AMENDMENT # 1

DATE: April 12, 2013

TO: All Bidders of Record

FROM: Gil Rivera, Buyer

SUBJECT: Amendment #1 to T-2894 “Re-issue: Adobe Enterprise Licensing, 3-Year Term”

This amendment becomes part of the Contract Documents and modifies the original bidding documents as noted below:

1. CLARIFICATION: SECTION A: STANDARD BID TERMS AND CONDITIONS, PARAGRAPH 1. ACCEPTANCE, Part (I) has changed as detailed below. Part (II) remains unchanged.

WAS:
(I) All equipment and/or services furnished will be subject to inspection and testing by buyer and buyer's agents upon arrival and after installation. Any equipment and/or services found by buyer in its sole discretion to be not in accordance with the specifications, drawings, plans, instructions, performance criteria, samples or other description furnished or adopted by buyer for the order or otherwise not in conformance with the terms of the order shall be subject to rejection, return and back charge as appropriate, together with the necessary costs of handling and shipping. Buyer's payment of all or any part of the purchase price prior to such inspection, testing and non-acceptance of the equipment and/or services involved shall not constitute a waiver of any of buyer's rights hereunder.

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2. CLARIFICATION: SECTION A: STANDARD BID TERMS AND CONDITIONS, PARAGRAPH 13. CONTRACTOR GUARANTEE has changed.

WAS:

13. CONTRACTOR GUARANTEE. The contractor shall guarantee all materials, equipment and workmanship furnished and or installed to be free of defects and shall agree to replace solely at his/her expense any and all defective equipment, parts, etc. within a one year period after the date of acceptance of the items and or installation by CNM, unless otherwise agreed to in writing at the time of award.

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3. CLARIFICATION: SECTION A: STANDARD BID TERMS AND CONDITIONS, PARAGRAPH 41. REPORTS AND INFORMATION has changed.

WAS:

41. REPORTS AND INFORMATION. At such times and in such forms as CNM may require, there shall be furnished to CNM such statements, records, reports, data and information, as CNM may request pertaining to matters covered by all resultant agreements to this Invitation to Bid.

IS NOW:

41. REPORTS AND INFORMATION. At such times and in such forms as CNM may require, there shall be furnished to CNM such statements, records, reports, data and information, as CNM may request once annually, or as required by law, pertaining to matters covered by all resultant agreements to this Invitation to Bid.

4. CLARIFICATION: SECTION B: GENERAL TERMS AND CONDITIONS, PARAGRAPH 1. Inspection and Audit has changed.

WAS:

1. Inspection and Audit. a. CNM may inspect, at any reasonable time, any part of Seller's plant or place of business which is related to performance of this Purchase Order. Acceptance of delivery shall not be considered acceptance of the materials, supplies or services furnished. Final inspection of product and services will be made at the destination. Any testing or inspection procedures required by the specification are in addition to CNM's rights under this paragraph.
   b. The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. Contractor shall maintain detailed records of all materials or supplies delivered to CNM under this Purchase Order, including serial numbers and other appropriate identifiers. These records shall be subject to internal and external audit. CNM shall have the right to audit billings both before and after payment. Payment under the resultant Agreement shall not preclude CNM from recovering excessive, erroneous or illegal payments previously made to the Contractor.

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5. CLARIFICATION: SECTION B: GENERAL TERMS AND CONDITIONS, PARAGRAPH 2. Warranties has changed.

WAS:

2. Warranties. Seller warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller. All applicable UCC warranties, express and implied, are incorporated herein.

IS NOW:

Seller warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller.

Seller shall forward the warranties to CNM which are provided to Seller from the Original Equipment Manufacturer ("OEM") of the Product, Adobe Systems Incorporated, and to the extent granted by the OEM, CNM shall be the beneficiary of the OEM’s warranties with respect to the Product. Seller or OEM shall provide proof of warranty transfer to CNM upon acceptance of CNM’s Purchase Order. Seller is not a Party to any such terms between CNM and OEM and CNM agrees to look solely to the OEM for satisfaction of any and all warranty claims related to that OEM’s Product.

Except as otherwise provided in this agreement and/or any order issued hereunder, Seller hereby disclaims all other warranties, either express or implied, including, but not limited to, any warranty of merchantability or fitness for a particular purpose, warranty of non-infringement, or any warranty relating to third party services. The disclaimer contained in this paragraph does not affect the terms of any warranty provided by the OEM, Adobe Systems Incorporated.

6. CLARIFICATION: SECTION B: GENERAL TERMS AND CONDITIONS, PARAGRAPH 3. Acceptance and Rejection has changed.

WAS:

3. Acceptance and Rejection. If prior to final acceptance, any materials, supplies or service are found to be defective or not as specified, or, if CNM is entitled to revoke acceptance of them, CNM may reject or revoke acceptance, require Seller to correct without charge within a reasonable time, or require delivery at an equitable reduction in price at CNM's option. Seller shall reimburse CNM for all incidental and consequential costs related to unaccepted materials, supplies or service. Notwithstanding final acceptance and payment. Seller shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of performance shall not waive CNM's right to claim damages for breach.

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7. CLARIFICATION: SECTION B: GENERAL TERMS AND CONDITIONS, PARAGRAPH 3. Acceptance and Rejection has changed.

WAS:

6. Termination and Delays. CNM, by written notice stating the extent and effective date may terminate this order for convenience in whole or in part, at any time. CNM shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) a reasonable amount to be approved by CNM, and not otherwise recoverable from other sources by Seller, with respect to the undelivered or unaccepted portion of this order. Provided, however, compensation hereunder shall in no event exceed the total order price. Such amount will be limited to Seller's actual cost and may not include anticipated profits.
CNM may terminate this order by written notice in whole or in part for Seller's default if Seller refuses or fails to comply with the provision of this order, or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time. In such event, CNM may otherwise secure the materials, supplies or services ordered, and Seller shall be liable for damages suffered by CNM, including incidental and consequential damages.

If, after notice of termination, CNM determines Seller was not in default, or if Seller's default is due to failure of CNM, termination shall be deemed for the convenience of CNM.

The rights and remedies of CNM provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

As used in this paragraph, the word "Seller" includes Seller and its subsuppliers at any tier.

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As used in this paragraph, the word "Seller" includes Seller and its subsuppliers at any tier.

8. CLARIFICATION:


WAS:

9. Patent and Copyright Indemnity. Seller shall pay all royalty and license fees relating to deliverables and other items covered hereby. In the event any third party shall claim that the reproduction, manufacture, use, or sale of goods or items covered hereby infringes any copyright, trademark, patent, or other intellectual property rights, Seller shall indemnify and hold CNM harmless from any cost, expense, damage, or loss resulting therefrom.

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9. CLARIFICATION: The following language is added to SECTION B: GENERAL TERMS AND CONDITIONS, PARAGRAPH 17. Applicable Law:

(i) Except for Seller’s breach regarding personal injury/property under indemnity obligations, seller will not be liable for any special, punitive, indirect, incidental or consequential damages including, but not limited to, loss of or damage to data, loss of anticipated revenue or profits, work stoppage or impairment of other assets, whether or not foreseeable and whether or not Seller has been advised of the possibility of such damages; provided, however, that, for the avoidance of doubt, damages arising in connection with obligations of indemnification or confidentiality hereunder shall be deemed to be “direct” damages for which recovery shall not be barred by this paragraph.

(ii) Except for Seller’s breach regarding personal injury/property under indemnity obligations, Seller’s total cumulative liability to the other in connection with this agreement, whether in contract, tort or other theory, will not exceed the total amount of fees actually paid or payable by CNM to Seller under the order that gave cause for such liability.

BIDDERS ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF ALL AMENDMENTS IN THE SPACE PROVIDED IN SECTION E.

All other specifications, terms and conditions remain unchanged. This amendment may also be downloaded from CNM’s website http://www.cnm.edu/depts/purchasing/request-for-bids.