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Contract Number

22-121

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: *Stock Additional Terms 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 Stock Additional Terms

Last updated June 15, 2020. Replaces all prior versions.

These Additional Terms govern your use of the Adobe Stock Services and the Stock Assets (as defined below) and are incorporated into the Adobe General Terms of Use ("**General Terms**") located at www.adobe.com/go/terms (these Additional Terms and the General Terms are collectively referred to as "**Terms**"). All rights and licenses granted to you under these Adobe Stock Additional Terms are subject to your compliance with the Terms. Capitalized terms not defined here have the same meaning as defined in the General Terms.

1. Definitions

1.1. "**Audio Work(s)**" means the audio tracks (including all sound recordings, musical compositions, and any other recordings containing sounds or a series of sounds, embodied therein) that are designated as Adobe Stock assets on any Websites, except that "Audio Work" does not include any audio that may be in a Work.

1.2. "**Project**" means a specific project created by you that combines the Audio Work with images, video, narration, or other materials as permitted in the Terms.

1.3. "**Stock Asset(s)**" means one or both of Audio Work(s) and Work(s).

1.4. "**Website(s)**" means Adobe Stock Services available at www.stock.adobe.com (or successor URL), or other Adobe websites or applications that make available Stock Assets for license.

1.5. "**Work(s)**" means the Pro Images (as defined below) as well as the photographs, illustrations, images, vectors, videos, 3D assets, template assets, and other pictorial or graphic works designated as Adobe Stock assets on any Websites, and for clarity, does not mean any Audio Work(s).

2. **Ownership.** Except as expressly granted in the Terms, we and our licensors retain all rights, title, and interest in and to the Stock Assets. No title or ownership interest in or to the Stock Assets is transferred to you by virtue of the Terms.

3. License Terms and Specific Restrictions Applicable to Works

3.1. **Standard License and Specific Restrictions for Works.** The license described in this section 3.1 is referred to as a "**Standard License**."

(A) **Standard License for Works.** If you have purchased a Standard License for a Work, then we grant you a non-exclusive, perpetual, worldwide, non-transferable (except pursuant to section 6 (Additional Rights)), non-sublicensable license to use, reproduce, archive, modify, and display the Work, in all media, for (1) advertising, marketing, promotional and decoration purposes; and (2) personal and non-commercial uses, up to 500,000 times as further described in section 3.1(B) ("**Standard License Specific Restrictions**").

(B) **Standard License Specific Restrictions for Works.** In addition to the restrictions in section 7 (Restrictions), the following restrictions apply to any Work under a Standard License:

(1) you may not, in the aggregate, (a) cause or allow a Work to appear on more than 500,000 printed materials (including copies of such materials); or (b) incorporate a Work into a live, recorded, or digital production if the

audience is expected to exceed 500,000 viewers, except the restriction on audience size does not apply to Works displayed only on websites, social media sites, or mobile applications;

(2) you may not incorporate a Work into merchandise intended for sale or distribution, including on-demand products, unless (a) the Work has been modified to the extent that the new work, as incorporated into such merchandise, is not substantially similar to the Work and can qualify as an original work of authorship; or (b) the primary value of such merchandise does not lie with the Work itself;

(3) you may not use, include, or incorporate the Work in any electronic template or design template application (e.g., a web design or presentation template, or templates for electronic greeting cards or business cards); and

(4) you may not use, reproduce, distribute, or display the Work with a press release that includes the distribution of the stand-alone image file to the media.

3.2. Enhanced License and Specific Restrictions for Works. The license described in this section 3.2 is referred to as an “**Enhanced License**”.

(A) **Enhanced License for Works.** If you have purchased an Enhanced License for a Work, then we grant you the same rights as under a Standard License, except without the limitation on the number of reproductions or viewers set forth in section (1) of 3.1.(B) (Standard License Specific Restrictions for Works).

(B) **Enhanced License Specific Restrictions for Works.** The restrictions in sections 3.1.(B)(2), 3.1.(B)(3), and 3.1.(B)(4) (Standard License Specific Restrictions), and in section 7 (Restrictions) apply to any Work under an Enhanced License.

3.3. Extended License and Specific Restrictions for Works. The license described in this section 3.3 is referred to as an “**Extended License**”.

(A) **Extended License for Works.** If you have purchased an Extended License for a Work, then we grant you the same rights as under an Enhanced License, in addition to the right to use, reproduce, distribute, and display the Work:

(1) for incorporation into merchandise and template files intended for sale or distribution, without limitation on the number of reproductions or viewers, provided the recipient is only permitted to use or access the Work as incorporated into the merchandise or template; and

(2) in a press release that includes distribution of the stand-alone image file to the media, provided the Work is only published in connection with the press release, and not used or disseminated in any other manner.

For clarity, and without limitation, you may use the Work in connection with (a) electronic templates and design template applications; (b) merchandise such as mugs, t-shirts, posters, and greeting cards; and (c) “print on demand” services.

(B) **Extended License Restrictions for Works.** The restrictions in section 7 (Restrictions) apply to any Work under an Extended License.

4. License Terms and Specific Restrictions Applicable to Audio Works. If there is a conflict between this section 4 and any other section of the Terms, this section 4 controls with respect to Audio Works only.

4.1. Audio Standard License and Specific Restrictions. The license described in this section 4.1 is referred to as an **"Audio Standard License"**.

(A) **Audio Standard License.** If you have purchased an Audio Standard License, then we grant you a non-exclusive, perpetual, worldwide, non-transferable (except pursuant to section 6 (Additional Rights)), non-sublicensable (except as to 4.1(A)(3) below) license to:

- (1) synchronize and otherwise combine the Audio Work with video, audio, and other materials, to create an unlimited number of Projects;
- (2) adapt, edit, and modify the Audio Work in Projects (including converting the file format, pitch-shifting, time compression, cutting, and trimming);
- (3) reproduce, copy, transmit, broadcast, display, publicly perform, and otherwise distribute the Audio Work as incorporated into a Project (except as specified in 4.2(A) (Audio Extended License)); and
- (4) subject to any and all applicable restrictions, use Projects for any purpose, including advertising, marketing, promotional, and commercial.

(B) **Audio Standard License Specific Restrictions.** In addition to the restrictions in section 4.3 (Audio Work Restrictions) and section 7.1 (General Restrictions), you may not use an Audio Work in any Project as specified in sections 4.2(A)(1)-(7) (Audio Extended License) without first obtaining an Audio Extended License.

4.2. Audio Extended License and Restrictions. The license described in this section 4.2 is referred to as an **"Audio Extended License"**.

(A) **Audio Extended License.** If you have purchased an Audio Extended License, then we grant you the same rights as under an Audio Standard License, in addition to the right to reproduce, copy, transmit, broadcast, display, publicly perform, or otherwise distribute Projects in:

- (1) radio;
- (2) television;
- (3) paid-access streaming video services;
- (4) paid-access on-demand video services;
- (5) theatrical releases;
- (6) computer software applications (including mobile applications and video games); and
- (7) physical point of sale locations (such as shopping malls, point of sale systems, in-store displays, and showroom videos).

(B) **Audio Extended License Restrictions.** The restrictions in section 4.3 (Audio Works Restrictions) and section 7.1 (General Restrictions) apply to any Audio Work under an Audio Extended License.

4.3 Audio Work Restrictions. In addition to the restrictions in section 7.1 (General Restrictions) and any restrictions specific to a license type, you must not:

- (A) use any Audio Work in a way that alters its fundamental character, such as to create remixes or mashups; make any other alterations for the purpose of creating new music; or otherwise alter the Audio Work except as expressly provided in section (1) of 4.1(A) (Audio Standard License);
- (B) use any Audio Work as a theme song in a Project specified in sections 4.2 (A) (1)-(7) (Audio Extended License);

- (C) incorporate any Audio Work into any electronic template or design template application (e.g., a web design or presentation template, or templates for electronic greeting cards or business cards);
- (D) offer any Audio Work on a stand-alone basis or as a listening-only experience, such as a track on an album; or
- (E) upload or make available any Audio Work as combined solely with a still image or simple one-shot video on a streaming platform (e.g. creating a playlist by using an Audio Work in combination with a visual element, where the visual element adds little to no value).

5. Comp License for Stock Assets. The license described in this section 5 is referred to as a "**Comp License**".

- (A) For up to 90 days from the date of download of a Stock Asset, you may use, reproduce, modify, adapt or display "comp" (i.e. composite, or preview) versions of that Stock Asset solely for previewing how the Stock Asset may look or sound in production or a Project. Unless a license is purchased, you have no right to use a Stock Asset in a final production or Project, or to make the Stock Asset publicly available in any manner.
- (B) A Comp License version of a Stock Asset is either a watermarked Work or an Audio Work that is a compressed AAC file with a .m4a file extension, unless otherwise indicated on the Website.
- (C) There is no guarantee that any Stock Asset you download under a Comp License will be available for license thereafter. Any use of a Stock Asset under a Comp License is on an "AS IS" basis with no representation, warranties, or indemnities of any kind.

6. Additional Rights. Subject to the Terms and any applicable restrictions, you may have the following additional rights:

(A) **Employer or Client Use.** You may license Stock Assets for the benefit of your employer, or one of your clients, provided that you:

- (1) represent and warrant that you have full legal authority to bind your employer or client to these Terms;
- (2) are solely responsible and liable for use of the Stock Assets by your employer or client (as applicable);
- (3) transfer your license to your client or employer via an enforceable written agreement that includes applicable terms no less restrictive than these Terms; and
- (4) purchase additional licenses for the same Stock Assets if you or your employer intend to use the same Stock Assets for yourself, your employer, or for the benefit of other clients (as applicable).

(B) **Employee and Contractor Use.** You may transfer files containing the Stock Assets, including productions, Projects, or other permitted derivative materials, to employees or subcontractors, provided that:

- (1) such employees and subcontractors agree in an enforceable written agreement to abide by the restrictions in the Terms;
- (2) such employees and subcontractors only use the Stock Assets on your behalf; and
- (3) you are solely responsible and liable for use of the Stock Assets by your employee or contractor.

7. Restrictions.

7.1. General Restrictions. You must not:

- (A) use the Stock Assets in any way that allows a third party to use, download, extract or access the Stock Assets (1) as a stand-alone file; or (2) in a way that exceeds the scope of the license to the Stock Assets;
- (B) use the Stock Assets with material that violates any third party rights, or otherwise take any action in connection with the Stock Assets that infringes the intellectual property or other rights of any person or entity, such as the moral rights of the creator of the Stock Assets or the rights of any person who, or any person whose property, appears in or is associated with the Stock Assets;
- (C) register, or apply to register, a trademark, design mark, service mark, sound mark, or tradename, that uses any Stock Asset (in whole or in part); or claim ownership rights in an attempt to prevent any third party from using a Stock Asset;
- (D) use the Stock Assets in a manner that is pornographic or defamatory, or that violates any applicable laws, rules, or regulations;
- (E) use the Stock Assets in a manner, or in connection with a subject, that a reasonable person could consider unflattering, immoral, offensive, obscene, or controversial, taking into account the nature of the Stock Asset, examples of which could include ads for tobacco; adult entertainment clubs or similar venues or services; implied or stated endorsements of political parties or other opinion-based movements; or implying mental or physical impairment;
- (F) use the Stock Assets in an editorial manner without the accompanying credit line or attribution, placed in a way that is reasonable to the applicable use, in this format: "[Contributor Name] / stock.adobe.com", or as designated on the Website;
- (G) use the Stock Assets contrary to any additional restrictions displayed on the Website in the details panel of such Stock Assets;
- (H) remove, obscure or alter any proprietary notices associated with the Stock Assets, or give any express or implied misrepresentation that you or another third party are the creator or holder of Intellectual Property Rights in any Stock Assets;
- (I) use the Stock Assets or any title, caption information, keywords or other metadata associated with Stock Assets for any (1) machine learning or artificial intelligence purposes; or (2) technologies designed or intended for the identification of natural persons;
- (J) use the Stock Assets other than for the benefit of yourself or a single client, without obtaining a separate license for a client or any additional clients, as applicable;
- (K) access Stock Assets filtered out by safe search unless you are over 18 and live in a country where adult content is legal; or
- (L) use or exploit the Stock Assets in any manner other than as expressly provided in these Terms.

7.2. Editorial Use Restrictions. For Stock Assets designated as "editorial use only":

- (A) you may only use these Stock Assets (1) in a manner that maintains the editorial context and meaning of the Stock Assets; (2) in relation to events or topics that are newsworthy or of general interest to the public; and (3) in compliance with any additional third-party licensor restrictions displayed on the Website in the details panel of such Stock Assets;
- (B) you must include the accompanying credit line or attribution, placed in a way that is reasonable to the

applicable use, in this format: "[Contributor Name] / stock.adobe.com", or as designated on the Website;

(C) you must not (1) use these Stock Assets for any commercial (i.e., promotional, endorsement, advertorial or merchandising) purpose; or (2) modify these Stock Assets, except for minor adjustments for technical quality or slight cropping or resizing; and

(D) in order to use editorial Stock Assets for a commercial purpose, you must first (1) obtain a license directly from the copyright owner of the Stock Assets; and (2) secure additional permissions as necessary.

8. Attribution. In addition to any attribution obligations in section 7 (Restrictions):

(A) if a Stock Asset is used in a context where any other stock content provider receives attribution, you also must include substantially similar attribution for Adobe Stock; and

(B) if the Stock Asset is used in an audiovisual production, you must use commercially reasonable efforts to include attribution for Adobe Stock in accordance with industry standards, and where possible in the following format: (1) For Works: [Contributor Name]/stock.adobe.com; and (2) For Audio Works: "[Song Title]" performed by [Artist's Name] / via Adobe Stock"; or as otherwise notified by Adobe.

9. Special Terms for Subscription Users, Business Users, VIP, and Teams

9.1. Subscription User Account. You may not transfer your subscription or allow others to use your subscription, even if they are your affiliates, colleagues, contractors, or employees. However, you may license Stock Assets multiple times through the subscription.

9.2. Business Users. If a Business User purchases a license to any Stock Asset, such license is granted to the Business, whether such license was purchased before or after the date the Terms were last updated. The Business User's use of any Stock Assets is governed by the Business's agreement with us. A Stock Asset licensed by a Business on a team plan may be used only by Business Users from a single legal entity.

9.3. Adobe Stock Credits in VIP. If you purchase Adobe Stock credits via Adobe's VIP program, as part of your Creative Cloud Team plan, then (A) credit purchases are not refundable; and (B) unused credits automatically expire 12 months from the date of purchase.

9.4. Special Terms for CC Pro Edition Plan. The terms of this section 9.4 apply only to Pro Images that are licensed as part of a CC Pro Edition Plan by a Teams Customer or an Enterprise VIP Customer. If there is a conflict between this section 9.4 and any other section of the Terms, this section 9.4 controls with respect to Pro Images only.

(A) Definitions.

(1) **"CC Pro Edition Plan"** means any Creative Cloud plan that: (a) includes "Pro Edition" in the name; (b) is available to Teams Customers and Enterprise VIP Customers; and (c) includes the right to download and license an unlimited number of Pro Images.

(2) **"Grace Period"** means the 30 days immediately following the termination or expiration of your CC Pro Edition Plan.

(3) **"Pro Image(s)"** means, as part of a CC Pro Edition Plan, only those photographs, illustrations, 3D assets, templates files, and vectors designated by Adobe as "standard" Works. For clarity, an asset type is not a "Pro Image" unless expressly listed in this definition.

(4) **"Teams Customer(s)"** means Creative Cloud for teams customers that have purchased a CC Pro Edition Plan for teams, including via VIP.

(5) **"Enterprise VIP Customer(s)"** means Creative Cloud for enterprise customers that have purchased a CC Pro Edition Plan for enterprise via VIP.

(B) **License for Pro Images.** Pro Images are licensed to (1) Teams Customers under an Enhanced License; and (2) Enterprise VIP Customers under an Extended License.

(C) **Limitations on License for Pro Images.**

(1) The license to Pro Images set forth in this section 9.4 is perpetual for those specific uses of the Pro Images you have used during the term of your CC Pro Edition Plan, including any extensions or renewals, as well as the Grace Period.

(2) Only Users licensed for a CC Pro Edition Plan may use the Adobe Stock APIs (as defined in the Adobe Developer Additional Terms) to access Pro Images.

(3) You agree not to stockpile Pro Images or otherwise abuse access to CC Pro Edition Plan.

(4) Comp Licenses are not applicable to Pro Images.

(D) **Effect of Termination or Expiration of CC Pro Edition Plan.** You will have a Grace Period to make use of any Pro Images downloaded and paid for prior to the termination or expiration of your CC Pro Edition Plan, and any such Pro Images used in a project or other end use prior to the end of the Grace Period remain subject to the Terms. Any Pro Images downloaded and paid for, but not so used before the end of the Grace Period, are not considered licensed. For clarity, you may not download Pro Images during the Grace Period. Other than during the Grace Period, you may not use a Pro Image for the first time, or in a new context (such as on new or different merchandise), after the termination or expiration of your CC Pro Edition Plan. By way of example, if, prior to such termination or expiration, you printed a promotional brochure with a Pro Image on it, you may continue to produce that brochure in perpetuity, but after the end of the Grace Period, you may not use that same Pro Image in a different brochure, project or other end use.

10. Our Indemnification Obligations.

10.1. **Our Duty to Indemnify.** Provided that an Indemnified Stock Asset is used in accordance with the Terms, and subject to section 10.2 (Conditions to Indemnification), we will defend any third-party claim, action, or legal proceeding made against a person or entity during the term of the Terms that alleges that your use of the Indemnified Stock Asset directly infringes the third party's copyright, trademark, publicity rights, or privacy rights ("**Infringement Claim**"). "**Indemnified Stock Asset**" means a Stock Asset that (A) you have downloaded and paid for; and (B) is not designated as "editorial use only." We will pay you the damages, losses, costs, expenses, or liabilities directly attributable to an Infringement Claim and which are either finally awarded by a court of competent jurisdiction against you or agreed to in a written settlement agreement signed by us.

10.2. **Conditions to Indemnification.** We will have no liability for any Infringement Claim:

(A) that arises from: (1) any modification of a Stock Asset; (2) any combination of a Stock Asset with any other materials or information; (3) any use of a Stock Asset after we have instructed you to stop using the Stock Asset; (4) any use under a Comp License; or (5) the context in which the Stock Asset is used; or

(B) if you fail to: (1) notify us in writing of the Infringement Claim promptly upon the earlier of learning or receiving notice of it, to the extent we are prejudiced by this failure; (2) provide us with reasonable assistance as requested for the defense or settlement of the Infringement Claim; (3) provide us with the exclusive right to control, and the authority to settle, the Infringement Claim; or (4) refrain from making admissions about the Infringement Claim without our prior written consent.

10.3. Limitation of Liability. Notwithstanding anything to the contrary contained in the Terms or in any other agreement between you and us, irrespective of the number of times the Stock Asset is downloaded or licensed, our total maximum aggregate liability with respect to any Stock Asset will in no event exceed US\$10,000 per Stock Asset. Notwithstanding any otherwise applicable statute(s) of limitation, any action or dispute resolution proceeding must be commenced within two years of the act, event, or occurrence giving rise to the claim.

10.4. Sole and Exclusive Remedy. The foregoing states our entire liability and obligation, and your sole and exclusive remedy, with respect to any Stock Asset or Infringement Claim.

11. Your Indemnification Obligations. Without limiting the obligations in the General Terms, you will indemnify us and our subsidiaries, affiliates, officers, agents, employees, partners, and licensors from any claim, demand, loss, or damages, including reasonable attorneys' fees, arising out of or related to your use of the Stock Assets (except as indemnified under section 10 (Our Indemnification Obligations)) or your violation of the Terms.

12. Disclaimers. We are not responsible, and expressly disclaim any liability, for:

(A) the accuracy of any Stock Asset, including any related descriptions, categories, captions, titles, metadata, or keywords included with any Stock Asset; and

(B) feedback, materials, or answers to questions provided to you by us or our representatives, whether about these Terms, your use or proposed use of a Stock Asset, or otherwise, all of which are provided as a courtesy only and do not constitute legal advice.

13. Reservation.

(A) If you have actual knowledge, or if you or Adobe reasonably believe, that a Stock Asset may be subject to a third-party claim, then we may instruct you to cease all use, reproduction, modification, display, performance, distribution, and possession of such Stock Asset, in which case you must (1) promptly comply with such instructions; and (2) ensure your clients, distributors, employees, and employers, as applicable, also stop using the Stock Asset.

(B) We may, at any time (1) discontinue the licensing of any Stock Asset; and (2) deny the downloading of any Stock Asset.

14. Effect of Termination.

(A) If your subscription ends, or upon termination of these Additional Terms, then:

(1) you will forfeit all rights, title and interest in and to any and all unused credits or unused standard assets from a subscription plan, as applicable;

(2) except as set forth in section 9.4(D) (Effect of Termination of CC Pro Edition Plan), any perpetual licenses granted as to Stock Assets will survive and you may continue to use those licensed Stock Assets;

(3) you should download any Stock Assets that you have licensed, as such licensed Stock Assets may not be available after termination or expiration; and

(4) you should make note of any license validation codes issued upon license of an Audio Work, as such license codes may not be available after termination or expiration.

(B) If we terminate your right to use any Stock Asset(s) due to your breach of the Terms, you must cease all use, reproduction, modification, display, performance, distribution, and possession of any such Stock Asset(s).

15. Injunctive Relief. In the event of your or others' unauthorized access to, or use of, the Stock Assets in violation of these Terms, you agree that we are entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction, without providing notice or opportunity to cure.

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