

# I Online Backup Offer Terms and Conditions

## 1 General provisions

The terms and conditions in this offer apply to the Online Backup service of Swisscom (Switzerland) Ltd (hereinafter referred to as "Swisscom"). In the absence of any stipulation to the contrary, they shall apply in addition to the contract terms which already exist between the Customer and Swisscom.

For use of the Online Backup service, the Customer shall require an Adobe software licence. The Adobe Software Licence Agreement can be found at the end of these Offer Terms and Conditions for the Online Backup service. Acceptance of this Software Licence Agreement by the Customer is a pre-requisite for the use of the Swisscom Online Backup service.

## 2 Services provided by Swisscom

### 2.1 Scope of service

Online Backup shall include the following services:

- The Online Backup service secures data saved locally on the computer in various Swisscom data centres in Switzerland. After the initial upload of all files to be saved, Online Backup will carry out regular and automatic backups. The Customer shall have the option to adjust the interval between backups so that these occur either weekly, daily or when the Customer manually so determines.
- Online Backup encrypts these data both for transfer and for saving in the Swisscom data centre. The data are thus protected from third-party access. In addition to the encryption, Online Backup offers optional password protection for the encryption so that the encryption can only be deciphered by the password owner. Should the Customer select password protection, it shall bear the risk of loss of the password and for subsequent loss of access to all saved data (including previous versions). If the password is lost, Swisscom will no longer be able to restore access to the data.
- Online Backup saves all data which are selected by the Customer for online backup. All data formats can be saved, though no copy of the entire system will be made. System and program files shall not be saved as these can result in problems on restoration of the files.
- Online Backup allows data to be restored at any time provided they have been previously stored with Online Backup. In addition to the last backup, the Customer shall also be able to restore previous versions made up to 30 days before the last backup.

An up-to-date overview together with details of the various functions can be found at [http://www.swisscom.ch/res/internet/online\\_backup/index.htm?languageld=de](http://www.swisscom.ch/res/internet/online_backup/index.htm?languageld=de)

### 2.2 Updates (uploads)

Backups necessary for securing data shall be uploaded pursuant to the defined time schedule. The upload shall be performed automatically via the Internet to Swisscom. The default position is that backups are carried out on a weekly basis. This shall occur when the computer is switched on and connected to the Internet. After the initial upload, only changed files will be uploaded.

The Customer shall also be provided with new versions of the Online Backup software at no charge.

### **3 Duties and obligations of the Customer**

#### **3.1 General usage requirements**

Online Backup is offered exclusively to Swisscom customers who at least have a fixed-line connection with Swisscom and receive a bill for such.

#### **3.2 Download of software**

Customers are themselves responsible for downloading the Online Backup software and for the required hardware and software components and computer configurations. For each computer which is to be protected, a separate Online Backup licence is required.

#### **3.3 System requirements and updates**

Usage of Online Backup software requires that every computer equipped with this software meet the system requirements. A continually updated overview of system requirements for Online Backup will be published on the Swisscom portal ([http://www.swisscom.ch/res/hilfe/sicherheit/help\\_online\\_backup/index.htm?languageId=de](http://www.swisscom.ch/res/hilfe/sicherheit/help_online_backup/index.htm?languageId=de)). A new version of the Online Backup software may entail a change to system requirements.

On initial upload, the computer should remain switched on and connected to the Internet. Depending on the Internet connection and the volume of data, this process can take several days. If the saving procedure is interrupted, it will resume automatically upon re-establishment of the Internet connection.

In order to ensure regular data backups, the computer must be regularly connected to the Internet.

Use of the full scope of services provided by Online Backup requires that the Customer install all updates (Section 2.2) over the entire duration of the subscription, use the currently valid version of the Online Backup software (Section 2.2), employ a computer operating system that meets the current system requirements (Section 3.3) and ensure that this remains up to date.

The Customer shall be able to determine the time of the installation itself when installing a new version of the Online Backup software.

#### **3.4 Impact on other services**

The Customer accepts that use of Internet bandwidth for the Online Backup service and associated saving procedures can restrict Internet bandwidth for other services, in particular during the initial upload or when downloading backup files.

### **4 Billing**

The Online Backup service will be invoiced annually at the beginning of the one-year term on the Customer's existing fixed-line connection. Subject to any agreements to the contrary, the payment obligation shall begin with receipt of the activation code for the Online Backup software. The current price published on the Swisscom website at [www.swisscom.ch](http://www.swisscom.ch) shall apply.

### **5 Special provisions**

#### **5.1 Warranty**

With the Online Backup service, Swisscom shall ensure state-of-the-art data security within the scope of its obligations pursuant to Section 2.1 and the software manufacturer Adobe (see separate agreement below under Section II).

Swisscom **cannot offer any warranty**

- **for operational reliability and any impairment to the software supplied by Adobe (see separate agreement of the Customer with Adobe attached to these Offer Terms and Conditions under Section II)**

- for files lost as a result of force majeure
- for temporary interruptions during saving and restoration of data
- for lack of an Internet connection
- for third-party access to data through security loopholes on the Customer's system
- for third-party access to data resulting from a breach of the duty of care with respect to access data
- for loss of encryption data (see Section 2.1)
- for manipulation of configuration files

## **5.2 Liability**

**As far as legally permissible**, Swisscom excludes all liability, in particular but not exclusively, for faults and loss of data as well as for consequential damage and loss of profits. Swisscom shall only be liable for gross negligence and deliberate acts. These provisions on liability shall take precedence over other provisions on liability in other Swisscom contracts.

## **5.3 Duration**

The Online Backup service shall be concluded for a one-year term. The contract shall begin with receipt of the activation code for the Online Backup software.

## **6 Service modifications**

Swisscom shall be entitled to modify the scope of the Online Backup service or to suspend the service at any time. Swisscom shall notify the Customer accordingly.

## **7 Place of jurisdiction and applicable law**

This Agreement shall be governed by the laws of Switzerland. **The place of jurisdiction shall be Berne.** This does not apply to mandatory courts of jurisdiction.

Swisscom, July 2011

## II Adobe Systems Incorporated

### Personal Computer Software License Agreement

#### 1. Warranty disclaimer, binding agreement and additional terms and agreements

##### 1.1 Warranty disclaimer

The software and other information are delivered to you “as is” and with all faults. Adobe, its suppliers and certification authorities do not and cannot warrant the performance or results you may obtain by using the software, certificate authority services or other third party offerings. Except to the extent any warranty, condition, representation or term cannot or may not be excluded or limited by law applicable to you in your jurisdiction, adobe and its suppliers and certification authorities make no warranties conditions, representations, or terms (express or implied whether by statute, common law, custom, usage or otherwise) as to any matter including without limitation no infringement of third party rights, merchantability, integration, satisfactory quality, or fitness for any particular purpose. The provisions of sections 1.1 and 10 shall survive the termination of this agreement, howsoever caused, but this shall not imply or create any continued right to use the software after termination of this agreement.

##### 1.2 Binding agreement

By using, copying or distributing all or any portion of the Adobe Software, you accept all the terms and conditions of this agreement, including, in particular, the provisions on:

- Use (Section 3);
- Transferability (Section 5);
- Connectivity and Privacy (Section 7), including:
  - Updating,
  - Local Storage,
  - Settings Manager,
  - Peer Assisted Networking Technology,
  - Content Protection Technology, and
  - Use of Adobe Online Services;
- Warranty Disclaimer (Section 1.1), and;
- Liability Limitations (Sections 10 and 17).

Upon acceptance, this agreement is enforceable against you and any entity that obtained the software and on whose behalf it is used. If you do not agree, do not Use the Software.

##### 1.3 Additional terms and agreements

Adobe permits you to use the software only in accordance with the terms of this agreement. Use of some third party materials included in the software may be subject to other terms and conditions typically found in a separate license agreement, a “Read Me” file located near such materials or in the “Third Party Software Notices and/or Additional Terms and Conditions” found at <http://www.adobe.com/go/thirdparty>. Such other terms and conditions will supersede all or portions of this agreement in the event of a conflict with the terms and conditions of this agreement.

#### 2. Definitions

“Adobe” means Adobe Systems Incorporated, a Delaware corporation, 345 Park Avenue, San Jose, California 95110, if subsection 12(a) of this agreement applies; otherwise it means Adobe Systems Software Ireland Limited, 4-6 River walk, City west Business Campus, Dublin 24, Ireland, a company organized under the laws of Ireland and an affiliate and licensee of Adobe Systems Incorporated.

“Compatible Computer” means a computer that conforms to the system requirements of the software as specified in the documentation.

“Computer” means a virtual machine or physical personal electronic device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.

“Personal Computer” or “PC” shall mean a hardware product which is designed and marketed with the primary purpose of operating a wide variety of productivity, entertainment, and other software applications provided by unrelated third party software vendors, which operates depending upon the use of a full function and full feature set computer operating system of the type(s) then in widespread use with hardware to operate general purpose laptop, desktop, server and large format tablet microprocessor based computers. This definition of Personal Computer shall exclude hardware products that are designed and/or marketed to have as their primary purpose any number of the following: Television, television receiver, portable media player, audio/video receiver, radio, audio headphone, audio speaker, personal digital assistant (“PDA”), telephone or similar telephony based device, game console, personal video recorder (“PVR”), player for digital versatile disc (“DVD”) or other optical media, video camera, still camera, camcorder, video editing and format conversion device, video image projection device, and shall further exclude any similar type of consumer, professional or industrial device.

“Software” means (a) all of the contents of the files (delivered electronically or on physical media), or disk(s) or other media with which this agreement is provided, which may include (i) Adobe or third party computer information or software, including Adobe Reader® (“Adobe Reader”), Adobe® AIR® (“Adobe AIR”), Adobe Flash® Player, Shockwave® Player and Author ware® Player (collectively, Adobe AIR and the Flash, Shockwave and Author ware players are the “Adobe Runtimes”); (ii) related explanatory written materials or files (“Documentation”); and (iii) fonts; and (b) upgrades, modified versions, updates, additions, and copies of the foregoing, provided to you by Adobe at any time (collectively, “Updates”).

“Use” means to access, install, download, copy, or otherwise benefit from using the functionality of the Software.

### **3. Software License**

If you obtained the software from Adobe or one of its authorized licensees, and subject to your compliance with the terms of this agreement, including the restrictions in section 4, Adobe grants to you a non-exclusive license to use the software in the manner and for the purposes described in the documentation as follows:

#### **3.1 General Use**

You may install and use one copy of the software on your compatible computer. See section 4 for important restrictions on the use of the software.

#### **3.2 Server Use**

This agreement does not permit you to install or use the software on a computer file server. For information on use of software on a computer file server please refer to [http://www.adobe.com/go/acrobat\\_distribute](http://www.adobe.com/go/acrobat_distribute) for information about Adobe Reader; or <http://www.adobe.com/go/licensing> for information about the Adobe Runtimes.

#### **3.3 Distribution**

This license does not grant you the right to sublicense or distribute the software. For information about obtaining the right to distribute the software on tangible media or through an internal network or with

your product or service please refer to [http://www.adobe.com/go/acrobat\\_distribute](http://www.adobe.com/go/acrobat_distribute) for information about Adobe Reader; or <http://www.adobe.com/go/licensing> for information about the Adobe Runtimes.

### **3.4 Backup Copy**

You may make one backup copy of the software, provided your backup copy is not installed or used other than for archival purposes. You may not transfer the rights to a backup copy unless you transfer all rights in the software as provided under section 5.

## **4. Obligations and Restrictions**

### **4.1 Adobe Runtime Restrictions**

You will not use any Adobe Runtime on any non-PC device or with any embedded or device version of any operating system. For the avoidance of doubt, and by example only, you may not use an Adobe Runtime on any (a) mobile device, set top box (STB), handheld, phone, game console, TV, DVD player, media center (other than with Windows XP Media Center Edition and its successors), electronic billboard or other digital signage, internet appliance or other internet-connected device, PDA, medical device, ATM, telematic device, gaming machine, home automation system, kiosk, remote control device, or any other consumer electronics device, (b) operator-based mobile, cable, satellite, or television system or (c) other closed system device. No right or license to use any Adobe Runtime is granted for such prohibited uses.

For information on software license terms for non-PC versions of Adobe Runtimes please visit [http://www.adobe.com/go/runtime\\_mobile\\_EULA](http://www.adobe.com/go/runtime_mobile_EULA).

For information on licensing Adobe Runtimes for distribution on such systems please visit <http://www.adobe.com/go/licensing>.

The software may contain h.264/avc video technology, the use of which requires the following notice from mpeg-la, l.l.c.: This software is licensed under the avc patent portfolio license for the personal and non-commercial use of a consumer to (i) encode video in compliance with the avc standard (“avc video”) and/or (ii) decode avc video that was encoded by a consumer engaged in a personal and non-commercial activity and/or was obtained from a video provider licensed to provide avc video. No license is granted or shall be implied for any other use. additional information may be obtained from mpeg la, l.l.c. see <http://www.mpegla.com>.

### **4.2 Adobe Flash Player Restrictions**

You will not use Adobe Flash Player with any application or device that circumvents technological measures for the protection of video, audio, and/or data content, including any of Adobe’s secure RTMP measures. No right or license to use Adobe Flash Player is granted for such prohibited uses.

### **4.3 Adobe Reader Restrictions**

#### **4.3.1 Conversion Restrictions**

You will not integrate or use Adobe Reader with any other software, plug-in or enhancement that uses or relies upon Adobe Reader when converting or transforming PDF files into a different format (e.g., a PDF file into a TIFF, JPEG, or SVG file).

#### **4.3.2 Plug-in Restrictions**

You will not integrate or use Adobe Reader with any plug-in software not developed in accordance with the Adobe Integration Key License Agreement, more information can be found at <http://www.adobe.com/devnet/reader/ikla.html>.

### **4.3.3 Disabled Features**

Adobe Reader may contain features or functionalities that are hidden or appear disabled or “grayed out” (the “Disabled Features”). Disabled Features will activate only when opening a PDF document that was created using enabling technology available only from Adobe. You will not access, or attempt to access, any Disabled Features other than through the use of such enabling technologies, nor will you rely on Adobe Reader to create a feature substantially similar to any Disabled Feature or otherwise circumvent the technology that controls activation of any such feature. For more information on disabled features, please refer to <http://www.adobe.com/go/readerextensions>.

### **4.4 Notices**

You shall not alter or remove any copyright or other proprietary notice that appears on or in the software.

### **4.5 No Modification or Reverse Engineering**

You shall not modify, adapt, translate or create derivative works based upon the software. You shall not reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the software.

## **5. Transfer**

You may not rent, lease, sublicense, assign, or transfer your rights in the software, or authorize all or any portion of the software to be copied onto another user’s computer except as may be expressly permitted by this agreement.

You may, however, transfer all your rights to use the software to another person or legal entity provided that: (a) you also transfer (i) this agreement, and (ii) the software and all other software or hardware bundled or pre-installed with the software, including all copies, updates, and prior versions, to such person or entity, (b) you retain no copies, including backups and copies stored on a computer, and (c) the receiving party accepts the terms and conditions of this agreement and any other terms and conditions upon which you obtained a valid license to the software.

Notwithstanding the foregoing, you may not transfer education, pre-release, or not for resale copies of the software.

## **6. Intellectual Property Ownership, Reservation of Rights**

The software and any authorized copies that you make are the intellectual property of Adobe and its suppliers. The structure, organization and code of the software are the valuable intellectual property (e.g. trade secrets and confidential information) of Adobe and its suppliers. The software is protected by law, including without limitation the copyright laws of the United States and other countries, and by international treaty provisions. Except as expressly stated herein, this agreement does not grant you any intellectual property rights in the software and all rights not expressly granted are reserved by Adobe and its suppliers.

## **7. Connectivity and Privacy**

You acknowledge and agree to the following:

### **7.1 Use of PDF Files**

When you use the software to open a PDF file that has been enabled to display ads, your computer may connect to a website operated by Adobe, an advertiser, or other third party. Your internet protocol

address (“IP Address”) is sent when this happens. The party hosting the site may use technology to send (or “serve”) advertising or other electronic content that appears in or near the opened PDF file. The website operator may also use JavaScript, web beacons (also known as action tags or single-pixel gifs), and other technologies to increase and measure the effectiveness of advertisements and to personalize advertising content.

Your communication with Adobe websites is governed by the Adobe Online Privacy Policy found at <http://www.adobe.com/go/privacy> (“Adobe Online Privacy Policy”).

Adobe may not have access to or control over features that a third party may use, and the information practices of third party websites are not covered by the Adobe Online Privacy Policy.

## **7.2 Updating**

If your computer is connected to the internet, the software may, without additional notice, check for updates that are available for automatic download and installation to your computer and let Adobe know the software is successfully installed. For Reader, Updates may be automatically downloaded but not installed without additional notice unless you change your preferences to accept automatic installation.

Only non-personally identifying information is transmitted to Adobe when this happens, except to the extent that IP Addresses may be considered personally identifiable in some jurisdictions. The use of such information, including your IP Address, as provided by the auto update process is governed by the Adobe Online Privacy Policy. Please consult the documentation for information about changing default update settings, or online at <http://www.adobe.com/go/settingsmanager> for Flash Player, <http://acrobatsupport.com/turning-off-the-acrobat-updater> (or successor website) for Reader, and <http://kb2.adobe.com/cps/403/kb403175.html> and <http://airdownload.adobe.com/air/applications/SettingsManager/SettingsManager.air> for Adobe AIR.

## **7.3 Local Storage**

Flash Player and Adobe AIR may allow third parties to store certain information on your computer in a local data file known as a local shared object. The type and amount of information that the third party application requests to be stored in a local shared object can vary by application and such requests are solely controlled by the third party. You can find more information on local shared objects at [http://www.adobe.com/go/flashplayer\\_security](http://www.adobe.com/go/flashplayer_security). For more information on how to limit or control the storage of local shared objects on your computer, please visit [http://www.adobe.com/go/setmgr\\_storage\\_en](http://www.adobe.com/go/setmgr_storage_en).

## **7.4 Settings Manager**

Flash Player and Adobe AIR may cause certain user settings to be stored on your computer as a local shared object. These settings are associated with the instance of Flash Player or Adobe AIR on your Computer, but do not contain personally identifiable information associated with you, and allow you to configure certain settings within the Flash Player including the ability to limit third parties from storing local shared objects. You can find more information on how to configure your version of Flash Player or Adobe AIR, including how to disable local shared objects in the settings manager for Flash Player, at <http://www.adobe.com/go/settingsmanager>, or <http://airdownload.adobe.com/air/applications/SettingsManager/SettingsManager.air> for Adobe AIR.

## **7.5 Peer Assisted Networking Technology**

Adobe Flash Player and Adobe AIR runtimes provide the ability for applications built by third parties to connect to an Adobe Server or Service and permit direct communication between two Adobe Runtime clients or to connect an Adobe Runtime client as part of a peer or distributed network that allows a portion of your resources, such as network bandwidth, to be made directly available to other participants. Prior to joining such peer or distributed network, you will be provided with the opportunity

to accept such connectivity. To manage Peer Assisted Networking settings, please go to the settings manager at [http://www.adobe.com/go/settmgr\\_networking\\_en](http://www.adobe.com/go/settmgr_networking_en). You can find more information on Peer Assisted Networking at <http://www.adobe.com/go/RTMFP>.

## **7.6 Content Protection Technology**

If you use the Adobe Runtimes to access content that has been protected with Adobe Flash Media Rights Management Server or Flash Access software (“Content Protection”), in order to let you play the protected content, the software may automatically request media usage rights and individualization rights from a rights server on the internet, and may download and install required components of the software, including any available Content Protection Updates. You can find more information on Content Protection at [http://www.adobe.com/go/protected\\_content](http://www.adobe.com/go/protected_content).

## **7.7 Use of Adobe Online Services**

If your computer is connected to the internet, the software may, without additional notice and on an intermittent or regular basis, facilitate your access to content and services that are hosted on websites maintained by Adobe or its affiliates (“Adobe Online Services”). Examples of such Adobe Online Services might include, but are not limited to: Acrobat.com. In some cases an Adobe Online Service might appear as a feature or extension within the software even though it is hosted on a website. In some cases, access to an Adobe Online Service might require a separate subscription or other fee in order to access it, and/or your assent to additional terms of use. Adobe Online Services might not be available in all languages or to residents of all countries and Adobe may, at any time and for any reason, modify or discontinue the availability of any Adobe Online Service. Adobe also reserves the right to begin charging a fee for access to or use of an Adobe Online Service that was previously offered at no charge. If your computer is connected to the internet, the software may, without additional notice, update downloadable materials from these Adobe Online Services so as to provide immediate availability of these Adobe Online Services even when you are offline. When the software connects to the internet, no personally identifiable information is sent except to the extent that IP Addresses may be considered personally identifiable in some jurisdictions. Notwithstanding the foregoing, if you sign on to Acrobat.com your user name and password may be sent to Adobe’s servers and stored by Adobe in accordance with the Acrobat.com Additional Terms of Use. Whenever the Software makes an Internet connection and communicates with an Adobe website, whether automatically or due to explicit user request, the Adobe Online Privacy Policy shall apply. Additionally, unless you are provided with separate terms of use at that time, the Adobe.com terms of use (<http://www.adobe.com/go/terms>) shall apply. Please note that the Adobe Privacy Policy allows tracking of website visits and it addresses in detail the topic of tracking and use of cookies, web beacons and similar devices.

## **8. Third Party Offerings**

You acknowledge and agree to the following:

### **8.1 Third Party Offerings**

The software may allow you to access and interoperate with third party content, software applications, and data services, including rich Internet applications (“Third Party Offerings”). Your access to and use of any Third Party Offering, including any goods, services, or information, is governed by the terms and conditions respecting such offerings and copyright laws of the United States and other countries.

Third Party Offerings are not owned or provided by Adobe. You agree that you will not use any of such Third Party Offerings in violation of copyright laws of the United States or other countries. Adobe or the third party may at any time, for any reason, modify or discontinue the availability of any Third Party Offerings. Adobe does not control, endorse or accept responsibility for Third Party Offerings. Any dealings between you and any third party in connection with a Third Party Offerings, including such party’s privacy policies and use of your personal information, delivery of and payment for goods and

services and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such third party. Third Party Offerings might not be available in all languages or to residents of all countries and Adobe or the third party may, at any time and for any reason, modify or discontinue the availability of any Third Party Offerings.

## **8.2 Warranty**

Except as expressly agreed by Adobe or its affiliates or a third party in a separate agreement, your use of Adobe and third party offerings is at your own risk under the warranty and liability limitations of sections 1.1 and 10.

## **9. Digital Certificates**

You acknowledge and agree to the following:

### **9.1 Use**

Adobe AIR uses digital certificates to help you identify the publisher of Adobe AIR applications created by third parties. Additionally, Adobe AIR uses digital certificates to establish the identity of servers accessed via the Transport Layer Security (TLS) protocol, including access via HTTPS. Adobe Reader uses digital certificates to sign and validate signatures within PDF documents and to validate certified PDF documents. Adobe Runtimes use digital certificates to secure protected content from unauthorized usage. Your computer may connect to the Internet at the time of validation of a digital certificate in order to download current certificate revocation lists (CRLs) or to update the list of digital certificates. This access may be made both by the Software and by applications based on the software. Digital certificates are issued by third party certificate authorities, including Adobe Certified document Services (CDS) vendors listed at [http://www.adobe.com/go/partners\\_cds](http://www.adobe.com/go/partners_cds) and Adobe Approved Trust List (AATL) vendors listed at <http://www.adobe.com/security/approved-trust-list.html>, and individualization vendors found at [http://www.adobe.com/go/protected\\_content](http://www.adobe.com/go/protected_content) (collectively "Certification Authorities"), or can be self-signed.

### **9.2 Terms and Conditions**

Purchase, use and reliance upon digital certificates are the responsibility of you and a certification authority. Before you rely upon any certified document, digital signature or certification authority services, you should review the applicable terms and conditions under which the relevant certification authority provides services, including, for example, any subscriber agreements, relying party agreements, certificate policies and practice statements. See the links on [http://www.adobe.com/go/partners\\_cds](http://www.adobe.com/go/partners_cds) for information about Adobe's CDS vendors and <http://www.adobe.com/security/approved-trust-list.html> for information about Adobe's AATL vendors.

### **9.3 Acknowledgement**

You agree that (a) a digital certificate may have been revoked prior to the time of verification, making the digital signature or certificate appear valid when in fact it is not, (b) the security or integrity of a digital certificate may be compromised due to an act or omission by the signer of the document, the applicable certification authority, or any other third party, and (c) a certificate may be a self-signed certificate not provided by a certification authority. You are solely responsible for deciding whether or not to rely on a certificate. Unless a separate written warranty is provided to you by a certification authority, you use digital certificates at your sole risk.

### **9.4 Third Party Beneficiaries**

You agree that any certification authority you rely upon is a third party beneficiary of this agreement and shall have the right to enforce this agreement in its own name as if it were Adobe.

### **9.5 Indemnity**

You agree to hold Adobe and any applicable Certification Authority (except as expressly provided in its terms and conditions) harmless from any and all liabilities, losses, actions, damages, or claims (including all reasonable expenses, costs, and attorneys fees) arising out of or relating to any use of, or reliance on, any service of such authority, including, without limitation (a) reliance on an expired or revoked certificate, (b) improper verification of a certificate, (c) use of a certificate other than as permitted by any applicable terms and conditions, this agreement or applicable law; (d) failure to exercise reasonable judgment under the circumstances in relying on issuer services or certificates or (e) failure to perform any of the obligations as required in the terms and conditions related to the services.

## **10. Limitation of Liability**

In no event will adobe, its suppliers, or certification authorities be liable to you for any damages, claims or costs whatsoever including any consequential, indirect, incidental damages, or any lost profits or lost savings, even if an adobe representative has been advised of the possibility of such loss, damages, or claims. The foregoing limitations and exclusions apply to the extent permitted by applicable law in your jurisdiction.

Adobe's aggregate liability and that of its suppliers and certification authorities under or in connection with this agreement shall be limited to the amount paid for the software, if any. Nothing contained in this agreement limits adobe's liability to you in the event of death or personal injury resulting from adobe's negligence or for the tort of deceit (fraud).

Adobe is acting on behalf of its suppliers and certification authorities for the purpose of disclaiming, excluding and/or limiting obligations, warranties and liability as provided in this agreement, but in no other respects and for no other purpose. For further information, please see the jurisdiction specific information at the end of this agreement, if any, or contact adobe's customer support department.

## **11. Export Rules**

You agree that the software will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the software is identified as export controlled items under the Export Laws, you represent and warrant that you are not a citizen, or otherwise located within, an embargoed nation (including without limitation Iran, Syria, Sudan, Cuba, and North Korea) and that you are not otherwise prohibited under the Export Laws from receiving the software. All rights to use the software are granted on condition that such rights are forfeited if you fail to comply with the terms of this agreement.

## **12. Governing Law**

This agreement will be governed by and construed in accordance with the substantive laws in force: (a) in the State of California, if a license to the software is obtained when you are in the United States, Canada, or Mexico; or (b) in Japan, if a license to the software is obtained when you are in Japan, China, Korea, or other Southeast Asian country where all official languages are written in either an ideographic script (e.g., Hanzi, Kanji, or Hanja), and/or other script based upon or similar in structure to an ideographic script, such as Hangul or Kana; or (c) in England, if a license to the software is obtained when you are in any other jurisdiction not described above. The respective courts of Santa Clara County, California when California law applies, Tokyo District Court in Japan, when Japanese law applies, and the competent courts of England, when the law of England applies, shall each have non-exclusive jurisdiction over all disputes relating to this agreement. This agreement will not be governed by the conflict of law

rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

### **13. General Provisions**

If any part of this agreement is found void and unenforceable, it will not affect the validity of the balance of this agreement, which shall remain valid and enforceable according to its terms. This agreement shall not prejudice the statutory rights of any party dealing as a consumer. This agreement may only be modified by a writing signed by an authorized officer of Adobe. Updates may be licensed to you by Adobe with additional or different terms. This is the entire agreement between Adobe and you relating to the software and it supersedes any prior representations, discussions, undertakings, communications, or advertising relating to the software.

### **14. Notice to U.S. Government End Users**

For U.S. Government End Users, Adobe agrees to comply with all applicable equal opportunity laws including, if appropriate, the provisions of Executive Order 11246, as amended, section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 USC 4212), and section 503 of the Rehabilitation Act of 1973, as amended, and the regulations at 41 CFR Parts 60-1 through 60-60, 60-250, and 60-741. The affirmative action clause and regulations contained in the preceding sentence shall be incorporated by reference in this agreement.

### **15. Compliance with Licenses.**

If you are a business or organization, you agree that upon request from Adobe or Adobe's authorized representative, you will, within thirty (30) days, fully document and certify that use of any and all software at the time of the request is in conformity with your valid licenses from Adobe.

### **16. European Union Provisions.**

Nothing included in this agreement (including section 4.5) shall limit any non-waivable right to decompile the software that you may enjoy under mandatory law. For example, if you are located in the European Union (EU), you may have the right upon certain conditions specified in the applicable law to decompile the Software if it is necessary to do so in order to achieve interoperability of the software with another software program, and you have first asked Adobe in writing to provide the information necessary to achieve such interoperability and Adobe has not made such information available. In addition, such decompilation may only be done by you or someone else entitled to use a copy of the software on your behalf. Adobe has the right to impose reasonable conditions before providing such information. Any information supplied by Adobe or obtained by you, as permitted hereunder, may only be used by you for the purpose described herein and may not be disclosed to any third party or used to create any software which is substantially similar to the expression of the software or used for any other act which infringes Adobe or its licensors' copyright.

### **17. Specific Provisions and Exceptions**

#### **17.1 Limitation of Liability for Users Residing in Germany and Austria**

##### **17.1.1**

If you obtained the software in Germany or Austria, and you usually reside in such country, then section 10 does not apply. Instead, subject to the provisions in section 17.1.2, Adobe's statutory liability for damages shall be limited as follows: (a) Adobe shall be liable only up to the amount of damages as typically foreseeable at the time of entering into the license agreement in respect of damages caused by a slightly negligent breach of a material contractual obligation and (b) Adobe shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.

#### **17.1.2**

The aforesaid limitation of liability shall not apply to any mandatory statutory liability, in particular, to liability under the German Product Liability Act, liability for assuming a specific guarantee or liability for culpably caused personal injuries.

#### **17.1.3**

You are required to take all reasonable measures to avoid and reduce damages, in particular to make back-up copies of the software and your computer data subject to the provisions of this agreement. If you have any questions regarding this agreement, or if you wish to request any information from Adobe, please use the address and contact information included with this product or via the web at <http://www.adobe.com> to contact the Adobe office serving your jurisdiction. Adobe, Adobe AIR, AIR, Authorware, Flash, Reader, and Shockwave are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries.

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