

InstallShield Activation Service Access Agreement

IMPORTANT-READ CAREFULLY: This Access Agreement (“**Agreement**”) is a legal contract between you (“**you**”) and Provider (as designated below) for the InstallShield Activation Service, including any associated media, printed materials and electronic documentation (the “**Service**”).

By clicking on the “I ACCEPT” button, or by accessing or otherwise using the Service, you agree to be bound by the terms of this Agreement and you represent that you are authorized to enter into this Agreement on behalf of your corporate entity (if applicable). If you do not wish to be bound by the terms of this Agreement, click the “I DO NOT ACCEPT” button, and do not access or use the Service.

As used herein, *for users in Japan*, “Provider” means Acreso Software GK, a Godo Kaisha organized under the laws of Japan; *for users in Europe, Middle East, or Africa*, “Provider” means Acreso Software Limited, a private company limited by shares and incorporated in England and Wales with company number 6524874; *for users outside of the countries listed above*, “Provider” means Acreso Software Inc., a Delaware corporation.

This Agreement supplements the End User License Agreement (“**EULA**”) which was contained with the InstallShield software (the “**Software**”) and provides the complete terms and conditions surrounding your access to and use of the Service.

In the event of a conflict between the terms of this Agreement and the terms of the EULA, the terms of this Agreement will control. Terms not defined herein shall have the meanings ascribed to them in the EULA.

Provider reserves the right, in its sole discretion, to modify these terms or the Service fees at any time, effective upon the date Provider posts revised terms or fees on its Acreso site. Your continued use of the Service constitutes your binding acceptance of these terms including any changes or modifications that Provider may make.

Use of Service: Upon payment of the applicable fee, you will be provided with access to the activation server. You will be entitled to create an unlimited number of user accounts on the activation server. User accounts must be assigned to and used solely by your employees; they may not be used by or assigned or provided to third parties who are not your employees. Your users will be entitled to access and use the Service solely on your behalf for the purposes of providing the capabilities of the Service in regard to those of your software products to which the InstallShield software has been properly licensed and incorporated (the “**Enabled Products**”). Those capabilities include activating and/or deactivating an Enabled Product, managing serial numbers and licenses associated with an Enabled Product, and running related reports on an Enabled Product.

Excluding maintenance periods and downtime, you may electronically access and use the Service 24-hours a day, 7-days a week.

If you have accessed the system for evaluation purposes only, you may acquire a maximum of five (5) licenses during the evaluation period.

Requirements: To use the Service, you understand and acknowledge that you must at all times meet the following requirements:

- Your annual company revenue does not exceed US \$15M; and
- The average selling price (“**ASP**”) of any of your Enabled Products does not exceed US \$2,500; and
- The annual number of activations for any Enabled Product is less than 100,000.

In the event that you fail to meet any one or more of these requirements at any time, Provider reserves the right to discontinue your access to and/or use of the Service.

Provider reserves the right, in its sole discretion, to restrict, suspend or terminate your access to and/or use of all or any part of the Service at any time and for any reason without prior notice or liability. Provider may change, suspend or discontinue all or any aspect of the Service at any time, without prior notice or liability. Provider’s goal is to ensure timely activation services; however, Provider does not guarantee that activations will be processed within specified timeframes. Provider will not be liable, and you will not be entitled to a refund, for service outages, including, but not limited to those caused by or related to maintenance issues, servers, the technology that underlies the Service, failures of Provider direct or indirect service providers (including, but not limited to, telecommunications, hosting and power providers), computer viruses, natural disasters or other destruction or damage to Provider facilities, acts of nature, war, civil disturbance, court order, legislative or regulatory action, catastrophic weather condition, third party interference or other causes beyond Provider’s reasonable control.

Support: Provider will provide reasonable customer support service via telephone or email (“**Support Services**”) Monday through Friday, from 8:00 a.m. until 5:00 p.m. local Provider support facility time from the support center closest to you (except on those days designated as Provider’s holidays). Provider currently provides support from Santa Clara, California, Schaumburg, Illinois and Cheshire, United Kingdom. All Support Services will be limited to issues surrounding the issuance of activations. Unless you have a separate maintenance contract for the Software, Provider will not provide you with any assistance surrounding the Software.

The Support Services will be provided only to a single individual who is designated by you as your “Superuser.”

Provider will not provide support to your end users and you are responsible for all such support.

Term of Agreement: This Agreement will commence on the date you register for the Service and will continue through either: (i) the end of the period elected by you for the provision of the Service; or (ii) until you have depleted the number of activations purchased; or as earlier terminated by Provider (the “**Term**”). On or before the end of the Term, you must either renew for another Term, or cease all use of the Service. If you fail to renew by the end of the Term, your access to and/or use of the Service will be denied.

This Agreement may be terminated by Provider if (a) you fail to make payment and/or (b) you fail to comply with the terms of this Agreement. Upon the effective date of any termination, you relinquish all rights granted under this Agreement.

Fees and Taxes: The fees for the Service are based on the number of activations you wish to generate in a given Term. Activations purchased are not cumulative and may not be rolled over to a new Term; unused activations at the end of the Term will be forfeit. You are solely responsible for monitoring the number of activations used by you or remaining at the end of the Term.

For users in Japan, all fees are in non-refundable Japanese Yen. *For users in Europe, Middle East or Africa*, all fees are in the currency outlined in the quote/invoice and are non-refundable. *For users in any region not outlined*, all fees are in non-refundable US Dollars. Fees are due within 30-days of the date of the invoice.

All fees do not include taxes. If Provider is required to pay any sales, use, GST, VAT, or other taxes in connection with the Service, other than taxes based on Provider’s income, such taxes will be billed to and paid by you.

You will make all payments of fees to Provider free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Provider will be your sole responsibility and consequently the amount of such fees will be increased such that the net fee received by Provider will be the same as if such withholding taxes were not imposed, and you will provide Provider with official receipts issued by the appropriate taxing authority, or such other evidence as the Provider may reasonably request, to establish that such taxes have been paid.

Certification/Indemnification: You certify that you own all intellectual property and other rights in the Enabled Products and that the operation or distribution of such Enabled Products does not, and will not, violate any law or third party rights.

You will indemnify, defend and hold Provider, and all of its officers, directors, employees, contractors, owners, shareholders, agents, information providers, service providers, vendors, partners, affiliates, distributors and licensors (collectively, the “**Provider Parties**”) harmless from and against any and all liability, losses, costs and expenses (including attorneys’ fees) incurred by any Provider Party in connection with any claim arising out of (1) any claim that if proven true would constitute a material breach of this Agreement, (2) any use or alleged use of your or your user accounts by any person, whether or not authorized by you, or

(3) any claim arising out of the material provided by you for which we provide Service, including, but not limited to, claims for defamation, violation of rights of publicity and/or privacy, copyright infringement or misappropriation, trademark infringement or misappropriation, other intellectual property right infringement or misappropriation and any claim or liability relating to the content, quality, or performance of materials that you submit to or use with the Service. You may not enter into a settlement affecting or obligating Provider without its prior written consent. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defense of such claim.

Disclaimer of Warranty: PROVIDER PROVIDES THE SERVICE “AS IS” AND HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT OR TITLE. YOU ACKNOWLEDGE THAT PROVIDER HAS NOT REPRESENTED OR WARRANTED THAT THE USE OF THE SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY. YOU ACKNOWLEDGE THAT PROVIDER HAS NOT REPRESENTED THAT THE SERVICE WILL PREVENT ALL UNAUTHORIZED USE OF YOUR SOFTWARE PRODUCTS. YOU MAY NOT RELY UPON ANY REPRESENTATION OR WARRANTY RESPECTING THE SERVICE BY ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES BY ANY OTHER PROVIDER CUSTOMER OR USER OF THE SERVICE

Limitation of Liability: IN NO EVENT WILL PROVIDER OR ITS PROVIDERS’ LIABILITY TO YOU ARISING OUT OF THIS AGREEMENT EXCEED U.S. FIVE HUNDRED DOLLARS (U.S. \$500). IN NO EVENT WILL PROVIDER HAVE ANY LIABILITY TO YOU OR ANY OTHER THIRD PARTY FOR ANY LOST BUSINESS OPPORTUNITIES OR PROFITS, FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICE, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICE, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY (INCLUDING NEGLIGENCE), REGARDLESS OF WHETHER PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

Some states do not allow exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the above limitations or exclusions may not fully apply to you. In such states, our liability and that of our third party providers and their respective agents shall be limited to the greatest extent permitted by law.

For Users within Europe, the Middle East or Africa, No person who is not a party to this Agreement shall be entitled to enforce any terms of the same under the Contracts (Rights of Third Parties) Act 1999.

LICENSOR DOES NOT LIMIT OR EXCLUDE ITS LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE.

Security and Copy Protection: Provider shall have reasonable protection in place to minimize the risk of the Enabled Products becoming lost or accessed in an unauthorized manner using the Service. Provider does not guarantee the security of the Service and Provider will not be responsible in the event of any infiltration of its security systems. Provider does not guarantee that your Enabled Products cannot be used in an unlicensed installation by an end user without first being activated by the Service. You acknowledge that all security and copy protection systems are inherently fallible.

Third Party Control: The flow of data over the Internet depends in large part on the performance of connections and services provided by third parties. Failure of these parties to perform their services correctly can disrupt Internet sessions. Provider cannot guarantee such events will not occur, and disclaims any and all liability, claims or losses resulting from or relating to such events.

Information: You acknowledge that, in providing the Service, Provider could rely upon information, instructions and services from you, your employees and agents and other third parties. You fully assume the risk associated with errors in such information, instructions and services provided that Provider has accurately transmitted data and/or complied with your instructions.

U. S. Export Restrictions. You will fully comply with all relevant export laws and regulations, including, but not limited to, the U.S. Export Administration Regulations and Executive Orders ("Export Controls"). You warrant that you are not a person, company or destination restricted or prohibited by Export Controls ("Restricted Person"). You will not, directly or indirectly, export, re-export, divert, or transfer the Software or Service, any portion thereof or any materials, items or technology relating to Provider's business or related technical data or any direct product thereof to any Restricted Person.

Force Majeure: Neither party will be liable for any failure or delay in performing any obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, governmental acts, omissions laws or regulations, labor strikes or difficulties, communications systems breakdowns or failure of the Internet, hardware or software failures (other than those attributable to the party hereto that has failed to perform hereunder), transportation stoppages or slowdowns or the inability to procure supplies or materials. If any of these causes continue to prevent or delay performance for more than 10 days, the affected party may terminate this Agreement, effective immediately upon written notice to the other party. Notwithstanding the foregoing, this Section shall not apply to requirements to make payments.

Relationship of Parties. You and Provider are independent parties. Nothing in this Agreement shall be construed as making you an employee, agent or legal representative of Provider.

No Third-Party Beneficiaries. There are no third-party beneficiaries of this Agreement.

Controlling Law. For users in Japan, this Agreement will be governed by the laws of Japan; for users in Europe, Middle East, or Africa, this Agreement will be governed by the laws of England and Wales and you submit to the jurisdiction of the courts of England and Wales; for users outside the countries listed above, this Agreement will be governed by the laws of California, USA, excluding conflicts of law. This Agreement is not subject to the United Nations Convention on Contracts for the Sale of Goods.

Company Name. Provider may include your company name in a list of Licensor customers and reference you as a customer.

Entire Agreement. This Agreement constitutes the complete and entire understanding and agreement of all terms, conditions and representations between you and Provider with respect to the Software and Service and may be modified only in writing by both parties. No term or condition contained in your purchase order will apply unless expressly accepted by Provider in writing. Failure to prosecute a party's rights will not constitute a waiver of any breach.

If any provision of this Agreement is found to be invalid, it will be enforced to the extent permissible and the remainder of this Agreement will remain in full effect. This Agreement has been written in the English language and you waive any rights you may have under the law of your country or province to have this Agreement written in any other language.

Miscellaneous. You may not rent, lease, or lend the Service or Software. You may NOT permanently or temporarily transfer ANY of your rights under this Agreement to any individual or entity. You may assign or transfer (by law or otherwise) your rights hereunder to another, person entity or affiliate company only having first obtained written consent from the Provider. You acknowledge that Provider owns all right title and interest to the Service and Software.