

## **SAMUCO TERMS OF USE**

The following is the Samuco Terms of Use, which terms and conditions form part of any Agreement between Samuco and any Customer using Samuco Software. Please read this Agreement carefully before using the Software or the Samuco website. This Agreement licences use of the Software by You and contains warranty and liability disclaimers.

By using the Software and/or the Samuco website You are agreeing to be bound by the Terms of Use contained in the following licence Agreement. You may not use the Software or Samuco website unless You agree to these terms and conditions.

### **1. Definitions**

(a) “Agreement” means the licence agreement between Samuco and the Customer.

(b) “Computer Work-station” means a single stand-alone computer not a server.

(c) “Customer” is the person, school, or organisation acquiring the Software and is, accordingly, the licensee in respect of it.

(d) “Registration key” means the alphanumeric code provided to You upon payment of the requisite fee for the Software.

(e) “Samuco” (Samuel Colbran) is the owner of the copyright and other rights in the Software and Related Items and is, accordingly, the licensor of the Software.

(f) “Samuco website” means the website owned by Samuco with the domain name [www.samuco.net](http://www.samuco.net) and associated sub-domains.

(g) “Software” means Colored Folder Creator Pro, Colored Folder Creator, Colored Folder Creator Extreme, Protected Screen, iDock, Secret Folders, iWeb Backup, Desktop Screensaver, Borderslunch, Disk Image Icons, iEncrypt, iSchedule, iTube, or iWallpaper and includes updates to the Software.

(h) “User submission” means content submitted by users to the Samuco website.

### **2. Your acceptance**

By using and /or visiting this website (collectively, including all functionality and content available through the samuco.net domain name, or any sub-domains, the “Samuco website”, You signify Your acceptance of these terms and conditions. Should You not agree to these terms and conditions, please do not use the Samuco website. Samuco may attempt to notify You of major changes to these Terms of Use, but You should periodically review the most current version available on the Samuco website.

Samuco may, in its sole discretion, revise or modify these Terms of Use and

associated policies, if any, at any time, and You agree to be bound by such modifications or revisions. Nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

These Terms of Use apply to all users of the Samuco website, including users who contribute visual images, information, and other materials or services on the website.

### **3. Registration keys**

To access some features of the website, You will need to have a valid Registration key. You may never use another's Registration key without permission. When obtaining a Registration key, You must provide accurate and complete information, and pay the applicable fee. You are solely responsible for all activity that occurs on Your account, and You must keep Your Registration key secure. You must notify Samuco immediately of any breach of security or unauthorized use of Your Registration key. While Samuco will not be liable for Your losses caused by any unauthorized use of Your account, You may be liable for the losses of Samuco or others due to such unauthorized use.

### **4. Permissions and Restrictions on Use of the Samuco website**

Samuco grants You permission to access and use the Samuco website consistent with the Terms of Use, provided that:

- (a) You agree not to distribute in any medium any part of the Website, including but not limited to User Submissions, without Samuco's prior written authorization.
- (b) You agree not to alter or modify any part of the Website.
- (c) You agree not to access User Submissions or Samuco content through any technology or means other than by the means provided by the Website itself, or other explicitly authorized means Samuco may designate.
- (d) You agree not to use the Samuco website for any commercial use, without the prior written authorization of Samuco. Prohibited commercial uses include any of the following actions taken without Samuco's express approval:
  - (i) sale of access to the Samuco website or its related services on another website;
  - (ii) use of the Samuco website or its related services for the primary purpose of gaining advertising or subscription revenue;
  - (iii) the sale of advertising, on the Samuco website or any third-party website, targeted to the content of specific User submissions or Samuco content; and
  - (iv) any use of the Samuco website or its related services that Samuco finds, in its sole discretion, to use Samuco's resources or User submissions with the effect of competing with or displacing the market for Samuco Software content, or its User submissions.

(e) You agree not to use or launch any automated system, including without limitation, "robots," "spiders," or "offline readers," that accesses the Samuco website in a manner that sends more request messages to the Samuco servers in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser. Notwithstanding the foregoing, Samuco grants the operators of public search engines permission to use spiders to copy materials from the site for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials. Samuco reserves the right to revoke these exceptions either generally or in specific cases. You agree not to collect or harvest any personally identifiable information, including account names, from the Samuco website, nor to use the communication systems provided by the Samuco website (e.g. comments, email) for any commercial solicitation purposes. You agree not to solicit, for commercial purposes, any users of the Website with respect to their User submissions.

(f) In Your use of the Samuco website, You will otherwise comply with the terms and conditions of these Terms of Use, Samuco Policies (if any), and all applicable local, national, and international laws and regulations.

(g) Samuco reserves the right to discontinue any aspect of the Samuco website at any time.

## **5. Your use of content on the Samuco website**

(a) The content on the Samuco Website, except all User submissions, including without limitation, the text, software, scripts, graphics, photos, sounds, music, videos, interactive features and the like ("Content") and the trademarks, service marks and logos contained therein ("Marks"), are owned by or licensed to Samuco, subject to copyright and other intellectual property rights under the law. Content on the Samuco website is provided to You AS IS for Your information and personal use only and may not be downloaded, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without the prior written consent of the respective owners. Samuco reserves all rights not expressly granted in and to the Samuco website and the Content.

(b) You may access User submissions solely, for Your information and personal use, and as intended through the normal functionality of the Samuco website.

(c) User Comments are made available to You for Your information and personal use solely as intended through the normal functionality of the Samuco website. User Comments are made available "as is", and may not be used, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, downloaded, or otherwise exploited in any manner not intended by the normal functionality of the Samuco website or otherwise as prohibited under this Agreement.

(d) You may access Samuco Content, User submissions and other content only as permitted under this Agreement. Samuco reserves all rights not expressly granted in

and to the Samuco Content.

(e) You agree to not engage in the use, copying, or distribution of any of the Content other than expressly permitted herein, including any use, copying, or distribution of User Submissions of third parties obtained through the Samuco website for any commercial purposes.

(f) You agree not to circumvent, disable or otherwise interfere with security-related features of the Samuco website or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Samuco website or the Content therein.

(g) You understand that when using the Samuco website, You will be exposed to User Submissions from a variety of sources, and that Samuco is not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such User Submissions. You further understand and acknowledge that You may be exposed to User Submissions that are inaccurate, offensive, indecent, or objectionable, and You agree to waive, and hereby do waive, any legal or equitable rights or remedies You have or may have against Samuco with respect thereto, and agree to indemnify and hold Samuco, its Owners/Operators, affiliates, and/or licensors, harmless to the fullest extent allowed by law regarding all matters related to Your use of the site.

## **6. Your User submissions and conduct**

(i) As a Samuco Registration key holder You may submit visual content ("User Images") and textual content ("User Comments"). User Images and User Comments are collectively referred to as "User submissions." You understand that whether or not such User submissions are published, Samuco does not guarantee any confidentiality with respect to any User Submissions.

(ii) You shall be solely responsible for Your own User Submissions and the consequences of posting or publishing them. In connection with User Submissions, You affirm, represent, and/or warrant that: You own or have the necessary licenses, rights, consents, and permissions to use and authorize Samuco to use all patent, trademark, trade secret, copyright or other proprietary rights in and to any and all User submissions to enable inclusion and use of the User submissions in the manner contemplated by the Website and these Terms of Use.

(iii) For clarity, You retain all of Your ownership rights in Your User submissions. However, by submitting User submissions to Samuco, You grant Samuco a worldwide, non-exclusive, royalty-free, sub-licenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the User submissions in connection with the Samuco website and Samuco's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Samuco website (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each user of the Samuco website a non-exclusive license to access Your User submissions through

the Samuco website, and to use, reproduce, distribute, display and perform such User submissions as permitted through the functionality of the Samuco website and under these Terms of Use. The above licenses granted by You in User Images terminate within a commercially reasonable time after You remove or delete Your User Images from the Samuco website. You understand and agree, however, that Samuco may retain, but not display, distribute, or perform, server copies of User submissions that have been removed or deleted. The above licenses granted by You in User Comments are perpetual and irrevocable.

(iv) In connection with User submissions, You further agree that You will not submit material that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless You are the owner of such rights or have permission from their rightful owner to post the material and to grant Samuco all of the license rights granted herein.

(v) You further agree that You will not, in connection with User submissions, submit material that is contrary to Samuco policy (if any), which may be updated from time to time, or contrary to applicable local, national, and international laws and regulations.

(vi) Samuco does not endorse any User submission or any opinion, recommendation, or advice expressed therein, and Samuco expressly disclaims any and all liability in connection with User submissions. Samuco does not permit copyright infringing activities and infringement of intellectual property rights on its website, and Samuco will remove all Content and User submissions if properly notified that such Content or User submission infringes on another's intellectual property rights. Samuco reserves the right to remove Content and User submissions without prior notice.

## **7. Account Termination**

(1) Samuco will terminate a User's access to its Website if, under appropriate circumstances, they are determined to be a repeat infringer.

(2) Samuco reserves the right to decide whether Content or a User submission is appropriate and complies with these Terms of Use. Samuco may remove User submissions that amount to an infringement of copyright or contain pornography, obscene or defamatory material, or are of excessive length. Samuco may terminate a User's access for uploading such material in violation of these Terms of Use at any time, without prior notice and at its sole discretion.

## **8. Licence**

This Agreement allows the Customer to: (a) Use the Software on the Customer's computer system; and (b) Make one backup copy of the Software, provided that the Customer reproduces on any such copy all copyright notices and readme files, if any, that are contained within the Software. The backup copy is governed by the terms of this Agreement and is not permitted to be re-copied.

The Customer agrees not to use the Software in a manner contrary to any agreement the Customer has with any other third party and agrees to Samuco for any liability for breach of this condition.

## **9. Ownership and assignment**

(i) Samuco expressly reserves all copyright and any other intellectual property rights in and the Software and only grants the Customer a licence to use the Software as provided in this Agreement. The Software remains the property of Samuco all times and may not be sold or transferred to third parties.

(ii) These Terms of Use, and any rights and licenses granted, may not be transferred or assigned by You, but may be assigned by Samuco without restriction.

## **10. Termination**

This Agreement terminates on: (a) the Customer destroying or deleting the Software; or (b) the Customer breaching any terms of this Agreement.

## **11. Limited warranties**

(i) Should the Software prove defective in materials or workmanship within three months of purchase, Samuco will replace the Software free of charge, except where the defect is a result of abuse, misuse or accident. Save to the extent permitted by law: (a) Samuco does not warrant that the Software will meet Your requirements or that the operations of the Software itself or in conjunction with other software will be uninterrupted or error free; (b) The Customer is entirely responsible for determining the suitability of the Software for their purposes and for the use they make of the Software. (c) Samuco disclaims all other warranties, either express or implied, including warranties of merchantability, fitness for purpose for a particular purpose and non-infringement of third party rights. If any such warranties are implied by law, such warranties are limited in duration to three months from the date of delivery; and (d) No oral or written information or advice given by Samuco, its dealers, distributors, agents or employees shall create or extend existing warranties, and the Customer must not rely on any such information or advice unless in writing and signed by an authorised representative of Samuco.

(ii) YOU AGREE THAT YOUR USE OF THE SAMUCO WEBSITE SHALL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, SAMUCO IT'S EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SAMUCO WEBSITE AND YOUR USE THEREOF. SAMUCO MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THIS SITE'S CONTENT OR THE CONTENT OF ANY SITES LINKED TO THIS SITE AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR WEBSITE, (III)

ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR WEBSITE, (IV) ANY BUGS, BOTS, SPIDERS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH OUR WEBSITE BY ANY THIRD PARTY, AND/OR (V) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SAMUCO WEBSITE. SAMUCO DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SAMUCO WEBSITE OR ANY HYPERLINKED WEBSITE OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND SAMUCO WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

## **12. Restrictions**

In no circumstances may the Customer transfer, assign, rent, lease, sell, charge, exchange, adapt (otherwise than in the course of normal use), decompile, disassemble, create a derivative product or otherwise deal the Software except pursuant to this Agreement or with the permission of Samuco. Subject to this Agreement, the Customer will not otherwise than pursuant to the Copyright Act 1968 as amended: Copyright Act 1968 as amended: Copyright Act 1968 (a) make a hard, electronic or other copy of the Software; (b) supply or distribute the Software to a third party or parties for reward or otherwise; (c) transfer the Software to another computer, network, the internet, an intranet or otherwise; or (d) access the Software by means other than a single user system.

## **13. Limitation of liability**

(i) The Software is provided to You "AS IS" without warranty of any kind, either express or implied. Samuco shall not be liable for any damage to property, loss of income, loss of revenue, trade, business, information or profits including any direct, indirect, incidental or consequential loss from the installation or use of the Software, whether based on breach of contract, tort (including negligence), product liability or otherwise.

(ii) IN NO EVENT SHALL SAMUCO, ITS EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II)

PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR WEBSITE, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR WEBSITE, (IV) ANY BUGS, BOTS, SPIDERS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH OUR WEBSITE BY ANY THIRD PARTY, AND/OR (V) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SAMUCO WEBSITE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT SAMUCO IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WHILE THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION, WHERE CONDITIONS, WARRANTIES OR OTHER RIGHTS ARE IMPLIED IN THIS AGREEMENT OR OTHERWISE CONFERRED BY LAW, AND IT IS NOT LAWFUL OR POSSIBLE TO EXCLUDE THEM, THEN THOSE CONDITIONS, WARRANTIES OR OTHER RIGHTS WILL (BUT ONLY TO THE EXTENT REQUIRED BY LAW) APPLY TO THIS AGREEMENT. AT THE OPTION OF SAMUCO, OUR LIABILITY FOR BREACH OF IMPLIED CONDITIONS OR WARRANTIES IS LIMITED, TO THE EXTENT PERMITTED BY LAW TO, IF THE BREACH RELATES TO GOODS, (I) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS, (II) THE REPAIR OF THE GOODS, (III) THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS, OR (IV) THE PAYMENT OF HAVING THE GOODS REPAIRED AND, IF THE BREACH RELATES TO SERVICES, (I) THE SUPPLY OF THE SERVICES AGAIN; OR (II) THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

YOU SPECIFICALLY ACKNOWLEDGE THAT SAMUCO SHALL NOT BE LIABLE FOR USER SUBMISSIONS OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY AND THAT THE RISK OF HARM OR DAMAGE FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

The Samuco website is controlled and offered by Samuco via facilities in the United States of America. Samuco makes no representations that the Samuco website is appropriate or available for use in locations outside Queensland, Australia. Those who access or use the Samuco website from other jurisdictions do so at their own volition and are responsible for compliance with local law.

#### **14. Indemnity**

You agree to defend, indemnify and hold harmless Samuco, it's employees and agents, from and against any and all claims, damages, obligations, losses, liabilities,

costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) Your use of and access to the Samuco website; (ii) Your violation of any term of these Terms of Use; (iii) Your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that one of Your User submissions caused damage to a third party. This defense and indemnification obligation will survive these Terms of Use and Your use of the Samuco website.

### **15. Persons under a disability**

You affirm that You are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Use, and to abide by and comply with these Terms of Use.

### **16. Choice of law and severability**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Queensland, Australia. The Samuco website, shall be deemed to be based in Queensland, Australia. The Samuco website shall be deemed a passive website that does not give rise to personal jurisdiction over Samuco, either specific or general, in jurisdictions other than Queensland. These Terms of Use shall be governed by the internal substantive laws of the State of Queensland, without respect to its conflict of laws principles. Any claim or dispute between You and Samuco that arises in whole or in part from the Samuco website shall be decided exclusively by a court of competent jurisdiction located in Brisbane, Queensland.

This Agreement contains the final, complete and exclusive agreement between Samuco and the Customer and supersedes all prior or contemporaneous agreements, whether oral or written.

If any provision, of these Terms of Use, is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Use, which shall remain in full force and effect. No waiver of any term of these Terms of Use shall be deemed a further or continuing waiver of such term or any other term, and Samuco's failure to assert any right or provision under these Terms of use shall not constitute a waiver of such right or provision. Samuco reserves the right to amend these Terms of Use at any time and without notice, and it is Your responsibility to review these Terms of Use for any changes. Your use of the Samuco website following any amendment of these Terms of Use will signify Your assent to and acceptance of its revised terms.

**YOU AND SAMUCO AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SAMUCO WEBSITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.**

### **17. Inquiries**

All questions concerning this Agreement shall be directed to [contact@samuco.net](mailto:contact@samuco.net).