

ADOBE CERTIFIED EXPERT PROGRAM AGREEMENT

This Adobe Certified Expert Program Agreement (the “Agreement”) sets forth the terms and conditions agreed to between Adobe and you (“Applicant” or “you”), the individual applying for participation in the Adobe Certified Expert Program (“Program”). The parties to the Agreement are Adobe (as defined below) and Applicant. If Applicant is located in the United States, Canada, or Mexico, “Adobe” means Adobe Systems Incorporated, a Delaware corporation (“Adobe Delaware”). If Applicant is located in any other country, “Adobe” means Adobe Systems Software Ireland Limited, a company incorporated in the Republic of Ireland (“Adobe Ireland”). All references to Adobe herein shall correspondingly either refer to Adobe Delaware or Adobe Ireland.

THIS IS A LEGAL AGREEMENT BETWEEN YOU AND ADOBE. PLEASE CAREFULLY REVIEW THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY INDICATING YOUR ACCEPTANCE BELOW, YOU CERTIFY THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT, THAT YOU ARE BECOMING A PARTY TO THIS AGREEMENT, AND THAT YOU CONSENT TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, DECLINE WHERE INSTRUCTED, AND YOU WILL NOT BE ABLE TO TAKE THE ADOBE PRODUCT PROFICIENCY EXAM OR ADOBE PRODUCT PROFICIENCY RECERTIFICATION EXAM, AS APPLICABLE, OR PARTICIPATE IN THE PROGRAM. THIS AGREEMENT IS NOT EFFECTIVE UNLESS AND UNTIL APPLICANT HAS SUCCESSFULLY PASSED THE ADOBE PRODUCT PROFICIENCY EXAM AND RECEIVED NOTICE OF ACCEPTANCE INTO THE PROGRAM FROM ADOBE.

In consideration of the mutual promises and covenants contained in this Agreement, Adobe and Applicant hereby agree to the following:

1. Definitions.

1.1. “Certification Requirements” means the requirements listed in Exhibit A, which may be changed by Adobe from time to time in Adobe’s sole discretion.

1.2 “Effective Date” means the date on which Applicant receives notice from Adobe confirming Applicant’s acceptance in the Program.

1.3 “Major Upgrade” refers to a product upgrade designated by a change in version number to the left of the decimal place, or otherwise designated as a Major Upgrade under this Agreement by Adobe. For example, unless otherwise designated by Adobe, Adobe Photoshop 5.1 is not a Major Upgrade under this Agreement when compared to Adobe Photoshop 5.0, but Adobe Photoshop 5.0 is a Major Upgrade when compared to Adobe Photoshop 4.0.

1.4 “Materials” means the welcome kit provided by Adobe and such other related items, if any, provided by Adobe to Applicant under this Agreement.

1.5 “Registration Fee” means the registration fees set forth in Exhibit A, as amended from time to time by Adobe in its sole discretion.

1.6 “Trademarks” means the Adobe Certified Expert Program logo and the Adobe Certified Expert trademark in word form, or in any style or translated form, which designates the product(s) for which Applicant has qualified pursuant to an Adobe Product Proficiency Exam or Adobe Product Proficiency Recertification Exam, as applicable.

1.7 “Use Guidelines” means the Program Trademarks Use Restrictions set forth in Exhibit B, as amended from time to time by Adobe in its sole discretion.

2. Acceptance into Program; License Grant.

2.1 Acceptance into Program. As of the Effective Date of this Agreement and subject to the terms and conditions of this Agreement, Adobe accepts Applicant as a participant in the Program.

2.2 License Grant. Upon Adobe’s receipt of satisfactory evidence of Applicant’s successful completion of the Certification Requirements and subject to the terms and conditions of this Agreement, Adobe grants to Applicant a personal, nonexclusive, nonassignable, nonsublicensable, nontransferable, revocable license to use the Trademarks and Materials (i) strictly in

accordance with the Use Guidelines and (ii) solely in reference to Applicant's approved services related to the particular versions of an Adobe product for which certification has been granted and for no other products or product versions. Adobe reserves the right to modify the Use Guidelines from time to time upon thirty (30) days' notice to Applicant, and Applicant must promptly and strictly adhere to such modified Use Guidelines. Applicant may not alter, modify or change the Trademarks or Materials in any way. This license shall immediately terminate if Applicant fails to successfully complete and pass the Adobe Product Proficiency Exam or the Adobe Product Proficiency Recertification Exam, as applicable, within ninety (90) days after it is first published by Adobe following a commercial release of a Major Upgrade of such product.

3. Term and Termination.

3.1 Term. This Agreement shall become effective on the Effective Date and shall continue until terminated by either party as provided below.

3.2 Termination. Either party may terminate this Agreement with or without cause upon thirty (30) days' prior notice to the other party. Adobe may terminate this Agreement with cause upon ten (10) days' prior notice to Applicant. Applicant expressly acknowledges that the Trademarks are and the Materials contain valuable intellectual property rights of Adobe, and Adobe may terminate for cause for many reasons including, without limitation, Adobe's disapproval at any time during the term of this Agreement of the nature or quality of Applicant's products or services rendered in connection with use of the Trademarks.

3.3 Effect of Termination; Survival. Upon termination of this Agreement, Applicant's participation in the Program and the license to the Trademarks and Materials shall terminate immediately. Applicant shall discontinue any and all uses of the Trademarks and Materials and either destroy or return all Trademarks and Materials to Adobe within thirty (30) days of the termination date. If Applicant chooses to destroy the Trademarks and Materials, then Applicant shall provide Adobe with written verification of such destruction. Each party understands that the rights of termination hereunder are absolute. Neither party shall incur any liability whatsoever for any damage, loss or expense of any kind suffered or incurred by the other arising from or incident to any termination of this Agreement by such party, whether or not such terminating party is aware of any such damage, loss or expense. In particular, without in any way limiting the foregoing, neither party shall be entitled to any damages in connection with loss of business profits or revenues. Sections 3.3, 4 and 6-9 shall survive termination of this Agreement for any reason.

4. Adobe Product Licenses. Applicant agrees to be bound by the terms and conditions of all end user licenses for the Adobe products used by Applicant and licenses for any and all beta versions of the products that may, at Adobe's sole discretion, be made available to Adobe Certified Experts from time to time.

5. Modification by Adobe. Upon thirty (30) days' notice to Applicant, Adobe, in its sole discretion, reserves the right to modify the terms and conditions of this Agreement from time to time. These modifications shall become effective immediately at the end of such notice period and shall be deemed to modify and supplement the terms and conditions of this Agreement. APPLICANT'S CONTINUED PARTICIPATION IN THE PROGRAM FOLLOWING SUCH NOTICE WILL CONSTITUTE BINDING ACCEPTANCE OF THE MODIFICATIONS. IF ANY MODIFICATION IS UNACCEPTABLE TO APPLICANT, APPLICANT'S ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT WITHIN THIRTY (30) DAYS OF SUCH NOTICE.

6. Disclaimer of Warranties; Limitation of Liability.

6.1 Disclaimer of Warranties. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ADOBE MAKES, AND APPLICANT RECEIVES, NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, UNDER THE LAWS OF ANY COUNTRY OR JURISDICTION RELATED TO OR ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF MATERIALS OR SERVICES UNDER THIS AGREEMENT. ADOBE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, EXCEPT INsofar AS CANNOT BE EXCLUDED OR LIMITED BY COMPULSORY LAW. IN NO EVENT SHALL ADOBE BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR THE INABILITY TO USE ANY OF THE MATERIALS OR SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADOBE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.2 Limitation of Liability. ADOBE'S LIABILITY (i) WITH RESPECT TO ANY PROVISION OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT, (ii) FOR ANY DAMAGES CAUSED BY A PRODUCT OR DEFECT OR FAILURE IN ANY PRODUCT, OR (iii) IN THE EVENT THAT A COURT OF COMPETENT JURISDICTION HOLDS ANY OF THE ABOVE DISCLAIMERS OF WARRANTIES INVALID, SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY APPLICANT UNDER THIS AGREEMENT. ADOBE'S LIABILITY IS CUMULATIVE, WITH ALL OF APPLICANT'S LOSSES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. APPLICANT HEREBY RELEASES AND FOREVER DISCHARGES ADOBE FROM ANY AND ALL OBLIGATIONS, LIABILITY, CLAIMS OR DEMANDS IN EXCESS OF THE FOREGOING LIMITATION. THE PARTIES ACKNOWLEDGE THAT OTHER PROVISIONS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS SECTION. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential, special, or incidental damages or the exclusion of implied warranties, some of the above limitations and disclaimers may not apply to Applicant. This Agreement does not exclude, restrict or modify any liability imposed under law that cannot, by such law, be excluded, restricted or modified when applied to Applicant.

7. **Indemnity**. Applicant hereby agrees that it will be solely responsible for and that it will indemnify, defend and hold Adobe and Adobe's officers, directors, agents, employees and representatives harmless from and against any and all claims, suits, damages, actions, proceedings, losses, obligations, penalties and expenses, including attorneys' fees, arising out of, related to, or caused directly or indirectly by (i) Applicant's use of the Trademarks and Materials, (ii) Applicant's provision of services or goods in connection with this Agreement, (iii) Applicant's negligent or illegal acts or omissions, or (iv) Applicant's breach of its obligations under this Agreement.

8. **No Other Product Warranties by Applicant**. Neither Applicant nor any of its employees or agents shall have any right to make any representation, warranty, or promise to any third party on behalf of Adobe that is not explicitly stated in an applicable end user license for an Adobe product, on a product label or container, or as authorized in writing by Adobe.

9. **Miscellaneous**.

9.1 Notice. Any notices required or permitted to be given pursuant to this Agreement shall be in writing, sent via email, certified mail, return receipt requested, postage pre-paid, or delivered by hand, to the business or email addresses of the parties set forth in the examination registration form or to such other address as may be furnished in writing to the other party. Notices shall be deemed effective on the earlier of the date of receipt or the fourth day after deposited in the mail. If notice is sent to Adobe, it shall be sent to the attention of the General Counsel. In addition, Applicant will refer to the web sites specified in herein from time to time during the term of this Agreement to ensure Applicant's continued compliance with the terms of this Agreement, including without limitation, the web sites specified in Section 3 of Exhibit A and Section 5 of Exhibit B.

9.2 Relationship of the Parties. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. Applicant is solely responsible for payment of, and will pay when due, all applicable business license fees, value added tax (VAT) and similar taxes, withholding taxes, and business and income taxes related to its activities in connection with this Agreement.

9.3 Governing Law; Forum. If Applicant is a resident of the United States, Canada or Mexico, this Agreement shall be governed by and interpreted in all respects by the laws of the State of California, without reference to conflict of laws principles, as such laws are applied to agreements entered into and to be performed entirely within California between California residents. If Applicant is a resident of Japan, this Agreement shall be governed by and interpreted in all respects by the laws of Japan, without reference to conflict of laws principles, as such laws are applied to agreements entered into and to be performed entirely within Japan between Japanese residents. If Applicant is a resident of any other country, this Agreement shall be governed by and interpreted in all respects by the laws of the Republic of Ireland, without reference to conflict of laws principles, as such laws are applied to agreements entered into and to be performed entirely within the Republic of Ireland between residents of the Republic of Ireland. In any event, this Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If Applicant is a resident of the United States, Canada or Mexico, all disputes arising under this Agreement may be brought in Superior Court of the State of California or the Federal District Court of San Jose in Santa Clara County, as permitted by law. If Applicant is a resident of Japan, all disputes arising under this Agreement may be brought in Tokyo District Court in Japan. If Applicant is a resident of any other country, all disputes arising under this Agreement may be brought in the Courts of Ireland in the Republic of Ireland.

9.4 Attorneys' Fees. In the event an action is commenced to enforce either party's rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and attorneys' fees.

9.5 Assignment. Applicant may not assign its rights or obligations under this Agreement. Any attempted assignment by Applicant shall be null and void.

9.6 Remedies. The parties expressly agree that a violation of Section 2.2 of this Agreement will cause irreparable harm to Adobe and that a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, Adobe will be entitled to an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation or any or all of the provisions hereof. Applicant hereby waives any requirement that Adobe post a bond or other security in conjunction with any application for injunctive or other equitable relief.

9.7 Waiver; Severability. The waiver by a party of a breach of any provisions contained herein shall be deemed effective only when in writing and shall in no way be construed as a waiver of any succeeding breach of such provision or the waiver of the provision itself. In the event that any provision of this Agreement is determined to be invalid or unenforceable under any law or by a court of competent jurisdiction, then the other provisions hereof shall continue unabated and in full force and effect. 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 objectives of such unenforceable invalid provision within the limits of applicable law of applicable court decisions.

9.8 Entire Agreement. Each Exhibit attached hereto and the Materials delivered separately is incorporated by reference and made a part of this Agreement as if its terms were fully set forth in the body of this Agreement. This Agreement, including all such Exhibits and such Materials, constitutes the entire agreement between Adobe and Applicant, and supersedes and terminates any and all prior agreements or contracts, written or oral, entered into between the parties relating to the subject matter hereof.

9.9 Independent Investigation. APPLICANT ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, HAS HAD AN OPPORTUNITY TO CONSULT WITH ITS OWN LEGAL ADVISERS IF IT SO DESIRED, AND AGREES TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. APPLICANT AGREES THAT, IN INTERPRETING THIS AGREEMENT, NO WEIGHT SHALL BE PLACED UPON THE FACT THAT THIS AGREEMENT HAS BEEN DRAFTED BY ADOBE.

EXHIBIT A
TO ADOBE CERTIFIED EXPERT PROGRAM AGREEMENT

Certification Requirements and Registration Fee

All of the following requirements must be met for each Adobe product or Major Upgrade for which Applicant seeks certification under the terms and conditions of this Agreement:

1. Applicant must accept the terms and conditions of the Agreement for each Adobe product version for which Applicant seeks certification.
2. Applicant must successfully complete and pass the Adobe Product Proficiency Exam or the Adobe Product Proficiency Recertification Exam, as applicable, for each product version for which certification is sought. Successful completion of the Adobe Product Proficiency Exam or the Adobe Product Proficiency Recertification Exam, as applicable, is good only for the particular product and version (including minor upgrades) that is the subject of the examination. The Adobe Product Proficiency Exam or the Adobe Product Proficiency Recertification Exam, as applicable, must be successfully completed and passed within ninety (90) days after it is made available for Major Upgrades to avoid termination of the license granted to Applicant under Section 2.2 of the Agreement in connection with certification previously obtained for the applicable version of the product. Upon the termination of such license pursuant to the preceding sentence, Applicant shall immediately cease any and all uses of the Trademarks and Materials; provided, however, that Applicant may continue to use only text references to Applicant's certification under the Program if and provided that Applicant clearly states the version of the Adobe product for which he/she was certified pursuant to this Agreement and otherwise adheres to the terms of the Agreement.
3. Applicant must have paid in valid funds the current applicable Registration Fee as required pursuant to http://www.adobe.com/support/certification/ace_certify.html#Anchor-Step-47857 or a successor web site thereto.

EXHIBIT B
TO ADOBE CERTIFIED EXPERT PROGRAM AGREEMENT

PROGRAM TRADEMARKS
USE RESTRICTIONS

The following guidelines are restrictions on use of the Trademarks and are mandatory. Applicant's failure to abide by these provisions may result in termination of this Agreement by Adobe.

1. Under no circumstances may the Trademarks be used by Applicant in any manner until Applicant has successfully completed, to Adobe's satisfaction, all Certification Requirements for at least one Adobe product.
2. If Applicant has not obtained certification from Adobe with respect to the Major Upgrade within ninety (90) days following the date that an Adobe Product Proficiency Exam or an Adobe Product Proficiency Recertification Exam is first published by Adobe for release of a Major Upgrade of such product, Applicant must discontinue any and all use of the Trademarks in relation to such product. For example, if Applicant obtained certification from Adobe with respect to Adobe Photoshop 5.0, Applicant's license under Section 2.2 of the Agreement remains valid through the 5.X series (unless Adobe designates a particular 5.X release as a Major Upgrade). Upon general commercial release of Adobe Photoshop 6.0, however, Applicant must complete the requirements for certification for Adobe Photoshop 6.0 within ninety (90) days following the date that an Adobe Product Proficiency Exam or an Adobe Product Proficiency Recertification Exam is first published by Adobe for Adobe Photoshop 6.0 in order for such license to continue. If Applicant does not, Applicant must discontinue any and all use of the Trademarks in relation to Adobe Photoshop (even in reference to older versions). To "discontinue all use" in this example includes, but is not necessarily limited to, destroying or revising all stationery, business cards, advertisements, brochures, and training manuals showing the Trademarks used in reference to Adobe Photoshop.
3. Applicant agrees to use the Trademarks only in connection with services that: (a) meet or exceed all applicable U.S. and foreign laws and regulations; (b) are advertised in compliance with all applicable U.S. and foreign fair advertising laws and regulations; (c) comply with all other applicable U.S. and foreign laws and regulations; (d) are of a quality and reputation consistent with the high quality of Adobe products and services; and (e) are advertised in a manner consistent with industry standards.
4. Upon reasonable request from Adobe, Applicant shall notify Adobe of the locations of Applicant's use of the Trademarks and furnish Adobe with suitable specimens of Applicant's use of the Trademarks. If Adobe so requests, Applicant agrees to submit to Adobe any uses of the Trademarks for Adobe's approval prior to the dissemination of these materials, such approval not to be unreasonably withheld. Applicant agrees to undertake such steps as Adobe may reasonably request to assist in monitoring and maintaining the quality and form of use of the Trademarks.

Adobe may review Applicant's use of the Trademarks at any time to evaluate Applicant's compliance with the quality standards described in this Agreement. If at any time Adobe determines that Applicant is not maintaining adequate quality standards, Applicant shall be considered in breach of this Agreement and subject to the termination provisions of Section 3 of the Agreement. Applicant shall remedy any material deficiencies in its use of the Trademarks, as determined by Adobe in its sole discretion and upon reasonable notice from Adobe, as soon as reasonably possible but in any event not later than thirty (30) days following notice from Adobe.

5. Applicant's use of the Trademarks, including without limitation marking requirements, shall comply at all times with this Agreement, the "Adobe Certified Program Guidelines for Logos and Credentials" currently available at www.adobe.com/support/certification/pdfs/Cert_Logo_Guide.pdf and the "Adobe Guidelines for third parties who license, use or refer to Adobe trademarks," currently available at www.adobe.com/misc/trade.html, each web site or successor web site thereto as modified from time to time in Adobe's sole discretion.

6. Applicant acknowledges Adobe's ownership of the Trademarks. Applicant shall employ best efforts to use the Trademarks in a manner that does not derogate from Adobe's rights and will take no action that will interfere with or diminish Adobe's right in the Trademarks. Further, Applicant shall not use the Trademarks in a manner which is likely to mislead any third party regarding Applicant's relationship to Adobe, or in connection with any obscene, pornographic, libelous, or defamatory material, product or services.