

AMENDMENT NO. 1
TO THE
ADOBE OPEN OPTIONS CONTRACTUAL LICENSING PROGRAM MEMBERSHIP AGREEMENT
BETWEEN
U.S. DEPARTMENT OF DEFENSE
AND
ADOBE SYSTEMS INCORPORATED

EFFECTIVE AS OF

August 14, 2001

This Amendment No. 1 is for the Adobe Open Options Contractual Licensing Program Membership Agreement effective as of August 14, 2001 (the "Agreement"), by and between Adobe Systems Incorporated, a Delaware corporation having a place of business at 345 Park Avenue, San Jose, CA 95110-2704 ("Adobe"), and Department of Defense, a department of the United States government with an office at 5450 Carlisle Pike, PO Box 2020, code 0272, Mechanicsburg, PA 17055-0788("Program Member").

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Amendment No. 1 the parties agree as follows:

1. Section 4.2 of the Agreement is deleted and replaced by the following:

4.2 Maintenance for the Licenses is optional. All fees for Software Products, including Maintenance fees, are determined by the ALC. Maintenance for Software Products may be obtained at various intervals during the Term. Maintenance is a one (1) year commitment and is payable on an annual basis. Maintenance fees for the Software Products shall be paid at the time of License acquisition.

2. All other terms and conditions of the Agreement will remain in full force and effect. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 as of the date set forth below.

ADOBE SYSTEMS:
ADOBE SYSTEMS INCORPORATED



Authorized Signature

Printed Name Jim Stephens
SVP Worldwide Sales,
Customer Care, Field Marketing

Title

San Jose
City Where Signed

Date

11/26/2001

PROGRAM MEMBER:
DEPARTMENT OF DEFENSE



Authorized Signature

Printed Name R. L. KLINGER

Contracting Officer

Title

Mechanicsburg

City Where Signed

Date

11/16/2001



**ADOBE® OPEN OPTIONS
CONTRACTUAL LICENSING
PROGRAM
MEMBERSHIP AGREEMENT**

This Adobe Open Options Contractual Licensing Program Membership Agreement ("this Agreement") is entered into

between

ADOBE SYSTEMS INCORPORATED, a Delaware corporation having a place of business at 345 Park Avenue, San Jose, CA 95110-2704 ("Adobe"), and

DEPARTMENT OF DEFENSE

a company registered in _____

and having a place of business at

WORLDWIDE

Contact Name R. L. KLINGER

Tel number (717) 605-3824

Fax number (717) 605-4600

E-mail Rodney_L_Klinger@icpmech.navy.mil

("Program Member").

WHEREAS:

- (i) Adobe is authorized to offer membership in the Program in Canada, the United States and Mexico and to enter into this Agreement; and
- (ii) Program Member wishes to participate in the Program, subject to the terms and conditions of this Agreement.

NOW THEREFORE in consideration of the premises and mutual covenants contained herein the Parties agree as follows:

1. Definitions

In this Agreement the following words and expressions shall have the following meanings, unless the context otherwise requires:

- “ALC” means Adobe License Center, being an Adobe distributor licensed to distribute Software Products to Program Members participating in the Program.
- “Effective Date” means the date on which Adobe sends to Program Member written notification that it has been accepted into the Program and provides the Program Member ID Number. For the avoidance of doubt, no such notification can be provided before Program Member has complied with Clauses 2.1(a) and (b).
- “End User” means a licensee who acquires software products for use rather than distribution or resale and shall exclude (without limitation) ALC’s, distributors, dealers, resellers, value added resellers, systems integrators and third party vendors.
- “End User License Agreement” means the Adobe Software Product end user license agreement for the relevant Software Product which is current from time to time.
- “Legacy Products” means an Adobe software product validly licensed to an End User under an End User License Agreement prior to that End User becoming a Program Member. This shall include a shrinkwrap version, OEM version or volume license product.
- “License(s)” means the license or right granted by Adobe to install and use the Software in accordance with the End User License Agreement. License shall also include an Upgrade license.
- “Maintenance” means the right to order and receive such updates, patches and Upgrades for the Software as may be released during the Term.
- “Maintenance Schedule” means the schedule appended hereto as Part II of the Schedule.
- “Media” means the physical property in and the physical copy of the Software specifically the disks, CD-ROMs or other media.

Under no circumstances shall Program Member be entitled to make additional copies of the Media.

- “OEM” means an original equipment manufacturer who manufactures, markets, sells and/or services computer systems who is entitled to include Software Products, to be distributed under license, as an integral part of the computer system sold to its customers.
- “Parties” means Adobe and Program Member.
- “Points” means the credits (in the form of points) which are allocated to Software Products and which are accumulated by Program Member under the Program. Accumulation counts towards Program Member’s Points Target. Point values may be changed by Adobe from time to time upon notice to the Program Member.
- “Points Target” means Program Member’s minimum points target for the Term as set out in Part I of the Schedule, which shall not be less than one thousand (1,000) points.
- “Program” means the Adobe Open Options Contractual Licensing Program described in this Agreement.
- “Reporting Date” means the last working day of each calendar month during the Term. The first Reporting Date during the Term shall be the last working day of the calendar month following the month in which the Effective Date falls.
- “Schedule” means the schedule in three (3) parts appended hereto.
- “Software” means the copy(ies) of the Software Products in object code.
- “Software Products” means Licenses, User Documentation, Maintenance and Media copies of the Software, collectively or individually, available under the Program. The Software Products available under the Program may be modified from time to time.
- “Subsidiary” means any corporation, partnership or other entity for which Licensee owns or controls, directly or indirectly, at least fifty percent (50%) by nominal value or number of units of the outstanding stock or of the outstanding equity or beneficial interest, or of the outstanding equity or beneficial interest conferring the right to vote at a general meeting.
- “Term” means the term of this Agreement, specifically the period commencing on the Effective Date and terminating at the end of the twenty-fourth (24th) calendar month thereafter.
- “Upgrade” means a version of the Software described as an upgrade and intended for use by End Users of the previous versions of the same Software.

“User Documentation”

means the manuals, supporting documentation and other materials whether of a technical nature or otherwise provided for use with the Software by Adobe. Each License shall include the right to use the User Documentation and, in the case of electronic User Documentation, includes the right to print one hard copy of such User Documentation; however, under no circumstances shall Program Member be entitled to reproduce the User Documentation, except as provided herein.

2. The Program

2.1 Participation

- (a) To participate in the Program, a Program Member residing in Canada, the United States and/or Mexico, must complete and sign two (2) copies of this Agreement and return both copies to: Adobe Systems Incorporated, 345 Park Avenue, San Jose, CA 95110-2704. Program Member’s participation in the Program shall be governed by the terms and conditions of this Agreement, and no other terms or conditions, save for those of the End User License Agreement shall apply.
- (b) Program Member’s Subsidiaries may participate in the Program during the Term subject to the following:
 - (i) The Subsidiaries participating in the Program shall fall under the description contained in Part III of the Schedule. If the description is to be expanded or amended as to effect the eligibility of any Subsidiary to participate in the Program, Program Member shall notify Adobe within Five (5) business days. The Program Member ID Number shall be used by all Subsidiaries participating in the Program;
 - (ii) during the Term, such Subsidiaries shall be entitled to the benefits of the Program provided that and for so long as they remain Subsidiaries of Program Member and comply with the provisions of this Agreement;
 - (iii) Program Member agrees to post the terms of this Agreement on a website that all Subsidiaries will have access to. Program Member agrees to instruct the Subsidiaries that the use of the Software Products is governed by the terms and conditions of the EULA that is contained in or supplied with the Software. Program Member will use best efforts to assist with its enforcement of the EULA. Adobe reserves the right to terminate any Subsidiary’s participation in the Program in the event of a breach of the EULA or a violation of the terms of this Agreement; and
 - (iv) without limiting the foregoing, a Subsidiary’s participation in the Program shall cease immediately if the company ceases to be a Subsidiary of the Program Member, is declared bankrupt, files for a moratorium on payments of its debts or seeks any other relief, or if it shall go into liquidation (other than for a member’s voluntary liquidation for the purposes of reconstruction or amalgamation), or enters into a scheme or voluntary arrangement with its creditors, or becomes subject to an administration order or have a receiver appointed over any of its

property and assets, or undergoes any proceeding analogous to any of the foregoing events. Program Member shall use best efforts to notify Adobe immediately if one of the foregoing events occurs.

- (c) It is a condition of Program Member's (and any Subsidiary's) participation in the Program that Program Member (and each such Subsidiary) are not acquiring licenses for distribution, resale or use outside Program Member's group as defined in Part III of the Schedule.
- (d) Program Member must nominate a principal ALC by completing Part I of the Schedule prior to execution. Program Member is free to change its principal ALC during the Term.

2.2 Terms and Conditions

- (a) During the Term, Adobe may make available to ALCs certain discounts for Software Products based upon the volume of Licenses ordered by the ALC from Adobe. ALCs may (but are not obliged to) pass on the benefit of such discounts to Program Member. Adobe does not set the pricing which ALCs may charge and Program Member is free to negotiate fees directly with ALCs. ALCs are not agents or affiliates of Adobe and operate as independent distributors. Matters such as price, delivery, method of installation and payment terms must be agreed between Program Member and Program Member's ALC(s).
- (b) Program Member's right to install and use each copy of the Software Products shall be subject to all the terms and conditions of the End User License Agreement. In the event that Program Member does not wish to accept the End User License Agreement, Program Member should return the Software Products in accordance with the instructions in the End User License Agreement.
- (c) The "permitted number" of users or computers, as the case may be (that is referred to in the End User License Agreement), shall be determined by the number of Licenses obtained by Program Member.
- (d) If there is a conflict between the terms of the End User License Agreement and the terms of this Agreement, the terms of this Agreement shall prevail.
- (e) Without prejudice to the terms of any End User License Agreement (which permit certain back-up copies), Program Member is not permitted to reproduce or make any additional copies of the Software, the Media or the User Documentation.

3. Ordering

3.1 Program Member ID Number

Upon execution of this Agreement Adobe shall confirm Program Member's ID Number which shall identify Program Member as a member of the Program. Program Member shall treat such number as confidential information and not share or disclose such number to anyone other than its principal and other ALC(s) or Subsidiaries who are participating in the Program in accordance with Clause 2.1(b). In addition, Program Member shall receive a master serial number for each Adobe product and that number shall also be confidential.

3.2 Obtaining Licenses and Maintenance

- (a) Commencing on the Effective Date, Program Member shall be entitled to order Licenses, Media, User Documentation, Upgrades and (subject to Clause 4) Maintenance through its principal ALC. ALCs shall be authorized by Adobe to communicate installation information to Program Member.
- (b) Program Member shall obtain Points under the Program by obtaining Licenses or Maintenance through ALCs. Program Member may have a requirement for multiple Licenses without requiring the corresponding Media and/or User Documentation. Accordingly, Program Member may order Licenses, Media and/or User Documentation separately, provided that Program Member has acquired a License for each copy of the Software which it installs or uses (save for the permitted number of back-up copies) and no right to use Media shall be granted without the obtaining of a corresponding License.
- (c) Each acquisition of a License or Maintenance hereunder entitles Program Member to a certain number of Points. Legacy Products shall only count towards Points where Maintenance is acquired for such Legacy Products in accordance with Clause 4.
- (d) For the avoidance of doubt, Program Member's Subsidiaries who are participating in the Program shall not have separate Points Targets and the acquisition of Licenses and Maintenance by such Subsidiaries shall count towards Program Member's Points Target.
- (e) By entering into this Agreement, Program Member indicates its intention over the Term, to obtain Licenses and Maintenance with a total Point value equal to Program Member's Points Target. Without prejudice to the foregoing, or to Clause 3.2(f), Program Member intends to obtain Licenses and Maintenance with a Point value of not less than ten percent (10%) of Program Member's Points Target within thirty (30) days of the Effective Date of this Agreement.
- (f) Program Member also intends to obtain Licenses and Maintenance with a Point value of not less than forty percent (40%) of Program Member's Points Target during the first twelve (12) months of the Term.
- (g) At the appropriate stages, Adobe and Program Member's principal ALC shall review the Licenses and Maintenance which Program Member has acquired. If Program Member has failed to achieve the minimum Points values pursuant to this Agreement, Adobe reserves the right to terminate this Agreement (including Program Member's participation in the Program) with immediate effect and without judicial intervention by giving written notice to Program Member.
- (h) Program Member agrees to report the total number of copies of the Software installed under the Program through its designated ALC (s) in a timely fashion in accordance with procedures agreed with the ALC. Without prejudice to the foregoing, Program Member agrees that during the Term it and its Subsidiaries shall submit orders to their designated ALC (s) to enable all License purchase to be recorded.
- (i) Program Member shall be able to access its Program information by logging on www.licensing.adobe.com.

4. Maintenance

- 4.1 The right to acquire and/or receive Maintenance on the terms offered under this Agreement shall terminate on the expiry or termination of this Agreement. The right to receive Upgrades under Maintenance acquired during the Term will continue for the duration of the original term for which Maintenance was purchased, notwithstanding early termination.
- 4.2 Maintenance for the Licenses is optional. All fees for Software Products, including Maintenance fees, are determined by the ALC. Maintenance for Software Products may be obtained at various intervals during the Term and Program Member may choose from two options:
- (i) an option whereby all the fees for Maintenance are paid in accordance with the Maintenance Schedule, and no balancing payments under a two (2) year option, are required over the Term; or
 - (ii) an option whereby the Program Member can choose to pay the fees for Maintenance in two (2) annual installments, with a balancing payment at the end of the first year of the Program.

Details of the Maintenance Schedule can be found in Part II of the Schedule.

- 4.3 Under the Program to obtain Maintenance for Licenses during the Term, Program Member must be at the currently shipping version of a Software Product and a new version of that Software Product must not have been announced by Adobe. Legacy Products are subject to the rules in Clause 4.4.
- 4.4 Legacy Products may be covered by Maintenance, subject to the following conditions:
- (i) if the Legacy Product is a shrinkwrap version of an Adobe software product which is not the currently shipping version (and a new version of that Adobe software product has not been announced by Adobe), Program Member may acquire an Upgrade through the Program and then subscribe for Maintenance; or
 - (ii) if the Legacy Product is the currently shipping shrinkwrap version of an Adobe software product (and a new version of that Adobe software product has not been announced by Adobe), Program Member may subscribe for Maintenance; or
 - (iii) if the Legacy Product is a license acquired through an Adobe volume licensing program and it is not the currently shipping version (and a new version of that Adobe software product has not been announced by Adobe), Program Member may acquire an Upgrade through the Program and then subscribe for Maintenance; or
 - (iv) if the Legacy Product is a license acquired through an Adobe volume licensing program and it is the currently shipping version (and a new version of that Adobe software product has not been announced by Adobe), Program Member may subscribe for Maintenance; or

- (v) if the Legacy Product is an OEM version of an Adobe software product which is not the currently shipping version (and a new version of that Adobe software product has not been announced by Adobe), Program Member may acquire an Upgrade through the Program and then subscribe for Maintenance; or
- (vi) if the Legacy Product is an OEM version of an Adobe software product (and a new version of that Adobe software product has not been announced by Adobe), Program Member may subscribe for Maintenance.

Program Member must subscribe for Maintenance for Legacy Products within six (6) months of the Effective Date of this Agreement.

- 4.5 Program Member shall be entitled to subscribe for Maintenance during the Term for all new Licenses acquired under the Program. For the avoidance of doubt, once the six (6) month Maintenance subscription period for Legacy Products has expired, Program Member shall not be entitled to acquire Maintenance under the Program for Legacy Products, new shrinkwrap versions of Adobe software products, new OEM versions of Adobe software products, licenses acquired under the transactional program or Licenses acquired under the Program where Program Member had previously acquired those Licenses without Maintenance.

If Program Member is accepted into the Program for another term, all Licenses obtained during previous membership shall become Legacy Products for the subsequent term.

- 4.6 Program Member acknowledges that nothing in this Agreement shall obligate Adobe to maintain any Software Product, or in the event Adobe does provide Upgrades, to provide such Upgrades at any particular time or with any particular content, or to maintain a contractual relationship with any ALC, designated or not.

5. Term and Termination

5.1 Term

This Agreement shall commence on the Effective Date and continue for twenty four (24) months until the end of the final calendar month unless terminated in accordance with this Clause 5. There shall be no automatic renewal of this Agreement.

5.2 Termination Without Cause

Notwithstanding the provisions of Clause 5.1, Program Member, at its discretion, may terminate this Agreement at any time without judicial intervention upon sixty (60) days written notice to Adobe. Such termination shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination. Notwithstanding the provisions of Clause 5.1 in the event that Adobe considers it necessary to replace this Agreement in order to implement administrative changes to the Program or to reflect a restructuring within the Adobe group of companies, it shall notify Program Member within sixty (60) days of its intention to terminate this Agreement. Adobe shall provide a replacement agreement, effective upon such termination, to deal with the aforementioned changes. Such termination shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

5.3 Termination with Cause

- (a) Notwithstanding the provisions of Clause 5.1, Adobe or Program Member, may terminate this Agreement, without judicial intervention, and without prejudice to its other rights and remedies at law and under this Agreement, upon written notice to the other party if the other party is in breach of this Agreement and such breach is not remedied within the thirty (30) day period following notice.
- (b) Notwithstanding the above, Adobe may terminate this Agreement at any time immediately, without judicial intervention, upon written notice, for breach of Clause 8, provided that the circumstances of Program Member's breach are such that Adobe cannot reasonably be expected to continue this Agreement in effect.
- (c) This Agreement shall immediately and automatically terminate, without judicial intervention, if Program Member is declared bankrupt, files for a moratorium on payments of its debts or seeks any other relief, or if Program Member shall go into liquidation (other than for a member's voluntary liquidation for the purposes of reconstruction or amalgamation) or enters into a scheme or voluntary arrangement with its creditors or becomes subject to an administration order or has a receiver appointed over any of its property and assets, or undergoes any proceeding analogous to any of the foregoing events. Program Member shall use best efforts to notify Adobe immediately if one of the foregoing events occurs.

5.4 Effect of Termination or Expiry

- (a) Immediately upon termination Program Member shall cease all installation of the Software, unless the Licenses were purchased prior to termination or expiry.
- (b) The End User License Agreements under which Program Member uses the Software Products shall continue so long as Program Member's use of the Software Products is in compliance with all the terms and conditions of the End User License Agreements.
- (c) For the avoidance of doubt, Subsidiaries of Program Member shall cease to be entitled to participate in the Program once this Agreement has terminated, and Program Member is no longer entitled to participate.
- (d) The provisions of Clauses 2.1(b)(iii), 5.4, 8, 10 and 11 shall survive expiry or termination of this Agreement for whatever reason.
- (e) On expiration or termination for whatever reason the Program Member's right to use the accumulated Points under the Program shall terminate.

6. Proprietary Rights Indemnity

- 6.1 Subject to the limitations set forth herein below, Adobe shall defend Program Member with respect to all claims, suits or proceedings with respect to any claim that the Software Products as designed and licensed to Program Member in furtherance of this Agreement, infringe upon any United States or Canadian trade mark, copyright or patent; provided, however, that Program Member: (i) promptly notifies Adobe in writing of such claim, suit or proceeding; (ii) gives Adobe the right to control and direct investigation, preparation, defence and settlement of any claim, suit or proceeding; (iii) makes no admission of liability; and (iv) gives assistance and full co-operation for the defence of same and further provided that Adobe's liability with respect to portions of the Software Products provided by or licensed from third parties shall be limited to the extent that

Adobe is indemnified by such third parties. Adobe shall pay any resulting damages, costs and expenses finally awarded to a third party, but Adobe is not liable for such amounts, or for settlements incurred by Program Member without Adobe's written authorisation. If such claim, suit or proceeding has occurred or, in the opinion of Adobe is likely to occur, Adobe may, at its election and expense, either obtain for Program Member the right to continue using such allegedly infringing Software Product, replace or modify the Software Product so it is not infringing, or remove such Software Product from this Agreement.

- 6.2 THE RIGHTS GRANTED TO PROGRAM MEMBER UNDER THIS CLAUSE SHALL BE PROGRAM MEMBER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE MARK OR OTHER PROPRIETARY RIGHT. ADOBE, ITS LICENSORS AND SUPPLIERS SHALL HAVE NO LIABILITY TO PROGRAM MEMBER IF ANY ALLEGED INFRINGEMENT OR CLAIM THEREOF IS BASED UPON A MODIFICATION OF THE SOFTWARE PRODUCTS BY PROGRAM MEMBER OR ANY THIRD PARTY, THE USE OF THE SOFTWARE PRODUCTS IN CONNECTION OR IN COMBINATION WITH EQUIPMENT, DEVICES OR SOFTWARE NOT DELIVERED BY ADOBE (AND SUCH INFRINGEMENT OR CLAIM COULD HAVE BEEN AVOIDED BY THE USE OF THE SOFTWARE PRODUCTS WITH OTHER EQUIPMENT, DEVICES OR SOFTWARE) OR USE OF THE SOFTWARE PRODUCTS IN A MANNER FOR WHICH THEY WERE NOT INTENDED OR USE OF OTHER THAN THE MOST CURRENT RELEASE OF THE SOFTWARE PRODUCTS IF SUCH INFRINGEMENT OR CLAIM WOULD HAVE BEEN PREVENTED BY THE USE OF SUCH RELEASE.

Program Member acknowledges and agrees that Adobe is acting on behalf of its licensors and suppliers for the purpose of disclaiming, excluding and/or restricting obligations in this Clause 6 but in no other respects and for no other purposes.

- 6.3 IN NO EVENT SHALL THE TOTAL LIABILITY OF ADOBE UNDER THIS AGREEMENT FOR INDEMNITY EXCEED THE AMOUNT OF LICENSE FEES PAID BY PROGRAM MEMBER TO ITS DESIGNATED ALC (S) FOR THE RELEVANT SOFTWARE PRODUCT (S) IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

7. Consequential Damages Waiver

EXCEPT FOR PROGRAM MEMBER'S BREACH OF CLAUSE 8, NONE OF THE PARTIES SHALL BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES.

8. Proprietary Rights

Program Member acknowledges that the structure and organization of the Software Products is proprietary to Adobe, its licensors and suppliers and that Adobe, its licensors and suppliers retain exclusive ownership of the Software Products. Program Member shall take all reasonable measures to protect the proprietary rights of Adobe, its licensors and suppliers in the Software Products. Except as provided herein, Program Member is not granted any rights to patents, copyrights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights, franchises or licenses with respect to the Software Products.

9. Program Member Tracking

- 9.1 Program Member represents and warrants to Adobe that Program Member has systems and/or procedures in place at all of its facilities sufficient to track and control the use of the Software Products to ensure that Program Member can accurately report to Adobe or Program Member's ALC(s) the correct number of copies of the Software which have been installed.

10. Right of Audit

- 10.1 During the Term, and for a period of one (1) year thereafter, Program Member shall maintain a complete, clear accurate record of the number of Licenses used and the geographical location of the workstation or CPU where each License is used.
- 10.2 Program Member acknowledges that Adobe has a substantial and legitimate business interest in preventing illegal use of Software Products. Accordingly, to ensure that Program Member and its Subsidiaries are properly licensed, and to ensure Program Member's and its Subsidiaries' compliance with the terms of this Agreement, Adobe shall have the right to have an inspection and audit of all the relevant records of Program Member and Subsidiaries and access to all CPUs which have access to the Software (including those owned or controlled by Subsidiaries). Adobe may initiate an audit only if it has reasonable cause to believe that Program Member may be out of compliance, however such determination is solely within Adobe's discretion. Unless prohibited by confidentiality or other restrictions, Adobe will provide Program Member a general description of the nature of non-compliance. Audits shall be conducted upon giving Program Member seven (7) business days notice, and shall be conducted by Adobe's independent certified public accountant whose fee is paid by Adobe. Any such audit shall be conducted during regular business hours at Program Member's or Subsidiaries' offices (as the case may be) and in such a manner as to protect the confidentiality of Program Member's information and not unreasonably interfere with Program Member's or Subsidiaries' normal business activities and only after obtaining the security clearance s deemed appropriate by Program Member acting reasonably. In no event shall audits be made under this Clause 10 more frequently than every twelve (12) months.
- 10.3 For the avoidance of doubt, any such audit shall not be concerned with any review of the terms (including financial terms) upon which Program Member or Subsidiaries obtained Software Products from ALC.
- 10.4 If such inspection and audit should disclose any under reporting, Program Member shall immediately acquire all necessary Licenses and if such under reporting exceeds five percent (5%), Program Member shall pay one hundred percent (100%) of the reasonable audit costs. Adobe reserves the right to terminate this Agreement should such under reporting be significant, such termination shall be without prejudice to Adobe's other rights and remedies at law and under this Agreement.

11. Miscellaneous

11.1 Notices

All notices or reports permitted or required under this Agreement shall be in writing and shall be by personal delivery, registered mail or by reputable international courier service. Notice shall be deemed to have been given upon personal delivery, on the date shown on the receipt for registered mail or on the date of delivery shown in the business records of the international courier service. The addresses for service shall be those appearing in this

Agreement or as subsequently notified by the Parties from time to time. If notice is sent to Adobe it shall be sent to the attention of Associate General Counsel.

11.2 Assignment

This Agreement may not be assigned by Program Member without the prior written approval of Adobe. For the purposes of this sub-clause, a change in the persons or entities who control fifty percent (50%) or more of the equity securities or voting interest of Program Member shall be considered an assignment of Program Member's rights. Any transfer of any License shall be in accordance with the terms and conditions of the End User License Agreement. Adobe's rights and obligations, in whole or in part, under this Agreement may be assigned by Adobe. Adobe may exercise full transfer and rights of assignment in any manner at Adobe's discretion.

11.3 Waiver

The waiver by either Adobe or Program Member of a breach of any provisions contained herein shall be in writing and shall in no way be construed as a waiver by any succeeding breach of such provision or a waiver of the provision itself.

11.4 Severability

In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and in such event, such provision shall be changed and interpreted so as to best accomplish the objective of such provision within the limits of applicable law or applicable court decisions.

11.5 No Agency

Nothing contained herein shall be construed as creating any agency, partnership or other form of joint enterprise between the Parties.

11.6 Headings

The clauses headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such clause or in any way affect such clause. All clause references are references to clauses in this Agreement, unless the context otherwise requires.

11.7 Entire Agreement

This Agreement, together with the Schedule, completely and exclusively states the agreement of the Parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements or other communications between the Parties, oral or written, regarding such subject matter. This Agreement shall not be modified except by a subsequently dated written amendment or appendix signed on behalf of the applicable Parties by their duly authorized representatives.

11.8 English Language

In the case that this Agreement is executed in more than one language version, then the English language version shall prevail in case of any discrepancy between the versions.

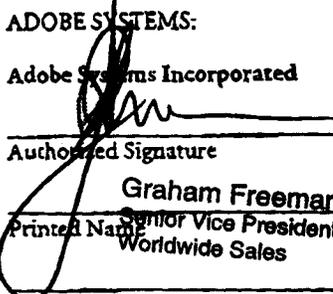
11.9 Controlling Law and Jurisdiction

This Agreement shall be governed in all respects by the Federal Government Contract laws of the United States.

IN WITNESS WHEREOF, these presents consisting of this and the preceding thirteen (13) pages are, together with the Schedule annexed hereto, executed in duplicate as follows:

ADOBE SYSTEMS:

Adobe Systems Incorporated


Authorized Signature

Graham Freeman
Senior Vice President
Worldwide Sales

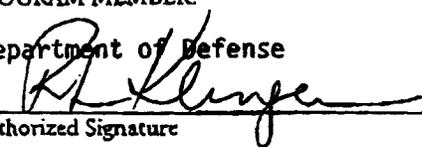
Title

Date

8/16/01

PROGRAM MEMBER:

Department of Defense


Authorized Signature

R. L. KLINGER

Printed Name

Contracting Officer

Title

Date

8-14-01

SCHEDULE

PART I

Program Member's Points Target

(please check one only)

_____ 1,000 - 4,999

_____ 5,000 - 19,999

 X 20,000+

Program Member's Principal ALC

ALC Name: _____ Corporate Software
Headquarters Street Address: _____ 2 Edgewater Drive
City and State/Province: _____ Norwood, MA 02062
Country and Postal Code: _____
Contact Name: _____ Derek Megan
Phone Number: _____ (800) 677-4009 X5664
Fax Number: _____ (808) 677-4008
Internet Address: _____ derek.megan@corpsoft.com

SCHEDULE

PART III

List of Subsidiaries

“Subsidiary” as used herein means any component of the Department of Defense (DoD), or agency supported by DoD’s Enterprise Software Initiative, specifically: all DoD Components and their employees, including Reserve Component (Guard and Reserve) and the US Coast Guard; other Government employees assigned to and working with DoD; DoD non-appropriated funds instrumentalities such as Defense Commissary Command inter alia; Intelligence Community (IC) covered organizations to include DoD Intel System member organizations, but not the CIA nor other IC employees unless they are assigned to and working with DoD organizations; DoD Contractors authorized in accordance with the FAR; and authorized Foreign Military Sales (FMS).