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Contract Number

22-115

SAP Number

Innovation and Technology Department

Department Contract Representative	Jennifer Mancebo
Telephone Number	909-388-5579
Contractor	Adobe, Inc
Contractor Representative	Pierluigi Oliverio
Telephone Number	40-821-4461
Contract Term	Perpetual
Original Contract Amount	Non-financial
Amendment Amount	N/A
Total Contract Amount	Non-financial
Cost Center	1200604048

Briefly describe the general nature of the contract: *Value Incentive Plan for Large Government Agencies Agreement 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 _____

EXHIBIT A

VALUE INCENTIVE PLAN FOR LARGE GOVERNMENT AGENCIES
AGREEMENT

THIS VALUE INCENTIVE PLAN FOR LARGE GOVERNMENT AGENCIES (“LGA,” or “Program”) Agreement (“Agreement”) sets forth the terms of your participation as a Member in the Program. The Agreement is effective as of the date Member places its first LGA Product order. This Agreement is entered into by and between Adobe and the organization identified in on-line enrollment to become a Member. “Adobe” shall mean ADOBE INC., a Delaware corporation having a place of business at 345 Park Avenue, San Jose, CA 95110-2704. 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) from Adobe. This Agreement is effective when Member’s partner places an order with Adobe under this Agreement.

1. Program Description.

1.1 General and Program Term. The LGA Program is a flexible licensing program designed to allow Government Entities to manage and deploy Product licenses purchased through the Program. The VIP Program is a membership program based on an annual product renewal period as further defined in Section 3.4 of this Agreement. The LGA program is a special variation (a sub-program) of Adobe’s VIP program just for large Government Entities that initially license at least 100 Products. References to Adobe’s VIP program, will include and apply to LGA, unless there is a conflict in the LGA Program, in which case LGA terms will control. Member is required to accept the online VIP terms. Once Member agrees to these LGA terms, however, these LGA terms will supersede and replace the online VIP terms. Once the organization accepts these terms and enrolls in a membership through the VIP online user interface, the organization will be a member of the Program (“Member”) until the earliest of when (a) Adobe terminates the Program, or (b) this Agreement terminates. If Member is already an existing LGA Member, these terms supersede and replace Member’s prior LGA Agreement. This LGA Agreement governs all of Member’s LGA Products. Member’s participation is subject to the terms of the VIP program guide, which may be updated from time to time and is available at www.adobe.com/go/vip_program_guide_en (“Program Guide”). The Program Guide is hereby incorporated into the Agreement by reference. Adobe may change the terms of the Program at its sole discretion.

1.2 Government Entity. An LGA Member must be a Government Entity. Government Entity means: (a) a federal, central, or national agency, department, commission, board, office, council, entity, 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 is a Government Entity. Adobe reserves the right to terminate LGA memberships if Member is not a Government Entity.

1.3 TOU. The access and use of the Products is governed by the Adobe Terms of Use available at <https://www.adobe.com/legal/terms.html> (the “TOU”). The TOUs are hereby incorporated by reference. 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 LGA Program Products. LGA is designed to offer Adobe’s enterprise Products to Government Entities. Adobe non-enterprise Products may be available in the Admin Console, however, LGA Members may not order or use such Products. For a complete list of Products available through the LGA Program, Member shall contact its

Account Manager. 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.

2. Participation.

2.1 Adobe ID and VIP ID. An Adobe ID will be required by Member's initial administrator in order to enroll in the Program. In the event of inconsistency between the terms of this Agreement and the terms required when signing up for an Adobe ID, such inconsistency will be resolved in favor of this LGA Agreement. Upon completion of the VIP enrollment process, the Member will be assigned a VIP ID which must be referenced on all LGA orders. Member is responsible for acts or omissions of anyone who obtains access to and use of the Products through Member. Member must deploy type 2 or type 3 IDs. For more information see https://www.adobe.com/go/setup_identity.

2.2 Admin Console. The Program administration user interface is the "Admin Console." The individual initially accepting the online VIP terms on behalf of Member will be assigned as the Contract Owner and such individual is authorized by Member to accept such terms. 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 proprietary information, subject to any freedom of information laws and regulations or other laws requiring the protection of contractor confidential information and thus not share or disclose such information.

3. Ordering, Pricing, and Fulfillment.

3.1 Ordering; Pricing; LGA Level. Member shall place Product orders with their Account Manager within thirty (30) days after the Purchase Authorization Date, with payment being calculated from the Purchase Authorization Date. Purchase Authorization Date means the date the Purchase Authorization is created, or if no Purchase Authorization is created, then the date of order. Matters such as price, delivery, and payment terms must be agreed between Member and Member's Account Manager. Account Manager means either (i) Reseller, if a transaction is through a reseller, or (ii) Adobe representative, if a transaction is direct with Adobe. Adobe cannot guarantee any particular discount, unless Adobe is Member's Account Manager. Member's initial LGA level is based on the number of initial licenses Member purchases. Member's order will fail if Member does not purchase the minimum number of licenses required for Member's LGA level within 15 days after Member's initial order or Anniversary Date. Subsequent year LGA levels will be set as described for Select levels in the VIP Program Guide. LGA Members may not participate in VIP three-year commit amendment. A VIP three-year commit amendment applies only for the standard Adobe VIP Program, and any acceptance of the standard VIP three-year commit is void for an LGA customer.

3.2 Access and Fulfillment. Upon becoming a Member, Member's Administrator will be provided access to the available Products, through the Admin Console. Member will have thirty (30) days from the Purchase Authorization Date to place a corresponding order. A Purchase Authorization may be created when Member adds Products through the Admin Console.

3.3 Over-deployment. If the number of Products ordered is less than the actual number of Products deployed after the thirty-day period referenced in Section 3.2, then Member will no longer be able to deploy additional Products until payment is made for all outstanding deployments. Member may manage the number of Products deployed in the Admin Console.

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 either Adobe accepts Member's initial order or, if earlier, Member's initial Purchase Authorization Date ("Anniversary Date").

3.4.2 Subscription Period. The Subscription Period means the period that a Member may use Products and any related services and includes the initial Subscription Period and any renewal Subscription Period. The initial Subscription Period means the period that begins on Member's first Purchase Authorization Date and ends the day prior to the Anniversary Date. If Member renews, then 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. Consumables must be used within a single Subscription Period. Additional information may be found in the Program Guide.

3.4.3 Subscription Renewals. Adobe will use reasonable efforts to notify Member prior to subscription termination. Member must renew subscriptions prior to the Anniversary Date in order to ensure uninterrupted use of Product. Renewal orders may be placed before the Anniversary Date; however, early renewal does not change the Anniversary Date.

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 applicable procurement laws or regulations governing government contracts with Member, 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. Also, if Member does not purchase the required number of licenses for Member's LGA level within 15 days after Member's initial order or Anniversary Date, as applicable, then Adobe may return any licenses.

4. Miscellaneous.

4.1 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.

4.2 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, subject to facility access requirements as set forth by Member. 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 either purchase the necessary licenses within thirty (30) days after being so notified or immediately discontinue usage and compensate Adobe for fair usage of such licenses in accordance with applicable government contract law and regulation. This Section 4.2 shall survive termination of the Agreement for a period of two (2) years.

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

4.4 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").

4.5 General. The parties are independent contracting entities, and this Agreement will not be construed to imply that either party is the agent or venturer of the other. Subject to applicable law and regulation 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. Subject to applicable law and regulation Adobe may assign or novate this Agreement. 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 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.

4.6 Services. The Product may integrate with a variety of services, operated either by Adobe or by third parties, which may contain user-generated content that may be (a) inappropriate for minors, (b) illegal in some countries; or (c) inappropriate for viewing at work. A complete list of integrated services is available here: www.adobe.com/go/integratedservices. If Member wants 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.

5. Additional Terms for LGA

5.1 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.

5.2 Termination. This Agreement may be terminated by a United States federal government Member pursuant to the applicable procedures under FAR part 49 and applicable procedures under FAR 52.212-4, FAR 52.249-1 (Termination for Convenience of the Government). If the Member materially breaches one of the following: (a) reverse engineers, decompiles, disassembles, or otherwise attempts to discover the source code of the software, (b) unbundles the constituent component parts of the software, or (c) provides use of the software in a computer service business, third party outsourcing facility or service, service bureau arrangement, or time sharing basis, the relevant law and regulations regarding government breach shall apply and Adobe may immediately terminate this Agreement, upon written notice. 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. By written notice, Adobe may terminate this Agreement effective on Member's next Anniversary Date.

5.3 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.

5.4 LGA TOU amendments. The following clauses in the TOU are revised as follows:

5.4.1 TOU Section 1.1— For US Federal Government Entity Members, this Agreement is governed by the laws of the United States. For US state and local Government Entity Members, this Agreement is governed by the laws of the state in which your Government Entity is domiciled, except concerning conflicts of laws.

5.4.2 TOU Section 8.2 (Indemnification) shall begin with "To the extent permitted by applicable law,"

5.4.3 TOU Section 14.1 (Process)—the second sentence regarding arbitration is deleted.

5.4.4 TOU Section 14.2 (Rules) is deleted.

5.5 Adobe is not entering into a direct purchasing relationship with Member for the Products. Reseller is solely responsible for setting the terms of payment with Customer (including but not limited to when payments by Customer are due to Reseller).

5.6 Adobe will provide support services for the Products as described at <http://www.adobe.com/go/supportpolicies> terms.

5.7 By placing an order with Reseller for Products through LGA, Customer will be deemed to have accepted the terms of this LGA Agreement.