

PROSTEP PDF Generator 3D for Adobe LiveCycle® and for AEM Forms® Software License Agreement

NOTICE TO USER: THIS LICENSE AGREEMENT (“AGREEMENT”) GOVERNS INSTALLATION AND USE BY LICENSEE OF THE PROSTEP SOFTWARE DESCRIBED HEREIN. INSTALLATION AND USE OF THE SOFTWARE IS SUBJECT TO A SEPARATE WRITING CERTIFICATION OF LICENSE AND FOR THE LICENSE METRICS APPLICABLE TO LICENSEE. LICENSEE AGREES THAT THIS AGREEMENT IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY LICENSEE. BY CLICKING TO ACKNOWLEDGE AGREEMENT TO BE BOUND DURING REVIEW OF AN ELECTRONIC VERSION OF THIS LICENSE, OR DOWNLOADING, COPYING, INSTALLING OR USING THE SOFTWARE, LICENSEE ACCEPTS ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT IS ENFORCEABLE AGAINST ANY PERSON OR ENTITY THAT INSTALLS AND USES THE SOFTWARE AND ANY PERSON OR ENTITY (E.G., SYSTEM INTEGRATOR, CONSULTANT OR CONTRACTOR) THAT INSTALLS OR USES THE SOFTWARE ON ANOTHER PERSON’S OR ENTITY’S BEHALF.

THIS AGREEMENT SHALL APPLY ONLY TO THE SOFTWARE TO WHICH LICENSEE HAS OBTAINED A VALID LICENSE REGARDLESS OF WHETHER OTHER SOFTWARE IS REFERRED TO OR DESCRIBED HEREIN.

LICENSEE’S RIGHTS UNDER THIS AGREEMENT MAY BE SUBJECT TO ADDITIONAL TERMS AND CONDITIONS IN A SEPARATE WRITTEN AGREEMENT WITH PROSTEP THAT SUPPLEMENTS OR SUPERSEDES ALL OR PORTIONS OF THIS AGREEMENT.

1. Definitions.

1.1 “PROSTEP” means PROSTEP AG, a corporation organized and existing under the laws of Germany, registered under number HRB 8883, having its registered office at: Dolivostrasse 11, D-64293 Darmstadt, Germany.

1.2 “Authorized Users” means employees and individual contractors (i.e., temporary employees) of Licensee. Non licensed persons that participate in electronic processes that utilize the Software shall be deemed Authorized Users for the sole purpose of counting the number of users using the Software under the Per-User License Metric and not for any other purpose.

1.3 “Computer” means one or more central processing units (“CPU”) in a hardware device (including a Server) that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.

1.4 “Data Services Features” means the remoting features and associated data services destinations automatically installed and configured with the initial installation of the Foundation Components.

1.5 “Deploy” means to deliver or otherwise make available, directly or indirectly, by any means, a Document to one or more persons or entities including Recipients. A Document that has been Deployed will be deemed to remain Deployed until it is no longer available for distribution.

1.6 “Developer Programs” shall mean programs that are built consisting partly of the Flex SDK Source Files and partly of Licensee’s Material Improvement to add to or extend the Flex SDK Source Files.

1.7 “Development Software” means Software licensed for use in a technical environment solely for internal development and testing with respect to licensed Production Software.

1.8 “Disaster Recovery Environment” means Licensee’s technical environment designed solely to allow Licensee to respond to an interruption in service due to an event beyond Licensee’s control that creates an inability on Licensee’s part to provide critical business functions for a material period of time.

1.9 “Documentation” means the user manuals and/or technical publications as applicable, supplied in connection with validly licensed Software relating to the installation, use and administration of the Software.

1.10 „Licensee“ means the agreement partner whom PROSTEP has granted the rights to use the software according to the terms defined in this Agreement.

1.11 "Evaluation Software" means Software licensed for internal evaluation purposes and not for productive business use.

1.12 "Foundation Components" means the components of the Software that are automatically installed with the standard configuration for first-time installations, and become operational upon Licensee's entry of the License Key provided for such first-time installation. "Foundation Components" includes (a) the portions of the LiveCycle and AEM Forms SDK Components other than the client libraries used to access the Software programmatically, and the Flex SDK Components, (b) the JBoss Application Server software, the MySQL database software and the MySQL JDBC driver software accompanying the Software.

Foundation Components do not include the PROSTEP PDF Generator 3D.

1.13 "Internal Network" means Licensee's private, proprietary network resource accessible only by Authorized Users. "Internal Network" specifically excludes the Internet or any other network community open to the public, including membership or subscription driven groups, associations or similar organizations. Connection by secure links such as VPN or dial up to Licensee's Internal Network for the purpose of allowing Authorized Users to use the Software is deemed use over an Internal Network.

1.14 "License Key" means any license key, activation code, or similar installation, access or usage control codes, including serial numbers and electronic certificates digitally signed by PROSTEP or Adobe, designed to provide access to licensed software applications.

1.15 "License Metric" means each of the per-unit metrics specified by PROSTEP in connection with the licensed quantities identified in a separate writing to describe the scope of Licensee's right to use the Production Software and Development Software. The License Metrics are incorporated by reference into this Agreement. One or more of the following License Metrics (or another License Metric as provided in a separate writing) applies to each software application as further provided herein:

(a) Per-CPU. The total number of CPUs on the Computers used to operate the Software may not exceed the licensed quantity of CPUs. For purposes of this License Metric: (i) all CPUs on a Computer on which the Software is installed shall be deemed to operate the Software unless Licensee configures that Computer (using a reliable and verifiable means of hardware or software partitioning) such that the total number of CPUs that actually operate the Software is less than the total number on that Computer; and, (ii) when a CPU contains more than one processing core, each group of two (2) processing cores, and any remaining unpaired processing core, will be deemed a CPU unless otherwise separately provided in writing.

(b) Per-Server. The total number of Servers on which the Software is installed may not exceed the licensed quantity of Servers.

(c) Per-User. The total number of Authorized Users that use the Software may not exceed the licensed quantity of Authorized Users.

1.16 "LiveCycle SDK Components" or "AEM Forms SDK Components" means software libraries (including client libraries used to programmatically access the Software), sample software code, application programming interfaces, header files and related information, and the file format specifications, if any, included as part of the Software as described in the Documentation or a "Read Me" file accompanying the applicable Software, but not including the Flex SDK Components.

1.17 "Production Software" means Software licensed for productive business use.

1.18 "Recipient" means a person or entity to which Licensee directly or indirectly Deploys Documents. Each person or entity that receives a Deployed Document shall be deemed a unique Recipient with respect to a particular software application unless the identity of that Recipient is known to Licensee prior to Deployment and Licensee has Deployed Documents to that Recipient before.

1.19 "Server" means a Computer designed or configured for access by multiple users through a network.

1.20 "Short-Lived Process" means an electronic process that

(a) is tagged as "short-lived" through the user interface or application programming interfaces of the LiveCycle or AEM Forms SDK Components,

(b) is initiated by the specific action of a single person or computer,

(c) results in the completion of a single electronic transaction consisting of one or more events that occur in a serial or synchronous fashion in real-time to generate a certain result or output, and

(d) does not include or require any human intervention (other than initiation of the process).

1.21 "Software" means the Foundation Components, PROSTEP PDF Generator 3D, the LiveCycle SDK Components, the AEM Forms SDK Components, and object code versions of the validly licensed software applications distributed by PROSTEP and licensed according to the Licence Metrics defined in Section 3, including all Documentation and other materials provided by PROSTEP to Licensee under this Agreement, but does not include the JBoss Application Server software, the MySQL database software, or the MySQL JDBC driver software accompanying the Software.

2. License.

Subject to the terms and conditions of this Agreement, PROSTEP grants to Licensee a perpetual (except as set forth in Section 15 ("Term and Termination")), non-exclusive license to permit Authorized Users to install and use the Software delivered hereunder according to the terms and conditions of this Agreement on Computers within Licensee's Internal Network, on the licensed platforms and configurations, in the manner and for the purposes described in the Documentation, as further set forth below. Licensee may also permit non-licensed persons to participate in electronic processes that utilize Production Software provided that such non-licensed persons are not permitted to use the LiveCycle SDK Components, AEM Forms SDK Components or Flex SDK Components, or otherwise use the Software directly, and such participation does not otherwise violate any of the prohibitions described in Section 2.9(d) ("Prohibited Use") of the Agreement.

2.1 License Limitations. Licensee's right to install and use the Software is limited as follows based on the type of Software licensed:

(a) if Licensee has licensed Production Software or Development Software version(s) of the Software, then Licensee's right to install and use the Software is limited based on the License Metrics applicable to the particular software application licensed as provided in a separate written document and as further provided in Section 3 of this Agreement; and

(b) if Licensee has licensed Evaluation Software, then Licensee's right to install and use the Software is limited as provided in Section 4 of this Agreement.

2.2 Foundation Components. Licensee may install and use the Foundation Components solely for purposes of facilitating use of the Software in accordance with this Agreement, subject to the following additional limitations:

(a) Licensee's right to design, implement and/or execute electronic processes that use the Software in any way is limited to Short-Lived Processes unless Licensee has obtained a valid license to the Production Software version of the Adobe LiveCycle Process Management Software or the Adobe AEM Forms Software;

(b) Licensee may not modify or use the Data Services Features unless Licensee has obtained a valid license to the Production Software version of the PROSTEP PDF Generator 3D Software, except that Licensee may access the remoting end point functionality that is embedded in the Foundation Components for programmatic purposes (i.e., being able to call licensed LiveCycle or AEM Forms public APIs from an application developed in Flex); and

(c) Licensee may install and use the PROSTEP PDF Generator 3D Software and its output, solely with the Foundation Components and validly licensed software applications distributed by PROSTEP and specifically designed to operate with the Foundation Components.

2.3 LiveCycle SDK Components and AEM Forms SDK Components. Licensee may install and use the LiveCycle SDK Components and AEM Forms SDK Components solely for purposes of facilitating use of PROSTEP PDF Generator 3D Software in accordance with this Agreement.

2.4 Additional Software. Licensee is not permitted to use any software applications or components accompanying or installed with the Software unless Licensee is validly licensed to do so and only to the extent explicitly permitted under this Agreement or a separate writing. Use of some third party materials and services included in or accessed through the Software may be subject to other terms and conditions. These terms and conditions are typically found in a separate license agreement, terms of use or in a "Read Me" file located within or near such materials and services or are referenced at <http://www.PROSTEP.com>. Any licenses granted hereunder do not alter any rights and obligations Licensee may have under the terms and conditions governing such third party materials and services provided, however, that the disclaimer of warranty and limitation of liability provisions in this Agreement will apply to all Software provided hereunder. The JBoss Application Server software, MySQL database software, and MySQL JDBC driver software accompanying the Software are provided "AS IS" without warranty or support from PROSTEP and are otherwise subject to terms and

conditions other than this Agreement, which are found in a separate license agreement or “Read Me” file located in the file directory near such materials.

2.5 Backup and Disaster Recovery. Licensee may make and install a reasonable number of copies of the Software for backup and archival purposes and use such copies solely in the event that the primary copy has failed or is destroyed, but in no event may Licensee use such copies concurrently with Production Software or Development Software. Licensee may also install copies of the Software in a Disaster Recovery Environment for use solely in disaster recovery and not for production, development, evaluation or testing purposes other than to ensure that the Software is capable of replacing the primary usage of the Software in case of a disaster.

2.6 Documentation. Licensee may make and distribute copies of the Documentation for use by Authorized Users in connection with use of the Software in accordance with this Agreement, but no more than the amount reasonably necessary. Any permitted copy of the Documentation that Licensee makes must contain the same copyright and other proprietary notices that appear on or in the Documentation.

2.7 Outsourcing. Licensee may sub-license use of the Software to a third party outsourcing or facilities management contractor to operate the Software on Licensee’s behalf, provided that:

- (a) Licensee provides PROSTEP with prior written notice;
- (b) Licensee is responsible for ensuring that any such contractor agrees to abide by and fully complies with the terms of this Agreement as they relate to the use of the Software on the same basis as applies to Licensee;
- (c) such use is only in relation to Licensee’s direct beneficial business purposes as restricted herein;
- (d) such use does not represent or constitute an increase in the scope or number of licenses provided hereunder; and
- (e) Licensee shall remain fully liable for any and all acts or omissions by the contractor related to this Agreement.
- (f) PROSTEP is entitled to object to the outsourcing, within two (2) weeks after the written notice was received by PROSTEP.

2.8 Font Software. If the Software includes font software, then Licensee may:

- (a) use the font software on Licensee’s Computers in connection with Licensee’s use of the Software as permitted under this Agreement;
- (b) output such font software on any output devices connected to Licensee’s Computers;
- (c) convert and install the font software into another format for use in other environments provided that the converted font software may not be distributed or transferred for any purpose except in accordance with the transfer section in this Agreement; and
- (d) embed copies of the font software into Licensee’s electronic documents for the purpose of printing and viewing the document, provided that if the font software Licensee is embedding is identified as “licensed for editable embedding” on Adobe’s website at <http://www.adobe.com/type/browser/legal/embeddingeula.html>, Licensee may also embed copies of that font software for the additional limited purpose of editing Licensee’s electronic documents. No other embedding rights are implied or permitted under this license.

2.9 Restrictions.

- (a) No Modifications, No Reverse Engineering. Licensee shall not modify, port, adapt or translate the Software. Licensee shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software. Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of Licensee’s jurisdiction give Licensee the right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, that Licensee must first request such information from PROSTEP and PROSTEP may, in its discretion, either provide such information to Licensee or impose reasonable conditions, including a reasonable fee, on such use of the source code to ensure that PROSTEP’s and its suppliers’ proprietary rights in the source code for the Software are protected.
- (b) No Unbundling. The Software may include various applications, utilities and components, may support multiple platforms and languages or may be provided to Licensee on multiple media or in multiple copies. Nonetheless, the Software is designed and provided to Licensee as a single product to be used as a single product on Computers and platforms as permitted herein. Licensee is not required to use all component parts of the Software, but Licensee shall not unbundle the component parts of the Software for use on different Computers except as otherwise permitted under this

Agreement. Licensee shall not unbundle or repackage the Software for distribution, transfer or other disposition.

(c) No Transfer. Except as may be explicitly provided in this Agreement, Licensee shall not (i) sublicense, assign or transfer the Software, or Licensee's rights in the Software, to any third party, or (ii) authorize any portion of the Software to be copied onto or accessed from another individual's or entity's Computer.

(d) Prohibited Use. Except as expressly authorized under this Agreement, Licensee is prohibited from: (i) using the Software on behalf of third parties (including use of the Software to generate PDF files from electronic documents or content provided by third parties when Licensee also distributes or makes available the generated PDF files to the same third parties except to the extent such PDF files are a component of a broader service or product offering and not the sole or primary value of such service or product offering); (ii) renting, leasing, lending or granting other rights in the Software including rights on a membership or subscription basis; and (iii) providing use of the Software in a computer service business, third party outsourcing facility or service, service bureau arrangement, time sharing basis, or as part of a hosted service.

(e) Export Rules. Licensee agrees 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 an export controlled item under the Export Laws, Licensee represents and warrants that Licensee is not a citizen of, or located within, an embargoed or otherwise restricted nation (including Iran, Syria, Sudan, Cuba and North Korea) and that Licensee is not otherwise prohibited under the Export Laws from receiving the Software. All rights to install and use the Software are granted on condition that such rights are forfeited if Licensee fails to comply with the terms of this Agreement.

2.10 Delivery. The Software may be delivered via electronic delivery or via tangible media (e.g., CD or DVD), and, if applicable, the Software may be supplied with a valid License Key.

3. Production Software and Development Software.

The following terms and conditions, including the License Metrics, govern Licensee's use of validly licensed Production Software and Development Software versions of the Software as provided in the Certificate of License.

PROSTEP PDF Generator 3D Software is licensed as Production Software on a Per-CPU or Per-User basis and/or Development Software on a Per-Server basis as provided in the Certificate of License.

4. Evaluation Software.

This Section 4 applies only if Licensee has obtained a valid license to evaluate Software as Evaluation Software as separately provided in writing by PROSTEP or as indicated by the License Key Licensee uses to install the Software.

4.1 License. Licensee may

- (a) install the Evaluation Software on Computers within Licensee's Internal Network and
- (b) permit only Authorized Users to use the Evaluation Software (and electronic document, content and other materials generated by or processed with the Evaluation Software) within Licensee's Internal Network for the sole purpose of determining whether to purchase a license to the Evaluation Software and not for any revenue generation, commercial activity or other productive business purpose. Licensee is not permitted to use the Evaluation Software (including its output) directly or indirectly with any Production Software or Development Software (or the output from such software).

4.2 Limitations. Licensee's rights to install and use Evaluation Software under this Section 4 will terminate immediately upon such time that Licensee purchases a license to a non-evaluation version of such Software. PROSTEP reserves the right to terminate Licensee's license to use the Evaluation Software at any time in its sole discretion. Licensee agrees to terminate the usage and to return or destroy Licensee's copy of the Evaluation Software upon termination of this Agreement for any reason. To the extent that any provision in this Section 4 is in conflict with any other term or condition in this Agreement, this Section 4 shall supersede such other term(s) and condition(s) with respect to the Evaluation Software, but only to the extent necessary to resolve the conflict. LICENSEE ACKNOWLEDGES THAT THE EVALUATION SOFTWARE MAY (i) HAVE LIMITED FEATURES, (ii) FUNCTION FOR A LIMITED PERIOD OF TIME, OR (iii) HAVE OTHER LIMITATIONS NOT PRESENT IN NON-EVALUATION SOFTWARE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE EVALUATION SOFTWARE IS PROVIDED TO LICENSEE

BY PROSTEP ON AN "AS IS" BASIS, AND PROSTEP DISCLAIMS ANY WARRANTY OR LIABILITY OBLIGATIONS TO LICENSEE OF ANY KIND.

5. Intellectual Property Rights.

The Software and any copies that Licensee is authorized by PROSTEP to make are the intellectual property of and are owned by PROSTEP and its suppliers. The structure, organization and code of the Software are the valuable trade secrets and confidential information of PROSTEP and its suppliers. The Software is protected by copyright, including without limitation by German and United States Copyright Law, international treaty provisions and applicable laws in the country in which it is being used. Except as expressly stated herein, this Agreement does not grant Licensee any intellectual property rights in the Software and all rights not expressly granted are reserved by PROSTEP.

6. Confidentiality.

Licensee agrees that Licensee will treat the Software and License Keys ("Confidential Information") with the same degree of care to prevent unauthorized disclosure to anyone other than Authorized Users as Licensee accords to Licensee's own confidential information, but in no event less than reasonable care. Licensee may also disclose the Confidential Information in response to a valid order by a court or other governmental body, when otherwise required by law, or when necessary to establish the rights of either party under this Agreement, provided Licensee gives PROSTEP advance written notice thereof.

7. Updates.

If the Software is an upgrade or update to a previous version of the Software, Licensee must possess a valid license to such previous version in order to use such upgrade or update. All upgrades and updates are provided to Licensee subject to the terms of this Agreement on a license exchange basis. Licensee agrees that by using an upgrade or update Licensee voluntarily terminates Licensee's right to use any previous version of the Software. As an exception, Licensee may maintain installations of previous versions of the Software on Licensee's Computers for a reasonable period of time (but not exceeding ninety (90) days) after Licensee use the upgrade or update to assist Licensee in the transition to the upgrade or update, provided that Licensee's right to such simultaneous installations does not constitute an increase in the number of copies, licensed amounts or scope of use granted to Licensee hereunder.

8. WARRANTY.

8.1 Warranty. Except as may be otherwise provided in Section 14, PROSTEP warrants to Licensee that the Software will perform substantially in accordance with the Documentation for the ninety (90) day period following shipment of the Software when used on the recommended operating system, platform and hardware configuration. Non substantial variation of performance from the Documentation does not establish a warranty right. THIS LIMITED WARRANTY DOES NOT APPLY TO EVALUATION SOFTWARE (AS IDENTIFIED IN SECTION 4), OR TO THIRD PARTY SOFTWARE WHICH IS LISTED IN THE „READ ME“ FILE OR UNDER <http://www.prostep.com> OR TO SOFTWARE THAT HAS BEEN ALTERED BY LICENSEE, TO THE EXTENT SUCH ALTERATION CAUSED A DEFECT. All warranty claims must be made within such ninety (90) day period. If the Software does not perform substantially as warranted above, the entire liability of PROSTEP and its affiliates and Licensee's exclusive remedy shall be limited to either, at PROSTEP option, replacement of the Software or refund of the license fee paid to PROSTEP for the Software whereupon the license to such software shall automatically terminate. THE LIMITED WARRANTY SET FORTH IN THIS SECTION GIVES LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY HAVE ADDITIONAL RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

8.2 DISCLAIMER. THE FOREGOING LIMITED WARRANTY IS THE ONLY WARRANTY MADE BY PROSTEP AND ITS AFFILIATES AND STATES THE SOLE AND EXCLUSIVE REMEDIES FOR PROSTEP, ITS AFFILIATES OR SUPPLIERS' BREACH OF WARRANTY. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, AND ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO LICENSEE IN LICENSEE'S JURISDICTION, PROSTEP, AND ITS AFFILIATES AND SUPPLIER S PROVIDE THE SOFTWARE AS-IS AND WITH ALL FAULTS AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO PERFORMANCE, SECURITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY, QUIET ENJOYMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY

PARTICULAR PURPOSE. THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME JURISDICTIONS. The provisions of Section 8.2 and Section 9 will survive the termination of this agreement, howsoever caused, but this will not imply or create any continued right to use the Software after termination of this Agreement.

9. LIMITATION OF LIABILITY.

EXCEPT FOR THE EXCLUSIVE REMEDY SET FORTH ABOVE AND AS OTHERWISE PROVIDED IN SECTION 14, IN NO EVENT WILL PROSTEP OR ITS AFFILIATES OR SUPPLIERS BE LIABLE TO LICENSEE FOR ANY LOSS, DAMAGES, CLAIMS OR COSTS WHATSOEVER INCLUDING ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, ANY LOST PROFITS OR LOST SAVINGS, ANY DAMAGES RESULTING FROM BUSINESS INTERRUPTION, PERSONAL INJURY OR FAILURE TO MEET ANY DUTY OF CARE, OR CLAIMS BY A THIRD PARTY EVEN IF AN PROSTEP REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION. PROSTEP'S AGGREGATE LIABILITY AND THAT OF ITS AFFILIATES AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT PAID FOR THE SOFTWARE, IF ANY. THIS LIMITATION WILL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL OR MATERIAL BREACH OR A BREACH OF THE FUNDAMENTAL OR MATERIAL TERMS OF THIS AGREEMENT. THIS LIMITATION OF LIABILITY MAY NOT BE VALID IN SOME STATES. Nothing contained in this Agreement limits PROSTEP `s liability to Licensee in the event of death or personal injury resulting from PROSTEP `s negligence or for the tort of deceit (fraud). PROSTEP is acting on behalf of its affiliates and suppliers for the purpose of disclaiming, excluding and limiting obligations, warranties and liability, 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 PROSTEP `s Customer Support Department.

10. Governing Law.

This Agreement, each transaction entered into hereunder, and all matters arising from or related to this Agreement (including its validity and interpretation), will be governed and enforced by and construed in accordance with the substantive laws in force in:

- (a) Germany, if Licensee obtained the Software in Europe, and Licensee usually resides in Europe. The respective court is Frankfurt/Main.
- (b) Delaware/USA, if a license to the Software is purchased when Licensee is in any other jurisdiction not described in a). The respective court is Dover/USA.

11. 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. Updates and upgrades may be licensed to Licensee by PROSTEP with additional or different terms. The English version of this Agreement shall be the version used when interpreting or construing this Agreement. This is the entire agreement between PROSTEP and Licensee relating to the Software and it supersedes any prior representations, discussions, undertakings, communications or advertising relating to the Software.

12. Notice to U.S. Government End Users.

12.1 Commercial Items. The Software and Documentation are "Commercial Item(s)," as that term is defined at 48 C.F.R. Section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. Section 12.212 or 48 C.F.R. Section 227.7202, as applicable. Consistent with 48 C.F.R. Section 12.212 or 48 C.F.R. Sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users

- (a) only as Commercial Items and
- (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of Germany.

12.2 U.S. Government Licensing of PROSTEP-Technology. Licensee agrees that when licensing PROSTEP Software for acquisition by the U.S. Government, or any contractor therefore, Licensee will license consistent with the policies set forth in 48 C.F.R. Section 12.212 (for civilian agencies) and 48 C.F.R. Sections 227-7202-1 and 227-7202-4 (for the Department of Defense). For U.S. Government End Users, PROSTEP 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.

13. Compliance with Licenses.

PROSTEP may, at its expense, and no more than once every twelve (12) months, appoint an independent third party or PROSTEP's internal auditor to verify the usage and number of copies and installations of the Software in use by Licensee. Any such verification shall be conducted upon no less than seven (7) business days notice, during regular business hours at Licensee's offices and shall not unreasonably interfere with Licensee's business activities. Upon Licensee's request, PROSTEP (and its third-party auditors, in applicable) shall execute a commercially reasonable nondisclosure agreement with Licensee before proceeding with the verification. If such verification shows that Licensee is using a greater number of copies of the Software than that legitimately licensed, is exceeding any applicable License Metric, or is deploying or using the Software in any way not permitted under this Agreement and which would require additional license fees, Licensee shall pay the applicable fees for such additional usage rights or copies within thirty (30) days of invoice date, with such underpaid fees being the license fees as per PROSTEP's then current, country specific, license fee list. If underpaid fees are in excess of five percent (5%) of the value of the fees paid under this Agreement, then Licensee shall pay such underpaid fees and PROSTEP's reasonable costs of conducting the verification. This Section shall survive expiration or termination of this Agreement for a period of two (2) years.

14. Specific Provisions and Exceptions.

This Section sets forth specific provisions related to certain components of the Software as well as limited exceptions to the above terms and conditions. To the extent that any provision in this Section is in conflict with any other term or condition in this agreement, this Section will supersede such other term or condition.

14.1 Limited Warranty for Users Residing in Europe. If Licensee obtained the Software in Europe, and Licensee usually resides in Europe, then Section 8.1 does not apply; instead, PROSTEP warrants that the Software provides substantially the functionalities set forth in the Documentation (the "agreed upon functionalities") for the limited warranty period following receipt of the Software when used on the recommended operating system, platform and hardware configuration. As used in this Section, "limited warranty period" means one (1) year if Licensee is a business user and two (2) years if Licensee is not a business user. Non-substantial variation from the agreed upon functionalities will not and does not establish any warranty rights.

FOR EVALUATION SOFTWARE (AS IDENTIFIED IN SECTION 4), LIVECYCLE SDK COMPONENTS, AEM FORMS SDK COMPONENTS, FONT SOFTWARE CONVERTED INTO OTHER FORMATS, OR TO SOFTWARE THAT HAS BEEN ALTERED BY LICENSEE, TO THE EXTENT SUCH ALTERATION CAUSED A DEFECT SHALL APPLY SECTION 8.1.

To make a warranty claim, during the limited warranty period Licensee must return, at PROSTEP's expense, the Software and proof of purchase to the location where Licensee obtained it. If the functionalities of the Software vary substantially from the agreed upon functionalities, PROSTEP is entitled -- by way of re-performance and at its own discretion -- to repair or replace the Software. If this fails, Licensee is entitled to a reduction of the purchase price (reduction) or to cancel the purchase agreement (rescission). For further warranty information, please contact the PROSTEP Customer Support Department.

14.2 Limitation of Liability for Users Residing in Europe.

14.2.1 If Licensee obtained the Software in Europe, and Licensee usually resides in such country, then Section 9 does not apply. Instead, subject to the provisions in Section 14.2.2, PROSTEP and its affiliates' statutory liability for damages will be limited as follows: (i) PROSTEP and its affiliates will be liable only up to the amount of damages as typically foreseeable at the time of entering into the purchase agreement is limited to five times the amount paid for the Software in respect of damages caused by a slightly or grossly negligent breach of a material contractual obligation and (ii) PROSTEP and its affiliates will not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.

FOR EVALUATION SOFTWARE (AS IDENTIFIED IN SECTION 4), LIVECYCLE SDK COMPONENTS, AEM FORMS SDK COMPONENTS, FONT SOFTWARE CONVERTED INTO OTHER FORMATS, OR TO SOFTWARE THAT HAS BEEN ALTERED BY LICENSEE, TO THE EXTENT SUCH ALTERATION CAUSED A DEFECT SHALL APPLY SECTION 9.

14.2.2 The aforesaid limitation of liability will 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.

14.2.3 Licensee is required to take all reasonable measures to avoid and reduce damages, in particular to make backup copies of the Software and Licensee's computer data subject to the provisions of this agreement.

14.3 Eclipse Code. This Software may contain Eclipse code provided by the Eclipse Foundation ("Eclipse Code"). On behalf of Contributors to such Eclipse Code, PROSTEP hereby: (i) disclaims any and all warranties or conditions of title and non-infringement, and implied warranties or conditions of merchantability and fitness for a particular purpose with respect to such Eclipse Code and any and all derivative works thereof, (ii) disclaims any liability for damages, including direct, indirect, special, incidental and consequential damages, such as lost profits, and (iii) represents that any provisions in this License Agreement that differ from the Eclipse Public License under which PROSTEP licensed the Eclipse Code, are offered by PROSTEP alone and not by any other party. The source code for the Eclipse Code as contained in this Software may be obtained by the Licensee as described in a "Read Me" to the Software or at <http://www.PROSTEP.com> . PROSTEP provides the Eclipse Code as is, without warranty or support from PROSTEP.

15. Term and Termination.

This Agreement shall remain in effect until any material breach of this Agreement by Licensee occurs, upon which this Agreement shall automatically terminate. Upon termination of this Agreement for any reason, Licensee shall discontinue use of the Software and shall destroy the Software, Documentation and all copies thereto. Termination shall not, however, relieve either party of obligations incurred prior to the termination. The following Sections shall survive termination of this Agreement: 1 (Definitions), 5 (Intellectual Property Rights), 6 (Confidentiality), 8.2 (Disclaimer), 9 (Limitation of Liability), 10 (Governing Law), 11 (General Provisions), 12 (Notice to U.S. Government End Users), 14 (Specific Provisions and Exceptions), and 15 (Term and Termination).

16. Third-Party Beneficiary.

Licensee acknowledges and agrees that PROSTEP's licensors (and/or PROSTEP if Licensee obtained the Software from any party other than PROSTEP) are third party beneficiaries of this Agreement, with the right to enforce the obligations set forth herein with respect to the respective technology of such licensors and/or PROSTEP. If Licensee has any questions regarding this agreement or if Licensee wishes to request any information from PROSTEP please use the address and contact information included with this product to contact the PROSTEP office serving Licensee's jurisdiction. Adobe, Flex, LiveCycle and AEM Forms are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries. All other trademarks are the property of their respective owners.