

**SOFTWARE AS A SERVICE (SaaS) AGREEMENT**

This Software as a Service Agreement (“SaaS Agreement”) is by and between the Esko-Graphics entity that executed Your SaaS Subscription Order Form (“Esko”) and You. The term “Agreement” includes this SaaS Agreement, Your SaaS Subscription Order Form, the Service Level Agreement (“SLA”) (attached as Exhibit A to Your SaaS Subscription Order Form or separately executed between Esko and You, if any), and any other document which is incorporated herein by reference. In case of conflicting terms, the following order of precedence shall apply: (i) The SaaS Subscription Order Form; (ii) the terms of this SaaS Agreement; (iii) the SLA; (iv) any other document incorporated by reference.

**1. Defined Terms**

(a) “Acceptable Use Policy” or “AUP” refers to the Acceptable Use Policy published at Esko’s website [www.esko.com/termsandconditions](http://www.esko.com/termsandconditions) (if any), considered incorporated herein by reference.

(b) “Access Credentials” refers to user names and password or similar credentials enabling access to the Services.

(c) “Authorized Users” means individuals or processes assigned by You to use the Services, which may include, as far as individuals are concerned, Your officers, employees and/or consultants and agents performing services for You or on Your behalf, and/or officers or employees of third parties involved in the performance of Your internal business purposes (e.g. approving customer workflows).

(d) “Customer Data” refers to any information, data and/or files You transmit, upload or store to or on the Hosted Infrastructure in association with Your use of the Services.

(e) “Hosted Environment” refers to the common integrated hardware and software components (including but not limited to hardware, software, servers, networks and technology installed within such environment, but excluding the particular software licensed as a hosted service) used by Esko to provide the Services, excluding any hardware, software or telecommunication networks outside the scope of Esko’s span of control (such as but not limited to the internet and telecommunication networks used to connect to the Hosted Infrastructure).

(f) (Esko) “Security Policy” refers to the security policy attached as Exhibit B to Your SaaS Subscription Order Form, or in the absence thereof the Esko customer facing data security policy published at Esko’s website [www.esko.com/termsandconditions](http://www.esko.com/termsandconditions) (if any) which is then considered incorporated herein by reference.

(g) “SaaS Subscription Order Form” refers to the form attached hereto or in the absence thereof an Esko commercial proposal form, detailing the scope of the Services ordered.

(h) “Services” means the services of (i) hosting the software defined in the SaaS Subscription Order Form and providing for associated data storage through the Hosted Infrastructure, (ii) providing Authorized Users access to such software and (iii) operating the Hosted Infrastructure for the purpose of (i) and (ii).

(i) “Service Commencement Date” means the specific date set forth in Your SaaS Subscription Order Form, or in the absence thereof the date on which Esko provides You with Your Access Credentials;

(j) “You” or “Your” means the customer identified in the applicable SaaS Subscription Order Form.

**2. Services Provided.**

(a) *Provisioning of Services.* During the Term of this Agreement, Esko will provide You with the Services set forth in the applicable SaaS Subscription Order Form duly executed between the parties. Services are provided for in accordance with the provisions set forth herein and the corresponding SLA.

The use of the Hosted Services (SaaS) is limited to the number of licenses procured. In case of “Concurrent User” licenses, the number of users using the Services simultaneously may at no point in time exceed the number of licenses procured. In case of “Named User” licenses, (i) each individual or processes assigned as Authorized Users is required to be identified (i.e. “named”); (ii) You may assign/change Authorized Users at any time, other than by automated means; (iii) the use of the Services at any time is limited to use only by the specific Authorized Users appointed and licensed at such time; AND (iv) the total number of Authorized Users active at any point in time may not exceed the total number of licenses procured;

(b) *Excluded.* The Services do not include, and Esko will not provide for any client-side hardware or software, programming, training, hardware or software not set forth in this Agreement. Technical support outside the scope of the SLA (e.g. assistance with customer-side and or workstation-side configuration, errors or issues, any user-specific software customizations, any configuration or troubleshooting of non-Service related software products, resolutions of problems caused by Your modification, or resolution of network products outside the scope of the Hosted Environment) will only be provided for under a separate written agreement.

(c) *Delegation/subcontracting.* You acknowledge that Esko for the provisioning of the Services uses the services of third party subcontractors, including but not limited to third-party datacenters, and You consent to the corresponding subcontracting of Esko’s obligations under this Agreement. Esko shall be responsible for any act or omission by said third party subcontractors which, if performed by Esko, would constitute a breach of Esko’s obligations under this Agreement.

(d) *Account.* Only Authorized Users appointed by You in accordance with the terms set forth herein are entitled to use the Services under the terms of this Agreement. You are responsible for the use of the Services by any Authorized User, as well as for use of the Services by any third party that uses the Services through Your Access Credentials. You are responsible for implementing Your own security measures in order to safeguard your Access Credentials and to prevent disclosure of the same to any third party not designated as an Authorized User, and to keep Your billing, contact, and other account information up to date. Except pursuant to a written authorization from Esko, You are not entitled to resell, transfer, assign, or sublicense Your rights under this Agreement to any third party, to use the Services to run an outsourcing business or for any purpose other than Your own internal business purposes.

(e) *Security.* In relation to the provisioning of the Services, Esko implements the security measures detailed in the Security Policy. Esko disclaims any liability for unauthorized access, use or release of any Customer Data, unless such access, use or release results from Esko’s failure to meet its security obligations set forth by the Security Policy.

You will use reasonable security precautions in light of Your use of the Services, including encrypting any information while in transit to or from the Services which comprises any personal data (as defined below). You will

reasonably cooperate with any of Esko's investigations into Service outages, security problems, and/or suspected breaches of the Agreement.

(f) *Customer Data.* You may transmit or upload Customer Data to the Hosted Environment. Esko agrees to only process Customer Data for the performance of the Services and in accordance with the terms set forth herein. In case You upload Customer Data, You (not Esko) have control over such Customer Data. To the extent that any Customer Data comprises personal data (as defined in Directive 95/46/EC of the European Parliament and of the Council or any successor directive or regulation), as between You and Esko, You are the data controller and Esko is the data processor. You grant Esko authorization to view, store, copy, and delete or otherwise process any Customer Data as part of Esko's standard performance of the Services and You irrevocably consent and agree to the processing of such Customer Data by Esko for such purpose at or from geographic locations within or outside of the European Economic Area (including but not limited to the United States of America).

*License Management Routines.* The Services provided may include technical means designed to limit the functionality of the same to the licensed functionality and/or to prevent the use of the Services outside the scope of the licenses procured ("License Management Routines). In order to implement the same, certain information (such as Access Credentials and other information as stated in Esko's Privacy Policy published at Esko's website [www.esko.com](http://www.esko.com)) may be processed by Esko in geographical areas inside or outside the European Economic Area (including but not limited to the United States of America). The processing of such data is subject to the terms of the Esko Privacy Policy published at Esko's website ([www.esko.com](http://www.esko.com)) and considered incorporated herein by reference. You acknowledge consenting to the above.

(g) *Back-up.* Esko will back up Your Customer Data if and as provided in the SLA. Without prejudice to the above, You also have a responsibility for retaining backup copies of all Customer Data, and You are responsible for implementing Your own disaster-recovery plan.

(h) *Regulatory compliance.* Esko represents and warrants that the performance of the Services will be in compliance with any and all applicable laws, rules and regulations. You represent and warrant that Your use of the Services will be in compliance with any and all applicable laws, rules and regulations. You specifically warrant that You have sufficient rights, title and interests in and to any Customer Data for uploading and using the same within the scope of the Services, and for granting Esko the authorization set forth in subsection (f) above.

(i) *Viruses and Malicious Code.* In the performance of the Services, Esko implements industry standard anti-virus software. You also agree to implement commercially reasonable actions and precautions to prevent the introduction and proliferation of Malicious Code into the Hosted Infrastructure through Your use of the Services. "Malicious Code" will mean (i) any code, program, or sub-program the knowing or intended purpose or effect of which is to damage or maliciously interfere with the operation of a computer system containing the code, program or sub-program, or to halt, disable, or interfere with the operation of the software, code, program, or sub-program, itself, or (ii) any device, method, or token that permits any person to circumvent without authorization the normal security of any software or System containing the code.

### **3. Fees**

(a) You agree to pay the fees set forth in the SaaS Subscription Order Form. Fees may be payable on a one-time or recurring basis as set forth in the SaaS Subscription Order Form. Fees agreed upon as part of the SaaS Subscription

Order Form are subject to change by Esko in order to compensate for potential inflation (up to 3 % on an annual basis). Esko further reserves the right to adjust the fees applicable to any Renewal Term by notifying You of the same at least 45 days prior to the start of a Renewal Term. If you do not agree with the new fees notified to You in accordance with the terms herein, You may provide Esko with a notice of non-renewal in accordance with Section 7.

(b) *Due Date.* Invoices issued are payable within fifteen (15) days from the invoice date. Esko reserves the right to charge late payment interests in the amount of the lesser of (i) 1.5% per month or (ii) the maximum amount allowed by applicable law.

(c) *Taxes.* The fees set forth in Your SaaS Subscription Order Form exclude taxes. You are responsible for the payment of all taxes and duties levied or assessed in connection with this Agreement, including but not limited to all local and federal import, sales, use, value added, rental receipt, personal property or other taxes, however excluding any taxes based on Esko's net income. Any costs for certificates of origin, legalizations, consular invoices and the like will be charged separately and in addition to the fees set forth in Your SaaS Subscription Order Form.

(d) *Storage.* Unless agreed upon otherwise as part of the SaaS Subscription Order Form, (i) Esko allocates the amount of storage set forth by in the SaaS Subscription Order Form to Your use of the Services and (ii) Esko reserves the right to charge additional fees for Your use of any additional storage.

### **4. Service Level Agreement (SLA) / AUP**

(a) *SLA.* Esko provides for the Services in accordance with the terms set forth in the SLA, which includes the remediation of outages of the Hosted Infrastructure and the correction of errors in the software hosted a part of the Services as set forth therein. Esko however does not warrant that the Services will be completely uninterrupted or error-free.

(b) *AUP.* In using the Services, You agree to comply with Esko's Acceptable Use Policy. Esko will provide You with a notification in case any material changes to the AUP are made. Any change to the AUP shall become applicable upon the earlier of (i) the commencement of the next Renewal Term, or (ii) 30 calendar days from the date of the corresponding notification, provided that You, in case of such change adversely impacting Your use of the Services, may (i) request Esko to waive such change in relation to Your use of the Services, and (ii) in case of Esko refusing to do the same, terminate Your subscription to the Services by means of a written notice issued prior to the change becoming effective. In case of such termination, Esko will refund any fees prepaid for the use of the Services not rendered prior to the effective date of the termination.

### **5. Warranty and Disclaimer of Warranty.**

(a) *Warranty.* Esko warrants that (i) it has the power, and has obtained all permits, regulatory licenses, registrations and authorizations required to provide for the Services procured under this Agreement; (ii) the Services shall be provided with all professional diligence, skill and care and corresponding to good industry practice.

(b) *Warranty disclaimer.* Esko provides for the Services through the Hosted Infrastructure, and does not control, and does not accept any liability in relation to any event occurring outside the scope of said Hosted Infrastructure. THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICES OR THE SOFTWARE HOSTED AS PART OF THE SERVICES, WILL BE UN-INTERRUPTED OR

COMPLETELY ERROR OR BUG FREE, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

(c) *Minimum Standards.* Esko's obligations to provide for the Services, and any associated warranties provided are conditional upon You maintaining all hardware, software and network connectivity needed to connect to and use the Services, including but not limited to the minimum (system) requirements set forth in the SaaS Subscription Order Form ("Minimum Standards").

## **6. Intellectual property rights**

(a) You retain all rights, title and interests in and to any Customer Data. Nothing set forth herein shall be of nature to assign or transfer any rights in the Customer Data to Esko. Esko retains all rights, title and interests in and to the Services, any software hosted as part of the Services, and the Hosted Environment. Nothing set forth herein shall be of nature to assign or transfer any rights in the Services, the software hosted as part of the Services, or the Hosted Environment to You.

(b) You agree, except subject to Esko's prior written consent (i) not to copy, download, modify or translate any software hosted as part of the Services; (ii) not to be reverse engineer, decompile, or disassemble any software hosted as part of the Services, or to attempt to discover the underlying source code, except to the limited extent expressly allowed by applicable law; (iii) not to tamper with, bypass or alter the security features of the Services or Hosted Infrastructure.

## **7. Term, Termination and Suspension.**

(a) *Term.* Unless set forth otherwise as part of the SaaS Subscription Order Form, this Agreement will come into force upon the Service Commencement Data for an initial period of twenty-four (24) months (the "Initial Term"). Following the Initial Term, this Agreement shall auto-renew by consecutive one (1) year periods (each period called a "Renewal Term"), unless either party provides the other with a written notification of non-renewal at least three (3) months prior to the expiration of the then current term. The Initial Term, together with any Renewal Term, is referred to as the "Term" of this Agreement.

(b) *Termination for cause.* Either party may terminate this Agreement by means of a written notification in case of the other party failing to perform any material obligation under this Agreement, with such breach (if capable of being remedied) remaining uncured following a ten (10) days written notice. In case such breach is not capable of being remedied, termination may occur forthwith by means of a written notification.

(c) *Suspension of Services.* Esko may suspend the Services in case of: (i) any outstanding invoice not being paid within sixty (60) days from the invoice date; (ii) Esko becoming aware of what it deems a credible claim that Your use of the Services violates any applicable law, rules or regulations or infringes upon third party rights; (iii) Your use of the Services violating the AUP or interfering with the normal operation of the Services or Hosted Infrastructure; (iii) the security of the Services, of the Customer Data, or of the Hosted Infrastructure or Your access rights being compromised or in any event Esko decides that suspension of the Services is needed to protect the integrity of the Services or Hosted Infrastructure; or (iv) in any event where Esko is entitled to terminate this Agreement for cause. In each case of suspension as per above, Esko will give You an advance twelve (12) hours' notice, unless Esko reasonably determines that giving a shorter or no notice is necessary to protect the interests of Esko, of You or of any third party.

(d) *Results of termination.* Following termination of this Agreement, (i) Your access rights shall lapse and Esko shall no longer be required to provide for any Services, and (ii) the parties shall return to each other, or destroy, within sixty (60) days from such termination, any Confidential Information received. Termination of this Agreement will not relieve a party from any accrued payment obligations. The provisions which are identified for such purpose or which by their nature are meant to survive (including but not limited to Sections 4, 5(b), 6, 8, 9 & 11), shall survive the termination or expiration of this Agreement.

## **8. Confidentiality**

(a) *Confidentiality.* Each party, as a recipient, agrees, by using measures equal to the measures used in protecting its own confidential information, not to disclose any Confidential Information received except to Authorized Recipients, and to use any Confidential Information received solely for the purpose of performing this Agreement. For the purpose of the above, Authorized Recipients are a party's and a party's corporate affiliates' officers, employees and consultants who require access to the Confidential Information for the purpose of performing this Agreement and who are bound by confidentiality obligations at least as stringent as those set forth herein.

(b) *Survival.* The obligations set forth in this Section 8 shall survive until five (5) years from the termination or expiration of this Agreement.

(c) "*Confidential Information*" refers to any information or data marked as such, or which, reasonably determined, constitutes information/data of a proprietary or confidential nature. Confidential Information does not include information which: (i) was, as evidenced by the recipient, already known to the recipient prior to the time that it is disclosed; (ii) is or has entered the public domain through no breach of this Agreement; (iii) has rightfully been received from a third party without breach of any duty of confidentiality; (iv) has been approved for release by written authorization of the disclosing party; (v) is independently developed by the recipient without use of the disclosing party's Confidential Information or (vi) is required to be disclosed pursuant to the order of a court or governmental agency provided that the disclosing party has, if permitted by law, been given reasonable notice of the order and the opportunity to contest disclosure.

## **9. Limitation of Liability**

IN NO EVENT WILL ESKO, REGARDLESS OF LEGAL THEORY, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, SUCH AS BUT NOT LIMITED TO ANY LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS OR ANY OTHER ECONOMICAL ADVANTAGE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY SERVICES PROVIDED UNDER THIS AGREEMENT. IN NO EVENT WILL ESKO'S LIABILITY, REGARDLESS OF LEGAL THEORY, EXCEED, FOR ALL CLAIMS IN AGGREGATE, AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID BY YOU TO ESKO UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INITIAL CLAIM.

## **10. Miscellaneous.**

(a) *Export Matters.* You agree to abide and conform to any and all export regulations in force during this Agreement that are applicable to You or the Services provided, including but not limited to any export rules and regulations of the United States of America. You understand that these regulations may prohibit the export or re-export of documentation, and any information or technical data related to the Services.

(b) *Governing Law; Venue.* All disputes arising from or related to this Agreement will be governed by the laws of the country and state, or other applicable geographic designation, where Esko is located, without reference to its conflicts of law principles. Each party hereby consents to the exclusive personal jurisdiction and venue of the courts where Esko is located. The parties expressly exclude the United Nations Convention on Contracts for the International Sale of Goods from application to this Agreement.

(c) *Assignment.* Neither party may assign this Agreement without the express written consent of the other party, except that either party may assign this Agreement to any of its corporate affiliates or pursuant to a merger, consolidation, reorganization, change-in-control or sale of all or substantially all of the assets or business to which this Agreement relates. Any attempted assignment in violation of this provision will be void.

(d) *Severability;* If any part of the Agreement is found unenforceable by a court of competent jurisdiction, the remainder of the Agreement will remain

in full force and effect. This Agreement may be amended only in a writing signed by both parties. The parties' relationship is that of independent contractors. This Agreement constitutes the entire agreement of the parties and supersedes all previous communications between the parties relating to this Agreement and to the subject matter herein.

(e) *Force Majeure.* Neither party will be responsible for, nor be in default under this Agreement due to any delays or failure of performance resulting from acts or causes beyond its reasonable control, including without limitation, acts of war, export regulations, third-party labor strikes, power failures, natural disasters or other similar events ("Force Majeure Events"). In the event that either party is unable to perform any of its obligations under this Agreement because of a Force Majeure Event, the party who has been so affected will promptly give notice to the other and will exercise all reasonable efforts to resume performance.

**SAAS SUBSCRIPTION ORDER FORM**

Thank you for enrolling in Esko’s Software-as-a-Service (“SaaS”) subscription. This SaaS Subscription Order Form provides the details of the hosted services (“Services”) you will be receiving pursuant to your subscription. Esko’s SaaS Agreement attached hereto or available at [www.esko.com/termsandconditions](http://www.esko.com/termsandconditions) is incorporated by reference and made a part of this document. Unless set forth otherwise, prices listed herein are per-year and in the currency identified below or if none is identified, the currency identified in Esko’s Proposal. Fees may be modified during the term of this Agreement as set forth under the SaaS Agreement.

Customer Name:

Address:

Bill To Address (Only if Different):

Contact Person:

Phone:

Email:

**1. Description of software hosted as a service**

<include part list>

**2. Term**

Service Commencement Date: \_\_\_\_\_.

(If no Service Commencement Date is provided above, the term shall start upon the date you are provided access to the Services.)

Initial Term/Renewal mechanism (if different from Section 7(a) of the SaaS Agreement: \_\_\_\_\_ (state or N/A)

**3. Fees**

<include fees>

**4. Amount of storage included (if any) as part of the fees set forth above :** \_\_\_\_\_ (state if relevant)

**5. Minimum Standards (Your minimum system requirements)**

<https://www.esko.com/en/SystemRequirements/>

On behalf of the Customer:

On behalf of Esko:

Signature:

Signature:

Print Name:

Print Name:

Title:

Title:

Date:

Date:

**APPENDIX A TO THE SAAS SUBSCRIPTION ORDER FORM** - Attach applicable SLA

**APPENDIX B TO THE SAAS SUBSCRIPTION ORDER FORM** - Attach Security Policy (if not, the customer facing data security policy published at Esko’s website [www.esko.com/termsandconditions](http://www.esko.com/termsandconditions) applies).