

**FRANZ INC.**

**COMMERCIAL END USER LICENSE AGREEMENT**

**ALLEGROGRAPH SERVER EDITION**

BEFORE YOU INSTALL OR ACCESS OR OTHERWISE USE ANY OF THE SOFTWARE CONTAINED IN THIS PACKAGE OR CLICK ON THE "YES" BUTTON AT THE END OF THIS DOCUMENT, CAREFULLY READ THE TERMS AND CONDITIONS OF THIS DOCUMENT. BY INSTALLING OR OTHERWISE USING OR ACCESSING ANY OF THE SOFTWARE CONTAINED IN THE ALLEGROGRAPH PACKAGE OR BY CLICKING ON THE "YES" BUTTON, YOU ARE AGREEING TO AND CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS LICENSE AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT PROCEED WITH INSTALLATION OF THE SOFTWARE.

1. **GRANT.** Subject to the provisions contained herein and full payment of all applicable license fees, Franz Inc. ("Franz") hereby grants to the end user ("you") a nonexclusive, non-sublicensable, nontransferable, and revocable license to use Franz's Allegrograph Server Edition proprietary computer software product ("Software") and any documentation provided for the Software located at Franz.com ("Documentation"), for the term and in the number of copies licensed, as follows.

You may:

- (1) use the Software, for its intended use only, on the type and capacity of computer for which you have purchased a license, provided you install the Software on only one computer at a time with licenses for the appropriate number of CPU cores; and
- (2) use the Documentation only in support of use of the Software authorized in paragraph (1) above; and
- (3) make a copy or copies of the Software, as provided in Section 5.

Franz retains ownership of the Software and Documentation, and each copy thereof, which are protected by United States copyright law and international treaty provisions, as set out below. This license grants you certain rights to use the Software; it is not a sale. No rights are granted to any software or documentation which you have not purchased.

2. **RESTRICTED USE.** Your use of the Software and Documentation is restricted so that you may not, and you may not permit or cause others to:

- (1) Sublicense, transfer, sell, lease, or rent the Software or the Documentation;
- (2) Decompile, decipher, disassemble, reverse engineer or translate the Software;
- (3) Modify or create a derivative work of the Software or the Documentation;
- (4) Install the software on more computers than have been licensed; or
- (5) use the Software or the Service for any purpose not expressly permitted by this Agreement.

Unauthorized copying of the Software or the Documentation, or failure to comply with the above restrictions, will result in the automatic termination of this license and will make other legal remedies available to Franz.

3. **TRANSFERS PROHIBITED.** This Agreement is between Franz and you. You are prohibited from selling, loaning, renting, leasing, sublicensing, transmitting, distributing or redistributing, or otherwise transferring or assigning any part of the Software or the Documentation to any third party at any time whether by operation of law or otherwise and whether with or without consideration. Without limiting the foregoing, any transmittal or transfer of the Software or the Documentation on the Internet or by other electronic means is prohibited. ANY REPRODUCTION OR DISTRIBUTION OF THE SOFTWARE OR THE DOCUMENTATION NOT IN ACCORDANCE WITH THE EXPRESS TERMS OF THIS LICENSE IS PROHIBITED BY LAW AND MAY SUBJECT YOU TO CIVIL AND CRIMINAL PENALTIES. ANY ACTUAL OR ATTEMPTED SALE, LOAN, RENTAL, LEASE, SUBLICENSE, TRANSMISSION, DISTRIBUTION OR REDISTRIBUTION OR OTHER TRANSFER OR ASSIGNMENT OF THE SOFTWARE OR THE DOCUMENTATION IN WHOLE OR IN PART IN ANY MEDIA OR BY ANY METHOD SHALL IMMEDIATELY AND IRREVOCABLY TERMINATE THIS LICENSE AGREEMENT FOR ALL PURPOSES.

4. **SOFTWARE FORMAT; UPDATES; SUPPORT.**

- (1) Franz shall furnish the Software to you electronically or on media in machine-readable object code format only. This license does not grant you any right to the source code of the Software or other formats of the Software and Documentation.
- (2) This license does not grant you any right to any technical support, enhancement or update to the Software and Documentation.

(3) Any update or enhancement to the Software released by Franz shall be deemed part of the "Software" and shall be used only in conjunction with the Software as originally installed on a single computer and may not be separated for use.

5. COPIES. You may not copy or distribute the Software or the Documentation, except as follows:

(1) If you have acquired a single license for use of the Software, you may make a single copy of the Software and the Documentation for backup or archival purposes.

(2) If you have acquired a multi-user license for use of the Software, you may make the number of copies of the Software and the Documentation for internal use equal to the number of copies for which you have paid the license fee, plus a single copy of the Software and the Documentation for backup or archival purposes. In the case of a multi-user license, Franz shall have reasonable rights of audit to ensure compliance with these terms and conditions.

(3) No other copies of the Software or the Documentation shall be made by you or any other party or entity at any time. All permitted copies of the Software or the Documentation shall be subject to this Agreement and shall contain all notices of copyright, trademark or other proprietary rights and all claims of trade secret rights as contained in the original Software or Documentation provided to you. You may not remove or obscure any said copyright or trademark or proprietary rights notices of Franz or the text of this Agreement at any time for any purpose.

6. TITLE; REMAINDER. All title, ownership rights, and intellectual property rights in and to the Software and Documentation shall remain the sole property of Franz and/or its suppliers and no such rights are being transferred or conveyed hereunder. All rights not expressly granted herein are expressly reserved and retained by Franz.

7. CONTENT AND THIRD PARTY SOFTWARE. Title, ownership rights, and intellectual property rights in and to the content accessed through the Software are the property of the applicable content owner and may be protected by applicable copyright or other laws. This License gives you no rights to such content. You acknowledge that the Software contains third party software and/or open source software as set forth in the Documentation (the "**Third Party Software**"). Such Third Party Software may be subject to restrictions in addition to those listed herein. To the extent those restrictions conflict with or are in addition to the restrictions contained in this Agreement, this Agreement shall control.

8. CONFIDENTIALITY. Confidential Information" means information about the Franz's business, products, technologies, strategies, customers, suppliers, syndication or distribution partners, financial information, operations or activities that is proprietary and confidential. Confidential Information includes the Software and the Documentation. Confidential Information shall not include information that you can establish (1) is in or enters the public domain without breach of this Agreement, (2) you lawfully received from a third party without restriction on disclosure and without breach of a nondisclosure obligation, (3) you knew prior to receiving such information from Franz, or (4) is independently developed by you without reference to the Confidential Information. You agree that you will (i) not disclose to any third party nor use any Confidential Information except as expressly permitted in this Agreement or as required by a court of law or otherwise compelled to be disclosed pursuant to the legal process or applicable laws or regulations, and (ii) take all reasonable measures to maintain the confidentiality of all Confidential Information in your possession or control, which will in no event be less than the measures that you use to maintain the confidentiality of your own information of similar importance.

9. INDEMNIFICATION. You will indemnify, defend and hold harmless Franz, its officers, directors, employees, subsidiaries and corporate affiliates from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys fees) arising from (1) your breach of any warranty or representation in this Agreement, or (2) your negligence or willful misconduct.

10. LIMITED WARRANTY AND LIMITATION OF LIABILITY.

(1) Franz warrants that for a period of thirty (30) days from the original date of your receipt of the Software (the "Warranty Period"), the Software, if operated as directed, will substantially achieve the functionality described in the Documentation. Franz does not warrant, however, that your use of the Software will be uninterrupted or that the operation of the Software will be error-free or secure. Franz also warrants that, during the Warranty Period, the media containing the Software, if provided by Franz, will be free from defects in material and workmanship. In the event Franz receives written notice from you of any defects within the Warranty Period, Franz in its sole discretion shall: (i) replace your defective media; (ii) 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) provide a refund of the price paid for the Software. The sole liability of Franz for any defect or breach of warranty shall be the remedies set forth herein.

(2) THESE LIMITED WARRANTIES SHALL BE APPLICABLE ONLY TO YOU AND ARE NOT APPLICABLE TO ANY THIRD PARTY AND ARE NOT TRANSFERABLE OR ASSIGNABLE TO ANY EXTENT.

(3) THE FOREGOING ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY FRANZ. FRANZ HEREBY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF NONINFRINGEMENT OR ANY WARRANTY OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE LIMITED WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE OR BY JURISDICTION. APPLICABLE LAWS MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. NO FRANZ EMPLOYEE, AGENT, SUPPLIER OR RESELLER IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS OR ADDITIONS TO THIS WARRANTY.

(4) Notwithstanding any other provision herein, the limited warranties shall immediately terminate if any modifications are made to the Software by you at any time; if the media is subjected to accident, abuse, or improper use; if the Software is used on or in conjunction with hardware or programs other than the unmodified version of hardware and programs with which the Software was designed to be used as described in the Documentation; or if you violate any of the terms of this Agreement.

11. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL FRANZ OR ITS SUPPLIERS OR RESELLERS OR ANY OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS THEREOF BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE ANY OF THE SOFTWARE OR DOCUMENTATION (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOSS OF BUSINESS PROFITS, LOSS OF BUSINESS INFORMATION, LOSS OF DATA, OR OTHER PECUNIARY LOSS), EVEN IF FRANZ SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. SUBJECT TO THE FOREGOING, IN ALL EVENTS FRANZ'S LIABILITY FOR DAMAGES SHALL NOT EXCEED THE AMOUNT OF THE LICENSE FEE PAID TO FRANZ FOR THIS LICENSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, THESE LIMITATIONS MAY NOT APPLY TO YOU.

12. EXPORT CONTROLS. You shall not download, transmit 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 the Documentation or underlying information or technology may be downloaded, transmitted or otherwise exported or reexported (i) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Iran, Serbia, Syria or Sudan or any other country to which the United States has embargoed goods; or (ii) to any person on the United States Treasury Department list of Specially Designated Nationals or the United States Commerce Department Table of Deny Orders. You represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

13. TERMINATION. Without prejudice to its other rights hereunder, Franz may terminate this Agreement and the License if you violate or breach any term or condition hereof. In the event of such termination, you must immediately destroy all copies of the Software and the Documentation and cease all use thereof.

14. BINDING EFFECT. Subject to the prohibitions on transfer and assignment hereof, this Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective officers, directors, employees, shareholders, owners, partners, agents, representatives, parents, subsidiaries, affiliates, heirs, devisees, successors and assigns.

15. OTHER SOFTWARE. This Agreement shall not be applicable to any other software separately distributed or licensed by Franz.

16. MISCELLANEOUS. This Agreement represents the sole and exclusive agreement between the parties concerning the subject matter hereof and supersedes all prior agreements, communications, proposals and representations. This Agreement may be amended only by a writing executed by both parties. THE ACCEPTANCE OF ANY PURCHASE ORDER PLACED BY YOU IS EXPRESSLY MADE CONDITIONAL ON YOUR ASSENT TO THE TERMS SET FORTH HEREIN, AND FRANZ AGREES TO FURNISH THE SOFTWARE AND DOCUMENTATION ONLY UPON THESE TERMS AND NOT THOSE CONTAINED IN YOUR PURCHASE ORDER. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. In the event that any provision of this Agreement shall be held by the final judgment of a court of competent jurisdiction to be invalid or unlawful or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect and shall be construed to give the fullest effect to the intent of the parties expressed herein. Headings shall not be considered in interpreting this Agreement. This Agreement shall be governed by and construed under the laws of the State of California, U.S.A. for contracts entered into and to be performed entirely within the State of California, without reference to conflict of laws principles. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.

17. U.S. GOVERNMENT RESTRICTED RIGHTS. The Software and Documentation are being provided only with RESTRICTED RIGHTS. If the acquiring unit or agency is the U.S. Department of Defense, use, duplication or disclosure is subject to restrictions as set forth in DFAR Section 227.7202. If the acquiring unit or agency is any other unit or agency of the United States Government, use, duplication or disclosure is subject to restrictions as set forth in FAR Section 12.212 and FAR Section 52.227-19(c)(1) and (2). For these purposes the manufacturer is Franz Inc, 2201 Broadway, Suite 715, Oakland, CA 94612.

COPYRIGHT NOTICE: (c) 2005-14 Franz Inc. All rights reserved.

TRADEMARK NOTICE: "Franz" and the names of Franz products or processes and all Franz logos are trademarks or registered trademarks or service marks or trade dress of Franz Inc.

If you have any questions concerning this agreement, or otherwise wish to contact Franz Inc., email to: [info@franz.com](mailto:info@franz.com), or write to: CUSTOMER SERVICE, FRANZ INC., 2201 Broadway, Suite 715, Oakland, CA 94612.