

## VIVO® SOFTWARE, INC. LICENSE AGREEMENT

BEFORE YOU USE THE SOFTWARE, CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY USING THE SOFTWARE, YOU ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ANY OR ALL OF THE TERMS OF THIS AGREEMENT, DO NOT USE THE SOFTWARE.

1. Vivo Software, Inc. ("Vivo") grants to you a non-exclusive, non-transferable, non-sublicensable, license to use this version of the Vivo VivoActive Player (the "Software"), in binary executable form. You may use the Software on a single platform only. If you want to use the Software on more than one platform at a time, you must obtain separate licenses for each platform from Vivo. You may use the Software on a network, provided that each person accessing the Software through the network has a copy licensed to that person.

[Vivo grants you the right to use one copy of the Software on a single computer. However, installation on a network server for the sole purpose of distribution to one or more other computers shall not constitute "use" for which a separate license is required. You are encouraged to load and run the Software on any personal computer within your company. However, the Software is a copyrighted product of Vivo and may not be copied, distributed or sold by any commercial concern without written permission from Vivo.]

2. IF YOU HAVE PURCHASED A LICENSE TO THE SOFTWARE, VIVO WARRANTS THAT FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF ACQUISITION, THE SOFTWARE, IF OPERATED AS DIRECTED, WILL SUBSTANTIALLY ACHIEVE THE FUNCTIONALITY DESCRIBED IN THE ACCOMPANYING DOCUMENTATION ("DOCUMENTATION"). VIVO DOES NOT WARRANT, HOWEVER, THAT YOUR USE OF THE SOFTWARE WILL BE UNINTERRUPTED, THE SUITABILITY OF ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY THE SOFTWARE FOR ANY PURPOSE, OR THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR-FREE OR SECURE. IN ADDITION, THE SECURITY MECHANISMS IMPLEMENTED BY VIVO SOFTWARE HAVE INHERENT LIMITATIONS, AND YOU MUST DETERMINE THAT THE SOFTWARE SUFFICIENTLY MEETS YOUR REQUIREMENTS. YOU ARE RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT AND CONTROL OF THE USE OF THE SOFTWARE, AND OUTPUT OF THE SOFTWARE, INCLUDING, BUT NOT LIMITED TO: (A) SELECTION OF THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS; (B) DETERMINING THE APPROPRIATE USES OF THE SOFTWARE IN YOUR BUSINESS; (C) ESTABLISHING ADEQUATE INDEPENDENT PROCEDURES FOR TESTING THE ACCURACY OF THE SOFTWARE; AND (D)

ESTABLISHING ADEQUATE BACKUP TO PREVENT THE LOSS OF DATA IN THE EVENT OF MALFUNCTION OF THE SOFTWARE. VIVO ALSO WARRANTS THAT THE MEDIA CONTAINING THE SOFTWARE, IF PROVIDED BY VIVO, ARE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP AND WILL SO REMAIN FOR NINETY (90) DAYS FROM THE DATE YOU ACQUIRED THE SOFTWARE. VIVO'S SOLE LIABILITY FOR ANY BREACH OF THIS WARRANTY SHALL BE, IN VIVO'S SOLE DISCRETION: (I) TO REPLACE YOUR DEFECTIVE MEDIA; OR (II) TO ADVISE YOU HOW TO ACHIEVE SUBSTANTIALLY THE SAME FUNCTIONALITY WITH THE SOFTWARE AS DESCRIBED IN THE DOCUMENTATION THROUGH A PROCEDURE DIFFERENT FROM THAT SET FORTH IN THE DOCUMENTATION; OR (III) IF THE ABOVE REMEDIES ARE IMPRACTICABLE, TO REFUND THE LICENSE FEE YOU PAID FOR THE SOFTWARE. REPAIRED, CORRECTED, OR REPLACED SOFTWARE AND DOCUMENTATION SHALL BE COVERED BY THIS LIMITED WARRANTY FOR THE PERIOD REMAINING UNDER THE WARRANTY THAT COVERED THE ORIGINAL SOFTWARE, OR IF LONGER, FOR THIRTY (30) DAYS AFTER THE DATE (A) OF SHIPMENT TO YOU OF THE REPAIRED OR REPLACED SOFTWARE, OR (B) VIVO ADVISED YOU HOW TO OPERATE THE SOFTWARE SO AS TO ACHIEVE THE FUNCTIONALITY DESCRIBED IN THE DOCUMENTATION. ONLY IF YOU INFORM VIVO OF YOUR PROBLEM WITH THE SOFTWARE DURING THE APPLICABLE WARRANTY PERIOD AND PROVIDE EVIDENCE OF THE DATE YOU PURCHASED A LICENSE TO THE SOFTWARE WILL VIVO BE OBLIGATED TO HONOR THIS WARRANTY. VIVO WILL USE REASONABLE COMMERCIAL EFFORTS TO REPAIR, REPLACE, ADVISE OR, FOR INDIVIDUAL CONSUMERS, REFUND PURSUANT TO THE FOREGOING WARRANTY WITHIN 30 DAYS OF BEING SO NOTIFIED.

THIS IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY VIVO. VIVO MAKES NO OTHER EXPRESS WARRANTY AND NO WARRANTY OF NONINFRINGEMENT OF THIRD PARTIES' RIGHTS. THE DURATION OF IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, IS LIMITED TO THE ABOVE LIMITED WARRANTY PERIOD; SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO LIMITATIONS MAY NOT APPLY TO YOU. NO VIVO DEALER, AGENT, OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS WARRANTY. IF ANY MODIFICATIONS ARE MADE TO THE SOFTWARE BY YOU DURING THE WARRANTY PERIOD; IF THE MEDIA ARE SUBJECTED TO ACCIDENT, ABUSE, OR IMPROPER USE; OR IF YOU VIOLATE THE TERMS OF THIS AGREEMENT, THEN THIS WARRANTY SHALL IMMEDIATELY BE TERMINATED. THIS WARRANTY SHALL NOT APPLY UNLESS THE SOFTWARE IS USED ON OR IN CONJUNCTION WITH HARDWARE OR SOFTWARE WITH WHICH THE SOFTWARE WAS DESIGNED TO BE USED AS DESCRIBED IN THE DOCUMENTATION. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY BY JURISDICTION.

3. All content accessed through the Software is the property of the applicable content owner and may be protected by applicable copyright law. This License gives you no rights to such content.

4. Vivo reserves the right at any time to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Software.

5. Title, ownership rights, and intellectual property rights in and to the Software shall remain in Vivo and/or its suppliers. This License is NOT a sale of the Software or any copy of the Software. This License does not convey to you an interest in or to the Software, but only a limited right of use, revocable in accordance with the terms of this Agreement. You agree to abide by the copyright law and all other applicable laws of the United States including, but not limited to, export control laws. You may not make any copies of all or any part of the Software, except for archival copies as permitted by the United States Copyright Act. Any archival copy must contain all of the original Software's proprietary notices. You acknowledge that the Software in source code form remains a confidential trade secret of Vivo and/or its suppliers and therefore you agree not to modify the Software or attempt to decipher, decompile, disassemble or reverse engineer the Software (except to the extent applicable laws specifically prohibit such restriction), or incorporate in whole or in part in any other product or create derivative works based on all or any part of the Software. You may not remove any copyright, trademark, proprietary rights, disclaimer or warning notice included on or embedded in any part of the Software; and you may not sell, license, sublicense, rent or otherwise transfer the Software.

6. This License will terminate automatically if you fail to comply with the limitations described in this agreement. Vivo may terminate this License at any time by delivering notice to you and you may terminate this License at any time by destroying or erasing your copy of the Software. Upon termination of this License you agree to destroy or erase the Software. In the event of termination, the following sections of this License will survive: 2, 3, 4, 5, 6, 7 and 8. This License is personal to you and you agree not to assign your rights in this agreement. This license shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and, as to matters affecting copyrights, trademarks and patents, by U.S. federal law. This License sets forth the entire agreement between you and Vivo. If any provision of this agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable.

7. Use, duplication or disclosure by the Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1) and (2) of the Rights in

Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA AR Supplement. Contractor/manufacturer is Vivo Software, Inc., 411 Waverley Oaks Road, Waltham, MA 02154-8414.

8. You may not download or otherwise export or reexport the Software or any underlying information or technology except in full compliance with all United States and other applicable laws and regulations. In particular, but without limitation, none of the Software or underlying information or technology may be downloaded or otherwise exported or reexported (i) into (or to a national or resident of) Cuba, Haiti, Iraq, Libya, Yugoslavia, North Korea, Iran, Syria or any other country to which the US has embargoed goods; or (ii) to anyone on the US Treasury Department's list of Specially Designated Nationals or the US Commerce Department's Table of Denial Orders. By downloading the Software, you are agreeing to the foregoing and you are representing and warranting that you are not located in, under control of, or a national or resident of any such country or on any such list.

9. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VIVO AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR (a) ANY CLAIM BY YOU FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT OR EXEMPLARY DAMAGES OF ANY SORT, WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS OR SAVINGS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF YOUR USE OR INABILITY TO USE THE SOFTWARE OR THE BREACH OF THIS LICENSE, EVEN IF VIVO HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR (b) ANY CLAIM BY ANY OTHER PARTY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

10.

This License constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes in their entirety any and all written or oral agreements previously existing between the parties with respect to such subject matter.

Vivo, Vivo Software and the Vivo logo are registered trademarks of Vivo Software, Inc. VivoActive is a trademark of Vivo Software, Inc. No right, license, or interest to such trademarks is granted hereunder, and you agree that no such right, license or interest shall be asserted by you with respect to such trademarks.

Copyright © 1997 Vivo Software, Inc. All rights reserved.

