

## ScaleNine "Skin to Win Challenge" : Legal

### 1. 2008 ScaleNine "Skin to Win Challenge": OFFICIAL RULES

The 2008 ScaleNine "Skin to Win Challenge" ("Contest") is an international competition open to software and web application developers to showcase their skill in using Adobe Creative Suite Applications (Photoshop, Illustrator, Fireworks and/or Flash) and Adobe Flex. Contest Participants, as defined below, may compete for three top prizes, one submission will be judged "First Place." The Contest is sponsored by Adobe Systems Incorporated, 345 Park Avenue, San Jose, CA, USA, 95110 ("Adobe"); EffectiveUI Inc., 2162 Market Street, Denver, CO, 80205 ("EffectiveUI") (Adobe and EffectiveUI hereinafter referred to collectively as the "Sponsors"); and hosted by ScaleNine LLC, 2154 Market Street, Denver, CO 80205 ("ScaleNine").

**2. Timing:** The Contest begins on August 11, 2008 8:00 a.m. U.S. Eastern Daylight Saving Time (EDT) and ends on October 10, 2008. All entries must be submitted no later than October 10, 2008 11:59p.m. (EDT).

**3. Eligibility:** The Contest is open to individuals who are 18 years of age or older or who have attained the age of majority in their respective states or countries, and is open to individuals who are citizens or working or studying under a valid visa/permit in the 50 United States (including Washington D.C.), Canada, the United Kingdom, Ireland, Switzerland, France, Germany, Austria, Sweden, Norway, Finland and Denmark, The Netherlands, Belgium, Italy, Australia, New Zealand, Japan, Korea, Singapore, the People's Republic of China, Taiwan, Hong Kong, Croatia, the Czech Republic, Hungary, India, Portugal, Spain, South Africa, Poland, Brazil, Estonia, Bulgaria and Turkey. Only natural persons are eligible to participate in this Contest; corporate entities and the like are ineligible. Eligible individuals are "Contest Participants." Contest Participants may enter individually or as part of a group (both hereafter referred to as, "Entrants"). For Entrants consisting of more than one Contest Participant, every Contest Participant must be listed on the entry form and must meet these eligibility requirements, and one Contest Participant must be designated on the entry form as lead team member for the group ("Team Leader"). Employees, independent contractors, officers, and directors of the Sponsors, their affiliates, subsidiaries, partners, advertising, promotion, and fulfillment agencies, and legal advisors, the judging panel, and the immediate family members and persons living in the same household of such persons, are not eligible to participate in the Contest. All federal, state, provincial, and local laws and regulations apply. Void where prohibited.

**4. How to Enter:** All Entrants (individual and group) must complete the official online form for the 2008 ScaleNine "Skin to Win Challenge" available at <http://www.scalenine.com/contest/> in its entirety. Every Contest Participant must be listed on the official online form and the Team Leader must indicate his or her assent to the terms of these Official Rules where requested on the form. By expressing assent in his or her capacity as Team Leader, the Team Leader represents and warrants that all Contest Participants constituting the Entrant agree and accept these Official Rules as binding on

each of them, jointly and severally. Each Entrant must submit a Flex 3 theme created using Adobe Creative Suite 3 software, including Photoshop, Illustrator, Fireworks or Flash (available for free by download at <http://www.adobe.com/downloads/>) that meets the criteria set forth below and complies with these Official Rules. Entrants’ applications, together with any relevant attachments such as documentation for the application, constitute their “Entry(ies)” for purposes of the Contest. Entries must be submitted via entry form as outlined on the “Submit an Entry” page. Each Entry must comply with the following:

- A. All work must be original (no plagiarized images, text, or other content).
- B. Theme may not contain pornography or other offensive materials as solely determined by ScaleNine and/or the Sponsors.
- C. Applications must run and function correctly on Mac and Windows® (exceptions may be made due to bugs in the Adobe Flex).
- D. Applications must not include malicious code, such as spyware, easter eggs, etc., or anything that intentionally interferes with operation of user’s systems or networks.
- E. Entrants must own all copyrights and other intellectual property rights in the theme including any associated software code, data sources, images, and text, or have properly obtained license to such rights from a third party, to allow it, ScaleNine, and the Sponsors to use, make, distribute, copy, display and otherwise exploit the theme. ScaleNine and/or the Sponsors may request documentation and other materials needed to confirm such rights. (See Section 7 below.)

Any Entry not complying with the above entry requirements will not be eligible for any prize. LIMIT: There is no limit to the number of Entries per Entrant. Sponsor accepts no responsibility for Entries that are lost or damaged in transit.

**5. Judging:** Conformance of Entries with these Official Rules shall be determined by the judges, whose decisions on all matters related to this Contest are final. Altered, illegible, or incomplete entry forms will be disqualified. After each Entry is screened for compliance with the entry requirements by the Sponsors, it will be judged by an independent panel of judges selected by the Sponsors in accordance with the criteria set forth below. The judges’ decisions are final and binding.

**6. Winners:** For clarification, a Winner consists of one Entrant, regardless of whether the Entrant is comprised of a single Contest Participant or a group of Contest Participants. Contest Participants within a group are NOT considered separate Winners. One (1) “First Place Winner”, one (1) “Second Place Winner” and one (1) “Third Place Winner” will be judged from among the Winners. Thus, there shall be a maximum total

of three (3) prizes awarded to Entrants, as well as “Spot Prizes” awarded to non-winning entries that judges believe deserve particular recognition for effort.

**7. Judging Criteria:** Entries shall be judged on a points system based on (a) visual design, (b) overall quality and completeness, and (c) innovation or uniqueness. Tied Entries will be reevaluated by the judges in accordance with the same criteria. Chance plays no part in the determination of the winners. All correspondence with the Winners will be addressed to the Team Leader for the Entrant and Sponsor takes no responsibility for how the Contest Participants constituting an Entrant share the individual items in any prize package.

**8. Copyright Ownership/License:** By participating in the Contest, each Contest Participant warrants that his or her contribution to an Entry is original, non-infringing, and non-confidential. Contest Participant further warrants that he or she owns all copyrights and other intellectual property rights in his or her contribution to the Entry (including any associated software code, data sources, images, and text) or has properly obtained a license or written permission to such rights from a third party, to allow him or her, ScaleNine, and the Sponsors to use, make, distribute, copy, display and otherwise exploit the works comprising the Entry in accordance with these terms. ScaleNine and/or the Sponsors may request documentation and other materials needed to confirm such rights. A breach of the warranties set forth above will result in invalidation of the Entry to which the Contest Participant has contributed. In addition, each Contest Participant indemnifies ScaleNine and the Sponsors (jointly and severally) against all losses, damages and costs incurred by the same arising from that Contest Participant’s breach of the warranty set forth above. ScaleNine and/or the Sponsors, in their sole discretion, may feature any Entry submitted in this Contest on <http://www.scalenine.com>, any related websites, in any promotional materials, whether related or unrelated to the Contest, and at any other location, whether physical or online, that ScaleNine and/or the Sponsors, in their sole discretion, deem(s) appropriate for the operation and promotion of this Contest. Furthermore, by participating in the Contest, each Contest Participant irrevocably grants to ScaleNine and the Sponsors a royalty-free, non-exclusive, transferable, worldwide, perpetual license to use and exploit all intellectual property rights (including without limitation, copyright) in and to the Entry including, without limitation, the license to use, reproduce, distribute, publicly perform, publicly display, communicate to the public, modify for purposes of publicly performing, publicly displaying and communicating to the public, and prepare derivative works based upon the Entry, for the purposes of advertising and promoting ScaleNine and/or the Sponsors’ products and services, or for inclusion in ScaleNine promotions and advertising, and for inclusion in and distribution with ScaleNine and/or the Sponsors’ products; and consents to ScaleNine and the Sponsors doing any acts with respect to the Entry that may otherwise constitute an infringement of the Contest Participant’s moral rights, to the extent such consent is legally enforceable under applicable copyright law. For the avoidance of doubt, ScaleNine and/or the Sponsors may use all or any part of an Entry for any purposes at their discretion, including, without limitation, using the Contest Participant’s Entry or contribution thereto for promotional, marketing or publicity purposes, whether with respect to this Contest, the Sponsor, or otherwise.

To the extent that such a license is ineffective or unenforceable, Contest Participant shall sign a license agreement providing to ScaleNine and the Sponsors a royalty-free, non-exclusive, two-year (2), worldwide license to use, reproduce, distribute, publicly perform, publicly display, communicate to the public, modify, and prepare derivative works based upon the Entry for the purposes of advertising and promoting ScaleNine and the Sponsors’ products, as well as to include in and distribution with any ScaleNine or Sponsors’ products, and on ScaleNine and/or the Sponsors’ websites. Each Contest Participant further agrees to execute any and all documents necessary to effectuate such license.

## **9. Prizes:**

This Contest will have three (3) official Winners:

A. First Place Winner receives one “First Place Prize Package”, which includes, one (1) MacBook Air with Solid State Drive (SSD); one (1) copy of Adobe Creative Suite® 3 Master Collection for Macintosh or Windows; one (1) copy of Adobe Flex™ Builder™ version 3, Macintosh or Windows edition; a feature article on Adobe Developer Network; and one (1) ticket to attend Adobe Max 2008 North America or Europe. Total approximate prize value: \$7,293.00 US.

B. Second Place Winner receives one “Second Place Prize Package”, which includes, one (1) copy of Adobe Creative Suite® 3 Master Collection for Macintosh or Windows; one (1) copy of Adobe Flex™ Builder™ version 3, Macintosh or Windows edition; and one (1) ticket to attend Adobe Max 2008 North America or Europe. Total approximate prize value: \$4,693.00 US.

C. Third Place Winner receives one “Third Place Prize Package”, which includes, one (1) copy of Adobe Creative Suite® 3 Web Premium for Macintosh or Windows; and one (1) copy of Adobe Flex™ Builder™ version 3, Macintosh or Windows edition. Total approximate prize value: \$2,298.00 US.

D. Additionally, judges may award “Spot Prizes” to non-winning entries that they believe deserve particular recognition for effort. A “Spot Prize” includes one (1) copy of Adobe Flex™ Builder™ version 3, Macintosh or Windows edition.

All Contest Participant members of Winner who choose to travel to MAX 2008 receive a full conference pass (approximate value: \$1,400 US – approximately €1,041.21). Winner (and any Contest Participant member of Winner who chooses to travel to MAX 2008) shall be responsible exclusively for understanding which documents, such as visas and passports, are required for travel, and for attaining and maintaining such documents at his or her own cost. If after booking travel and accommodations for MAX 2008, the Winner fails to receive or maintain such documents, or is not available to travel at the specified dates and times, the Winner shall be deemed to have forfeited the prize without compensation of any kind owed to Winner.

Because this is a contest of skill, winning is dependent upon the quality of Entries received. All prizes will be awarded unless there are fewer eligible Entries for a Place

than prizes for that Place. No alternative prize, cash, or other substitution is allowed except as set forth in these Official Rules or permitted by the Sponsors, in their sole discretion, in the event of prize unavailability. Prizes are non-assignable and non-transferable. Unless otherwise informed by the winning Entrant, Sponsor will award prizes to the named team leader of the Entrant. All applicable federal, state, provincial, and local taxes, if any, are the responsibility exclusively of the winners. Prize values are approximate and winners are not entitled to any difference between the stated approximate value and the actual value.

**10. Notification:** Entries will be judged between October 10, 2008 and October 17, 2008. All notified potential winners are subject to verification of eligibility and compliance with the Official Rules. Upon final verification, potential Winners will be notified by e-mail or telephone and will have ten (10) days from receipt of notification to accept the prize by e-mail. Such acceptance will include the execution of a declaration of compliance as well as a release of liability and publicity release (except where prohibited by law). If a selected winner cannot be contacted, is ineligible, fails to acknowledge winning status within the specified time frame, or fails to comply with any term or condition of these Official Rules, including without limitation the requirement to return the executed declaration and releases described above within the specified time frame, the potential winner will be deemed to have forfeited the prize and an alternate potential winner may be selected. From the confirmed, verified winners, the Sponsors will select the First Place Winner and notify that Entrant in the manner described above.

**11. General Terms and Conditions:**

A. ScaleNine and the Sponsors are not responsible for and shall not be liable for: (i) lost, late, delayed, damaged, incomplete, illegible, unintelligible, or misdirected Entries; (ii) telephone, electronic, hardware or software program, network, Internet, or computer malfunctions, failures, or difficulties of any kind; (iii) failed, incomplete, partial, garbled, or delayed computer transmissions; (iv) any condition caused by events beyond the control of ScaleNine or the Sponsors that may cause the Contest to be disrupted or corrupted; (v) any injuries, losses, or damages of any kind arising in connection with or as a result of a prize, or acceptance, possession, or use of a prize, or from participation in the Contest; (vi) any printing or typographical errors in any materials associated with the Contest (not applicable in Spain); and (vii) any regional, state, or local laws or regulations violated during the creation of the Entries by the Contest Participant(s). In the case of Australia, the limitations of liability in this sub-clause do not operate in respect of any implied condition or warranty the exclusion of which from these Official Rules would contravene any Australian statute or cause any part of these Official Rules to be void.

B. ScaleNine and the Sponsors reserve the right to suspend, cancel, or modify the Contest if fraud or technical failure corrupts the administration, security, or

proper conduct of the Contest, as determined by ScaleNine and the Sponsors in their sole discretion.

C. Not limiting the foregoing, each Contest Participant agrees to release and hold ScaleNine and the Sponsors harmless from any and all losses, damages, rights, claims, and actions of any kind in connection with the Contest, including without limitation any injury that results from loss or damage to any Entry, or resulting from acceptance, possession, or use of any prize, including without limitation, personal injury, death, property damage, and claims based upon intellectual property infringement, publicity rights, defamation, or invasion of privacy. Notwithstanding the foregoing, the preceding release of liability will not apply with respect to fraud or to personal injury, death, or damage to property caused by ScaleNine and/or the Sponsors' negligence against Contest Participants residing in India and France, and will not apply with respect to personal injury or death caused by ScaleNine and/or the Sponsors' negligence against Contest Participants residing in the United Kingdom, Austria, Germany, Canada, New Zealand, Korea, Hong Kong, Hungary, or Portugal. The preceding release of liability only applies to ordinary or minor negligence caused by ScaleNine and or the Sponsors against Contest Participants residing in Spain, Finland, or Austria (with respect to damage to property).

D. Each Contest Participant agrees that ScaleNine and the Sponsors' only obligation is to submit Entries from eligible Contest Participants to the judges according to the procedures and criteria set forth in these Official Rules, and award the prizes set forth herein to winners, subject to the terms and conditions herein. Contest Participant agrees that ScaleNine and the Sponsors' obligation is fair and adequate consideration for any Entry submitted and the license obtained to the Entry herein, and that Contest Participant is not entitled to and shall not seek any further compensation.

E. Each Contest Participant agrees that by submitting an Entry, he or she allows the use of his or her personal data, name, likeness, and/or voice in publicity or advertising or for any other purpose relating to the Contest without compensation, except where prohibited. ScaleNine and the Sponsors will be collecting Contest Participants' names, their countries of residence, telephone numbers, company names, and email addresses only ("Personal Data"). The Personal Data will be held by ScaleNine and/or the Sponsors for the duration of the Contest and thereafter for fulfillment of prizes and for future communication about their products and services. Contest Participants have the right of opposition to the data collection, under certain circumstances. To exercise such right, they may write to EffectiveUI, Attn: ScaleNine "Skin to Win Challenge", 2162 Market Street, Denver, CO, USA 80205. The data controller and the recipient of the data is EffectiveUI, 2162 Market Street, Denver, CO, USA 80205. The data collected will be transferred to the U.S. except for compulsory rules of local law prevailing over the following choice of law provision, all issues and questions concerning the construction, validity, interpretation, and enforceability

of these Official Rules, or the rights and obligations of Contest Participant, ScaleNine and the Sponsors in connection with the Contest, shall be governed by, and construed in accordance with the laws of the State of Colorado, USA, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Colorado or any other jurisdiction), that would cause the application of the laws of any jurisdiction other than the State of Colorado.

F. Where permitted by law, Contest Participant agrees that any and all disputes, claims, and causes of action arising out of or connected with this Contest, or any prizes awarded, other than the administration of the Contest or the determination of winners shall be resolved individually, without resort to any form of class action, and exclusively by the United States District Court for the District of Colorado (Denver County Division) or the appropriate Colorado State Court located in Denver County, Colorado.

**12. Winners List:** A winners list will be posted on the ScaleNine website, <http://www.scalenine.com/contest/> by October 18, 2008.

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