

MACROMEDIA

RUN-TIME DISTRIBUTION AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT MUST BE SIGNED AND RETURNED 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 that executes this Agreement (“Publisher”), effective as of the date of receipt by Macromedia. This Agreement supplements and amends Macromedia’s standard form End-User License Agreement for the Macromedia Software, which is attached hereto as Exhibit D and which is incorporated herein by this reference (the “End-User Agreement”) and supercedes the terms of any previously signed Developers Runtime Distribution Agreement for the Products listed on Exhibits A and C.

Publisher has developed or contracted to have developed one or more “End-User Products” (as defined in the End-User Agreement) using either Authorware Professional or Macromedia Director that Publisher desires to distribute directly or indirectly (through distributors) to end-users. Macromedia is willing to permit Publisher to distribute such End-User Products without payment of a royalty to Macromedia but only if Publisher and its distributors use certain Macromedia trademarks and copyright notices according to the terms of this Agreement.

1. Definitions. Terms shall be as defined in the End-User Agreement or as defined below, or elsewhere in this Agreement:

- (a) A “Developer” creates the End-User Products, using the Macromedia Software.
- (b) A “Publisher” causes the Published Products to be reproduced and distributed to End-Users, either directly or indirectly, through distributors. A Publisher may also be a Developer, or may have contracted with a Developer to obtain the Publisher Products.
- (c) “Publisher Products” means the End-User Products intended for distribution that were developed using the Macromedia Software and containing the Macromedia Run-Time (but not including End-User Products developed using

educational, not for resale (NFR), or academic versions of the Macromedia Software or Authorware Star) and which are listed on Exhibit A or Exhibit C to this Agreement (as amended by the parties from time to time), and any new or modified versions of such products that are developed using the Macromedia software and containing the Macromedia Run-Time. Additional Publisher Products may be added to this Agreement by completing, signing and sending additional copies of Exhibit A and/or Exhibit C to Macromedia. Publisher Products added by Publisher from time to time shall be governed by the terms of this Agreement.

2. Grant of Rights.

- (a) Representation of Publisher. Publisher represents that it is the Developer of the Publisher Products or that Publisher Products have been developed for or on behalf of Publisher by a third party Developer, and is accordingly responsible for the development and design of the Publisher Product.
- (b) Publishing License.
 - (i) Macromedia grants to Publisher a non-exclusive, non-transferable, perpetual, worldwide, non-royalty bearing license to incorporate object code copies of the Macromedia Run-Time into or with Publisher Products and to copy, distribute, display and perform said copies, subject to Publisher’s compliance with the terms of this Agreement. Publisher has no right to, and agrees not to, copy, distribute, display or perform object code copies of the Macromedia Run-Time except as part of or with a Publisher Product.
 - (ii) Publisher’s right to develop the Publisher Products through a third party Developer is subject to a prior written agreement of the Developer to comply with this Section 2(b) and with Section 2(d) below. Publisher’s failure to require Developer to comply with Section 2(b) and 2(d) will be deemed a material breach of this Agreement by Publisher.
- (c) Trademark License. Macromedia grants to Publisher the right to utilize the following Macromedia trademarks: Authorware®,

Director®, and Made with Macromedia™.”

- (d) Required Mark and Copyright. The license granted by Macromedia to Publisher in Section 2(b) of this Agreement is specifically conditioned upon Publisher meeting the following obligations, during the term of this Agreement:
- (i) Publisher agrees to use the trademark “Made with Macromedia”™ in the form provided by Macromedia on each copy of a Publisher Product to be distributed in accordance with the usage guidelines attached as Exhibit C. For Publisher Products on Exhibit A, the “Made with Macromedia” trademark shall appear on both the packaging and within the software. For Publisher Products on Exhibit B, the “Made with Macromedia” trademark shall appear within the software, only.
- (ii) Publisher agrees to incorporate in its copyright screen for the Publisher Products a copyright notice in the form set forth below:

(If Authorware was used to create the Publisher Product)

AUTHORWARE ® COPYRIGHT © 1993
Macromedia, Inc.

(If Director was used to create the Publisher Product:)

DIRECTOR ® COPYRIGHT © 1994 Macromedia,
Inc.

- (e) Copies. Publisher agrees to provide to Macromedia at no cost, two (2) copies of each Publisher Product within thirty (30) days of first distribution under this Agreement.
- (f) Limitations. Title to the Macromedia Run-Time, Macromedia Trademarks and all associated patents, copyrights, trade secrets and other proprietary rights shall remain with Macromedia.
- (g) Approval by Macromedia. Upon the request of Macromedia, all representations of the Macromedia Trademarks that Publisher intends to use shall be submitted to Macromedia for approval (which shall not be unreasonably withheld or delayed). Macromedia agrees that approval may be assumed for any use of a Macromedia Trademark that is substantially similar to one previously approved. Should

Macromedia disapprove of a use of a Macromedia Trademark, Macromedia shall promptly specify the changes to be made to secure approval, which changes shall be consistent with the Macromedia trademark usage guidelines and the intent of the parties in entering into this Agreement.

3. Macromedia Indemnity. Macromedia shall indemnify Publisher against all claims, demands, suits, liabilities, losses, damages, judgments, settlements, costs and expenses, including reasonable attorneys’ fees and court costs, that Publisher may sustain or incur by reason of any claim that the Macromedia Run-Time infringes or violates copyright or trade secret of a third party and/or that Macromedia’s Trademarks infringe or violate trademark or other proprietary rights of a third party; provided Publisher promptly notifies Macromedia and allows Macromedia to control the defense and resolution of the claim.

Macromedia shall have no liability for any claim of infringement arising out of (i) the use of any altered release of the Macromedia Run-Time or (ii) the use or combination of the Macromedia Run-Time with non-Macromedia programs, data or equipment if such infringement was caused by such use or combination.

THE FOREGOING IS IN LIEU OF ANY WARRANTIES OF NONINFRINGEMENT, WHICH ARE HEREBY DISCLAIMED, AND SETS FORTH MACROMEDIA’S ENTIRE LIABILITY FOR ANY INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE MACROMEDIA RUN-TIME OR MACROMEDIA TRADEMARKS.”

4. Termination. Publisher may terminate this Agreement at any time upon five (5) days prior written notice to Macromedia. Macromedia may terminate this Agreement if: Publisher materially defaults in the performance of any material provisions of this Agreement (including any breach of Publisher’s obligations under Section 2 (d) of this Agreement); Macromedia gives written notice to Publisher of such default; Publisher fails to cure such default within ten (10) days after Macromedia’s notice; and Macromedia gives subsequent notice that this Agreement is terminated. Upon the termination of this Agreement, the rights and licenses granted to Publisher pursuant to this Agreement will automatically cease, provided that Publisher may sell existing inventory for a period of ninety (90) days, subject to Section 2(d), and all existing sublicenses to end users will

continue for the duration of such sublicense. If this Agreement is terminated for any reason, the underlying End-User Agreement shall remain in force and the provisions of Sections 3, 5, and 6 of this Agreement shall survive.

5. Limitation of Liability. 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) Governmental Consent. Publisher and Macromedia each represent and warrant that no non-U.S. governmental authority's consent or authority is required in connection with this Agreement, except that Macromedia disclaims any representation or warranty with respect to Publisher's Products.

(b) Indemnification of Macromedia. Subject to the terms and conditions set forth in paragraphs 3 and 5, Publisher agrees to indemnify and hold Macromedia harmless against any costs, loss, liability or expense (including reasonable attorneys' fees) arising out of third party claims against Macromedia as a result of Publisher's development, promotion and distribution of the Publisher Products. Publisher shall have no liability for any claim arising out of (i) the use or combination of the Publisher Product(s) with non-Publisher Products, programs, data or equipment if such claim arises from such use or combination, or (ii) the Macromedia Run-Times, Macromedia Trademarks or any other materials or services provided or contributed by Macromedia.

(c) Governing Law and Legal Actions. This Agreement shall be governed by laws of California. Both parties agree that process may be served in the manner provided herein for giving of

notices or otherwise as allowed by law.

(d) Notice. All notices under this Agreement may be addressed to the parties at the addresses stated above and shall be sufficient only if personally delivered, delivered by a major commercial rapid delivery courier service, delivered by telecopy transmission, or mailed by certified or registered mail return receipt requested. If not received sooner, notice by mail shall be deemed received seven (7) days after deposit. Questions regarding this Agreement may be addressed to Macromedia, Attn: "Publisher Relations"; Facsimile: (415) 626-0554; Telephone:(415) 252-2000.

PUBLISHER:

By: _____

Print Name: _____

Title: _____

Company Name: _____

Address: _____

Tel No.: _____

Fax No: _____

Email: _____

Dated: _____

MACROMEDIA, INC.
Attn: Made with Macromedia Program
600 Townsend Street
San Francisco, CA 94103

EXHIBIT A

MADE WITH MACROMEDIA DEVELOPER PRODUCTS



PUBLISHER PRODUCT REQUIRING FULL MADE WITH MACROMEDIA MARKING

Product Name: _____

Product Description: _____

<u>Platform</u>	<u>Anticipated Introduction Dates</u>
Macintosh	_____
Windows	_____
3DO	_____
Other _____	_____

Distribution Medium
CD-ROM _____ Floppy _____ Other _____

Runtime being distributed:

Authorware
Director

Products used in development:

(check all that apply)

Authorware
Director
SoundEdit Pro
Sound Edit 16
Macromodel
Freehand
Fontographer

Publisher Information:

Company: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Developer Information:

(if different from Publisher)

Company: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

By: _____

Print Name: _____

Title: _____

Send completed and signed Exhibit A to:
Attn: Made with Macromedia Program
Macromedia, Inc.
600 Townsend St.
San Francisco, CA 94103

EXHIBIT B

MADE WITH MACROMEDIA 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 outside of the package containing the end-user 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 174 pixels wide by 138 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: PMS 116, PMS 485, PMS 320, PMS 2725 and Black.
 2. Four Color Process directly separated from the EPS file.
 3. Black and White version.
- In addition to the colors specified above, the logo may be reversed to white, out of a high contrast background (preferably black).
- Either the color or black and white version of the Made with Macromedia logo is acceptable on screen.

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 be reversed to white ONLY out of a high contrast background (preferably black).

EXHIBIT C

MADE WITH MACROMEDIA
DEVELOPER PRODUCTS
LIMITED MARKING



PUBLISHER PRODUCTS QUALIFYING FOR LIMITED MARKING WITHIN SOFTWARE ONLY*

Product Name: _____

Product Description: _____

<u>Platform</u>	<u>Anticipated Introduction Dates</u>
Macintosh	_____
Windows	_____
3DO	_____
Other _____	_____

Distribution Medium
CD-ROM _____ Floppy _____ Other _____

Runtime being distributed:

Authorware
Director

Products used in development:

(check all that apply)

Authorware
Director
SoundEdit Pro
Sound Edit 16
Macromodel
Freehand
Fontographer

Publisher Information:

Company: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Developer Information:

(if different from Publisher)

Company: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

By: _____

Print Name: _____

Title: _____

Send completed and signed Exhibit C to:
Attn: Made with Macromedia Program
Macromedia, Inc.
600 Townsend St.
San Francisco, CA 94103

*NOTE: Publisher Products may be listed on this Exhibit C only if the Publisher Product is an insubstantial portion of and is incidental to an end-user product which was not developed using the Macromedia Software and which does not contain the Macromedia Run-Time. Publisher need only comply with software (screen)

EXHIBIT D

MACROMEDIA END-USER LICENSE AGREEMENT

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) "Macromedia® Software" means the software program included in the enclosed package, and all related updates supplied by Macromedia.
- (c) "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.
- (d) "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.
- (e) "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: (i) for use by personnel employed by you; (ii) for use by third parties, provided that the copies are distributed free of direct or indirect charges; or (iii) for use by a single third party solely for its own internal purposes. HOWEVER, users of Educational Versions agree that End-User Products shall not be used for, nor shall they be distributed to any third party for use for, any commercial use or gain.
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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.

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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.