

TERMS AND CONDITIONS

SafeGuard PrivateDisk Portable

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- 3.7 Except as expressly provided herein or to the extent permitted under applicable law, you shall neither (i) directly or indirectly, copy, modify, translate, reverse compile, disassemble, reverse engineer or otherwise determine or attempt to determine the source code of the Licensed Software nor (ii) create any derivative works based on the Licensed Software or documentation.
- 3.8 You shall promptly notify Utimaco in writing of any breach or suspected breach of any material obligation under this Agreement which comes to your attention, and shall cooperate with Utimaco in any legal action to prevent or stop unauthorized use, reproduction or distribution of Licensed Software or documentation.

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- 7.2 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY TO YOU OF UTIMACO UNDER THIS AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, EXCEED 500 (FIVE HUNDRED) US DOLLAR.
- 7.3 You shall indemnify and hold Utimaco harmless against all suits, claims, damages and liabilities arising from your breach of or noncompliance with any term or condition of this Agreement, or from any modification of the Licensed Software not expressly authorized in writing by Utimaco.

8. General

- 8.1 Governing Law. This Agreement and the performance of transactions under this Agreement will be governed by the laws of the State of New York, without regard to conflict of law principles, as if this Agreement was fully performed entirely within the State of New York except 1) in Germany, all disputes relating to this Agreement and the performance of transactions will be governed by German Law and will be submitted to the exclusive jurisdiction of the German Courts, 2) in the United Kingdom, all disputes relating to this Agreement and the performance of transactions will be governed by English Law and will be submitted to the exclusive jurisdiction of the English Courts, 3) in countries of the European Union which are not mentioned under no 1) or 2), all disputes relating to this Agreement and the performance of transactions will be governed by German Law and will be submitted to the exclusive jurisdiction of the German Courts, 4) in all other countries, if legally permitted all disputes relating to this Agreement and the performance of transactions will be governed by German Law and will be submitted to the exclusive jurisdiction of the German Courts and if not legally permitted all disputes relating to this Agreement and the performance of transactions will be governed by the laws of the country in which the Licensed Software has been acquired. The United Nations' Convention on International Sale of Goods shall not apply to this Agreement. The parties each expressly waive any right to a jury trial regarding disputes related to this Agreement.
- 8.2 Jurisdiction; Attorney's Fees. Any dispute arising out of this Agreement shall be adjudicated exclusively in the courts of New York City, New York, except as otherwise set forth in Section 8.1. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and reasonable attorneys' fees from the other party.
- 8.3 Independent Contractors. The relationship between you and Utimaco under this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed (i) to give either you or Utimaco the power to direct or control the day-to-day activities of the other or

- (ii) to constitute you and Utimaco as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.
- 8.4 Severability. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect.
- 8.5 No Waiver. The failure of either party to enforce at any time any of the provisions of this Agreement shall not be deemed to be a waiver of the right of either party thereafter to enforce any such provisions.
- 8.6 Force Majeure. Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the nonperforming party.
- 8.7 Export Laws. You shall comply with all then current export laws and regulations of the U.S. Government and the government of the country in which you download the Licensed Software, which pertain to the Licensed Software.
- 8.8 Basis of Bargain. Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases of this Agreement.
- 8.9 Information provided to Utimaco. Unless otherwise explicitly stated in a written agreement between you and Utimaco, any information or material provided to Utimaco will be deemed NOT to be confidential. By providing Utimaco any information or material, you grant Utimaco an unrestricted, irrevocable license to use, reproduce, display, perform, modify, transmit and distribute those materials or information, and you also agree that Utimaco is free to use any ideas, concepts, know-how or techniques that you provide to Utimaco for any purpose
- 8.10 Mandatory Law. Consumers have legal (statutory) rights under applicable national laws relating to the sale of consumer products. This Agreement does not affect statutory rights you may have nor those rights that cannot be excluded or limited, nor rights against the person from whom you purchased the product. You may assert any statutory rights you have at your sole discretion.
- 8.11 Entire Agreement. This Agreement constitutes the entire, final, complete and exclusive agreement between the parties and supersedes all previous agreements or representations, oral or written, relating to this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party; provided, however, that Utimaco may at any time modify prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Licensed Software, and such modifications shall be effective upon notification by any means reasonable to give you actual or constructive notice or upon their placement on Utimaco's website. You acknowledge having read the terms and conditions set forth in this Agreement, understand all terms and conditions, and agree to be bound thereby. Utimaco's electronically or other properly stored copy of this Agreement shall be deemed to be the true, complete, valid, authentic and enforceable copy of this Agreement. You agree that you shall not contest the admissibility or enforceability of Utimaco's copy of this Agreement, as amended, in a court for any proceedings arising out of this Agreement. Your acceptance and this Agreement shall be deemed to be as effective as execution of this Agreement by a written signature performed manually by you, and this Agreement shall be deemed to satisfy any writings requirements of any applicable law, notwithstanding that the Agreement is written and accepted electronically. Utimaco's records of the date on which you accept this Agreement, and the effective date of all future changes to this Agreement, shall be conclusive evidence as to the effective date.