, identification of bugs, and suggestions or ideas for improvements or enhancements to the Prerelease Software, along with all associated intellectual property rights.

1.4. “Licensee” means either (A) an individual who accepts this Agreement prior to accessing the Prerelease Software or (B) an enterprise who accepts this Agreement through its authorized representative.

1.5. “Licensee Content” means any content that Licensee creates as part of Licensee’s testing of the Prerelease Software.

1.6. “Personal Information” means any information relating to an identified or identifiable natural person and includes, but is not limited to, name, address, phone number, email address, and IP address.

1.7. “Prerelease Software” means non-public prerelease versions of Adobe’s software, services, technologies, and any associated materials supplied by Adobe to Licensee including, but not limited to, any development tools, documentation, support materials, sample code, corrections, and updates.

1.8. “Testing Period” means the time period from when the Prerelease Software is made available to Licensee until the earlier of the date of the first commercial release of the Prerelease Software or a date communicated to Licensee by Adobe.

2. Privacy Policy. For information about how Adobe collects, uses, shares, and stores Personal Information, as well as information about what rights Licensee has, please see the Adobe Privacy Policy at https://www.adobe.com/privacy/policy.html.

3. Licenses.

3.1. Evaluation License. Adobe grants Licensee a limited, nonexclusive, non-transferable, and royalty-free license to use the Prerelease Software during the Testing Period for evaluating the Prerelease Software and providing Evaluation Feedback to Adobe.
3.2. Exchange of Information. Licensee acknowledges that access to and use of the Prerelease Software may require the exchange and storage of information (e.g., electronic documents, data, and user information that may include Personal Information) over the internet or other network connection.

3.3. Sample Content. If the Prerelease Software is preloaded with photographs, graphics, or other creative content (collectively, “Sample Content”), Adobe grants Licensee a limited, non-transferable license to copy and modify the Sample Content solely in connection with Licensee’s use of the Prerelease Software. No distribution or commercial use of the Sample Content is permitted.

4. Requirements and Restrictions.

4.1. Prohibited Output. Licensee’s use of the Prerelease Software does not include the right to make any public use of the Prerelease Software. Licensee is expressly prohibited from publicly referencing that the Licensee Content was created using the Prerelease Software, nor may the published Licensee Content contain screenshots of the Prerelease Software user interface or include references to Adobe’s name or to the name of the Prerelease Software. Licensee may not share screenshots of the Prerelease Software user interface or make reference to the name of the Prerelease Software outside Licensee’s participation in the Adobe Prerelease program.

4.2. Usage Tracking. In exchange for Licensee’s use of the Prerelease Software, Licensee agrees that Adobe may collect data, including Personal Information, regarding Licensee’s use of the Prerelease Software for Adobe’s research, product development, and product improvement purposes, and to personalize Licensee’s use of the Prerelease Software. Licensee agrees that Adobe may transfer Licensee’s Personal Information across national boundaries and that this information may be stored and processed in any of the countries Adobe and its agents maintain offices. If Licensee does not wish to have Licensee’s usage tracked, Licensee must discontinue use of the Prerelease Software by uninstalling or ceasing to use the Prerelease Software.

4.3. Other Rights. Except as expressly provided, Adobe does not grant rights to use any software or services other than the Prerelease Software. Licensee acquires no other licenses under any intellectual property or other proprietary rights of Adobe.

4.4. No Sublicensing. Licensee may not sublicense, rent, lease, lend, or grant other rights in the Prerelease Software.

4.5. No Modifications or Reverse Engineering. Licensee may not reverse engineer, decompile, disassemble or attempt to discover the source code of the Prerelease Software.

4.6. Auto Subscription to Forum. Upon participating in a Prerelease Software program, Licensee agrees to be subscribed to that Prerelease Software program’s forum which is used to convey information related to the Prerelease Software.

4.7. Specific Limitations on Fonts. If any font listed at: https://www.adobe.com/products/type/font-licensing/restricted-fonts.html is included with the Prerelease Software, Licensee may only use the font in connection with the Prerelease Software. Licensee may not copy, move, activate, or use (or allow any font management tool to copy, move, activate, or use) any of the listed fonts in or with any software application, program, or file other than the Prerelease Software.

4.8. Access to Licensee Content. Licensee agrees that Adobe may analyze Licensee Content and Licensee’s use of the Prerelease Software using techniques such as machine learning. More information about machine learning at Adobe can be found here: http://www.adobe.com/go/machine_learning.

5. Evaluation Feedback. Licensee agrees to provide Evaluation Feedback to Adobe during the Testing Period. Licensee grants to Adobe a worldwide, irrevocable, royalty-free, fully paid up right and license to use, reproduce, distribute, sublicense, and make derivative works based upon the Evaluation Feedback for
research, product development, and product improvement purposes. Licensee represents and warrants that it has all rights necessary to provide the Evaluation Feedback to Adobe. Adobe has no obligation to incorporate, use, or otherwise acknowledge any Evaluation Feedback that Licensee provides.

6. Monitoring User Activity. Adobe may monitor Licensee’s use of the Prerelease Software or Licensee Content. Without prior notice to Licensee, Adobe may remove Licensee Content if it violates the terms of this Agreement or any other applicable agreements, any law, or is otherwise objectionable to Adobe.

7. Confidential Information.

7.1. Non-Disclosure. Licensee agrees to hold the Confidential Information in strict confidence and not disclose it to any other party. Licensee will treat the Confidential Information with the same degree of care as Licensee treats its own confidential information, but in no event with less than reasonable care. Licensee’s obligations to protect the confidentiality of the Prerelease Software will terminate upon the first generally available commercial release of the Prerelease Software.

7.2. Login Identifiers and Passwords. Login identifiers and passwords are intended for use by Licensee only and may not be shared with anyone else.

7.3. Injunctive Relief. Licensee acknowledges and agrees that, due to the unique nature of Adobe’s Confidential Information, there will be no adequate remedy at law for any breach of Licensee’s obligations under this Agreement. Any such breach will result in irreparable harm to Adobe and, upon any such breach or any threat thereof, Adobe will be entitled to seek appropriate equitable relief, including, but not limited to, injunction in addition to whatever remedies Adobe may have at law. Licensee will notify Adobe in writing immediately upon the occurrence of any such unauthorized release or other breach.

8. No Warranty.

8.1. Licensee is aware that the Prerelease Software contains non-production features and may be prone to bugs and stability issues. Adobe provides the Prerelease Software to Licensee as is, and Adobe disclaims any warranty or liability obligations of any kind to Licensee. Adobe makes no express, implied, or statutory warranty of any kind with respect to the Prerelease Software including, but not limited to, any warranty with regard to performance, merchantability, satisfactory quality, security or privacy of information transmitted to and from the Prerelease Software, availability of the Prerelease Software, noninfringement, or fitness for any particular purpose. In no event will Adobe be liable to Licensee or any other party for any damages, including any lost data, lost profits, lost savings, or other incidental or consequential damages even if Licensee or any company representative has been advised of the possibility of such damages. Licensee bears the entire risk as to the quality and performance of the Prerelease Software. The foregoing exclusions and limitations apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

8.2. Adobe has no responsibility or liability for the deletion or accuracy of Licensee’s Content, including the failure to store, transmit, or receive transmission of Licensee’s Content.

9. Term and Termination. This Agreement will commence upon the Effective Date and continue for the duration of the Testing Period unless terminated earlier according to this section. Adobe may terminate this Agreement immediately upon written notice. Sections 1, 4.3, 5, 7, 8, and 11 survive any termination or expiration of this Agreement.

10. Deletion of Prerelease Software and Confidential information. Licensee must immediately delete or destroy all versions of the Prerelease Software and Confidential Information in its possession upon the earlier of (A) the end of the Testing Period or (B) termination of this Agreement.

11.1. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the United States of America and the State of California, without giving effect to its conflicts or choice of law provisions. Each party irrevocably consents to the exclusive jurisdiction and venue of the state and federal courts located in Santa Clara County, California for the purpose of any legal action, suit or proceeding brought by either party in connection with this Agreement.

11.2. Assignment; Modification; Entire Agreement; Precedence. Licensee may not assign or transfer any rights or obligations under this Agreement without the prior written consent of Adobe. This Agreement may only be modified by a writing signed by both parties. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes all other written and oral agreements and communications relating to the subject matter. In the event of any conflict between this Agreement (or any portion thereof) and any other agreements applicable to the Licensee’s use of the Prerelease Software, the terms of this Agreement shall prevail.

11.3. Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will continue in full force and effect.

11.4. Headings. The section headings used in this Agreement are for reference and will not determine the construction or interpretation of this Agreement.

11.5. Trade Controls. The Prerelease Software is subject to U.S. and international export control laws, restrictions, and regulations. Licensee may not export the Prerelease Software, any part, or any process or service that is the direct product of the Prerelease Software to any country, person or entity subject to U.S. export restrictions. Licensee represents and warrants that Licensee is not a citizen of, or located in, an embargoed nation or otherwise restricted territory (including without limitation Iran, Syria, Sudan, Cuba, Crimea, and North Korea).

11.6. Notice to Government End Users. The Prerelease Software and any documentation or derivatives thereof provided under this Agreement are “Commercial Items,” as that term is defined at 48 C.F.R. § 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. If you are a U.S. Government agency or instrumentality or if you are providing all or any part of the Prerelease Software or any documentation or derivatives thereof to the U.S. Government, such use, duplication, reproduction, release, modification, disclosure or transfer of these Commercial Items, are restricted in accordance with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, 48 C.F.R. § 227.7102-2, and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, 48 C.F.R. § 227.7102-1 through 48 C.F.R. § 227.7102-3, and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, as applicable. The Prerelease Software is licensed to U.S. Government end users (i) only as Commercial Items and (ii) with only those rights as are granted to all other users pursuant to this Agreement and any related agreement(s), as applicable. Accordingly, you will have no rights in the Prerelease Software except as expressly agreed to in writing by you and Adobe.