

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

22-116

SAP Number

Innovation and Technology Department

Department Contract Representative
Telephone Number

Jennifer Mancebo
909-388-5579

Contractor
Contractor Representative
Telephone Number
Contract Term
Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

Adobe, Inc
Pierluigi Oliverio
40-821-4461
Perpetual
Non-financial
N/A
Non-financial
1200604048

Briefly describe the general nature of the contract: *Value Incentive Plan Terms and Conditions with Adobe, Inc., including non-standard terms, to be accepted by the Purchasing Agent upon issuance of the Purchase Order, for an indefinite term, until terminated by either party, for licenses, support and maintenance of Adobe software products used for graphic design, video editing, web development applications, and editing PDF format files.*

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*
Bonnie Uphold, County Counsel

Date 2-2-2022

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

►

Date

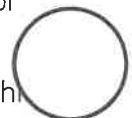


ADOBE VALUE INCENTIVE PLAN TERMS AND CONDITIONS

This Value Incentive Plan ("VIP" or "Program") Commercial Membership Agreement ("Agreement") sets forth the terms of your participation as a Member in the Program. The Agreement is effective as of the date of online enrollment. This Agreement is entered into by and between Adobe and the customer identified in on-line enrollment to become a Member. "Adobe" shall mean either ADOBE INC., a Delaware corporation having a place of business at 345 Park Avenue, San Jose, CA 95110-2704, if the Agreement is entered into with a Member's organization that is located in the United States, Canada, or Mexico, ADOBE SYSTEMS SOFTWARE IRELAND LIMITED, a company incorporated in Ireland and having a place of business at 4-6 Riverwalk, Citywest Business Campus, Dublin 24, Ireland as authorized agent of Adobe Systems Pty Ltd (ABN 72 054 247 835), if the Agreement is entered into with a Member's organization that is located in Australia, or otherwise with ADOBE SYSTEMS SOFTWARE IRELAND LIMITED, a company incorporated in Ireland and having a place of business at 4-6 Riverwalk, Citywest Business Campus, Dublin 24, Ireland. Member shall license all software, services, and offerings available under the Program (collectively "Product") to be installed and used within the United States (including United States territories and military bases wherever located), Canada, or Mexico from Adobe U.S. Member shall license all Products to be installed and used in Australia from Adobe Ireland, as authorized agent of Adobe Systems Pty Ltd (ABN 72 054 247 835). Member shall license all Products to be installed and used in all other countries and territories from Adobe Ireland.

1. Program Description.

1.1 General and Program Term. The VIP Program is a flexible licensing program designed to allow qualified and eligible customers to manage and deploy Product licenses purchased through the Program. The VIP Program is a membership program with license Subscription Periods as further defined in Section 3.4 of this Agreement. Once the organization enrolls in a membership through the VIP administration user interface and is accepted by Adobe into the Program, the organization will be a member of the Program ("Member") until the earliest of when (a) Adobe terminates the Program, (b) this Agreement terminates. Member's participation is further subject to the terms stated in the program guide for the Program, which may be updated from time to time and is available at





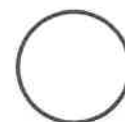
its sole discretion, it may terminate or change membership, as required to accept the Program terms in the Console.

1.2 Termination. Notwithstanding the foregoing, either party may terminate the Agreement with or without cause on thirty (30) days prior written notice. Termination of this Agreement shall not affect Member's obligations with regard to any Products ordered prior to the termination date, including without limitation any subscription terms or payment obligations. In addition, Adobe may immediately terminate this Agreement, upon written notice, for a material breach (including but not limited to any misappropriation or infringement of Adobe's intellectual property rights). If this Agreement terminates, then Member's organization shall immediately cease use of the Products, delete the Products from all computer systems and IT equipment on which it resides, and return to Member's Account Manager any media containing the Products as well as any related materials. Account Manager means either (i) Reseller, if a transaction is through a reseller, or (ii) Adobe representative, if a transaction is with Adobe.

1.3 TOU. The access and use of the Products is governed by the applicable Adobe terms of use ("TOU") available at <https://www.adobe.com/legal/terms.html>. The terms of the applicable TOUs are hereby incorporated by reference (including without limitations terms related to governing law and venue). In the event of inconsistency between the terms of this Agreement and the terms of the TOU, the terms of this Agreement shall control.

1.4 Program Products. For a complete list of Products available through the Program, Member shall contact its Account Manager or go to the Program web pages located on Adobe.com <http://www.adobe.com/howtobuy/buying-programs/vip.html>. All Products purchased through the Program are solely for use within Member's own organization and all re-sale, sublicensing, and other distribution is prohibited except as set forth in Section 4.1 and/or the Program Guide, if applicable. Certain offerings may be available for license by purchasing Consumables, as described in the Program Guide.

1.5 Affiliates. Adobe agrees that customer's Affiliates may place orders under this Agreement for the Products provided hereunder. Customer retains ultimate liability for any acts or omissions of such Affiliate. Affiliate means, for Member, any other entity that controls, is controlled by, or under common control with, Member. For the purposes of this Section 1.5, 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.





2.1 Adobe ID and VIP ID. An Adobe ID will be required in order to enroll in the Program. Each Member will be assigned a VIP ID which must be referenced on all orders. Member is responsible for acts or omissions of anyone who obtains access to and use of the Products through Member.

2.2 Console. The Program administration user interface is the "Admin Console." Once the terms of this agreement are accepted, the individual accepting on behalf of the organization will be assigned as the Contract Owner. The Contract Owner can add system administrator(s) (each an "Administrator"). The Contract Owner and any Administrator will be provided access to the Admin Console where they will have the ability to access the Product, manage their subscriptions, and view their account information. The Admin Console will allow the Administrator to invite additional users within their organization to gain access to the Admin Console. Member authorizes any Administrator or Contract Owner to act on Member's behalf.

2.3 Confidentiality. Member shall treat VIP ID as confidential and not share or disclose such information.

2.4 Memberships. The terms of Exhibit B apply to Education, Government, and Non-Profit Memberships. Member must use a separate VIP Agreement for any Products made available and ordered for use in the People's Republic of China.

3. Ordering, Pricing, and Fulfillment.

3.1 Ordering and Pricing. Member shall place Product orders with their Account Manager. All fees are determined by Member's Account Manager. Matters such as price, delivery, and payment terms must be agreed between Member and Member's Account Manager. Adobe cannot guarantee any particular discount, unless Adobe is Member's Account Manager.

3.2 Access, Admin Console Deployment, and Fulfillment Upon becoming a Member, Member's Administrator will be provided access to the available Products, through the Admin Console. Member may add many Products from the Admin Console and obtain immediate access to such Products. Adobe must receive an order for any such Products within the Grace Period.

3.3 Grace Period for Products Added in Admin Console. The Grace Period is 14 days after adding such Products. If Adobe does not receive an order for such Products within the Grace Period,





3.4 Agreement Anniversary Date, Subscription Period, and Renewals.

3.4.1 Anniversary Date. Unless otherwise communicated by Adobe, Member's Anniversary Date is the day twelve months after Adobe accepts Member's initial order ("Anniversary Date").

3.4.2 Subscription Period. The Subscription Period means the period that a Member may use Products and includes the initial Subscription Period and any renewal Subscription Period. The initial Subscription Period means the period that begins on Member's initial order date and ends the day prior to the Anniversary Date. With Product subscription renewal, a renewal Subscription Period will begin on the Anniversary Date and continue until the day prior to the next Anniversary Date. Use of subscription Products and any related services co-terminates on the last day of the Subscription Period. Most Consumables must be used within a single Subscription Period, and any unused Consumables will expire on the last day of the Subscription Period. Additional information may be found in the Program Guide.

3.4.3 Subscription Renewals. Adobe or Account Manager will use reasonable efforts to notify Member prior to any Subscription Period end date. Subscriptions must be renewed prior to the Anniversary Date in order to ensure uninterrupted use of Product.

3.5 Upgrade Protection. Purchase of the subscription Product(s) includes upgrade entitlement, meaning Member will be entitled to receive the latest generally available version of a subscription Product purchased under the program as long as the Product subscription is paid and active at the time Adobe makes the new version of the Product commercially available.

3.6 Returns. Without prejudice to any rights that a Member may have under any consumer laws in the jurisdiction that Member is located, once a Product is installed or accessed, Member cannot return it. If Member requests a return prior to installation, Member must return the entire order. Member must request the return of Products purchased under the Agreement through Member's Account Manager. Subject to any applicable warranty rights, return requests must be made to Member's Account Manager within fourteen (14) days after Member's original Product order date. Adobe must approve all return requests before any return is valid, as further described in the Program Guide.

3.7 Orders Direct From Adobe. If Member orders direct from Adobe, then this section will apply. Members can add Products at any time via the Admin Console or via an Adobe representative, but you must place an order for all Products with an Adobe representative. Products are priced at the rates current at the time ordered and prorated based on the days





the then current price for such may, at Adobe's discretion, be approved Member. These charges are the Product price, plus applicable taxes. For any ordered Products, Member must pay in full within 30 days of the invoice date in accordance with the invoice. Any amounts not paid when due will bear interest at a rate which is the lesser of 1.0% per month or the maximum rate permitted by applicable law on any overdue fees, from the date due until the date the full amount plus interest is paid in-full.

4. VIP Marketplace.

4.1. Section 4 "VIP Marketplace" will apply to Products licensed through VIP Marketplaces. Unless otherwise communicated by Adobe, Subscriptions offered through VIP Marketplaces auto-renew on Member's Anniversary Date despite language in 3.4.3 above. Member may work with their Account Manager to adjust Product subscriptions.

4.2 VIP Marketplace Grace Period. Notwithstanding Section 3.2 and 3.3, the Grace Period for VIP Marketplace Products is seven days after adding Products, not 14 days. If Adobe does not receive an order for Products added through VIP Marketplace within the Grace Period, then such Products will be removed.

5. Miscellaneous.

5.1 Transfer of License. Product TOUs do not govern restrictions regarding the transfer of Products licensed under or in connection with this Agreement. In limited circumstances, Adobe may permit the transfer of Product licenses under this Agreement in its sole and exclusive discretion. Such requests should be directed to Adobe Customer Service including a description of the reason for the proposed transfer and the contact information of the transferee. Additional information may be found in the Program Guide. For clarity, all offerings are licensed, not sold.

5.2 License Compliance. Member must maintain systems and/or procedures sufficient to ensure an accurate record of the number of copies of the Products that have been installed and/or deployed and retain records of Product installation and/or deployment for two (2) years after the termination of the Agreement. Adobe and/or its representatives may conduct an audit of Member's Product installation/deployment not more than once per year on thirty (30) days written notice. Such audit will require Member to provide an unedited, accurate report of all Products installed/deployed and accessed by Member and all valid purchase documentation for all Products within thirty (30) days after request. If the audit findings demonstrate non-conformity with the Product licenses, Member shall purchase the necessary

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shall survive termination of the Agreement for a period of two (2) years.

5.3 Use of Information. Adobe may use information about Member or Affiliate, including name and contact information, for fulfilling obligations under the Agreement. For more information, please see the Adobe Privacy Center (adobe.com/privacy).

5.4 Standing. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. If Member is an entity of the United States Federal Government, Member agrees that Adobe shall have standing and the right to assert any breach of contract claim arising out of this Agreement under the Contracts Disputes Act of 1978 ("Disputes Act").

5.5 General. The parties are independent contractors, and this Agreement will not be construed to imply that either party is the agent or venturer of the other. Member may not assign this Agreement (by operation of law or otherwise) without the prior written consent of Adobe and any prohibited assignment is null and void. Adobe may, at its sole discretion, assign or novate this Agreement, without the prior written consent of Member. This Agreement will be binding upon and will inure to the benefit of any permitted successors or assignees. No modification will be valid or binding unless in writing. This Agreement (including the Program Guide, applicable TOUs, and any Exhibits or on-line enrollment information, if applicable) represents the entire agreement between the parties on the subject matter of this Agreement. If any provision of this Agreement is held unenforceable, the remainder of the Agreement will continue in full force and effect.

This Agreement is prepared and is executed in the English language only. The English language version shall be controlling in all respects, and any version of this Agreement in any other language, shall not be binding and shall have no effect. Further, each party agrees that signature by Member or Adobe on any non-English language version, even if there is no signature(s) on the English language version shall be deemed execution of the English language version and binding on the parties. Without limiting the foregoing, if there is any conflict or inconsistency between the English language version of this Agreement and any other translated version of this Agreement, the English language version and interpretation shall prevail. All communications or notices to be made or given pursuant to this Agreement and any disputes arising under this Agreement shall be conducted or resolved in the English language.

5.6 Services. The Product may integrate with a variety of services, operated either by Adobe or

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integrated services or services provided by third parties, or integrated services provided by Member, to prevent viewing of or access to user-generated content services it may (i) disable service access in the Creative Cloud Packager, where that functionality is made available, or (ii) block access to the services via its network firewall. Services are not, under any circumstances, available to users under the age of thirteen (13). Adobe disclaims liability for all user-generated content available via the services. Member is responsible for determining whether use of the services complies with applicable laws in Member's jurisdiction. Member is not entitled to a refund and Adobe is not liable (i) if access to the services is slowed or blocked as a result of government or service provider action, or (ii) if Adobe reasonably deems it necessary to block access to some or all of the services.

EXHIBIT B

EDUCATION, GOVERNMENT, AND NON-PROFIT MEMBERSHIPS

A. EDUCATION MEMBERS

For the Member who is an Education Entity (defined below), the following additional terms apply. Adobe reserves the right to terminate Education memberships if Member is not an Educational Entity.

1. Definitions Applicable to Education Members.

1.1 Education Entity. The following is a non-exhaustive list of qualified educational institutions: (a) Accredited (by official accrediting entities) public or private primary or secondary school providing full-time instruction; (b) Accredited public or private university or college (including community, junior, or vocational college) that grants degrees requiring not less than the equivalent of two years of full-time study; (c) Named educational institutions approved by Adobe, only if individual named entities are approved by Adobe in writing; (d) Hospitals that are wholly owned and operated by an otherwise qualified educational institution, where "wholly owned and operated" means the educational institution is sole owner of the hospital and the only entity exercising control over day to day operations; and (e) Higher education research laboratories that are a public institution and recognized by a national or state educational authority.

The following is a non-exhaustive list of entities that are not qualified educational institutions:



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organizations that are not accredited schools; (e) Research training centers or schools granting certificates for courses such as computer software training or job training that are not accredited schools or which grant degrees requiring less than the equivalent of two years of full-time study; (f) Military schools that do not grant academic degrees; and (g) Research laboratories not recognized by a national or state ministry overseeing education. For example, institutions recognized by other government branches are not eligible.

The above lists do not apply to the countries as listed in Section 1.2 (Regional-Specific Definition) below.

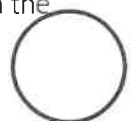
1.2 Regional-Specific Definition of Education Entity.

(a) *Asia Pacific Countries excluding Southeast Asia Countries* as defined in sub-paragraph (b) below. If Education Member is resident in Australia, New Zealand, India, Sri Lanka, mainland China, Hong Kong SAR of China, Taiwan region, the Republic of Korea, the People's Republic of Bangladesh, the Federal Democratic of Nepal, the Republic of the Union of Myanmar, Pakistan or Mongolia or any country designated by Adobe from time to time, "Education Entity" shall mean the entities that satisfy the meaning of "Qualified Educational Users" (except for the sections entitled "Full and Part Time Faculty and Staff" and "Students") designated by Adobe on <http://www.adobe.com/ap/education/purchasing/qualify.html> (or its successor web site thereto), as updated by Adobe from time to time.

(b) *Southeast Asia Countries*. If Education Member is resident in Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam, "Education Entity" or "Education Institution" shall have the respective meanings designated by Adobe on https://www.adobe.com/go/edu_entity_sea (or its successor web site thereto), as updated by Adobe from time to time.

(c) *Japan*. If Education Member is resident in Japan, "Education Entity" or "Education Institution" shall have the respective meanings designated by Adobe on <https://helpx.adobe.com/jp/x-productkb/policy-pricing/cq081918191.html> (or its successor web site thereto), as updated by Adobe from time to time.

1.3 Primary and Secondary Schools. Primary and Secondary Schools are defined in the Program Guide. Adobe may have offers available to members that qualify as Primary and Secondary Schools. Adobe reserves the right to terminate Primary and Secondary School licenses and memberships if Member is not a Primary and Secondary School as defined in the Program Guide. See VIP Education Program Guide for additional details.



B. GOVERNMENT MEMBERS

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Applicant reserves the right to terminate participation in this program if the Member is not a Government Entity.

1. Definitions Applicable to Government Members.

Government Entity. Participation is contingent upon Member (and each Affiliate) being a "government entity", which means: (a) a federal, central, or national agency, department, commission, board, office, council, or authority (executive, legislative, or judicial); (b) a municipality, special district, city, county, or state governmental agency, department, commission, board, office, council, entity, or authority, or any other agency in the executive, legislative, or judicial branch of state or local government that is created by the constitution or a statute of the governing state, including the district, regional, and state administrative offices; or (c) a public agency or organization created and/or funded by federal, state, or local governments and authorized to conduct the business of governing or supporting citizens, businesses, or other governmental entities. For the avoidance of doubt, the following entities are not Government Entities: private "for profit" companies, non-profit organizations, trade or industry associations, higher education institutions, and labor unions, even those conducting work on behalf of or with government agencies, unless such entity has a specific letter of authorization from a U.S Government Entity pursuant to FAR Part 51. Member represents to Adobe that it and its Affiliates are government entities. A list of qualified "Government Entities" for Japan is available at: http://www.adobe.com/jp/aboutadobe/volumelicensing/pdfs/cl5_government_license_table.pdf.

1.1 For France: a Government Entity is either an agency; a minister; a commission, board, office, or council (national, regional, or local); a city; a region; or any entity subject to the French Public Law and under the administration of a government entity.

2. Terms Applicable to Government Members.

2.1 Additional Restrictions. For United States Federal Government Members, it is understood that any orders are subject to FAR 52.232-18 (Availability of Funds) and FAR 52.232-19 (Availability of Funds for the Next Fiscal Year) and therefore United States Federal Government Members shall not deploy any Product unless funds are available to pay for such orders. To the extent any state or local government entity is subject to similar requirements, such entities shall not deploy any Product unless funds are available to pay for such orders.

2.2 Termination. This Agreement may be terminated by a Member who is a United States



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2.3 Federal Government Members. Notice to U.S. Federal Government End Users (Commercial Items): The Products, provided under this Agreement are "Commercial Item(s)," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," and services related thereto, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through §227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Federal 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 of this Agreement and the TOUs. Unpublished rights are reserved under the laws of the United States- Adobe Inc., 345 Park Avenue, San Jose, CA 95110-2704, USA.

C. NON-PROFIT MEMBERS

Additional terms applicable to Non-Profit Members are contained in the Program Guide. Adobe reserves the right to terminate memberships, if Member is not an eligible non-profit organization, as described on <https://helpx.adobe.com/buying-programs/non-profit.html>.

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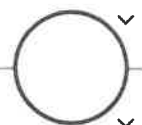


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