We recommend that you print this Agency Prototyping End User License Agreement (the “Agency Prototyping EULA” or the “Agreement”) for further reference.

This Agency Prototyping EULA becomes a binding contract between you and Monotype when you click on the area marked “ACCEPT LICENSE AGREEMENT” or similar language. Please read this entire Agreement before you agree to be bound by its terms and conditions.

*This is an agency prototyping license with limited distribution rights solely for the purpose of sharing samples of work created using the Software (for example, printed materials) or embedding the Software (for example, an application) with clients by whom you have been engaged with respect to the design process, but no one else. This is not a distribution license.*

If you or your client wish to publicly distribute any materials created through Use of the Software, or materials that embed any portion of the Software, you or your client must obtain a separate distribution license from Monotype. You agree to use reasonable efforts to promote the Software to your clients and to cooperate with Monotype, in good faith, if your clients require a license to the Software. This includes making your clients aware that the Software is available for licensing by Monotype, providing clients with Monotype’s contact information or other materials that Monotype may provide to you from time to time, and providing Monotype with non-confidential information about clients who inquire about the Software, including information about such client’s licensing needs.

# DEFINITIONS.

|  |  |
| --- | --- |
| **Account** | Your administrative account located at the Monotype Fonts Platform. |
| **Agreement** | This Agency Pitch Prototyping End User License Agreement. |
| **Application** | A product that is distributed as software only and (i) is not embedded into hardware of any kind, (ii) is not a platform or operating system that can run other software programs, (iii) which is not Publicly Available Software or integrated in such software and (iv) is made available by you to end users either directly or through a distributor. A version of an Application that does not have unique functionality beyond the scope of a previously released Application and is not licensed or marketed under a new name shall not be considered a new Application. |
| **Commercial Electronic Document** | An Electronic Document which may be distributed to the general public (or to some subset of the general public) as a commercial product for a fee or other consideration (for example, an e-book). For the avoidance of doubt, an Electronic Document that is created for one’s own internal use only or for distribution in a manner that is incidental to its business (for example an instruction manual that explains its product), is not considered a Commercial Electronic Document under this Agreement. |
| **Critical Patch Release** | Updates to any of the Font Software or the Desktop Application that Monotype determines, at its sole discretion, will be made available on a general basis to all of its customers. Critical Patch Releases may or may not include certain changes that are included in an update and may be released before or after any such update is provided to eligible customers. A Critical Patch Release may, at Monotype’s sole discretion, be released prior to completion of Monotype’s complete quality assurance testing process. |
| **Derivative Work** | A work, including but not limited to software or data, based upon or derived from any of the Font Software or the Desktop Application (or any portion of the Font Software or Desktop Application) in any form in which such software or data may be recast, transformed, or adapted including, but not limited to, binary data in any format into which the Font Software may be converted. |
| **Desktop Application** | The Monotype Desktop Application for Mac and Windows that allows Licensed Monotype Fonts Users to upload and download the Font Software and other font software to the Monotype Fonts Platform. |
| **Digital Marketing Communication** | A piece of promotional or marketing content delivered via the internet. A Digital Marketing Communication includes, but is not limited to, email advertisements, banner ads and display advertisements shown on websites, advertisements in web applications and advertisements in applications. |
| **Effective Date** | The date that the terms of this Agreement is accepted by you. |
| **Electronic Document** | An electronic document or data file, for example a .pdf manual or an e-book, which is created by Use of the Font Software, but which is not a Digital Marketing Communication. |
| **Font Software** | The font software available in your Monotype Fonts Platform Account, which when used on an appropriate device or devices, generates typeface and typographic designs and ornaments. Font Software shall include all subsets and bitmap representations of typeface and typographic designs and ornaments created by or derived from the Font Software, and all copies of the Font Software in web font format Used or accessed in conjunction with the rendering of web pages for Licensed Page Views, including copies of web pages that may be temporarily cached. Font Software refers to individual digital files (and thus the digital representation of one weight – with the exception of variable fonts – and in a specific format), not typeface families (for example, Helvetica Now, or Arial), a typeface or a category of typefaces. Not all Font Software is available in all formats.  |
| **Impression** | Either (i) a response, in which the Font Software or Subset(s) thereof is incorporated, from a digital advertisement delivery system to a request from a web or mobile browser or other application, or (ii) an opened e-mail where the Font Software or Subset(s) thereof is delivered to the email client. |
| **Internal or Internally** | With respect to Use, a Licensed User. With respect to distribution, Internal, in addition to youremployees, includes any client by whom you have been engaged with respect to the design process, but no one else. |
| **Licensed User** | Any user who may exercise the license grants to the Font Software and access Monotype Fonts Platform under this Agreement, as indicated in this Agreement, whether or not such user does actually exercise such rights. Licensed Users must be your employees or independent contractors, or an employee of your client by whom you have been engaged to Use the Font Software or access Monotype Fonts Platform as set forth in this Agreement. You shall be responsible for compliance with the terms of this Agreement by any such agency and its employee(s), client and its employees or independent contractor. The number of Licensed Users shall be counted regardless of whether and when actual Use or access occurs and thus equal the total of all individuals who are authorized and can potentially Use the Software or access Monotype Fonts during the Term (non-concurrent use). |
| **Metadata** | Data that provides information about the Font Software, such as the font name, format, weight, font family, source, etc. Metadata includes data generated from the Font Software automatically through the use of artificial intelligence or other software programs. |
| **Monotype** | Collectively, Monotype Imaging Inc. or any other Monotype entity identified in connection with the clickthrough process, its successors and assigns, and its parent and affiliatedcorporations. |
| **Monotype Fonts Platform** | Monotype’s platform, made available to Licensed Monotype Fonts Users from which Licensed Monotype Fonts Users may access the Font Software, the Subsetter Application and the Desktop Application and use the functionality made available to them on the Monotype Fonts Platform. |
| **Page View** | A single instance of access to a particular web page. For the avoidance of doubt, each visit to or display of a web page is a Page View, regardless of whether such visit or display is unique.  |
| **Primary Licensed Monotype Fonts User** | The individual identified during the clickthrough process. |
| **Production Fonts** | The Font Software you choose to utilize for Licensed Page Views as set forth in Section 2.B.v.b. **HOW PRODUCTION FONTS ARE COUNTED:**The maximum set forth in Section 2.B.v.b. refers to the amount of Font Software and thus, Production Fonts shall be counted by individual digital files which can be used for the licensed deployment, not typeface families (for example, Helvetica Now, Arial), a typeface or a category of typefaces. E.g. “Helvetica Now Text Regular,” “Helvetica Now Text Bold,” and “Helvetica Now Text Bold Italic” would count as three Production Fonts. Individual Font Software (e.g. variable Font Software or Font Software with Chinese or Japanese language extensions) may count as a multiple of one Production Font against your account. The factor will be communicated when you choose the Font Software as a Production Font and visible in your Monotype Fonts Platform Account. You may swap all of or part of your Production Fonts one (1) time per calendar quarter by removing Font Software as a Production Font and choosing other Font Software on the Monotype Fonts Platform.All formats (for example OTF, WOFF) of the same Production Font shall count as one Production Font.  |
| **Publicly Available Software** | (a) Any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g. Linux) or similar licensing or distribution models; and (b) any software that requires as a condition of use, modification and/or distribution of such software that such software or other software incorporated into, derived from or distributed with such software (i) be disclosed or distributed in source code form, (ii) be Licensed for the purpose of making Derivative Works, or (iii) be redistributable at no charge.  |
| **Server** | Any server or cloud server service that is either (a) maintained on your premises; (b) under your exclusive control; or (c) owned and controlled by a third party hosting service for your benefit, provided that you (i) have a written agreement regarding the Use and protection of the Font Software installed on such server, and (ii) shall remain responsible for any unauthorized access to and security of the Font Software on such Server. Furthermore, if such Server is part of a cloud server service, you are permitted to upload a copy of the Font Software to the cloud server service, provided that the Font Software and any Derivative Works thereof cannot be downloaded except by your Licensed Desktop Users and/or Licensed Monotype Fonts Users and if such cloud server service is owned and controlled by a third party hosting service for your benefit, you will require the cloud server service to completely remove the Font Software from the Servers upon termination of your use of the cloud server service. |
| **Subset** | A Derivative Work of the Font Software, created by removing certain glyphs and/or characters therefrom. |
| **Subsetter Application** | Monotype’s proprietary application used to create a Subset of the Font Software in web font format. |
| **Term** | One (1) year after the acceptance of this agreement. |
| **Trademarks** | The trademark as set forth at www.monotype.com/legal/trademarks for each piece of Font Software licensed under this Agreement or under which Monotype markets the Font Software. |
| **Use** | With respect to the Font Software when an individual is able to give commands (whether by keyboard or otherwise) that are followed by the Font Software, regardless of the location in which the Font Software resides. With respect to the Subsetter Application and the Desktop Application, when the software or instructions are executed. |
| **Workstation** | A hardware component in which Font Software or the Desktop Application is installed and from which an individual is able to give commands (whether by keyboard or otherwise) that are followed by the Font Software or Desktop Application, as applicable. |

1. **LICENSE GRANTS**.

You are licensing access to the Monotype Fonts Platform, Font Software and the Desktop Application. You agree that you have the rights expressly set forth in this Agreement and no other. You may Use the Font Software available on the Monotype Fonts Platform as set forth in Section 2.B., provided that in exercising such rights, the Font Software may be used solely for Internal Use in connection with the design process. You have limited distribution or deployment rights only with respect to the Font Software you choose to be Production Fonts, and only as specifically set forth in Section 2.B.v.b. All rights not expressly granted in this Agreement are reserved to Monotype.

Internal Use includes the distribution solely for the purpose of sharing samples of design work created using the Font Software (for example, printed materials) or embedding the Font Software (for example, an application) with clients by whom you have been engaged with respect to the design process, but no one else. If you or your client wish to publicly distribute any materials created through Use of the Font Software, or materials that embed any portion of the Font Software, you or your client must obtain a separate distribution license from Monotype. You agree to use reasonable efforts to promote the Font Software to your clients and to cooperate with Monotype, in good faith, if your clients require a license to the Font Software. This includes making your clients aware that the Font Software is available for licensing by Monotype, providing clients with Monotype’s contact information or other materials that Monotype may provide to you from time to time, and providing Monotype with non-confidential information about clients who inquire about the Font Software, including information about such client’s licensing needs.

The rights set forth in this Section 2 may be exercised on your behalf by Licensed Users, and you are responsible for compliance with the terms of this Agreement by all such users as well as any other parties who access the Monotype Fonts Platform, Font Software or Desktop Application. You are hereby granted, during the Term and subject to all terms and conditions set forth herein, a worldwide (subject to Section 8.B), non-exclusive, non-assignable, non-transferable license to allow Licensed Users to:

1. **MONOTYPE FONTS PLATFORM.**
	1. Access the Monotype Fonts Platform and access and use any of the functionality made available to you by Monotype on Monotype Fonts Platform.
	2. Extract, create and/or generate Metadata from the Font Software, provided that in each case, the Metadata is only used for your internal use.
	3. Access and Use the Subsetter Application on the Monotype Fonts Platform to create Subset(s) of the Font Software in a web font format provided that any such Subset continues to be owned by Monotype and shall constitute Font Software under this Agreement.
	4. **Desktop Application**:
2. Install and access the Desktop Application on a Licensed User’s Workstation(s).
3. Use the Desktop Application in connection with the Font Software.
4. Use the Desktop Application in connection with font software that you have not licensed from Monotype, so long as the agreement between you and the party who licensed you such font software allows your use of the Desktop Application with such font software.
5. Make backup copies of the Desktop Application, provided that such copies are for your internal back up purposes only and remain in your exclusive control.
6. **FONT SOFTWARE**
	1. **Desktop:**
7. Install the Font Software on a Licensed User’s Workstation(s).
8. Install the Font Software onto any Server on which the Font Software may only be accessed, directly or through programmatic access such as an API, AWS CLI, or Tools for Windows PowerShell, solely by your Licensed Users.
9. Use the Font Software on such Workstations or via such Server to:
	* + 1. create, edit, view, print and Internally distribute materials, provided that, if you create a static graphic image with a representation of the underlying typeface and typographic design or ornament, such static graphic image may not be used as a substitute for the Font Software, i.e., you may not create a substitute version of the Font Software containing different static graphic images of individual glyphs of the Font Software which then can be individually addressed by software, a website, a hardware device (e.g., keyboard) or other means to render such designs or ornaments; and/or
			2. embed the Font Software into Electronic Documents, duplicate the Font Software as an integrated part of any such Electronic Document, and Internally distribute such Electronic Document provided that the Font Software cannot be fully or partially extracted from such Electronic Documents.
10. Make backup copies of the Font Software, provided that such copies are for your internal back up purposes only and remain in your exclusive control.
	1. **Applications:**
11. Incorporate the Font Software into Applications in a manner in which the Font Software cannot be fully or partially extracted, provided (i) that the Application does not allow end users to use the Font Software for authoring purposes (e.g. in an Application that provides office functionality such as word processing or presentation design or that allows users to create graphic designs or merchandising) and/or (ii) its primary purpose is not to replace the Font Software.
12. Duplicate the Font Software as an integral part of any such Application.
13. Internally distribute the Font Software as an integrated component of any such Application.
	1. **Commercial Electronic Documents**:
14. Embed the Font Software into Commercial Electronic Documents and duplicate the Font Software as an integral part of any such Commercial Electronic Document.
15. Internally distribute the Font Software as an integrated component of any such Commercial Electronic Document, provided that (i) the Font Software cannot be fully or partially extracted from such Commercial Electronic Document, and (ii) a recipient cannot edit the Commercial Electronic Document with the Font Software.
	1. **Servers**:
		1. Install the Font Software, or a web server application into which the Font Software has been incorporated; and
		2. Allow Licensed Users to use the Font Software on such Servers in the manners set forth in Section 2.B.i.c., and provided that any Electronic Document created may only be distributed Internally.
	2. **Web Page Content**:
		1. Use the Font Software on a Server, to generate content on websites owned or under your control for Internal distribution and Use only.
		2. Use a maximum of five (5) Font Software that you choose to be Production Fonts to generate content on websites owned or under your control for up to 250,000 Page Views per month. This license allows users of your website to type text on that website through Use of the Production Font(s) (e.g. in form fields, customer feedback etc.) only for transactional or marketing purposes. This Web Page Content license does not allow the Font Software or Production Font(s) to be embedded in a web based customer product (e.g. a web server application, SaaS or other online product) or to be used for authoring purposes (e.g. in an Application that provides office functionality such as word processing or presentation design or that allows users to create graphic designs or merchandising).
	3. **Digital Marketing Communications**: Embed the Font Software into a Digital Marketing Communication in a manner in which the Font Software cannot be fully or partially extracted or create a Digital Marketing Communication that is generated as described in the previous paragraph through Use of the Font Software in web font format, in each case for Internal distribution and Use only.

# DELIVERY AND ACCESS.

Monotype will make available access to Monotype Fonts Platform and the Account via delivery of access credentials to the Primary Licensed Monotype Fonts User identified during the clickthrough process. Through the Account, the Primary Licensed Monotype Fonts User can invite users up to the number of Licensed Users licensed by you under this Agreement to access and use Monotype Fonts Platform in conformance with the terms of this Agreement. Such access credentials will allow the Primary Licensed Monotype Fonts User to create an Account. Any Font Software available through the Monotype Fonts Platform may be downloaded or accessed by a Licensed User at any time during the Term. Monotype’s delivery obligations for access to the Monotype Fonts Platform, Font Software and the Desktop Application shall be complete upon sending access credentials to the Monotype Fonts Platform to your Primary Licensed Monotype Fonts User.

In the event Monotype makes available additional features of the Monotype Fonts Platform that are not contemplated as of the Effective Date or otherwise governed by this Agreement, your Licensed Monotype Fonts Users who are designated in your Account as “Administrators” may be presented with additional terms of use to govern such additional features. Such additional terms must be agreed to by an Administrator before such feature can be enabled in your Account. Any such terms of use will not amend or restrict the license rights granted to the Font Software in this Agreement.

Using the Monotype Fonts Platform requires the Primary Licensed Monotype Fonts User and each Licensed Monotype to create a password and a user name. The confidentiality of passwords and Account information is your responsibility. Any activities that occur under the Accounts are your responsibility. You agree to notify Monotype immediately of any unauthorized use of any Account or any other breach of security which could affect the Monotype Fonts Platform or use of your Account.

# RESTRICTIONS.

You may not:

* Transfer your license rights in the Monotype Fonts Platform, the Font Software or the Desktop Application.
* Modify the Font Software or the Desktop Application in any way, including to create, directly or indirectly, Derivative Works from the Font Software or the Desktop Application or any portion thereof (except as otherwise specifically set forth herein).
* Embed the Font Software or the Desktop Application in open source software which may have the direct or indirect effect of causing the Font Software or Desktop Application to become Publicly Available Software or otherwise be subject to a Publicly Available Software agreement.

# TERMINATION.

The parties shall have the right to terminate the Agreement only as set forth in this Section 5.

Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party if the non-notifying party has breached this Agreement, and such breach has not been cured within that thirty (30) day period. Any such notice shall set forth the breach or breaches and the actions necessary to cure them, if a cure is possible.

The termination of this Agreement shall not preclude either party from suing the other party for damages of any breach of the Agreement.

# WARRANTIES, INDEMNIFICATION AND LIMITATION OF LIABILITY.

* 1. **WARRANTIES.**
* The Font Software will effect a faithful reproduction of the underlying typeface design which is of a quality consistent with industry standards.
* The Font Software and Desktop Application have no defect nor are deficient in title;
* The Font Software and Desktop Application do not infringe any intellectual property rights of any third parties, including but not limited to copyrights, design rights, trademarks and patents;
* The Font Software and Desktop Application upon download or delivery do not contain viruses, time or logic bombs, Trojan horses, worms, timers, clocks, trap doors, or other computer instructions, devices, or techniques that erase data or programming, infect, disrupt, damage, disable, or shut down a computer system or any component of such computer system, including, without limitation, its security or user data, or otherwise cause the Font Software or Desktop Application to become inoperable or incapable of being used in accordance with this Agreement; and
* The Font Software is not Publicly Available Software.
* The Monotype Fonts Platform shall be provided consistent with applicable industry standards, will be provided by personnel with the skills and qualifications necessary to perform such services and such services will be delivered in accordance with this Agreement.

In case of a defect or deficiency in title, promptly after you let us know of the problem (in text form, which could include via an email to warranty@monotype.com), Monotype will do everything that is commercially reasonable to correct the problem within fourteen (14) calendar days.

# INDEMNIFICATION.

Monotype shall, at its expense and at your request:

* defend you from any claim or action brought by an unaffiliated third party against you to the extent it is based on a claim that Monotype has breached a warranty contained in Section 6.A or any other obligation under this Agreement; and
* indemnify you against any damages, liability, costs or expenses incurred by you (including, without limitation, reasonable attorneys’ fees) resulting from such a claim or a breach of a warranty contained in Section 6.A.

You must notify Monotype promptly in writing of a claim, permit Monotype to control the defense or settlement, and cooperate fully with Monotype in such defense and settlement as reasonably requested and at Monotype’s expense.

# LIMITATION OF LIABILITY.

Except in the event of gross negligence or willful misconduct, neither party will be responsible for:

* Incidental, indirect, consequential or punitive damages, including without limitation, lost profits, business interruption, loss of use or lost data, regardless of the form of the action whether in contract, tort (including negligence), strict product liability or otherwise, even if such party has been advised of the possibility of such damages, in each case to the extent permitted by law; or
* Any damages caused by the other party’s failure to perform its obligations.

# MISCELLANEOUS.

1. **EXPORT.** You agree that you will not ship, transfer or export the Font Software or the Desktop Application into any country or use the Font Software or Desktop Application in any manner prohibited by the United States Export Administration or any applicable export laws, restrictions or regulations.

If delivery to you as set forth in this Agreement is prohibited by the United States Export Administration or any applicable export laws, restrictions or regulations, this Agreement shall be deemed void.

1. **INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS.**
* You agree that the Monotype Fonts Platform, the Font Software and the Desktop Application are protected by the copyright law or other intellectual and industrial property rights of the United States and its various States, by the copyright law and other intellectual and industrial property rights of other nations, and by international treaties.
* You agree that Monotype and or/its licensors own all right, title and interest in and to the Monotype Fonts Platform, the Font Software and the Desktop Application, their structure, organization, code, and related files, including all intellectual and industrial property rights therein such as copyright, design and trademarks rights.
* You agree that the Monotype Fonts Platform, the Font Software and the Desktop Application, their structure, organization, code, and related files are valuable property of Monotype and/or its licensors and that any intentional or negligent Use of the Monotype Fonts Platform, the Font Software and the Desktop Application not expressly permitted by the Agreement constitutes an infringement of intellectual and industrial property rights.
* All rights in and to the Monotype Fonts Platform, the Font Software and the Desktop Application, including unpublished rights, are reserved under the copyright laws of the United States and other jurisdictions.
1. **PRIVACY.** All personal data contained in this Agreement or in your Account will be collected and held in compliance with applicable privacy laws and our privacy statements “Monotype Fonts Platform and Desktop Applications Privacy Policy” and “Contractual Privacy Statement”, which can be found at http://www.monotype.com/legal/privacy-policy/.
2. **ENTIRE AGREEMENT; PARTIAL NULLITY; GOOD FAITH OBLIGATIONS.** This Agreement constitutes the entire agreement between the parties hereto with respect to license of the Monotype Fonts Platform, the Font Software and the Desktop Application. In the event that any provision of this Agreement is unenforceable or invalid, such unenforceability or invalidity shall not render the Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or court decisions. You and Monotype each owe a duty to co-operate in order to give full effect to this Agreement.
3. **ASSIGNMENT.** Your obligations under this Agreement may not be sublicensed or assigned to any third party (with a change in control of you constituting an assignment). This Agreement shall be binding on your and Monotype’s successors and assigns.
4. **GOVERNING LAW; JURISDICTION.**
	* + Unless you enter into this Agreement through the Monotype affiliate Monotype K.K., Monotype Ltd. or Monotype GmbH, this Agreement is governed by the laws of the Commonwealth of Massachusetts applicable to contracts wholly entered and performable within such Commonwealth (without regard to applicable conflict of laws provisions). The United States District Court for the District of Massachusetts or, if federal subject matter jurisdiction is lacking, the Superior Court of the Commonwealth of Massachusetts in Middlesex County, shall be the exclusive forum for any disputes arising out of or related to this Agreement. Both you and Monotype agree to the personal jurisdiction and venue of these courts in any action related to this Agreement.
		+ If you enter into this Agreement through the Monotype affiliate Monotype K.K., this Agreement is governed by the laws of Japan (without regard to applicable conflict of laws provisions). The courts of Tokyo, Japan shall be the exclusive forum for any disputes arising out of or related to this Agreement. Both you and Monotype agree to the personal jurisdiction and venue of these courts in any action related to this Agreement.
		+ If you enter into this Agreement through the Monotype affiliate Monotype Ltd., this Agreement is governed by the laws of England and Wales (without regard to applicable conflict of laws provisions). The courts of London, England, shall be the exclusive forum for any disputes arising out of or related to this Agreement. Both you and Monotype agree to the personal jurisdiction and venue of these courts in any action related to this Agreement.
		+ If you enter into this Agreement through the Monotype affiliate Monotype GmbH, this Agreement is governed by the laws of Germany (without regard to applicable conflict of laws provisions). The courts of Frankfurt/Main, Germany, shall be the exclusive forum for any disputes arising out of or related to this Agreement. Both you and Monotype agree to the personal jurisdiction and venue of these courts in any action related to this Agreement.
		+ This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.