



ADOBE ENTERPRISE TERM LICENSE AGREEMENT (ETLA)

FINANCIAL INCENTIVES PROGRAM GUIDE

ASIA PACIFIC (excluding CHINA)

V2.0, Effective March 2nd, 2019

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FINANCIAL INCENTIVES PROGRAM GUIDE

Adobe’s Enterprise Term License Agreement is a term-based licensing program for Adobe enterprise customers. It is an Adobe-led sales engagement where Adobe engages directly with the end user customer on the licensing of Adobe® products and services, and the structuring and executing of an ETLA is done entirely by Adobe.

From time to time, Adobe may require support from partners during the negotiation or performance of an ETLA. Such support may include a partner:

- a) Identifying and referring new business opportunities to Adobe (sourcing);
- b) Performing some ancillary sales services during Adobe’s negotiations with the customer (supporting);
- c) Processing an order and performing some of Adobe’s obligations under an ETLA (fulfillment); or
- d) All of the above.

Adobe wishes to reward partners for sourcing, supporting, and fulfilling ETLA opportunities that Adobe’s Enterprise Sales team engages in (“ETLA Incentives Program”). This document describes the ETLA Incentives Program and the applicable terms.

Adobe, in its sole discretion, may (A) update or revise any part of the ETLA Incentives Program, or (B) terminate the ETLA Incentives Program, at any time by giving notice to Partner. The changes or termination will become effective immediately at the end of the notice period specified in Adobe’s notice.

ELIGIBILITY CRITERIA

This program is available to:

- 1. Existing Platinum, Gold and Certified partners in the Adobe Partner Connection program. For eligibility criteria, see the Adobe Partner Connection Reseller Program Guide*.
- 2. Adobe Licensing Centres (ALCs).

**For the avoidance of doubt, although partners in the Adobe Partner Connection program may participate in the ETLA Incentives Program, the Adobe Partner Connection Reseller Program and the ETLA Incentives Program are distinct programs.*

SUMMARY OF ETLA INCENTIVES

INCENTIVE	PAYOUT
Sourcing Fee	4% of the annual contract value of the ETLA
Supporting Activities Commission	4% of the annual contract value of the ETLA
Fulfillment Fee	4% of the annual contract value of the ETLA

The nature of certain deals may render it necessary for reduced amounts of incentives to be paid. In these situations, Adobe and partner will agree on the reduced amounts before engaging with the customer, depending on the scope of the ancillary support activities that Adobe will require the partner to perform.

SOURCING FEE

Adobe taps on its network of partners to increase demand for Adobe products by relying on them to present Adobe products to customers, explain features and benefits, and support the entire sales cycle from first evaluation to purchase. Adobe wishes to reward those partners that become trusted advisors to these customers, particularly in light of a competitive environment where customers have ample choice of Adobe resellers from whom to purchase. In order to support customer choice and to compensate committed and competent partners, Adobe wishes to reward partners who have identified NEW opportunities, within existing or new accounts. Subject to the terms of this Program Guide, Partner may be eligible to receive a Sourcing Fee, calculated at 4% of the annual contract value of an ETLA, on all 3 years of the ETLA.

Although the potential Sourcing Fee relates to this ETLA Financial Incentives Program*, for administrative and operational efficiencies, Adobe partners are required to submit an opportunity which may qualify for Sourcing Fee(s) to be paid (“sourcing deal registration”), in accordance with the same process as the deal registrations (under Adobe Partner Connection program) via the Adobe Partner Connection Portal. Adobe will assess each sourcing deal registration based on the information being provided. Partner must provide all relevant information necessary to establish that an opportunity satisfies all requirements and criteria set out in the Sourcing Fee Eligibility Criteria section. **Validation of whether an opportunity is new will be conducted during the Adobe sourcing deal registration approval process, and in any event the decision of Adobe in this regard will be final.**

In respect of the Sourcing Fee, first and foremost, the ETLA opportunity must be considered a new subscription opportunity to Adobe (which includes the entire Adobe Group of companies i.e. Adobe Systems Incorporated, and all subsidiaries and affiliates of Adobe Systems Incorporated) at the time of registration. For the avoidance of doubt, renewal opportunities for non-ETLA licensing programs (such as VIP, EEA) which are migrated, transferred or eventually transacted through to an ETLA, are not eligible for the Sourcing Fee. Additionally, the opportunity cannot be submitted by another partner, nor should it be in the process of being actively worked on by an Adobe Sales Representative.

Upsell opportunities for existing customers are eligible** - however, the incremental revenue must meet the minimum eligibility criteria i.e. >\$75,000 USD (Total Contract Value), in addition to all other terms stated in this Program Guide.

***Only the upsell/incremental component will be eligible for the sourcing fee.*

If, during the claims process, Adobe finds that a partner has registered an opportunity which does not qualify for the Sourcing Fee, then the transaction will be deemed invalid and the applicable Sourcing Fee must be refunded to Adobe (if it has already been paid). Additionally, Adobe reserves the right to deduct such Sourcing Fee from future amounts which are payable to the partner.

Sourcing Fee Eligibility Criteria:

In order to qualify and receive the Sourcing Fee, partner must meet the following requirements:

- Registered Adobe Partner Connection partners who have attained and maintained at least Certified, Gold, or Platinum levels are eligible for the Sourcing Fee.
- Identify and introduce key decision makers in the end customer's organisation to Adobe.
- Establish that end user customer has a budget for this opportunity.
- Understand end user customers' business issues and illustrate how Adobe products can be used to address them.
- Provide Adobe with details of the two-way communication between the partner and the customer's decision maker (i.e., not solely with Adobe Sales Reps) in format that is not modifiable (e.g. PDF).
Note: Screenshots or extracts of WeChat or WhatsApp discussions, Word documents are not acceptable.
- Opportunities originating from customer RFP / RFQ bid scenarios are not eligible for Sourcing Fees. Adobe reserves the right to revoke any opportunity that has been approved if it is discovered that the reseller uncovered the opportunity from a bid board or as a result of a published RFP / RFQ.

The following requirements may also be considered:

- Introduce ETLA as a viable licensing program option to end user customer, including explaining to the end user customer the features and benefits of an ETLA.
- Outline end user customer's internal business and approval process to Adobe.
- Communicate to Adobe the risks associated with the opportunity.
- Deliver presentations, demos, and proof of concept(s) to prospective end user customers.

Additional terms:

- The Sourcing Fee will only apply to ETLA opportunities which are >\$75,000 USD (Total Contract Value).
- Must be a new opportunity (as verified by Adobe, at its sole discretion); renewals are not eligible for the Sourcing Fee.
- Sourcing Fee is payable on the Annual Contract Value (ACV).
- The maximum payout in respect of sourcing fees is limited to \$50,000 USD (across all deals and opportunities).
- Opportunities that are identified (sourced) by one partner initially, but subsequently followed through by another partner, are not eligible for the Sourcing Fee.
- Sourcing deal registrations must be submitted at least ten days prior to orders being placed.

- All orders must be placed prior to the expiration of the sourcing deal registration.
- Sourcing deal registrations are valid for 180 days from the approval date; a single 60-day extension may be requested through the system prior to the expiration date of the opportunity, however once an opportunity expires, it cannot be extended or re-registered.

SUPPORTING ACTIVITIES COMMISSION

This incentive is available to partners who, at the request and direction of Adobe, provide significant additional sales support functions to Adobe on an ETLA during Adobe's engagement with a customer. Subject to the terms of this Program Guide, Partner is eligible to receive a Supporting Activities Commission, calculated at 4% of the annual contract value of an ETLA, on all 3 years of the ETLA.

Supporting Activities Commission Eligibility Criteria:

In order to qualify and receive the Supporting Activities Commission, partner must perform two or more of the following ancillary sales support activities **throughout the term of the ETLA** at the request and direction of Adobe:

- Assist Adobe in establishing end user customer's base license needs.
- Assist Adobe in upselling, from point products to complete offerings, and promoting the value of subscription licensing over perpetual licensing.
- Assist Adobe by identifying and introducing additional Adobe products and services through articulating the business problems that Adobe products address.
- Assist in negotiations between Adobe and the end user customer when needed (with the exclusion of any price discussion).
- Update Adobe on any deal risks or pertinent issues that may affect deal progress that partner becomes aware of.
- Support the Adobe representative in presentations, demos, and proof of concept to prospective end user customers.

Partner must also perform the following ancillary sales support activities and fulfill the following requirements, at the request and direction of Adobe, to receive the Supporting Activities Commission for the second and third years of the ETLA:

- Assist Adobe in driving an increase of Adobe product penetration with the end user customer.
- Update Adobe on any end customer issues that partner becomes aware of.
- Assist Customer with active use of Adobe products, including deployment/training, if necessary.
- Assist Adobe by engaging with the customer to ensure funds are allocated and purchase orders are processed for the 2nd and 3rd-year payments.
- Post-acquisition software licensing advice
 - Product advice and positioning
 - Problem resolution including support for call logging and escalation to Adobe
- Management of Customer's orders/receipts of the Products and Services.
- Management of Adobe's licensing portal for Customer

- Maintain Customer login to the Adobe Licensing Website (LWS)
- Register Customer's upgrades, certificates and installation keys for the Products and Services in Aboveboard.
- Maintenance of download links to upgrades for the Products and Services.

FULFILLMENT FEE

When an end user customer opts to place its orders for an ETLA through an Adobe partner, Adobe may at its discretion appoint the selected Adobe partner as a third-party fulfillment service provider ("Fulfillment Partner") and pay the Fulfillment Partner a fee ("Fulfillment Fee") for fulfilling the orders under the ETLA through a Limited Scope Fulfillment Agreement ("LSFA").

The Fulfillment Fee is calculated at a rate of 4% of the annual contract value of the ETLA. A prerequisite for appointment as a Fulfillment Partner is that it must be able to meet Adobe's onboarding and credit requirements. For more information, please contact your Channel Adobe Account Manager.

In order to qualify and receive the Fulfillment Activities Commission, partner must perform two or more of the following ancillary sales support activities **throughout the term of the ETLA** at the request and direction of Adobe:

- If partner earning the Supporting Activities Commission is also fulfilling the ETLA, partner must have fulfilled the ETLAs for the second and third years.
- Preparation of quotes for Customer.
- Annual true-ups.
- Anniversary Renewals – work with the Customer (up to 90 days prior to the anniversary date of the Customer Agreement) to ascertain such Customer's actual software usage, utilizing either software deployment tools for Adobe-supplied tools and obtain customers signed deployment report for Adobe.
- Budgetary reporting, including project true-up requirements during any annual term of Customer Agreement (e.g. Customer may want to know what their true-up cost would be, 6 months before the next anniversary date).

NOTE:

Under no circumstances may the partner engage in any discussion on prices with the customer.

Partner must provide all information and documents evidencing partner's performance of the above activities to Adobe's satisfaction. Adobe is otherwise not obliged to make any payment of any incentive to partner. Adobe's decision, on whether a partner has performed the required activities and is entitled to receive the Sourcing Fee, Supporting Activities Commission or Fulfillment Fee, is final.

ETLA INCENTIVES PAYOUT

- **Sourcing Fee:** Adobe will pay each annual installment of the Sourcing Fee (if any) only after Adobe has received full payment from the Customer of the Annual Customer Fees payable by the Customer, in accordance with the terms and conditions of the Customer Agreement.
 - **Supporting Activities Commission:** Adobe will pay each annual installment of the Supporting Activities Commission (if any) only after Adobe has received full payment from the Customer of the Annual Customer Fees payable by the Customer, in accordance with the terms and conditions of the Customer Agreement.
 - **Fulfillment Fee:** Payment of the fulfillment fee is governed by the LSFA.
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- **For ETLAs transacted through Adobe** (i.e. end user customer places purchase order on Adobe directly without the involvement of a partner), payment of the Sourcing Fee and Supporting Activities Commission (where applicable), will be subject to the terms set out in **Exhibit A** attached to this Program Guide and partner's execution of the Acceptance Form.
 - **For ETLAs transacted through a Fulfillment Partner** (i.e. Adobe enters into a direct agreement with the end user customer who then places its purchase order through the Fulfillment Partner), and the partner receiving the Sourcing Fee or Supporting Activities Commission (or both) is also the Fulfillment Partner, then the Sourcing Fee or Supporting Activities Commission (or both) will be paid through the LSFA, subject to partner's execution of the LSFA Addendum (such form and format to be provided by Adobe).

EXHIBIT A

TERMS FOR SOURCING FEE AND SUPPORTING ACTIVITIES COMMISSION

Subject to these terms, Adobe will pay Partner Commission (as defined in clause 1.3) in consideration for the sales support services provided or to be provided by Partner to an end user customer.

1. DEFINITIONS

- 1.1 **“Acceptance Form”** means the “Acceptance of Terms” form indicating Partner’s acceptance of these terms in order to receive the Commission.
- 1.2 **“Anti-Corruption Laws”** means the United States Foreign Corrupt Practices Act (“FCPA”) and any similar or related laws and regulations in any jurisdiction, anywhere in the world, that are applicable.
- 1.3 **“Commission”** means the amounts payable to Partner for Services performed in relation to each Customer Agreement, as set out in the Acceptance Form (e.g. Sourcing Fee or Supporting Activities Commission or both).
- 1.4 **“Customer”** means the entity who has entered into a Customer Agreement with Adobe, whose details are set out in the Acceptance Form.
- 1.5 **“Customer Agreement”** means the agreement entered by and between Adobe and Customer, the details of which are set out in the Acceptance Form.
- 1.6 **“Customer Fees”** means the total or annual fees payable by Customer to Adobe for the Products and Services, as set out in the Customer Agreement.
- 1.7 **“Effective Date”** means the date of signature by Partner on the Acceptance Form.
- 1.8 **“Partner”** means the entity identified on the Acceptance Form as receiving Commission under these terms.
- 1.9 **“Products and Services”** means the Adobe software products and services licensed by Adobe to Customer under the terms of the Customer Agreement.
- 1.10 **“Services”** means the sourcing activities or sales support activities performed by Partner, as set out in the ETLA Financial Incentives Program Guide.

2. PAYMENT TERMS

- 2.1 In order to receive the Commission, Partner must:
 - (A) accept these terms by executing the Acceptance Form;
 - (B) comply with these terms and the ETLA Financial Incentives Program Guide; and

- (C) provide the Services during the term of the Customer Agreement.
- 2.2 Adobe is entitled to suspend, withhold or refuse payment of any part of the Commission, require Partner to refund any Commission that has been paid, or remove Partner's eligibility to participate in the ETLA Financial Incentives program, without prejudice to any of its rights, if:
- (A) Partner fails to comply with clause 2.1, or fails to provide proof of attainment of clause 2.1 to Adobe's satisfaction;
- (B) Adobe determines:
- (1) misrepresentation has been made by Partner or Partner's officers, employees, representatives or agents ("Partner Personnel");
 - (2) Partner or Partner Personnel has made a warranty or representation that exceeds the limited warranties made by Adobe under the Customer Agreement;
 - (3) Partner or Partner Personnel has committed a wrongful (including unlawful, fraudulent or negligent) act or omission;
 - (4) Partner or Partner Personnel has breached a law (including without limitation, Anti-Corruption Laws, privacy or data protection laws); or
 - (5) that Partner has provided information that is inaccurate, untrue, misleading, or fraudulent.
- 2.3 All Commissions do not include applicable taxes that are withheld by Adobe and are stated in Australian Dollars if Partner is located in Australia or New Zealand, and in United States Dollars if Partner is located in any other country.
- 2.4 Adobe may, if required by Partner, issue a purchase order to Partner for the Commission.
- 2.5 Partner must issue an invoice to Adobe for each Commission payment. Within 45 days of receipt of Partner's invoice, Adobe will either approve and pay the invoice, or notify Partner that it disapproves of the invoice in whole or in part (and provide reasons for its disapproval). Unless otherwise stated in an Acceptance Form, the Commission will be paid through Partner's Channel Pro account with Adobe.
- 2.6 No monies may be deducted from payments to Adobe on account of Commission being payable. No payment will be made to any person, firm or corporation other than Partner.
- 2.7 Adobe owes no further commissions or any other fees to Partner (A) in relation to the Products and Services and the Customer Agreement; or (B) for any other Adobe products, goods or services purchased by the Customer or any other entity other than as set out specifically in the Acceptance Form. Partner waives its right to any such fees.

3. TAX INDEMNIFICATION

Partner acknowledges and agrees that it is the obligation of Partner to report as income all Commission received by Partner under the ETLA Incentive Program and Partner agrees to indemnify Adobe and hold it harmless to the extent of any obligation imposed on Adobe to pay any taxes or insurance, including without limitations, withholding taxes, social security, unemployment, or disability insurance, and any interest and penalties that may be imposed. Partner agrees to pay any tax imposed by any governmental authority on any payment made, or to be made, by Adobe under these terms.

4. RECORDS AND INSPECTIONS

For a period of 2 years after payment of the Commission, (A) Partner agrees to maintain a complete, clear and accurate record of all matters concerning the Services and Supporting Activities Commission; and (B) Partner must permit Adobe's internal compliance auditor, chief compliance officer, his/her designate, or an independent third party (who is nominated by Adobe and bound by reasonable confidentiality undertakings), or all of them, to audit and inspect its books, records and all other relevant information and documents (wherever located) concerning the Services and Supporting Activities Commission, to ensure compliance by Partner with the ETLA Incentives Program and its terms. Any such inspection and audit will be conducted during regular business hours upon seven days' prior written notice to Partner, and in such a manner as not to interfere with the normal business activities of Partner. Adobe bears the expense of such audit, unless Partner is found to be non-compliant with these terms, in which case the audit will be at the expense of Partner.

5. GENERAL

5.1 **Relationship.** Nothing in these terms is intended to constitute a fiduciary relationship or an agency, partnership or trust between the parties. No party has authority to bind the other party.

5.2 **Additional Documentation.** Partner agrees that any varying or additional terms contained in any invoice or other written notification or document issued by Partner regarding the subject matter of these terms is of no effect.

5.3 **Modification.** Adobe, in its sole discretion, may revise any part of these terms at any time by giving notice to Partner. The changes will become effective at the end of the notice period specific in the notice by Adobe.

5.4 **Governing Law and Dispute Resolution.**

(A) If Partner is incorporated in Australia or New Zealand:

These terms are governed by and construed under the laws of the state of New South Wales without regard to its conflict of laws principles, and the parties irrevocably submit to the non-exclusive jurisdiction of that state.

(B) If Partner is resident in any other country, including a member state of the Association of Southeast Asian Nations (ASEAN), mainland China, Hong Kong S.A.R., Macau S.A.R., Taiwan R.O.C., the Republic of Korea, India, Sri Lanka, Bangladesh, or Nepal:

- (1) These terms (including the arbitration agreement contained in this clause 5.4(B)) is governed by and construed under the laws of Singapore, without regard to its conflict of laws principles. Except as expressly set out in these terms, nothing in these terms confers or purports to confer on any third party any benefit or any right to enforce any of these terms under the Contract (Rights of Third Parties) Act.
- (2) Any dispute arising out of or in connection with these terms, including any question regarding its existence, validity, or termination, must be referred to and finally resolved by arbitration in Singapore under the Arbitration Rules of Singapore International Arbitration Centre ("SIAC") for the time being in force, which rules are deemed to be incorporated by reference in this clause 5.4(B).
- (3) There will be one arbitrator, selected jointly by the Parties. If the arbitrator is not selected within 30 days of the written demand by a Party to submit to arbitration, the Chairman of the SIAC will make the selection.
- (4) The arbitration will be conducted in the English language, but any witness whose native language is not English may give testimony in the witness's native language, with simultaneous translation into English (at the expense of the Party presenting the witness).
- (5) Judgment upon the award rendered may be entered and will be enforceable in any court of competent jurisdiction having jurisdiction over the Parties.

5.5 **Provisional Remedies.** Actual or threatened breach of these terms may cause immediate or irreparable harm that is difficult to calculate and cannot be remedied by the payment of damages alone. Notwithstanding any provision in these terms, either Party to these terms may request any judicial, administrative, or other authority in any jurisdiction to order any provisional or conservatory measure, including injunctive relief, specific performance, or other equitable relief, before the institution of or during legal or arbitration proceedings, for the preservation of its rights and interests or to enforce specific terms that are suitable for provisional remedies.

5.6 **Entire Agreement.** The Acceptance Form, together with the Enterprise Term License Agreement (ETLA) Financial Incentives Program Guide and these terms, constitute the entire agreement of the parties as to the subject matter and replace all previous agreements, understandings, proposals, discussions, negotiations, representations and warranties about that subject matter. If there is any inconsistency between these terms and the Acceptance Form, then the Acceptance Form will prevail to the extent of the inconsistency.

VERSION	EFFECTIVE DATE
1.0	December 3 rd , 2016