

This license agreement is for the Stanford Computer Workstation Ergonomics Program. If you would like to license the Program, please download **TWO** copies. Complete, sign and return both copies to: Stefani Shek, Stanford University Office of Technology Licensing, 900 Welch Road, Suite 350, Palo Alto, CA 94304. Both copies will be signed by our Director and one copy will be returned to you.

Once we have received the signed copies of the Agreement, we will send you the following: **ONE** copy of the source code and **TEN** copies of the CD. Currently, we do not have available a generic version of the Program which has the Stanford information removed. When we do have a generic version, we will provide **ONE** copy of the source code to you free of charge.

SOFTWARE LICENSE AGREEMENT

Effective as of _____ (“Effective Date”), THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California (“STANFORD”), and _____, a _____ corporation having a primary place of business at _____ (“LICENSEE”) agree as follows:

1. BACKGROUND

- 1.1 STANFORD has an assignment of certain Software as defined hereinafter and desires to license the Software in order that it become available for public use and benefit.
- 1.2 LICENSEE desires to obtain a license to the Software to provide training for its employees.
- 1.3 The Software was created with Macromedia’s Authorware Program. STANFORD has a Run-time Distribution Agreement with Macromedia which allows STANFORD to license the Software (see Attachment A). STANFORD also has an Authorware Web Player Distribution Agreement with Macromedia which allows STANFORD to license the web player version of the Software (see Attachment B).

2. DEFINITIONS

- 2.1 “Software” means those source code and binary files known as the Computer Workstation Ergonomics CD-ROM, provided to LICENSEE pursuant to this Agreement.
- 2.2 “Site” means servers that are owned and operated by LICENSEE for use by LICENSEE’S employees that are within a one mile radius of location _____

_____.
- 2.3 “Licensed Programs” means those computer programs developed by LICENSEE, including manuals and related documentation, which include a material portion of, or which are derived from, Software.

3. GRANT

- 3.1 STANFORD grants, and LICENSEE accepts a nonexclusive, fully-paid license to use, copy, and modify the Software as part of the deployment of Licensed Programs only at the specified Site.
- 3.2 The above license in Paragraph 3.1 shall continue in perpetuity unless earlier terminated in accordance with Article 7 hereunder.
- 3.3 LICENSEE agrees:
- (a) To maintain the quality of the Software;
 - (b) To affix an appropriate notice of copyright (“© 1998 The Board of Trustees, Leland Stanford Junior University”) necessary for the protection and preservation of STANFORD’s rights in such copyrights; and
 - (c) To exercise due care in protecting the Software from unauthorized disclosure to third parties, at least to the degree LICENSEE exercises care in protecting its own proprietary information.
- 3.4 LICENSEE agrees the source code is for internal use only.
- 3.5 LICENSEE agrees to abide by the terms of the Macromedia Run-Time Distribution Agreement and Authorware Web Player Distribution Agreement. LICENSEE also agrees to contact Macromedia for a separate Run-Time Distribution Agreement if LICENSEE makes changes to the Software.
- 3.6 LICENSEE agrees that STANFORD has no obligation to provide any technical or other support to LICENSEE for Software or Licensed Programs.

3.7 STANFORD reserves the following rights:

- (a) To use, copy, and modify the Software; and
- (b) To distribute the Software to third parties.

4. CONSIDERATION

In consideration of the rights granted herein, LICENSEE shall pay to STANFORD Twenty Thousand Dollars (\$20,000.00). LICENSEE shall also provide to STANFORD any enhancements made by LICENSEE to the Software. Enhancements are defined as any changes made by LICENSEE to the STANFORD Software. LICENSEE agrees to allow STANFORD to internally use, copy, and modify such enhancements on a royalty-free basis, but STANFORD shall not further distribute such enhancements without LICENSEE's prior written consent.

5. INDEMNITY AND DISCLAIMER OF WARRANTIES

- 5.1 STANFORD MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED. By way of example, but not limitation, STANFORD MAKES NO REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR THAT THE USE OF SOFTWARE WILL NOT INFRINGE ANY PATENTS, COPYRIGHTS, TRADEMARKS, OR OTHER RIGHTS. STANFORD shall not be LIABLE for any liability or damages with respect to any claim by LICENSEE or any third party on account of, or arising from, the license or use of Software or Authorware.
- 5.2 LICENSEE agrees to indemnify, hold harmless, and defend STANFORD and its trustees, officers, employees, students, and agents against any and all claims arising out of the exercise of any rights under this Agreement, including, without limiting the generality of the foregoing, against any damages, losses, or liabilities whatsoever with respect to death or injury to person or damage to property arising from or out of the possession, use, or operation of Software or Licensed Programs by LICENSEE.

6. PROMOTIONAL ADVERTISING

Neither party will identify the other in any promotional advertising or other promotional materials to be disseminated to the public, or any portion thereof, or to use the name of any either party's faculty member, employee, or student or any trademark, service mark, trade name, or symbol of either party, without the prior written consent of the other party.

- 8.5 This Agreement shall be construed, interpreted, and applied in accordance with the laws of the State of California.
- 8.6 This Agreement constitutes the entire understanding between the parties and no modification or amendment thereof will be binding upon either party unless it will be in writing and signed by persons authorized to bind the parties to the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate originals by their duly authorized officers or representatives.

THE BOARD OF TRUSTEES OF THE LELAND
STANFORD JUNIOR UNIVERSITY

Signature _____

Name _____

Title _____

Date _____

LICENSEE

Signature _____

Name _____

Title _____

Date _____



RUN-TIME DISTRIBUTION AGREEMENT

This agreement must be signed and return to Macromedia prior to distribution of any publisher product.

This Agreement is entered into by and between Macromedia, Inc., a Delaware corporation with principal offices at 600 Townsend, San Francisco, California 94103 ("Macromedia") and the Publisher identified on the signature page hereof ("Publisher"), effective as of the date of receipt by Macromedia. This Agreement supplements and amends Macromedia's end-user license agreement, provided with Macromedia's Authorware® and/or Macromedia Director® authoring software.

Publisher has developed, intends to develop, has contracted to develop or intends to contract to have developed one or more "End-User Products" (as defined below), which it desires to distribute to end-users. Macromedia hereby licenses Publisher to distribute the Macromedia Run-Time within such End-User Products without payment of a royalty to Macromedia, subject to the agreement by Publisher and its Developer to use the Macromedia "Made With Macromedia" trademark, according to the terms of this Agreement.

1. Definitions

- (a) A "Developer" creates the End-User Products, using the Macromedia Software.
- (b) An "End-User Product" is the output file generated by the Macromedia Software, which includes a component of the Macromedia Software called the Macromedia Run-Time. Animations, courseware, presentations, demonstration files, interactive multimedia material, interactive entertainment products and the like are examples of End-User Products.
- (c) The "Macromedia Run-Time" is a portion of the Macromedia Software required by the End-User Product for the End-User Product to operate when the Macromedia Software product is not resident.
- (d) The "Macromedia Software" is Macromedia's Authorware and/or Director authoring software product.
- (e) A "Publisher" causes the Publisher Products to be reproduced and distributed to end-users, whether directly or indirectly, through distributors or resellers. A Publisher may also be the Developer, or may have contracted with the Developer to create the Publisher Product.
- (f) "Publisher Products" means the End-User Products developed through use of the Macromedia Software. Publisher Products are listed on Exhibit A to this Agreement. Additional Publisher Products may be added to this Agreement by completing, signing and sending additional copies of Exhibit A to Macromedia, at any time. End-User Products developed using Educational, Academic or Not For Resale (NFR) versions of the Macromedia Software are restricted to internal use only and are not included within the definition of Publisher Products.

2. Grant of Rights

(a) Publishing License.

- (i) Macromedia grants to Publisher a non-exclusive, non-transferable, perpetual, worldwide, non-royalty bearing license to incorporate, or have incorporated by its Developer, object code copies of the Macromedia Run-Time into Publisher Products and to display, perform, copy, advertise, promote, distribute, license and sub-license such copies, subject to Publisher's compliance with the terms of this Agreement. Publisher has no right to, and agrees not to display, perform, copy, distribute, license and sub-license copies of the Macromedia Run-Time except as a part of or within a Publisher Product.
- (ii) Publisher's end-user license agreement shall contain, at a minimum, the following limitations: (1) no title to or ownership rights in the Publisher Product or any portion of the Publisher Product are transferred; 2) the end-user shall not reverse compile or disassemble the Publisher Product.
- (iii) Publisher's rights to distribute Publisher Products created by a Developer are subject to Publisher and Developer having entered into a written agreement requiring Developer to comply with this Section 2(a) and with Section 3, below. Publisher's failure to require Developer to so comply will be deemed a material breach of this Agreement.



RUN-TIME DISTRIBUTION AGREEMENT

- (b) **Trademark License.** Macromedia grants to Publisher the right to use the "Made with Macromedia" logo, a trademark of Macromedia, as set forth in Section 3, below.

3. Required Marking

Publisher agrees to use the Made with Macromedia logo, in the form provided by Macromedia, on each copy of the Publisher Product, in accordance with the Logo Usage Guidelines attached as Exhibit B.

- (a) **Approval.** Upon request by Macromedia, Publisher shall submit its intended use of the Made With Macromedia logo to Macromedia for approval. If Macromedia fails to notify Publisher in writing of its disapproval within five (5) business days of its receipt thereof, such use shall be deemed approved.
- (b) **Copies.** Publisher agrees to provide to Macromedia at no cost, one copy of each Publisher Product within thirty (30) days of first distribution under this Agreement. Should Macromedia determine, in its sole discretion, that the Publisher Product will negatively affect the public's perception of the quality of the Macromedia's products, Macromedia may terminate the Trademark License granted herein.

4. General

- (a) **Indemnification of Macromedia.** With the exception of claims which may relate solely to the operation of the Macromedia Run-Time itself, Publisher shall indemnify and hold Macromedia harmless against all claims, demands, suits, liabilities, losses, damages, judgments, settlements, costs and expenses, (including reasonable attorneys' fees) arising out of third party claims against Macromedia relating to the performance, promotion and/or distribution of the Publisher Products.
- (b) **Governing Law and Legal Actions.** This Agreement shall be governed by internal laws of the State of California.

Publisher:

Sign Name: Katharine Ku
 Print Name: Katharine Ku
 Title: Director, Technology Licensing
 Company Name: Stanford University
 Address: 900 Welch Road, Suite 350
Palo Alto, CA 94304
 Tel No.: 650-723-0651
 Fax No.: 650-725-7295
 E-mail: katharine.ku@stanford.edu
 Dated: January 7, 2000

Developer (if different from Publisher):

Contact Name: _____
 Title: _____
 Company Name: _____
 Address: _____

 Tel No.: _____
 Fax No.: _____
 E-mail: _____

Please fill in the information requested above and mail this Agreement and Exhibit(s) A to:

Made with Macromedia Program
 Macromedia, Inc.
 600 Townsend Street
 San Francisco, CA 94103

Your Agreement is effective upon receipt by Macromedia. You will not receive a confirmation or a return copy from Macromedia.



EXHIBIT A RUN-TIME DISTRIBUTION AGREEMENT

Publisher Product Requiring MADE WITH MACROMEDIA Marking

Product Name: Computer Workstation Ergonomics

Product Description: CD-ROM which explains proper ergonomics when using a computer workstation.

Platform:

Mac Win Other _____ Anticipated Introduction Dates: 11/13/98

Distribution Medium: CD-ROM Floppy _____ Other web-deliverable

Runtime being distributed: Authorware Director _____

Products used in development: (check all that apply)

- | | | | |
|--|-----------------------------------|---------------------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> Authorware | <input type="checkbox"/> Director | <input type="checkbox"/> Dreamweaver | <input type="checkbox"/> Fireworks |
| <input type="checkbox"/> Flash | <input type="checkbox"/> FreeHand | <input type="checkbox"/> Fontographer | <input type="checkbox"/> SoundEdit 16 |

Publisher Information:

Company: Stanford University

Address: 900 Welch Road, Suite 350
Palo Alto, CA 94304

Phone: 650-723-0651

Fax: 650-725-7295

E-mail: Katharine.Ku@Stanford.edu

Sign Name: Katharine Ku

Print Name: Katharine Ku

Title: Director, Technology
Licensing

Developer Information: (if different from Publisher)

Company: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

Sign Name: _____

Print Name: _____

Title: _____

Consent

May we use your Publisher Product for promotional, advertising and/or demonstration purposes? Macromedia agrees to credit the Publisher and/or Developer as follows, and agrees not to publish the Publisher Product as a stand-alone piece:

Yes No Maybe - contact me

Credit line: _____

Send completed and signed Exhibit A to:

Attn: Made with Macromedia Program
Macromedia, Inc.
600 Townsend St.
San Francisco, CA 94103



EXHIBIT B LOGO USAGE GUIDELINES

General Guidelines

- The Made with Macromedia (MWM) trademark can only be used by licensed parties.
- The trademark must never be altered and must be reproduced from the supplied digital file.
- The trademark may not be used in connection with the display, advertising or promotion of products that do not contain Macromedia run-times.
- Licensees must identify the logo as a trademark of Macromedia, Inc. in the following format: "Made with Macromedia is a trademark of Macromedia, Inc."

Location Guidelines

The Made with Macromedia logo must appear on both the packaging and within the software according to the following guidelines:

1. Packaging (Print)
 - On the outermost front, back or sides of the package. It may **not** be placed on the top or bottom of the product.
 - If no box is used and the product is delivered on CD-ROM, the logo must be visible on the outside of the CD jewel case either on the front insert or the back tray liner.
 - If no box is used and the product is delivered on floppy disk, the seal must appear on the diskette holder or diskette label.
 - Use the logo artwork designated for "Print"
2. Software (Screen)
 - On the splash screen, credits screen, or similar location within the software product for a minimum of four seconds.
 - Use the logo artwork designated for "Screen"

Size Guidelines

1. Packaging (Print)
 - The minimum height of the Made with Macromedia logo is 1/2 inch, or no smaller than other, similar logos on the package.
2. Software (Screen)
 - The logo artwork designated for screen use must maintain its original size of 196 pixels wide by 174 pixels tall as supplied in the digital file.

Color Guidelines

- Color is an integral part of the Made with Macromedia logo. There are three acceptable color variations for the logo on packaging and within the software:
 1. PANTONE colors: PMS2726 and Black.
 2. Four Color Process directly separated from the EPS file.
 3. Black and White version.
- Either the color or black and white version of the Made with Macromedia logo is acceptable on screen.
- The RGB colors for onscreen display are: R: 51; G: 51; B:153
- The Netscape Safe Color is 333399

Clear Space Guidelines

- The area surrounding the Made with Macromedia logo should be even, unpatterned, and free from typography, illustration and other graphic elements. At a minimum, this clear space must extend around the height and width of the logo by 1/4 inch.

Background

- The logo can be placed on screened background as long as the logo is clearly visible.
- The logo may NOT be reversed to white. Use the black & white version supplied.



EXHIBIT C END-USER LICENSE AGREEMENT

PLEASE READ THIS DOCUMENT CAREFULLY BEFORE BREAKING THE SEAL ON THE MEDIA PACKAGE. THIS AGREEMENT LICENSES THE ENCLOSED SOFTWARE TO YOU AND CONTAINS WARRANTY AND LIABILITY DISCLAIMERS. BY BREAKING THE SEAL ON THE MEDIA ENVELOPE, YOU ARE CONFIRMING YOUR ACCEPTANCE OF THE SOFTWARE AND AGREEING TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT WISH TO DO SO, DO NOT BREAK THE SEAL. INSTEAD, PROMPTLY RETURN THE ENTIRE PACKAGE, INCLUDING THE UNOPENED MEDIA PACKAGE, TO THE PLACE WHERE YOU OBTAINED IT, FOR A FULL REFUND.

1. Definitions

- (a) "Educational Version" means a version of the Macromedia® Product, so identified, intended for use by students and faculty of educational institutions, only.
- (b) "Not For Resale (NFR) Version" means a version of the Macromedia Product, so identified, intended for review and evaluation purposes, only.
- (c) "Macromedia Software" means the software program included in the enclosed package, and all related updates supplied by Macromedia.
- (d) "Macromedia Product" means the Macromedia Software and the related documentation and models and multimedia content (such as animation, sound and graphics), and all related updates supplied by Macromedia.
- (e) "End-User Product" means the output file generated by you using the Macromedia Software. Examples of End-User Products include animations, courseware, presentations, demonstration disks, interactive multimedia material, interactive entertainment products and the like.
- (f) "Macromedia Run-Time" means the portion of the Macromedia Software required in order for the End-User Product to operate on hardware on which the Macromedia Software is not resident.

2. License

This Agreement allows you to:

- (a) Use the Macromedia Software on a single computer.
- (b) Make one copy of the Macromedia Software in machine-readable form solely for backup purposes. You must reproduce on any such copy all copyright notices and any other proprietary legends on the original copy of the Macromedia Software.
- (c) Make copies of the End-User Product (and the associated Macromedia Run-Time) and distribute those copies for use by personnel employed by you or for use by another party solely for its own internal purposes. Users of Educational Versions and Not For Resale (NFR) Versions agree that End-User Products shall not be used for, nor shall they be distributed to any party for any commercial use or gain.
- (d) Certain Macromedia Software is licensed with additional rights as set forth in the Supplementary Rights Addendum that may be included in the package for this Macromedia Product.

3. Supplementary Licenses

Certain rights are not granted under this Agreement, but may be available under a separate agreement. If you would like to enter into one of the Supplementary Licenses listed below, please contact Macromedia.

- (a) **Site or Network License**
You must enter into a Site License or Network License if you wish to make copies of the Macromedia Software for use with additional CPUs owned by you.
- (b) **Distribution License**
You must enter into a Macromedia Run-Time Distribution Agreement if you wish to copy and distribute an End-User Product (and its associated Macromedia Run-Time) other than as set forth in Section 2.

4. Restrictions

You may not make or distribute copies of the Macromedia Product, or electronically transfer the Macromedia Software from one computer to another or over a network. You may not decompile, reverse engineer, disassemble, or otherwise reduce the Macromedia Software to a human-perceivable form. You may not modify, rent, resell for profit, distribute or create derivative works based upon the Macromedia Software or any part thereof. You will not export or reexport, directly or indirectly, the Macromedia Product into any country prohibited by the United States Export Administration Act and the regulations thereunder. Educational Versions and Not For Resale Versions shall not be used for commercial purposes.

5. Ownership

The foregoing license gives you limited rights to use the Macromedia Software. Although you own the disk on which the Macromedia Software is recorded, you do not become the owner of, and Macromedia retains title to, the Macromedia Product, any Macromedia Run-Times, and all copies thereof. All rights not specifically granted in this Agreement, including Federal and International Copyrights, are reserved by Macromedia.

6. Limited Warranties

- (a) Macromedia warrants that, for a period of ninety (90) days from the date of delivery (as evidenced by a copy of your receipt): (i) when used with a recommended hardware configuration, the Macromedia Software will perform in substantial conformance with the documentation supplied as part of the Macromedia Product; and (ii) that the media on which the Macromedia Software is furnished will be free from defects in materials and workmanship under normal use, EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, MACROMEDIA DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, IF APPLICABLE LAW IMPLIES ANY WARRANTIES WITH RESPECT TO THE MACROMEDIA PRODUCT. ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF DELIVERY. No oral or written information or advice given by Macromedia, its dealers, distributors, agents or employees shall create a warranty or in any way increase the scope of this warranty.
- (b) SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS WHICH VARY FROM STATE TO STATE.

7. Exclusive Remedy

Your exclusive remedy under Section 6 is to return the Macromedia Software to the place you acquired it, with a copy of your receipt and a description of the problem. Macromedia will use reasonable commercial efforts to supply you with a replacement copy of the Macromedia Software that substantially conforms to the documentation, provide a replacement for the defective media, or refund to you your purchase price for the Macromedia Software, at its option. Macromedia shall have no responsibility with respect to Macromedia Software that has been altered in any way, if the media has been damaged by accident, abuse or misapplication, or if the nonconformance arises out of use of the Macromedia Software in conjunction with software not supplied by Macromedia.

8. Limitations of Damages

- (a) MACROMEDIA SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF MACROMEDIA OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
- (b) Macromedia's total liability to you for actual damages for any cause whatsoever will be limited to the greater of \$500 or the amount paid by you for the Macromedia Software that caused such damages.
- (c) SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

9. Basis of Bargain

The limited warranty, exclusive remedies and limited liability set forth above are fundamental elements of the basis of the bargain between Macromedia and you. Macromedia would not be able to provide the Macromedia Software on an economic basis without such limitations.

10. Government End Users

The Macromedia Product is "Restricted Computer Software."

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013. Manufacturer: Macromedia, Inc., 600 Townsend, San Francisco, CA 94103

11. General

This Agreement shall be governed by the internal laws of the State of California. This Agreement contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. All questions concerning this Agreement shall be directed to: Macromedia, Inc., 600 Townsend, San Francisco, CA 94103, Attention: Chief Financial Officer.

MACROMEDIA

Authorware Web Player Distribution Agreement

THIS AGREEMENT GRANTS A LICENSE TO DISTRIBUTE MACROMEDIA SOFTWARE AS A PART OF OR IN CONJUNCTION WITH LICENSEE'S PRODUCT

This Agreement is entered into by and between Macromedia, Inc., a Delaware corporation with principal offices at 600 Townsend St., San Francisco, California 94103 ("Macromedia") and the entity identified below ("Licensee"), effective as of the date of receipt by Macromedia.

1. Definitions.

- (a) "Macromedia Software" means the Macromedia Authorware Web Player technology.
- (b) "Licensee Product" is the file generated using Macromedia Authorware, identified below.

2. Grant of Rights.

(a) Software License. Macromedia grants to Licensee a non-exclusive, non-transferable, fully-paid and royalty-free, worldwide license to use internally for demonstration and training purposes, reproduce, have reproduced, sublicense and distribute the Macromedia Software to end users (directly or indirectly, through distributors or resellers, if applicable, or by electronic means) as a part of, with, or in conjunction with its Licensee Product, during the Term of this Agreement. Licensee agrees not to distribute copies of the Macromedia Software except as a part of, with, or in conjunction with the Licensee Product.

(b) Ownership. Ownership of and title to the Macromedia Software and all associated patents, copyrights, trade secrets and other proprietary rights remain with Macromedia. Other than as set forth in Section 2(a), Licensee may not make or distribute copies of the Software, decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form, modify or create derivative works based upon the Software or export the Software into any country prohibited by the United States Export Administration Act and the regulations thereunder. This Macromedia Software is "Restricted Computer Software." Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in this Agreement and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013 (OCT 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227-14, as applicable.

Where practical, Licensee shall provide notice of and impose the restrictions in this section, and the limitations in Section 5, upon its licensees and end users or set them forth in an end user license.

3. Indemnification of Macromedia.

With the exception of claims which may relate solely to the operation of the Macromedia Software itself, Licensee shall indemnify and hold Macromedia harmless against all claims, demands, suits, liabilities, losses, damages, judgments, settlements, costs and expenses, (including reasonable attorneys' fees) arising out of third party claims against Macromedia relating to the performance, promotion and/or distribution of the Licensee Product.

4. Term and Termination.

This Agreement shall remain in effect in perpetuity, unless terminated as set forth in this Section.

Licensee may terminate this Agreement at any time upon written notice to Macromedia. Macromedia may terminate this Agreement immediately if Licensee defaults in the performance of any material provision of this Agreement. Upon the termination of this Agreement, the rights and licenses granted to Licensee pursuant to this Agreement will automatically cease, however sublicenses to end users will continue for the duration of such sublicense. If this Agreement is terminated for any reason, the provisions of Sections 3, 5 and 6, of this Agreement shall survive.

5. Limited Macromedia Warranty and Limitation of Liability.

Macromedia warrants only that the media upon which the Macromedia Software is supplied is free of defects. Macromedia's sole obligation and Licensee's sole remedy is for Macromedia to provide a replacement copy of the Macromedia Software.

EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, MACROMEDIA DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, OR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE TERMINATION THEREOF, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT.

The parties agree that this provision will not limit Macromedia's remedies for the infringement of its intellectual property.

6. General.

- (a) Governing Law. This Agreement shall be governed by laws of California.
- (b) Notice. All notices under this Agreement shall be addressed to or delivered to the parties at the addresses set forth herein and shall be sufficient if sent by facsimile.
- (c) No Agency. Macromedia and Licensee are each independent entities and neither party shall be, nor represent itself to be, a franchisor, franchisee, joint venturer, partner, master, servant, principal, agent or legal representative of the other party for any purpose whatsoever.
- (d) Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the party to be charged.
- (e) Assignment. This Agreement may not be assigned by Licensee without the prior written consent of Macromedia, except to the purchaser of all or substantially all of the assets of Licensee.