# Adobe Open Options CLP 4.5

## Membership Terms and Conditions

### Program description

CLP 4.5 applies at least the same discount level to all of an organization's Adobe desktop software ordered during the life of the CLP membership, based on the value of an initial order. CLP members have no further order commitment beyond that initial order. CLP offers the discount level to all new and upgrade software orders and Upgrade Plan orders. Additional orders during the term of your CLP membership may qualify you for an improved discount level.

### Purchase requirement

During the term of your CLP membership, you must place an initial order that meets or exceeds your Initial Points Target.

### Affiliate linked enrollment

While you are an active CLP 4.5 member, qualified affiliates of your organization may order through your membership or may submit a separate affiliate enrollment form. These enrollments will be linked to your CLP 4.5 membership number. Your affiliate will need to provide your CLP 4.5 membership number on its affiliate enrollment form.

Affiliates who enroll this way receive their own set of serial numbers, designate their own Adobe License Center (ALC), and choose their own Upgrade Plan payment option, while taking advantage of the Program Member's discount level and helping to improve the overall discount level of the membership. Within 30 days after your affiliate receives its CLP 4.5 affiliate enrollment number, the affiliate must place an initial order of at least 3,500 points value. All CLP 4.5 terms and conditions apply to affiliates with linked enrollments, except where noted.

### *Affiliate definition*

Affiliates are entities that have legal personality, and in the case of commercial affiliates are entities that are owned, controlled, or under common ownership with your organization. Ownership is deemed to be at least 50 percent of the equity having the power to vote on or direct the affairs of the entity controlled by, controlling, or under common control with your organization.

### *Initial order minimum for affiliate linked enrollment*

3,500 points per enrollment

### Protecting your CLP membership

Your CLP membership number and your software serial numbers are unique to you and your affiliates. Do not share your CLP membership number or any serial numbers with any unauthorized parties. Affiliates who separately enroll are responsible for their own compliance with program rules and are individually responsible for protecting their membership and serial numbers.

### Program availability

You may benefit from worldwide CLP levels of discount with a valid CLP 4.5 membership number. For example, a CLP 4.5 member who qualifies for Level 2 in Europe also qualifies for Level 2 in the United States.

### Membership term

Program membership begins the day Adobe sends you your CLP membership number (which will occur after you sign this Agreement and send to Adobe) and continues through the end of the same month two years later, provided that you meet all obligations. Both you and Adobe can terminate membership for convenience upon 30 days notice. You and Adobe can terminate membership if a material breach of this Agreement is not cured within 30 days.

Immediately upon termination or expiration, you must cease all installation or deployment of the software, except for installation of licenses that you have already ordered or purchased. Notwithstanding any termination or expiration, your right to use the software products shall continue so long as your use of the Software Products is in compliance with all terms and conditions of the EULA(s). The right to acquire and/or receive the Upgrade Plan, all Enrollments and the right of any Affiliate to participate in the Program shall terminate on the expiration or termination of this Agreement. These termination conditions, shall survive expiration or termination. The right for Adobe to conduct verification shall survive expiration or termination for a 2 year period.

### Products available through CLP

The Adobe Commercial Discount Level Calculator provides a complete list of products available through CLP, along with their point values for available new and upgrade licenses and Upgrade Plan. Adobe updates the calculator periodically as product availabilities change. All products and point values are consistent worldwide.

### End User License Agreement

Use of software products licensed under CLP is subject to your accepting the applicable End User License Agreements ("EULAs") that come with the software products. EULAs

contain the license use rights and restrictions for the software products. EULAs may be viewed at http://www.adobe.com/products/eulas/main.

### Program levels by region

| Region | Discount level | Points |
|---|---|---|
| United States, Canada, Japan | | |
| | 1 | 40,000 |
| | 2 | 100,000 |
| | 3 | 225,000 |
| | 4 | 350,000 |
| All other regions | | |
| | 1 | 25,000 |
| | 2 | 50,000 |
| | 3 | 100,000 |
| | 4 | 200,000 |

*The region is the location of the main office of the enrolling entity.

### Reorder minimum

1 point

### Improving your discount level

You may improve your discount level as you and your enrolled affiliates continue to order. On the 25th day of each month, Adobe reviews the total points accumulated by each CLP member, including enrolled affiliates, from the effective date of the CLP 4.5 membership to that day. If the total points equal or exceed the minimum for the next discount level, then on the first day of the following month you become eligible for the improved level.

When this occurs, Adobe automatically notifies your main contact, designated Adobe License Center (ALC), and Adobe account manager, and the main contact and designated ALC for each affiliate enrollment linked to your CLP membership number.

You and your enrolled affiliates are responsible for informing any other channel partners with whom you do business.

Actual pricing is from your ALC or reseller, not Adobe.

### Concurrency

Concurrency is not available to the commercial market sector, except for Adobe FrameMaker® UNIX® shared software.

### Procurement and verification

You and your enrolled affiliates must report all software installation/deployment to the ALC or reseller of your choice. All purchases must include your CLP 4.5 membership number as well as other required information for a reseller or ALC to accept the order.

You and your enrolled affiliates must retain records of your software installation/deployment as well as records of your license entitlements.

To ensure that your installation/deployment is consistent with your license entitlements, Adobe or its representatives may conduct a verification of your software installation/deployment not more than once per year upon 30 days notification. If Adobe conducts verification and you are found to be under licensed, you must immediately place true-up orders. Also, if you are found to be more than 10% out of compliance, Adobe is entitled to collect from you the actual and reasonable cost of conducting the verification.

### Fulfillment

After your CLP enrollment becomes active, Adobe will provide you with access to your online purchase history report, printable customer statements, and a list of your serial numbers through our web-based licensing tool.

If you are a new CLP member, you will receive a login and temporary password to this website. Returning CLP members may continue to use their existing login and password.

### Media and documentation

You and your enrolled affiliates may order hard media from the Adobe License Center or Adobe reseller of your choice. You are not permitted to have more media than licenses.

### Electronic Software Delivery (ESD)

Adobe offers ESD for most of its products to CLP members at no additional charge.

### Serial numbers

Each serial number covers a single product, version, language, and platform, except for most products available in both Macintosh® and Windows® versions. For these products, you receive serial numbers for both platforms, even when only one platform is licensed. You use the same serial number for all installations of a given product. New serial numbers are issued for upgrades.

### Upgrade Plan

Upgrade Plan is a fixed cost that you may pay to receive future versions of software product upgrades covered under Upgrade Plan during the term of your CLP membership. Upgrade Plan can be purchased for all, some, or none of any purchased licenses. You receive points for the value of your Upgrade Plan purchases.

During the first six months of your CLP membership, you may purchase Upgrade Plan for licenses acquired prior to your CLP membership term. If Program Member does not order Upgrade Plan maintenance at the beginning of the Term but later wishes to purchase it during the term of this CLP, Upgrade Plan can be ordered in various increments (ex. 6 months, 12 months, 18 months) all of which are coterminous at the end of the 24 month term of the CLP.

Upgrade Plan costs are nonrefundable, even if Adobe discontinues a covered product.

#### *Upgrade Plan renewal*

Adobe notifies you 6 months, 90 days, and 30 days before your Upgrade Plan coverage is due to expire. For uninterrupted coverage, you must renew before your Upgrade Plan anniversary date. You may place the renewal order anytime, but early renewal does not change the anniversary date.

## Transfer of License

You may transfer Adobe software licenses due to mergers, acquisitions, consolidations, or divestitures. Please review the policy and process in the *Adobe Open Options CLP 4.5 Volume Licensing Program Guide* (posted at www.adobe.com/aboutadobe/openoptions/clp.html)

## Returns

You must request a return of purchases made under your CLP 4.5 membership through the same Adobe License Center or reseller that placed your original order. Your request must be made within 90 days of the original license order. Adobe must approve all return requests.

## Complete program terms, conditions, and policies

Complete program membership terms, conditions, and policies are in the *Adobe Open Options CLP 4.5 Volume Licensing Program Guide*, posted in the Adobe Open Options section of the Adobe website.

## GENERAL TERMS:

1. EXCEPT FOR MATERIAL BREACH BY PROGRAM MEMBER OF PROVISIONS OF THE EULAS THAT PROHIBIT REVERSE ENGINEERING OR ANY ATTEMPT BY PROGRAM MEMBER TO ENGAGE IN COMMERCIAL DISTRIBUTION OF THE SOFTWARE PRODUCTS, NONE OF THE PARTIES SHALL BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, 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.
2. *Proprietary Rights.* The software products are proprietary to Adobe, its licensors and suppliers and Adobe, its licensors, and suppliers retain exclusive ownership thereof.
3. *Public Records.* Adobe acknowledges that DIS is subject to Chapter 42.56 RCW, the Public Records Act. This agreement and all associated price lists are subject to the provisions of the Public Records Act.
4. *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 notices 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 - Worldwide Sales, A17 345 Park Avenue, San Jose, CA 95110-2704.
5. *Pricing Verification.* On a quarterly basis, if requested by Program Member Adobe will provide information that enables Program Member to verify that pricing provided to DIS by the Adobe authorized reseller is compliant with the pricing terms agreed upon between such reseller and Program Member. Adobe's obligation is contingent upon Program Member's securing a written consent by the reseller issued to Adobe which permits Adobe to disclose to Program Member the pricing given by Adobe to the reseller.
6. *Usage Reports.* Upon request, Adobe will provide DIS with information or reports regarding the orders by DIS of Adobe's Products , such as the number and type of Products purchased by DIS' Affiliates.
7. *Assignment.* This Agreement shall not be assigned without Adobe's prior written approval; such approval shall not be unreasonably withheld. For the purposes of this paragraph, a change in the persons or entities that control 50% or more of your equity securities or voting interest shall be considered an assignment of your rights.

8. *Waiver.* The waiver by either party of a breach of any provisions contained herein shall be in writing and shall in no way be construed as a waiver of any succeeding breach of such provision or a waiver of the provision itself.

9. *Termination for Non-Allocation of Funds.* If funds are not allocated to continue this Agreement in any future period, DIS will not be obligated to pay any further charges for software products not yet installed. In such case, DIS agrees to notify Vendor at the earliest possible opportunity of such non-allocation. No penalty shall accrue to DIS for exercising its rights under this section. This section shall not be construed to permit DIS to terminate this Agreement to acquire similar Products and Services from a third party.

10. *Severability.* If 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. *No Agency.* Nothing contained in this Agreement shall be construed as creating any agency or partnership among the parties.

12. *Controlling Law.* This Agreement shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington.

13. *Entire Agreement.* This Agreement completely and exclusively states the parties' agreement regarding its subject matter. This Agreement supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding such subject matter. Except as otherwise set forth in this Agreement, this Agreement shall not be modified except by an amendment executed by the parties.

Adobe Id: 4400084525

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