

## ***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 (defined below) in the Program. The Agreement is effective as of the Program Acceptance Date, which is either the date of online enrollment or the date last signed below. This Agreement is entered into by and between Adobe (defined below) and the customer identified in either (a) Exhibit A of this Agreement, or (b) the on-line enrollment to become a "Member" as further defined in Section 1.1 below. “Adobe” shall mean either ADOBE SYSTEMS INCORPORATED, 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, 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 and services 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 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 an on-going membership program based on an annual product renewal period as further defined in Section 3.4 of this Agreement. Once the customer enrolls in a membership through the VIP Admin Console (“Admin Console”) enrollment process and is accepted by Adobe into the Program, the customer will be a member of the Program ("Member") until the earliest of when (a) Adobe terminates the Program, (b) the Member terminates its participation in the Program, or (c) if Member is in breach of the terms and conditions of the Program. 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 [www.adobe.com/go/vip\\_program\\_guide\\_en](http://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. If Program terms change Member will be required to reaccept the Program terms in the Admin 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. Notwithstanding the foregoing, 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 Adobe terminates the Agreement for any material breach of the Agreement, notwithstanding anything to the contrary, Member's organization (as defined in the Program Guide) shall immediately cease use of the Products, delete the Products from all computer systems and IT equipment on which it resides, and return to Adobe, or its Reseller, any media containing the Products as well as any related materials.

1.3 *EULA and TOU*. The access and use of the Products is governed by the applicable Adobe end user license agreement ("EULA") or terms of use ("TOU"). The terms of applicable EULAs and 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 EULA or 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 Adobe authorized VIP reseller ("Reseller") or go to the Program web pages located on Adobe.com [www.adobe.com/volume-licensing/business/adobe-value-incentive-plan.html](http://www.adobe.com/volume-licensing/business/adobe-value-incentive-plan.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.

## **2. Participation.**

2.1 *Adobe ID and VIP ID*. An Adobe ID will be required in order to enroll in the Program. Upon completion of the VIP enrollment process, the Member will be assigned a VIP ID which must be referenced on all VIP orders.

2.2 *VIP Admin Console*. Once the terms of this agreement are accepted, the individual accepting on behalf of the organization will become a Member and will be assigned as the Admin Console Program Administrator ("Administrator"). The 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, Product effective dates, serial numbers, and comprehensive order details. The Admin Console will allow the Administrator to invite additional users within their organization to gain access to the Admin Console.

2.3 *Serial Numbers*. Serial numbers may be assigned to specific Products. For other Products, the Administrator may generate serial numbers in the Admin Console, which may be generated for use in specific quantities or for an entire organization (if applicable)

based on Product type, quantity deployed and purchased, and as further described in the Program Guide.

2.4 *Confidentiality*. Member shall treat VIP ID and serial numbers as confidential and not share or disclose such information.

2.5 *Education, Government and Non-Profit Memberships*. The terms of Exhibit B apply to Education, Government, and Non-Profit Memberships, as defined below.

### **3. Ordering, Pricing, and Fulfillment.**

3.1 *Ordering and Pricing*. Member shall place Product orders with their Reseller within thirty (30) days of the Purchase Authorization date, with payment being calculated from the date of the Purchase Authorization. If no Purchase Authorization is created, payment will be calculated from the order date. All fees are determined by the Reseller. Adobe does not set the pricing that Member is charged and Adobe cannot guarantee any particular discount. Matters such as price, delivery, and payment terms must be agreed between Member and Resellers.

3.2 *Access and Fulfillment*. Upon becoming a Member, 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. Member can initiate the Purchase Authorization process through the Admin Console, as described in the Program Guide.

3.3 *Over-deployment*. If the number of Products ordered is less than the actual number of Products in the Purchase Authorization 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, Subscription Period, Renewals, Upgrades, and Returns*.

3.4.1 *Agreement Anniversary Date*. Unless otherwise communicated each VIP membership will generally have a default Anniversary Date that is thirteen months from the date Adobe accepts online enrollment or the last date of signature of the Agreement (“Anniversary Date”). Upon the Anniversary Date, a new Subscription Period (as defined below) will begin.

3.4.2 *Subscription Period*. Use of subscription Products and any related services is determined by the subscription period (“subscription”), which begins either at the time of the Purchase Authorization if one is created, or if no Purchase Authorization is created, at the time of the order. The subscription will end the day prior to the Anniversary Date. All subscriptions, including any

related services, if applicable, will co-terminate on the day prior to the Anniversary Date. 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 initial Anniversary Date.

*3.5 Upgrade Protection.* Purchase of the subscription Product(s) includes upgrade entitlement where Member will be entitled to receive the latest generally available version of a 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 request the return of Products purchased under the Agreement through the same Reseller that placed the original order with Adobe. Subject to any applicable warranty rights, return requests must be made to the Reseller within thirty (30) days of Member's original Product order date and Adobe must approve all return requests as permitted pursuant to the Program Guide before any return is valid. For more information on qualifying returns please refer to the Program Guide.

#### **4. Miscellaneous.**

*4.1 Transfer of License.* Product EULAs and/or 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, the specific licenses being transferred, and the contact information of the transferee. Additional information may be found in the Program Guide.

*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 or expiration of the Agreement. To ensure that Member's installation/deployment is consistent with the license entitlements, 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 of request. If the audit findings demonstrate non-conformity with the Product licenses, Member shall purchase the necessary licenses within thirty (30) days of being so notified. Notwithstanding the foregoing, Adobe reserves the right to conduct an onsite audit of Member license installation/deployment on ten (10) business days prior written notice during regular business hours. This Section 4.2 shall survive termination or expiration of the Agreement for a period of two (2) years.

*4.3 Use of Information.* Adobe may use information about Member for purposes of administering the Program and for fulfilling its obligations under the Agreement. Such information may be used among Adobe entities worldwide and among authorized Resellers worldwide. This use includes, but is not limited to, the following: (a) sharing necessary program information of any Member with its Reseller, including VIP ID number, and (b) use of the name and contact details, including without limitation phone, email address, and other contact details of a Member designated VIP contact to send program related communications to such VIP contacts including, but not limited to, notices of upgrades, program changes, and notice of discontinuance of SKUs.

*4.4 Governing Law and Venue.* This Agreement shall be governed by and interpreted in accordance with the terms stated in the applicable EULA or TOU. In the event of conflict between the EULA and the TOU, the governing law and venue provision in the EULA shall control. Notwithstanding the foregoing, if Member is a resident of Germany, this Agreement shall be governed by and interpreted in all respects by the laws of Germany, without reference to conflict of laws' principles, as such laws are applied to agreements entered into and to be performed entirely within Germany between German residents, and all disputes arising under this Agreement will be brought in the courts of Frankfurt/Main in Germany. If Member is a resident of France, this Agreement shall be governed by and interpreted in all respects by the laws of France, without reference to conflict of laws' principles, as such laws are applied to agreements entered into and to be performed entirely within France between French residents, and all disputes arising under this Agreement will be brought in the Tribunal of Paris in France. 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 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 will be 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 and signed by the parties. This Agreement

(including the Program Guide, applicable EULAs, 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.

*4.6 Hosted Services.* The Product may integrate with a variety of Hosted 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](http://www.adobe.com/go/integratedservices).

If Member wants to prevent viewing of or access to user-generated content services it may (a) disable service access in the Creative Cloud Packager, where that functionality is made available, or (b) block access to the Hosted Services via its network firewall. Hosted 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 Hosted Services. Notwithstanding anything to the contrary, any dispute about the Hosted Services or content that is available there shall be governed by the law and take place in the venue designated in the Hosted Service Terms of Use and is not controlled by the Governing Law or Venue clause of this Agreement. Member is not entitled to a refund and Adobe is not liable in the event that access to the Hosted Services is slowed or blocked as a result of government or service provider action, or if Adobe blocks access to some or all of the Hosted Services if it deems, in its sole discretion, that such a block is necessary to comply with local laws.

## **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: (a) Non-accredited schools; (b) Museums or libraries; (c) Hospitals not wholly owned and operated by an otherwise qualified educational institution; (d) Churches or religious organizations that are not accredited schools; (e) Vocational 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 S.A.R., Taiwan R.O.C., 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 [www.adobe.com/go/education\\_entity\\_seasia\\_edem](http://www.adobe.com/go/education_entity_seasia_edem) (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 <http://aad.i-office.ne.jp/academic/index.html> (or its successor web site thereto), as updated by Adobe from time to time.

## **B. GOVERNMENT MEMBERS**

For the Member who is a Government Entity (defined below), the following additional terms apply. Adobe reserves the right to terminate Government memberships if 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, 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, private "for profit" companies, non-profit organizations, trade or industry associations, and labor unions

are not included. Also excluded are private organizations that conduct work on behalf of or with government agencies. 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](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 federal government customer pursuant to FAR 52.249-1 (Termination for Convenience of the Government). Adobe may change the Terms at its sole discretion.

*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 EULAs. Unpublished rights are reserved under the laws of the United States- Adobe Systems Incorporated, 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.