

09-30-2002



Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

102236588 TRADEMARKS ONLY

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): egi.sys AG 9-24-02
Individual(s) Association
General Partnership Limited Partnership
Corporation-State
[X] Other German Corporation
Additional name(s) of conveying party(ies) attached? Yes [] No [X]

2. Name and address of receiving party(ies)
Name: EGISYS AG
Internal
Address: Wilhelmstraße 44-46
Street Address: D-72074 Tübingen, Germany
City: State: Zip:
Individual(s) citizenship
Association
General Partnership
Limited Partnership
Corporation-State
[X] Other German Corporation
If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes [X] No []
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes [] No [X]

3. Nature of conveyance:
Assignment Merger
Security Agreement [X] Change of Name
Other
Execution Date: 08/16/2001

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s) 1,963,998
Additional number(s) attached Yes [] No [X]

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Richard A. Bynum, Esq.
Internal Address: Maupin Taylor & Ellis, P.A.
480 Beta Building
Headquarters Park
Street Address: 2222 Chapel Hill-Nelson Hwy.
09/27/2002 DBYRNE Du 00000088 1963998 State: NC Zip: 27713

6. Total number of applications and registrations involved:
7. Total fee (37 CFR 3.41).....\$ 40.00
[X] Enclosed
[] Authorized to be charged to deposit account
8. Deposit account number:

9. Signature. WOLFGANG EICHNER
Dieter Eberhardt
Name of Person Signing Signature
40.00 OP DO NOT USE THIS SPACE
9/16/02 Date
1 Total number of pages including cover sheet, attachments, and document:

EGISYS AG
72074 Tübingen | Wilhelmstraße 44-46
www.EGISYS.de | Tel: +49 7071 793606-0
info@EGISYS.de | Fax: +49 7071 793606-9

Documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

TRADEMARK
REEL: 002589 FRAME: 0672

2002 SEP 24 AM 11:16

Form PTO-1594 (Rev. 03/01) OMB No. 0851-0027 (exp. 5/31/2002)

FINANCE SECTION

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

Tab settings

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

MetaCreations Corporation

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)

Name: egi.sys AG

Internal Address: Wilhelmstraße 44-46

Street Address: D-72074 Tübingen, Germany

City: State: Zip:

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other German Corporation

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 04/07/2000

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 1,963,998

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Richard A. Bynum, Esq.

Internal Address: Maupin Taylor & Ellis, P.A.

480 Beta Building

Headquarters Park

Street Address: 2222 Chapel Hill-Nelson Hwy.

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41) \$40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

09/27/2002 DPTME Durham 0800889 1963998 State: NC Zip: 27713

01 FC:481

40.00.00

DO NOT USE THIS SPACE

9. Signature.

WOLFGANG EIGNER

Dieter Eberhardt

Name of Person Signing

Wolfgang Eigner Dieter Eberhardt

Signature

9/16/02

Date



Total number of pages including cover sheet, attachments, and document: 59

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

EGISYS AG 72074 Tübingen Wilhelmstraße 44-46 www.EGISYS.de Tel: +49 7071 793606-0 info@EGISYS.de Fax: +49 7071 793606-9

UNITED STATES COMMERCE DEPARTMENT
Patent and Trademark Office

DESIGNATION OF DOMESTIC REPRESENTATIVE

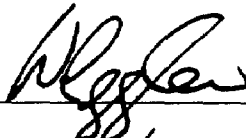
Mark: POSER
Registration No.: 1963998
Registration Date: March 26, 1996

Registrant: EGISYS AG
Wilhelmstraße 44-46
D-72074 TÜBINGEN
Germany

Date of Designation: March 25, 2002

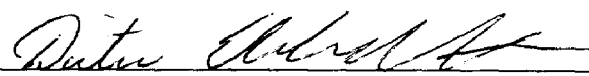
Richard A. Bynum, Esq., whose postal address is 480 Beta Building, Headquarters Park, 2222 Chapel Hill-Nelson Hwy., Durham, North Carolina 27713, is hereby designated the registrant's domestic representative upon whom notice or process in proceedings affecting the mark may be served.

EGISYS AG

By  (sign)

Print Name: WOLFGANG EICHNER

Print Title: CEO

By  (sign)

Print Name: Dieter Eberhardt

Print Title: CFO



EGISYS AG
72074 Tübingen | Wilhelmstraße 44-46
www.EGISYS.de | Tel: +49 7071 793606-0

TRADEMARK
REEL: 002589 FRAME: 0674

AGREEMENT FOR PURCHASE AND SALE OF ASSETS

BY AND BETWEEN

METACREATIONS CORPORATION

and

EGI.SYS AG

April 7, 2000

EXHIBITS

- A Assignment Agreements**
 - A-1: Assignment Including Copyrights**
 - A-2: Assignment of Trademarks**
- B Software License Agreement**
- C Escrow Agreement**

SCHEDULES

- 1.1 Acquired Software**
- 1.2 Acquired Patent Rights**
- 1.11 Content Contracts**
- 1.13 Domain Names**
- 1.17 Excluded Software**
- 1.34 Trademarks**
- 2.1 Purchased Assets**
- 2.2 Permitted Encumbrances**
- 2.3 Excluded Assets**
- 2.5 Third Party Agreements and Required Notices**
- 4.1 Assumed Obligations**
- 7.5 Proprietary Information and Inventions Agreement**
- 7.8 Seller Financial Statements**
- 10.1 Employees**

AGREEMENT FOR PURCHASE AND SALE OF ASSETS

THIS AGREEMENT FOR PURCHASE AND SALE OF ASSETS (the "Agreement") is made as of April 7, 2000, (the "Effective Date") by and between:

MetaCreations Corporation, a Delaware corporation, with its principal offices at 6303 Carpinteria Ave., Carpinteria, California 93013 ("Seller"); and

egi.sys AG, incorporated under the laws of Germany with its registered office Hagellocher Weg 63, D-72070 Tübingen, Germany ("Buyer") and

RECITALS

- A. Seller develops and markets computer graphics software, including "Poser" and "Office Advantage".
- B. Buyer is in the business of developing, localizing, manufacturing, marketing, distributing and providing technical and customer support on a worldwide basis, for, among other purposes, computer graphics and other software owned by or licensed to it for such purposes.
- C. Seller is willing to sell and license assets relating to Poser and Office Advantage and Buyer is willing to purchase and accept a license to such assets and to assume Seller's liabilities as described herein, as further described in this Agreement.
- D. Capitalized terms shall have the definitions specified herein.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter set forth, it is agreed as follows:

1. CERTAIN DEFINITIONS

Capitalized terms shall have the definitions specified herein. The following terms shall have the following meanings:

1.1 "Acquired Software" means all right, title and interest in the software programs listed on Schedule 1.1, including, without limitation, all source code and object code (including manufacturing-ready masters), related flow charts, program descriptions, program listings, layouts, schematics, engineering and design drawings, technical support information, diagrams and other documentation depicting or specifying the designs and components of all the software programs, libraries, reports, drafts, models, prototypes, test and other data and programs, and all related documentation and information, comprising and related to the versions of the software programs in any media or format and for all language versions and hardware platforms, software platforms and operating environments whether sold separately or bundled with other applications. Acquired Software does not include the Excluded Software.

1.2 "Acquired Patent Rights" means all right, title and interest in and to all patents, patent applications and invention disclosures which are set forth on Schedule 1.2, including, without limitation, any patents, reissues, divisionals, continuations, continuation-in-part, extensions, filing priorities and related patent rights based on the patents, patent applications and invention disclosures set forth on Schedule 1.2.

1.3 "Affiliate" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to control a Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such Person.

whether through the ownership of voting securities, by contract or otherwise; and the term "controlled" shall have a similar meaning.

1.4 "Assumed Obligations" shall have the meaning set forth in Section 4.1.

1.5 "Business" means the business carried on by the Seller directly in connection with the development, acquisition, marketing, licensing, sublicensing and distribution of the Acquired Software, as such business has been conducted by the Seller including plans and programs developed by Seller for future business directly in connection with the Acquired Software.

1.6 "Business Records" means all business, accounting and financial records and any of Seller's analysis, logs, books, records, files, summaries or descriptions of contracts, agreements or rights, supplier lists and files, product component lists, and all sales literature and sales aids, pictures, negatives, camera ready proofs, product catalogs, product sheets and documentation, product displays, advertising, marketing and promotional materials, manuals (in hard copy, electronic format and film), computer and electronic data processing materials and correspondence directly relating to the Business, and any of Seller's copies of sales and customer records directly relating to the Business.

1.7 "Buyer Closing Document(s)" shall have the meaning set forth in Section 12.2

1.8 "Buyer Indemnitees" means the Buyer and its Affiliates:

1.9 "Closing" and "Closing Date" shall have the meanings set forth in Article 5.

1.10 "Contracts" means all contracts, agreements, engagements, licenses and open purchase orders placed with Seller, directly relating to the Acquired Software, all warranties extended and representations made to Seller by third parties, and all rights, remedies, setoffs, allowances, rebates, discounts and credits granted to Seller by third parties relating to the Acquired Software, together with all claims, causes of action and rights of Seller now existing or hereafter arising out of such contracts or the performance thereof, all warranties and representations made to Seller by third parties under such contracts, and all rights, remedies, setoffs, allowances, rebates, discounts and credits granted to Seller by third parties in relation to such contracts. To the extent that such Contracts relate to other software programs as well as Acquired Software, the parties will cooperate with each other to accord each other the rights under such contracts that relate to the appropriate products.

1.11 "Content Contracts" means any and all agreements entered into between the Seller and one or more third parties relating to the development of, sale or license to Seller, or acquisition by Seller of, Acquired Software, as listed in Schedule 1.11.

1.12 "Customer List Assets" means all of Seller's data bases, customer lists, registration cards (whether current or prior) and customer account histories for customers or prospective customers of the Seller including Business, including, without limitation, all currently existing data regarding such customers and all other marketing, promotional and sales information, whether stored in written form, magnetic or electronic media or in any other form, that have been or now are directly related to the Business or that have been or now are used, developed or purchased in connection with the Business.

1.13 "Domain Names" means the domain names listed in Schedule 1.13.

1.14 "Encumbrances" shall have the meaning set forth in Section 2.2.

1.15 "Entity" means any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization or entity.

1.16 "Excluded Assets" shall have the meaning set forth in Section 2.3.

1.17 "Excluded Software" means the computer software listed on Schedule 1.17 and all right, title and interest therein.

1.18 "Governmental Body" means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, provincial, local, municipal, foreign or other government; or (c) governmental or quasi-governmental authority of any nature (including, without limitation, any governmental division, department, agency, commission, instrumentality, official, organization, unit, body, or Entity and any court or other tribunal).

1.19 "Indemnified Party" means any Buyer Indemnitee or Seller Indemnitee.

1.20 "Intellectual Property Assets" means all right, title and interest, including, without limitation, worldwide intellectual and industrial property rights, and all moral rights and rights of publicity, of Seller constituting, embodied in or pertaining to the Acquired Software, Acquired Patent Rights, Trademarks and Domain Names, including without limitation, copyrights (whether registered or unregistered) (including audiovisual copyrights), copyright applications, trademark rights, trademark applications, service marks and names, logos or slogans (together with the goodwill related thereto), domain name applications, Trade Secrets, patents, patent applications, inventions and the right to seek patents with respect thereto, moral rights, mask works, designs and design rights, technologies (including without limitation, all registrations, rights to register or apply for registration, renewals, reissues, divisions, continuations, continuations-in-part, modifications, extensions, reversions, moral rights, mask works and design rights and any registrations or applications therefor), all waivers and assignments of moral rights, all rights of privacy or publicity and all rights to enforce such rights or interests in any work, and all other proprietary rights or other intellectual property or intangible assets and any rights to use or exploit the foregoing.

1.21 "Legal Proceeding" means any action, suit, litigation, arbitration proceeding (including, without limitation, any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving any court or other Governmental Body or any arbitrator or arbitration panel.

1.22 "Loss" means and includes any and all liability, loss, provable lost profit, damage, claim, expense, cost, fine, fee, penalty, obligation or injury including, without limitation, those resulting from any and all actions, suits, proceedings, demands, assessments, judgments, award or arbitration, together with reasonable costs and expenses including, without limitation, the reasonable attorneys' fees and other legal costs and expenses relating thereto less any proceeds from insurance payable to the party as a result of the occurrence of such Loss.

1.23 "Net Revenue" means amounts actually received by Buyer in connection with the licensing, sale or other commercial exploitation of the Acquired Software.

1.24 "Non-Transferable Third Party Agreements" shall have the meaning set out in sub-paragraph 2.5(b).

1.25 "Person" means any individual, Entity or Governmental Body.

1.26 "Proprietary Rights Agreements" means all of Seller's rights (including, without limitation, rights relating to past infringement) to enforce for the protection of the Intellectual Property Assets any and all

agreements or licenses (i) entered into for the protection of rights associated with the Intellectual Property Assets, or (ii) between Seller and its consultants (or the third party persons or entities from whom it has assigned or obtained any of the Intellectual Property Assets), developers or other third parties relating to the Intellectual Property Assets, including, without limitation, any such rights assigned to or obtained by Seller in connection with Seller's direct or indirect acquisition (whether by purchase, license or otherwise) of any of the Intellectual Property Assets (to the extent that such agreements or licenses directly relate to the Intellectual Property Assets).

1.27 "**Purchased Assets**" shall have the meaning set forth in Section 2.1.

1.28 "**Representatives**" means officers, directors, employees, legal counsel, and accountants.

1.29 "**Seller Closing Document(s)**" shall have the meaning set forth in Section 12.1.

1.30 "**Seller Indemnitees**" shall mean the Seller and its Affiliates.

1.31 "**Signing Date**" means Friday, April 7, 2000.

1.32 "**Shared Use**" means necessary to the continued operation of both (i) the business associated with the Purchased Assets and the Acquired Software and (ii) the business or intellectual property to be retained by Seller.

1.33 "**Third Party Agreements**" shall have the meaning set forth in Section 2.5.

1.34 "**Trademarks**" means all right, title and interest of Seller in and to the trademarks, in both word and graphic design form (whether registered or unregistered) and trademark applications each as specified on Schedule 1.34, and the goodwill associated therewith.

1.35 "**Trade Secrets**" means all non-public information, trade secret rights and know-how of Seller used in connection with the Business, including, without limitation, business plans, customer lists, pricing, and sales information relating to the Business.

1.36 "**Warranty Claim**" means a claim made by either the Seller or the Buyer based on or with respect to the inaccuracy or non-performance or non-fulfillment or breach of any representation, covenant or warranty made by the other party contained in this Agreement, or contained in any document or certificate given in order to carry out the transactions contemplated hereby.

2. PURCHASE AND SALE OF ASSETS.

2.1 **Agreement to Sell and Purchase Assets.** Subject to the terms and conditions of this Agreement, and in reliance on the representations, warranties and covenants set forth in this Agreement, Seller agrees to sell, assign, transfer and convey to Buyer at the Closing, and Buyer agrees to purchase and acquire from Seller at the Closing, all of Seller's right, title and interest in and to all of the Purchased Assets. For purposes of this Agreement, "**Purchased Assets**" means, collectively, all assets listed in Schedule 2.1 for worldwide purposes. Notwithstanding anything to the contrary contained herein, the Purchased Assets shall not include the Excluded Assets.

2.2 **Encumbrances.** The Purchased Assets will be sold, assigned, transferred and conveyed to Buyer on the Closing Date, free and clear of all mortgages, pledges, liens, security interests, encumbrances, charges, title retention, conditional sale or other security arrangements or similar claims ("**Encumbrances**"), except for the following (which are individually and collectively referred to as the "**Permitted Encumbrances**"): the Encumbrances listed on Schedule 2.2 hereto; Encumbrances comprised of or related to the Required Notices; Encumbrances not substantial in amount and that do not detract in any significant respect from or interfere with the present or Buyer's intended use of any of the Purchased Assets; Encumbrances either created by Buyer after

the Signing Date or created by third parties after the Signing Date (the basis of which were not in existence as of the Signing Date) and allowed to be suffered after the Closing by Buyer; and the Encumbrances for non-payment by Buyer set forth in Section 3.4.

2.3 Excluded Assets. For the purposes of this Agreement, "Excluded Assets" means, collectively, those assets and rights of Seller listed on Schedule 2.3. Excluded Assets will include, without limitation, all sales and distribution Contracts that are not solely for the distribution of the Acquired Software. With respect to sales and distribution Contracts that relate both to Acquired Software and other products of Seller, Buyer will, as subcontractor to Seller, assume the obligation to fulfill product orders for, and other obligations related to, the Acquired Software under such Contracts, including but not limited to technical and customer support and upgrade obligations, with product purchases and support at the pricing, if any, specified in such Contracts (if not priced separately. Seller and Buyer will agree on a price for product purchases based on an allocation among the products such Contract covers based on the suggested retail purchase price of the products) and Buyer will be entitled to the revenue generated from the sale of such Acquired Software after the Closing. If any such Contracts provide for payments for support, upgrade or other similar obligations after the Closing Date, Seller and Buyer shall agree on the amount of such payments to be made to Buyer based on an appropriate allocation among the products such Contract covers. Seller and Buyer will cooperate to transition to Buyer that portion of such Contracts that relates to the Acquired Software as promptly as practicable following the Closing.

2.4 Asset Transfer; Passage of Title; Delivery.

(a) Title Passage and Delivery. Upon Closing, title to and possession of the Purchased Assets which are for use everywhere in the world, and assignment of rights to Purchased Assets as required by Section 2.5, shall be delivered to Buyer by electronic transfer.

(b) Instruments of Conveyance. The execution of this Agreement shall not operate as an effective conveyance, assignment and transfer of the Purchased Assets and the Assumed Obligations at the Closing as contemplated herein. In order to effectuate the assignment, transfer and conveyance of the Purchased Assets and assumption of the Assumed Obligations pursuant to the terms and conditions hereof, each party shall at the Closing deliver or cause to be delivered to the other parties such bills of sale, assignments, assumptions and instruments of conveyance as reasonably requested by such other parties, as well as such other instruments of conveyance as counsel for Buyer or Seller may reasonably deem necessary or desirable (both at and after Closing) to effect or evidence the transfers contemplated hereby.

2.5 Assignment of Third Party Agreements.

(a) Assignment. Upon the Closing, Seller shall assign to Buyer (to the extent required by this Agreement) Seller's rights, and Buyer shall assume from Seller, Seller's obligations under the Contracts, Proprietary Rights Agreements and other third party agreements listed in Schedule 2.5 (the "Third Party Agreements"). Seller shall make notices to each third party whose notice is required as designated in Schedule 2.5 (the "Required Notices").

(b) No Deemed Assignment. Nothing in this Agreement shall be construed as an assignment, license, transfer or conveyance of, or an attempt to assign, license, transfer or convey, any Third Party Agreement if such Third Party Agreement is not assignable, licensable, transferable or conveyable without the consent of a third party (if such consent has not been obtained) and such assignment, license, transfer or conveyance or attempted assignment, license, transfer or conveyance would constitute a breach of such Third Party Agreement (the "Non-Transferable Third Party Agreements").

2.6 Shared Access and Rights. Both Buyer and Seller shall be entitled to copy and use, subject to the terms and conditions of this Agreement, those Business Records and Customer List Assets that are Shared Use. Seller shall retain the original of the Business Records and Customer Lists Assets, provided that, in general, original Business Records and Customer List Assets shall be delivered to the party to whom such Business Records and/or Customer List Assets primarily relate and provided further that each party shall have access to all original Business Records to the extent reasonably required for purposes of compliance with law. To the extent that either Buyer or Seller requires access to an original Business Record or Customer List Asset that is Shared

Use which has been delivered to the other party. Buyer and Seller agree to allow such party and its representatives reasonable access to the original.

2.7 **Grant of License.** Seller shall enter into a software license agreement regarding the Excluded Software and substantially in the form attached hereto as **Exhibit B** with Buyer (the "**Software License Agreement**")

3. **PURCHASE PRICE.**

3.1 **Initial Cash Payments.** In consideration of the sale, transfer, conveyance and assignment of the Purchased Assets to Buyer, Buyer shall pay Seller the aggregate purchase price (the "**Purchase Price**") paid as follows:

(a) **Delivery on Signing Date.** On the Signing Date Buyer shall deposit the initial payment to Seller of US\$500,000 into a designated escrow account as evidenced by the Escrow Agreement. Seller shall provide Buyer with wire transfer or deposit instructions on or before such date.

(b) **Delivery on September 1, 2000.** On September 1, 2000, or such earlier date as may be agreed upon by the parties, Buyer shall pay Seller US\$500,000 by wire transfer of funds to Seller. Seller shall provide Buyer with wire transfer instructions on or before such date.

3.2 **Royalty Payments.**

(a) In addition to the payments set out above, and in consideration of the sale, transfer, conveyance and assignment of the Purchased Assets to Buyer, for a period of three (3) years from the Closing Date, Buyer shall pay to Seller a royalty on sales or transfers of the Poser or Office Advantage software products (or any upgrades thereto) and any modifications or derivative works which utilize the Poser or Office Advantage brands or serve as a substitute product in the marketplace, based on the following schedule:

- (i) For sales of transfers during the first year following Closing: 25% of Net Revenue regardless of when such Net Revenue is received by Buyer.
- (ii) For sales of transfers during the second Year following Closing: 20% of Net Revenue regardless of when such Net Revenue is received by Buyer.
- (iii) For sales of transfers during the third year following Closing: 10% of Net Revenue regardless of when such Net Revenue is received by Buyer.

(b) Buyer shall pay royalties to Seller on a semi-annual basis within sixty (60) days following the end of each half year and shall include, with each payment of royalties, a report specifying the aggregate royalties earned during the period. The first payment shall be for the period commencing on the Closing Date and ending on July 31, 2000.

(c) Buyer will maintain, in accordance with reasonable and consistent accounting practices, complete and accurate books and records in respect of its marketing and distribution of the Acquired Software and the fees and other amounts received therefor.

(d) For a period of four (4) years from the Closing Date, Seller shall have the right, no more often than once per twelve (12) month period, upon reasonable notice to Buyer, to appoint an independent third party to examine Buyer's relevant books and records in order to verify Buyer's compliance with the terms of this Agreement. Any such audit shall be at the expense of Seller unless the audit reveals an underpayment by Buyer, for any given semi-annual payment period, of greater than 5%, in which case Buyer shall reimburse Seller for the reasonable costs of the audit.

3.3 Late Payment. Any late payments shall bear interest as and from the date of default at the rate of 1.0% per month, compounded monthly.

3.4 Non-Payment by Buyer; Liquidated Damages. In addition to any other remedies available at law, in the event that Buyer fails to satisfy the payment obligations referenced in **Article 3**, after receiving a 20-day written notice of such failure (during which time Buyer shall be entitled to cure such default), any and all rights granted to Buyer under this Agreement in and to the Purchased Assets shall revert to Seller. Buyer shall immediately return all Purchased Assets, Confidential Information and other Proprietary Information to Seller and shall discontinue exercising rights granted to Buyer under this Agreement. Seller will keep (without the right to disclose, transfer or use such) one (1) copy of the Purchased Assets until the Purchase Price is completely satisfied by Buyer. In addition, any partial payment made by Buyer to satisfy the Purchase Price (e.g., the first \$500,000 required under **Section 3.1(a)**) shall be held by Seller as liquidated damages in the event of Buyer's failure to satisfy its payment obligations under **Article 3**.

4.0 OBLIGATIONS ASSUMED.

4.1 Assumption of Obligations. Buyer agrees, upon consummation of, and effective as of, the Closing Date, to assume those, and only those, obligations of Seller expressly listed on **Schedule 4.1** attached hereto (the "**Assumed Obligations**").

4.2 No Obligations to Third Parties. Assumption by Buyer of any liabilities or obligations of Seller pursuant to this Agreement shall in no way expand the rights or remedies of third parties against Buyer as compared to the rights and remedies such parties would have against Seller if the Closing were not consummated.

5. CLOSING.

5.1. Signing Date. Buyer and Seller shall agree to the final terms of the Agreement and shall enter this Asset Purchase Agreement on the Signing Date, which may only be cancelled in the event that the shareholders of Buyer do not approve the Agreement prior to the Closing Date. On the Signing Date, Buyer shall deposit into an escrow account the Initial Cash Payment provided for in Section 3.1(a) and Seller shall transfer the Acquired Software to Buyer to use under the terms of this Agreement until the Closing Date. On the Closing Date, this Agreement will become fully effective and title to and the right to distribute the Purchased Assets will be automatically passed to Buyer. On the Signing Date, all of the conditions to signing set forth in Articles 11 and 12 to this Agreement shall have been satisfied or waived in writing, except for the approval of Buyer's shareholders.

5.2. Failure to Close. In the event that the shareholders of Buyer do not approve the Agreement on or before the Closing Date, and the purchase and sale of the Purchased Assets is thereby cancelled, Seller shall be entitled to keep the amount deposited into the escrow account established in Exhibit C, and the Purchased Assets and any and all licenses granted to Buyer under this Agreement shall revert and be returned to Seller immediately.

5.3. Closing. The consummation of the purchase and sale of the Purchased Assets and the assumption of the Assumed Obligations contemplated hereby (the "Closing") will take place at the offices of the Seller in Carpinteria, California, on or April 30, 2000. (the date of the Closing referred to herein as the "Closing Date").

6. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer hereby represents and warrants to Seller that, except as set forth in the Schedules to this Agreement, all of the following statements are true, accurate and correct:

6.1. Organization, Good Standing and Qualification. Buyer is a corporation duly organized and validly existing under the laws of Germany; and has all requisite corporate power and authority to carry on its business as now conducted and to enter into this Agreement and the transactions contemplated hereby. Buyer is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have an adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement.

6.2. Authorization. All corporate action on the part of Buyer and its respective officers and directors necessary for the authorization, execution and delivery of this Agreement and the Buyer Closing Documents, the performance of all obligations of Buyer hereunder and thereunder, has been taken, and this Agreement and the Buyer Closing Documents constitute the valid and legally binding obligations of Buyer, enforceable in accordance with their respective terms. Buyer's Board of Directors has approved the transactions contemplated by this Agreement and the Buyer Closing Documents. Buyer has obtained or will obtain necessary shareholder approval to effect the transactions contemplated by this Agreement prior to the Closing Date.

6.3. Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority on the part of Buyer is required in connection with the consummation of the transactions contemplated by this Agreement.

6.4. Financial Condition. Buyer is now, and after Closing will be, solvent and able to pay its obligations as they become due.

6.5. Litigation. There is no action, suit, proceeding or investigation pending or currently threatened against the Buyer that questions or affects the validity of this Agreement or the Buyer Closing Documents, or the right or ability of the Buyer to enter into this Agreement or the Buyer Closing Documents or to consummate the transactions contemplated hereby or thereby. Buyer is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality that could reasonably be expected to have a material adverse effect on Buyer's business or ability to consummate the transactions contemplated hereby. There is no action, suit, proceeding or investigation by Buyer currently pending or threatened or that Buyer intends to initiate related to the transactions contemplated hereby.

6.6 Compliance with Other Instruments. The execution, delivery and performance of this Agreement and the Buyer Closing Documents and the consummation of the transactions contemplated hereby and thereby will not result in any violation or default of any provision of Buyer's charter documents, or of any instrument, judgment, order, writ or decree that could reasonably be expected to have a material adverse effect on Buyer's business or ability to consummate the transactions contemplated hereby or, to the best of Buyer's knowledge, any violation or default of any provision of any federal or state statute, rule or regulation applicable to Buyer that could reasonably be expected to have a material adverse effect on Seller or on Buyer's business or ability to consummate the transactions contemplated hereby.

6.7 Brokerage and Finder's Fees. Neither Buyer nor any of its affiliates has employed any broker, finder or agent, or agreed to pay or incurred any brokerage fee, finder's fee or commission with respect to the transactions contemplated by this Agreement, or dealt with anyone purporting to act in the capacity of a broker, finder or agent with respect thereto as a result of which any claim for a fee can be asserted against Seller.

6.8 Disclosure. To Buyer's knowledge, this Agreement, the Buyer's Closing Documents and other information delivered in connection herewith or therewith, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated herein or therein or necessary to make the statements herein or therein, in light of the circumstances in which they were made, not misleading.

7. REPRESENTATIONS AND WARRANTIES OF SELLER.

Seller hereby represents and warrants to Buyer that, except as set forth in the Schedules to this Agreement, all of the following statements are true, accurate and correct.

7.1 Organization, Good Standing and Qualification. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own and use its assets, to carry on its business as now conducted and to enter into this Agreement and the transactions contemplated hereby. Seller is duly qualified to transact business and is in good standing in the State of California and each other jurisdiction in which the failure to so qualify would have a material adverse effect on the Purchased Assets.

7.2 Authorization. All corporate action on the part of Seller, its officers and directors necessary for the authorization, execution and delivery of this Agreement and the Seller Closing Documents, and the performance of all obligations of Seller hereunder and thereunder, has been taken, and this Agreement and the Seller Closing Documents constitute valid and legally binding obligations of Seller, enforceable in accordance with their respective terms. Seller's Board of Directors has approved the transactions contemplated by this Agreement and the Seller Closing Documents. No approval of Seller's stockholders is required to effect the transactions contemplated by this Agreement or the Seller Closing Documents.

7.3 Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority on the part of Seller is required in connection with the consummation of the transactions contemplated by this Agreement.

7.4 Litigation. There is no action, suit, proceeding or investigation pending or currently threatened against the Seller that questions or affects the validity of this Agreement or the Seller Closing Documents, or the right or ability of the Seller to enter into this Agreement or the Seller Closing Documents or to consummate the transactions contemplated hereby or thereby. Seller is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality that could reasonably be expected to have a material adverse effect on Seller's business or ability to consummate the transactions contemplated hereby. There is no action, suit, proceeding or investigation by Seller currently pending or threatened or that Seller intends to initiate related to the transactions contemplated hereby.

7.5 Proprietary Information. It is Seller's standard practice to require that every employee and contractor execute a proprietary information and inventions agreement. Each employee and contractor involved with the development of the Acquired Software, or Purchased Assets whose failure to execute a proprietary information and inventions agreement could reasonably be expected to have a material adverse effect on the

Purchased Assets or Buyer's ability to commercially exploit the Purchased Assets has executed a proprietary information and inventions disclosure agreement substantially in the form attached hereto as Schedule 7.5.

7.6 Purchased Assets. Seller has good and marketable title to all of the Purchased Assets, free and clear of all Encumbrances, except encumbrances disclosed to Buyer on a Schedule to this Agreement. There is no element necessary for the commercial exploitation of the Acquired Software that is not included in the Purchased Assets or that has not been otherwise licensed to Buyer by Seller. Except as provided for in Section 3.4 of this Agreement (Seller's right to retain one (1) copy of the Purchased Assets), no person (including Seller or any of Seller's shareholders, partners, contractors or affiliates) holds any retained right to or claim against the Purchased Assets, including the Acquired Software

7.7 Taxes. At the Closing, there will be no federal, state, or local tax liens against or any unsatisfied liability for taxes of any kind imposed on or levied with respect to any of the Purchased Assets to be transferred hereunder other than liens for any such taxes which have not become due and payable. Seller has paid or will pay, when due, any federal, state or local taxes accruing prior to the Closing Date with respect to the Purchased Assets or Seller's business which, if unpaid, may result in a liability of Buyer or an Encumbrance against any of the Purchased Assets.

7.8 Financial Condition. Seller is now, and after Closing will be, solvent and able to pay its obligations as they become due. The audited financial statements of Seller for the year ended December 31, 1999 (the "Seller Financial Statements") provided to Buyer as Schedule 7.8 are true and accurate and fairly present the financial condition of Seller as of such dates and the results of operations of Seller for such period. The financial records relating to the Business have been provided to Buyer and have been prepared in a manner that is consistent with Seller's internal business and financial accounting methods, which internal business and financial accounting methods are in accordance with generally accepted accounting principles.

7.9 Intellectual Property.

(a) Schedules 1.1, 1.2, 1.13, 1.34 and Exhibit B are collectively an accurate and complete list of all the Intellectual Property Assets owned or under development by Seller that are related to the Acquired Software, Acquired Patents, Trademarks and Domain Names and with respect to patents, trademarks, domain names, service marks, copyrights, and mask work registrations, lists the application and registration number, date of application or date of registration and country of filing for each such right, if any. Seller has, and at Closing will transfer or license or cause to be transferred or licensed to Buyer, sufficient title and ownership of all right, title and interest necessary for or used in the commercial exploitation of the Purchased Assets worldwide without conflict with or infringement of the rights of others which conflict or infringement could reasonably be expected to have a material adverse effect on the Purchased Assets.

(b) Seller is not aware that any of its employees are obligated under any contract (including, without limitation, licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would conflict with the use by Buyer of the Intellectual Property Assets, or that would interfere with the ability of Buyer to use, license or sell the Intellectual Property Assets.

7.10 Software. Schedule 1.1 is an accurate and complete listing of all software programs included in the Acquired Software, including the language in which they are written and the type of operating systems and hardware platform(s) on which they run.

7.11 Infringement. None of the Purchased Assets has materially violated or infringed upon, or is materially violating or infringing upon, any software, copyright, patent, trade secret or other intellectual or proprietary right (other than patent rights) of any third party. There are no claims pending or, to the knowledge of Seller, threatened, and there is no basis for such claim, by any third party against Seller (i) alleging that Seller's ownership, sale, licensing, possession or use of, or disclosure or transfer to Buyer of, the Purchased Assets infringes upon or constitutes an unauthorized use of the intellectual property rights of any third party or (ii) challenging or questioning Seller's ownership of, or the validity or effectiveness of, Seller's ownership of the Purchased Assets nor to the knowledge of Seller, is there any basis for, any such claim. Seller has no disputes with or claims against any third party for infringement by such third party of any Intellectual Property Assets

7.12 Customer Contracts. Seller has not entered into any contractual obligation to release any additional version, upgrade or correction of the Acquired Software.

7.13 Advances and Deposits. Seller has not received any advances or deposits from customers for Acquired Software to be shipped, or services to be performed related to the Acquired Software, after the Signing Date.

7.14 Labor and Employee Relations. There is no strike or other labor dispute involving Seller, pending, or to Seller's knowledge, threatened, that could have a material adverse effect on Seller's assets, properties, financial condition, operating results, or business, nor is Seller aware of any labor organization activity involving its employees.

7.15 Brokerage and Finder's Fees. Neither Seller nor any of its affiliates has employed any broker, finder or agent, or agreed to pay or incurred any brokerage fee, finder's fee or commission with respect to the transactions contemplated by this Agreement, or dealt with anyone purporting to act in the capacity of a broker, finder or agent with respect thereto as a result of which any claim for a fee can be asserted against Buyer or the Purchased Assets, except for Alliant Partners, whose fees and expenses shall be paid by Seller pursuant to an agreement between Seller and Alliant Partners.

7.16 Disclosure. This Agreement, the Seller Closing Documents and other information delivered in connection herewith or therewith, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated herein or therein or necessary to make the statements herein or therein, in light of the circumstances in which they were made, not misleading.

7.17 Year 2000 Compliance. The Purchased Assets are and at all times will be Year 2000 Compliant. "Year 2000 Compliant" means that the Purchased Assets will not, as a result of processing data containing dates in the year 2000 and any preceding and following years, fail to initiate and operate and to correctly store, represent and process (including sort) all dates (including single and multi-century formulas and leap year calculations) when the date being used is in the year 2000, or in a year preceding or following the year 2000; nor cause or result in an abnormal termination or ending of operations.

8. COVENANTS OF BUYER.

Buyer covenants and agrees with Seller as follows:

8.1 Seller Confidential Information. For the purposes of this Agreement, "**Confidential Information**" means all copies of financial information, marketing and sales information, pricing, marketing plans, business plans, financial and business projections, manufacturing processes and procedures, formulae, methodologies, inventions, product designs, product specifications, source code, customer lists, customer data, drawings, and other confidential and/or proprietary information. Confidential information of Seller disclosed to Buyer in the course of negotiating or performing the transaction contemplated by this Agreement ("**Seller Confidential Information**") will be held in confidence and not used or disclosed by Buyer until the expiration of five (5) years after the Closing Date and will be promptly destroyed by Buyer or returned to Seller upon Seller's written request to Buyer. Buyer's employees, affiliates and shareholders will not be given access to Seller Confidential Information except on a "need to know" basis. Buyer shall take reasonable precautions to protect the Seller Confidential Information from disclosure, including such measures as Buyer takes with respect to its own confidential information. It is agreed that Seller Confidential Information will not include information that: (a) (with respect to information received from Seller) Buyer can demonstrate was known to Buyer prior to receipt of such information from Seller; (b) is disclosed to Buyer by a third party having the legal right to disclose such information and who owes no obligation of confidence to the Seller; (c) is now, or later becomes part of the general public or industry knowledge, other than as a result of a breach of this Agreement by Buyer; or (d) Buyer can demonstrate was independently developed by Buyer without the use of any Seller Confidential Information.

8.2 Transfer Taxes. The Buyer shall bear the burden of any stamp duty tax or any other sales, use or other tax (except for taxes based on Seller's income) imposed in connection with the consummation of the transactions contemplated by this Agreement. The Seller and the Buyer agree to cooperate in good faith with each other, and to use their commercially reasonable efforts, to minimize the taxes described in this **Section 8.2.**

8.3 Further Assurances. From and after the Signing Date, Buyer shall promptly execute and deliver such further assignments, assumptions, endorsements and other documents as Seller may reasonably request for the purpose of effecting the transfer of Seller's title to or right to use the Purchased Assets to Buyer and/or carrying out the provisions and intent of this Agreement and the Buyer Closing Documents.

8.4 Cooperation in Litigation. In the event of any litigation against Seller that relates to any Assumed Obligation or the Business, Buyer agrees to cooperate at Seller's sole cost and expense in Seller's defense of such litigation as required by law or as otherwise reasonably requested by Seller, including making Buyer's retained employees reasonably available to the extent that doing so would not unduly interfere with Buyer's business. However, Buyer shall not be required to modify, impair or limit its business or the use of its assets in connection with any resolution of such litigation.

8.5 Updating and Distribution of Product. Buyer agrees to use commercially reasonable efforts to continue to develop and promote the Poser product. Buyer further agrees to release the next major version of Poser (version 4.5 or 5.0) within twelve (12) months following the Closing Date and to release an additional full upgrade of Poser within thirty (30) months following the Closing Date. For the purposes of this **Section 8.5**, a "full upgrade" means a change to the left of the decimal place in the version number of the product.

8.6 Survival of Covenants. The covenants set forth in **Section 8.1** shall survive the termination of this Agreement for any reason. Each of the covenants set forth in **Sections 8.2 to 8.5**, inclusive, or otherwise made by Buyer in this Agreement shall survive the Closing. All covenants set forth in **Article 3**, this **Article 8** and **Exhibit B**, the Software License Agreement, shall survive and be transferred to any subsequent assignee of Buyer in the event that the Purchased Assets are wholly assigned by Buyer to a third party. Buyer may not partially transfer any of the Purchased Assets.

9. COVENANTS OF SELLER.

Seller covenants and agrees with Buyer as follows:

9.1 Access to Information. Until the Signing Date, Seller will afford to the representatives of Buyer, including, without limitation, its counsel and auditors, access, at the Seller's offices in Carpinteria or Scotts Valley, California, to any and all of the Purchased Assets and information with respect thereto (except for attorney-client privileged information) to the end that Buyer may have a reasonable opportunity to make such a full investigation of the Purchased Assets in advance of the Closing Date as Buyer shall reasonably desire.

9.2 Further Assurances. From and after the Signing Date, Seller shall promptly execute and deliver to Buyer any and all such further assignments, endorsements and other documents and information as Buyer may reasonably request for the purpose of effecting the transfer of Seller's title to or, as applicable, right and ability to use, the Purchased Assets to Buyer and/or carrying out the provisions and intent of this Agreement and the Seller Closing Documents.

9.3 Confidential Information.

(a) **Buyer Confidential Information.** Confidential information of Buyer disclosed to Seller in the course of negotiating or performing the transaction contemplated by this Agreement ("**Buyer Confidential Information**") will be held in confidence and not used or disclosed by Seller until the expiration of five (5) years after the Closing Date and will be promptly destroyed by Seller or returned to Buyer upon Buyer's written request to Seller. Seller's employees, affiliates and shareholders will not be given access to Buyer Confidential Information except on a "need to know" basis. Seller shall take reasonable precautions to protect the Buyer Confidential Information from disclosure, including, without limitation, such measures as Seller takes with respect to their own confidential information. It is agreed that Buyer Confidential Information will not include information that: (i) (with respect to information received from Buyer) Seller can demonstrate was known to Seller prior to receipt of such information from Buyer; (ii) is disclosed to Seller by a third party having the legal right to disclose such information and who owes no obligation of confidence to the Buyer; (iii) is now, or later becomes part of the general public or industry knowledge, other than as a result of a breach of this Agreement by Seller; or (iv) Seller can demonstrate was independently developed by Seller without the use of any Buyer Confidential Information.

(b) Confidential Information Related to Purchased Assets. Seller will not use or disclose any Confidential Information included in or relating to the Purchased Assets, and Seller shall take reasonable actions and precautions to ensure that such Confidential Information is not used or disclosed by Seller's employees, affiliates or shareholders.

9.4 Cooperation in Litigation. In the event of any litigation against Buyer that relates to any Assumed Obligation or the Business conducted before the Closing Date, Seller agrees to cooperate at Buyer's sole cost and expense in Buyer's defense of such litigation as required by law or as otherwise reasonably requested by Buyer, including making Seller's retained employees reasonably available to the extent that doing so would not unduly interfere with Seller's business.

9.5 Mail and Communications. From and after the Signing Date, Seller will promptly deliver to Buyer any mail or other communication received by Seller pertaining to the Purchased Assets, including, without limitation, orders from customers for items of Acquired Software.

9.6 Survival of Covenants. Each of the covenants set forth in Sections 9.2 through 9.6, inclusive, or otherwise made by Seller in this Agreement shall survive the Closing. The covenants set forth in Section 9.3 above shall, in addition, survive the termination of this Agreement for any reason.

10. COVENANTS AND AGREEMENTS RELATED TO EMPLOYEES.

10.1 Offers of Employment. At any time after the Signing Date, Buyer shall be entitled to make written offers of employment to employees listed on Schedule 10.1, currently involved in the commercial exploitation of the Purchased Assets (the "Employees"). Those Employees who accept such offers and report to work for Buyer shall hereinafter collectively be referred to as the "Transferred Employees." Seller hereby consents to the hiring of such Transferred Employees by Buyer and waives, with respect to the employment by Buyer of such Transferred Employees, any claims or rights Seller may have against Buyer or any such Transferred Employee under any non-competition agreement that relates to the Purchased Assets, any confidentiality agreement that relates to the Purchased Assets or any employment agreement in effect at the Signing Date.

10.2 Employment Taxes. Seller shall be responsible for any withholding or employment taxes with respect to all Seller's Employees attributable to periods of service ending on or before such Employee's termination of employment with Seller ("Termination Date") and shall be responsible for filing all federal, state and local employment tax returns with respect to such Employees attributable to periods of service ending on or before such Employees' Termination Date.

10.3 Contract Obligations. Seller shall be responsible for any liability for any employment contract or employment contractual obligations (including, without limitation, responsibility for any bonuses accrued or payable with respect to any period ending on or before a Transferred Employee's Termination Date) to Transferred Employees entered into prior to such Transferred Employee's Termination Date that accrue or become payable on or before such Transferred Employee's Termination Date. Seller shall be responsible for any liability with respect to any claims of discrimination under state or federal law that accrue or arise on or before such Transferred Employee's Termination Date. For purposes of this Article 10, "Hire Date" shall mean the date upon which a Transferred Employee reports to Buyer for work as an employee of Buyer. Buyer shall be responsible for any liability for any employment contract or employment contractual obligations to Transferred Employees entered into on or after such Transferred Employee's Hire Date.

10.4 Severance Payments. Seller is responsible for the severance liability, if any, with respect to any Employees who do not become Transferred Employees. Seller is also responsible for the severance liability, if any, arising by virtue of Transferred Employees leaving the employment of Seller to become employees of Buyer.

10.5 No Rights Conferred Upon Employees. Nothing in this Article 10 shall confer any rights or remedies on any Employee and no Employee shall be a third party beneficiary with respect to any covenant in this Agreement.

11. CONDITIONS OF SIGNING AND CLOSING.

11.1 Conditions of Signing. Buyer and Seller will enter into this Agreement at such time as the following conditions have been met:

- (a) **Final Terms.** Buyer and Seller have agreed upon the final terms of this Agreement;
- (b) **Escrow Account.** Buyer has deposited into an Escrow account the Initial Cash Payment contemplated by Section 3.1(a); and,

(c) **Closing Obligations.** Buyer and Seller have met all obligations to closing as set forth below in this Article as if the Closing Date were the Signing Date.

11.2 Conditions of Buyer Obligations. The obligations of Buyer hereunder shall be subject to the satisfaction and fulfillment of each of the following conditions, except that Buyer may expressly waive any or all of the conditions in writing:

(a) **Compliance.** As of the Closing Date, Seller shall have complied in all material respects with, and shall have fully performed, the terms, conditions, covenants and obligations of this Agreement imposed on Seller to be performed or complied with by Seller at, or prior to, the Closing Date, except for the conveyance of title to the Purchased Assets and the right to distribute the Acquired Software, and the warranties and representations of Seller shall be accurate, complete and not misleading as if restated on the Closing Date.

(b) **Closing Deliveries.** Seller shall have delivered, and Buyer shall have received, the deliveries described in Section 12.1, except to the extent that such would act to transfer title to the Purchased Assets or right to distribute the Acquired Software.

(c) **No Litigation.** There shall not be an injunction, judgment, order, decree, ruling or charge in effect preventing or delaying consummation of any of the transactions contemplated by this Agreement or the other Transaction Documents.

(d) **Due Diligence.** Buyer shall have completed to its satisfaction a due diligence review of the Purchased Assets, which shall be deemed completed on the Signing Date.

11.3 Conditions to Seller's Obligations. The obligations of Seller hereunder shall be subject to the satisfaction and fulfillment of each of the following conditions, except that Seller may expressly waive any or all of the conditions in writing:

(a) **Compliance.** As of the Closing Date, Buyer shall have complied in all material respects with, and shall have fully performed, the terms, conditions, covenants and obligations of this Agreement imposed on Buyer to be performed or complied with by Buyer at, or prior to, the Closing Date, except to the extent that such would require Buyer to have title to the Purchased Assets or the right to distribute the Acquired Software, and the warranties and representations of Buyer shall be accurate, complete and not misleading as if restated on the Closing Date.

(b) Closing Deliveries. Buyer shall have delivered, and Seller shall have received, the deliveries described in Section 12.2, except to the extent that such would act to transfer title to the Purchased Assets or the right to distribute the Acquired Software to Buyer.

(c) No Litigation. There shall not be an injunction, judgment, order, decree, ruling, or charge in effect preventing or delaying consummation of any of the transactions contemplated by this Agreement or the other related documents.

(d) Acceptance by Buyer. Buyer has accepted fulfillment of the Conditions of Closing of Seller as set out in Section 11.2 herein.

11.4 Conditions of Closing. The consummation of the purchase and sale of the Purchased Assets shall take place as soon as Buyer has obtained shareholder approval of the transaction, but in no event later than the Closing Date. On Closing, title to the Purchased Assets and the right to distribute the Acquired Software shall automatically transfer to Buyer. In the event that Buyer's shareholders do not approve the transaction prior to the Closing Date, Seller shall have the right to any amounts deposited into the escrow account by Buyer on the Signing Date, and the Purchased Assets, and any rights thereto shall revert to Seller.

12. CLOSING DELIVERIES

12.1 Delivery of Seller's Closing Documents. At the Signing Date, Seller shall execute and deliver to Buyer the following documents (the "Seller Closing Documents") signed by an authorized officer of Seller on behalf of Seller:

(a) Assignment Agreements. The Assignment Agreements in the form of Exhibit A, except to the extent that such would act as a conveyance of title to the Purchased Assets or would provide Buyer with right to distribute the Purchased Assets prior to the Closing Date;

(b) Software License Agreement. The Software License in the form of Exhibit B;

(c) Purchased Assets. The Purchased Assets; and,

(d) Employees. List of Seller's Employees as set out in Schedule 10.1

12.2 Delivery of Buyer Closing Documents. At the Signing Date, Buyer shall cause to be delivered to Seller the following items and documents (the "Buyer Closing Documents") signed by an authorized officer of the applicable entity:

(a) Software License Agreement. The Software License in the form of Exhibit B;

(b) Cash. The Initial Cash Payment as required by Section 3.1(a); and,

(c) Acknowledgement. A written acknowledgment that Seller has satisfied all of its closing conditions.

13 SURVIVAL OF WARRANTIES, WARRANTY CLAIMS AND INDEMNIFICATION

13.1 Survival of Warranties. Subject to Section 14.3, all representations, warranties and covenants made by Seller or Buyer, herein, or in any certificate, schedule or exhibit delivered pursuant hereto, shall survive the Closing for a period of eighteen (18) months after the Closing Date; provided that all representations and covenants relating to taxes or tax liens in Section 7.7 shall survive until the expiration of the applicable statute of limitations (including extensions).

13.2 Limitation on Warranty Claim(s) by Seller.

(a) The Seller shall not be entitled to make a Warranty Claim if the Seller has been advised in writing or otherwise has actual knowledge prior to Closing of the inaccuracy, non-performance, nonfulfilment or breach which is the basis for such Warranty Claim and the Seller completes the transactions hereunder notwithstanding such inaccuracy, non-performance, nonfulfilment or breach.

(b) The amount of any Losses which may be claimed by the Seller pursuant to a Warranty Claim shall be calculated to be the cost or loss to the Seller after giving effect to:

- (i) any insurance proceeds available to the Seller in relation to the matter which is the subject of the Warranty Claim, and
- (ii) the value of any related, determinable tax benefits realized, or to be realized within a two (2) year period following the date of incurring such cost or loss, by the Seller in relation to the matter which is the subject of the Warranty Claim.

(c) Seller shall not be entitled to make any Warranty Claim until such time as the total amount of all Losses (including, without limitation, the Losses directly arising from such inaccuracy or breach and all other Losses arising from any other inaccuracies in or breaches of any representations, warranties, covenants or obligations) that have been directly suffered or incurred by the Seller exceeds Fifty Thousand Dollars (\$50,000). Notwithstanding the foregoing, in the event the total amount of all such Losses exceed Fifty Thousand Dollars (\$50,000), Buyer's liability shall not include the initial Fifty Thousand Dollar (\$50,000) amount. Except in the event of a breach by Buyer of the confidentially provisions set out in Section 8.1 (to which the limitation in this Section 13.2 shall not apply), the maximum aggregate liability of the Buyer in respect of all Warranty Claims by the Seller will be limited to payments made by Buyer as Purchase Price or Royalties with respect to the Purchased Assets.

13.3 Limitation on Warranty Claim(s) by Buyer

(a) The Buyer shall not be entitled to make a Warranty Claim if the Buyer has been advised in writing or otherwise has actual knowledge prior to Closing of the inaccuracy, non-performance, nonfulfilment or breach which is the basis for such Warranty Claim and the Buyer completes the transactions hereunder notwithstanding such inaccuracy, non-performance, nonfulfilment or breach.

(b) The amount of any Losses which may be claimed by the Buyer pursuant to a Warranty Claim shall be calculated to be the cost or loss to the Buyer after giving effect to:

- (i) any insurance proceeds available to the Buyer in relation to the matter which is the subject of the Warranty Claim, and
- (ii) the value of any related, determinable tax benefits realized, or to be realized within a two (2) year period following the date of incurring such cost or loss, by the Buyer in relation to the matter which is the subject of the Warranty Claim.

(c) Buyer shall not be entitled to make any Warranty Claim until such time as the total amount of all Losses (including, without limitation, the Losses directly arising from such inaccuracy or breach and all other Losses arising from any other inaccuracies in or breaches of any representations, warranties, covenants or obligations) that have been directly suffered or incurred by the Buyer exceeds Fifty Thousand Dollars (\$50,000). Notwithstanding the foregoing, in the event the total amount of all such Losses exceed Fifty Thousand Dollars (\$50,000), Seller's liability shall not include the initial Fifty Thousand Dollar (\$50,000) amount. Except in the event of a breach by Seller of the confidentially provisions set out in Section 9.3 (to which the limitation in this Section 13.3 shall not apply), the maximum aggregate liability of the Seller in respect of all Warranty Claims by the Buyer will be limited to payments made by Buyer as Purchase Price or Royalties with respect to the Purchased Assets.

13.4 Indemnification by Seller.

(a) Subject to the provisions and limitations set forth in this **Article 13**, Seller shall hold harmless, defend, indemnify and pay for the defense of each of the Buyer Indemnitees from and against, and shall compensate and reimburse each of the Buyer Indemnitees for, any Losses which are suffered or incurred by any of the Buyer Indemnitees, or to which any of the Buyer Indemnitees may otherwise become subject and which arise from or as a result of, or are connected with:

(i) any breach of any covenant of Seller;

(ii) any inaccuracy or untruth of any representation or warranty of Seller made herein;

(iii) any violation by Seller of, or failure by Seller to comply with, any law, ruling, order, decree, regulation or zoning, environmental or permit requirement applicable to Seller or the Purchased Assets, whether or not any such violation or failure to comply has been disclosed to Buyer;

(iv) any product liability claim relating to the Acquired Software products manufactured or sold by or on behalf of Seller prior to the Signing Date;

(v) any tax liabilities or obligations of Seller which are not otherwise covered by **Section 8.2** and;

(vi) any claims against, or liabilities or obligations of, Seller with respect to (i) any employee benefit plan (as defined in ERISA) offered by Seller or (ii) violations of law relating to any Employee's services with the Seller.

(b) The obligations of indemnification by the Seller pursuant to **Section 13.4(a)** are:

(i) subject to the limitations referred to in **Section 13.1** with respect to the survival of the representations and warranties by the Seller;

(ii) subject to the limitations referred to in **Section 13.3**; and

(iii) subject to the provisions of **Sections 13.6, 13.7 and 13.8**

13.5 Indemnification by Buyer.

(a) Subject to the provisions and limitations set forth in this **Article 13**, Buyer shall hold harmless, defend, indemnify and pay for the defense of each of the Seller Indemnitees from and against, and shall compensate and reimburse each of the Seller Indemnitees for, any Losses which are suffered or incurred by any of the Seller Indemnitees or to which any of the Seller Indemnitees may otherwise become subject and which arise from or as a result of, or are connected with:

(i) any breach by Buyer of any covenant made herein

(ii) any inaccuracy or untruth of any representation or warranty of Buyer made herein

(iii) the failure of Buyer to timely pay or perform any of the Assumed Obligations; or

(iv) Buyer's distribution or other use, after the Closing, of the Acquired Software, except to the extent the Loss arises out of a breach of a representation and warranty of Seller;

(b) The obligations of indemnification by the Buyer pursuant to **Section 13.5(a)** are:

(i) subject to the limitations referred to in **Section 13.1** with respect to the survival of the representations and warranties by the Buyer;

(ii) subject to the limitations referred to in **Section 13.2**; and

(iii) subject to the provisions of Sections 13.6, 13.7 and 13.8.

13.6 Notice of Claim. If a Party becomes aware of a claim or Legal Proceeding in respect of which indemnification is provided for pursuant to either of Section 13.4 or 13.5, as the case may be, the Indemnified Party shall promptly give written notice of the claim or Legal Proceeding to the Indemnifying Party. Such notice shall specify with reasonable particularity (to the extent that the information is available):

(a) the factual basis for the claim; and

(b) the amount of the claim, if known, and the basis thereof and documentation supporting the same.

If, through the fault of the Indemnified Party, the Indemnifying Party does not receive notice of any claim or Legal Proceeding in time to effectively contest the determination of any liability susceptible of being contested, then the liability of the Indemnifying Party to the Indemnified Party under this Article shall be reduced by the amount of any Losses incurred by the Indemnifying Party resulting from the Indemnified Party's failure to give such notice on a timely basis.

13.7 Settlement of Third Party Claims. If the Indemnifying Party fails to assume control of the defense of any third party claim, the Indemnified Party shall have the exclusive right to contest, settle or pay the amount claimed and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such third party claim and shall solely bear all reasonable expenses associated with the defense of such third party claim. Whether or not the Indemnifying Party assumes control of the negotiation, settlement or defense of any third party claim, neither party shall settle any third party claim without the written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, that the liability of such party shall be limited to the proposed settlement amount if any such consent is not obtained for any reason within a reasonable time after the request therefor.

13.8 Period for Making Claims. A claim for indemnification under this Article 13:

(a) must be brought, if at all, at any time within eighteen (18) months after the Closing Date except that a claim for indemnification may be brought at any time up to the expiration of the applicable statute of limitations period (including extensions) with respect to any claim for indemnification relating to or based upon the provisions of Section 7.7 (Taxes);

(b) may be brought at any time within five (5) years after the Closing for breach of Seller's covenants regarding Confidential Information under Section 9.3 and for breach of Buyer's covenants regarding Confidential Information under Section 8.1.

13.9 Exclusion. The limitations set forth in Sections 13.2(c), 13.3(c), and 13.8 shall not apply to any claim for indemnification based on this Article 13 which arises out of or results from the fraud of Buyer or Seller.

14. TERMINATION.

14.1 Mutual Agreement. This Agreement may be terminated prior to Closing at any time on or prior to the Closing Date, by mutual written consent of the Buyer and Seller. If this Agreement so terminates, it shall become null and void and have no further force or effect, except as provided in Section 14.3.

14.2 Termination by Reason of Breach. This Agreement may be terminated by any party if at any time prior to Closing there shall occur a material breach of any of the representations, warranties or covenants of the other party or the failure by the other party to perform any condition or obligation hereunder of such severity as would excuse the non-breaching party's obligation to close under Article 11 (Conditions of Closing), and such breach or failure is not remedied within ten (10) days after delivery of written notice thereof to the breaching party.

14.3 Survival. If this Agreement is terminated and the transactions contemplated hereby are not consummated, this Agreement shall become void and of no further force and effect (and the initial payment deposited by Buyer into the escrow account shall be distributed to Seller (as set forth in Article 5) and the Purchased assets and any licensed granted upon signing shall be returned to Seller), except for the provisions of Article 1, this Section 14.3 and the confidentiality provisions set out in Sections 8.1 and 9.3; and provided, further, that none of the parties hereto shall have any liability for speculative, indirect, unforeseeable or consequential damages resulting from any legal action relating to this Agreement or any termination of this Agreement.

15. ARBITRATION.

15.1 Arbitration. Except for Buyer's or Seller's right to seek injunctive relief in order to prevent unauthorized use or disclosure of Buyer or Seller Confidential Information, any dispute hereunder ("Dispute") shall be settled by means of the procedures set forth in this Article 15. Each party shall give notice to the other party of any Dispute. Promptly upon delivery of such notice, a designated senior officer for each of Buyer and Seller (which representative may be changed by a party by means of a notice delivered to the other party) shall meet and attempt in good faith to resolve the Dispute on a mutually satisfactory basis. If such the parties are unable to resolve the Dispute within 60 days after delivery of the notice of a Dispute, then the Dispute shall be settled by arbitration in New York City, New York, USA, and, except as herein specifically stated, in accordance with the Commercial Dispute Resolution Procedures of the American Arbitration Association ("AAA Rules") then in effect. However, in all events, these arbitration provisions shall govern over any conflicting rules which may now or hereafter be contained in the AAA Rules. Any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over the subject matter thereof. The arbitrator shall have the authority to grant any equitable and legal remedies that could be available in any judicial proceeding instituted to resolve a Dispute. The parties shall use their best efforts to select an arbitrator within 30 days and to resolve the Dispute within 90 days.

15.2 Compensation of Arbitrator. Any such arbitration will be conducted before a single arbitrator who will be compensated for his or her services at a rate to be determined by the parties or by the American Arbitration Association, but based upon reasonable hourly or daily consulting rates for the arbitrator in the event the parties are not able to agree upon his or her rate of compensation.

15.3 Selection of Arbitrator. In the absence of agreement by the parties, the American Arbitration Association will have the authority to select an arbitrator from a list of arbitrators who are lawyers familiar with contract law and with the software industry; provided, however, that such lawyers cannot work for a firm then performing services for either party.

(a) Payment of Costs. Seller and Buyer will each pay 50% of the initial compensation to be paid to the arbitrator in any such arbitration and 50% of the costs of transcripts and other normal and regular expenses of the arbitration proceedings; provided, however, that the prevailing party in any arbitration will be entitled to an award of reasonable attorneys' fees and costs, and all costs of arbitration, including those provided for above, will be paid by the losing party, and the arbitrator will be authorized to make such determinations.

(b) Burden of Proof. For any Dispute submitted to arbitration, the burden of proof will be as it could be if the claim were litigated in a judicial proceeding.

(c) Award. Upon the conclusion of any arbitration proceedings hereunder, the arbitrator will render findings of fact and conclusions of law and a written opinion setting forth the basis and reasons for any decision reached and will deliver such documents to each party to this Agreement along with a signed copy of the award.

(d) Terms of Arbitration. The arbitrator chosen in accordance with these provisions will not have the power to alter, amend or otherwise affect the terms of these arbitration provisions or the provisions of this Agreement.

(e) Exclusive Procedures. Except as specifically otherwise provided in this Agreement, arbitration will be the sole and exclusive dispute resolution procedure of the parties for any Dispute arising out of this Agreement.

16.1 Transition Services. Seller agrees to provide certain technical support, customer service, manufacturing or production assistance to Buyer from the Signing Date as described herein (the "Transition Services") in order to facilitate the orderly transition of the marketing and distribution of the Acquired Software from Seller to Buyer. This **Article 16** sets out the scope of the Transition Services to be provided by Seller and the terms and conditions under which such services shall be provided. Each party will work in good faith to facilitate a smooth and successful transition as soon as practicable, with the expectation that in most or many cases transition to Buyer will not take the entire transition period. However, Seller will make transition support available to Buyer for the full period of time set out below. Seller and Buyer shall each appoint one designated representative who shall act as the point of contact with respect to Transition Services.

(a) **Customer Service.** Up to and including April 30, 2000, Seller shall continue to respond to second level customer service inquires in the United States and Canada for the Acquired Software. Seller shall have the discretion to use any employee or contractor to perform such services; provided that the level of service is at least equivalent to the current level of service offered by Seller. For the purposes of this **Section 16.1(a)** "second level customer service inquires" shall mean all of the customer services currently provided by MetaCreations' Customer Services Department in Scotts Valley, California, including, without limitation, responding to questions regarding rebates, missing product, faulty product and the like. Seller shall also use commercially reasonable efforts to respond to customer service requests from authorized distributors that originate outside of the United States and Canada, and that are forwarded to MetaCreations' Scotts Valley Office (either telephonically or e-mail). Seller shall provide these services to Buyer at no cost.

(b) **Technical Support.** Up to and including May 19, 2000 Seller shall continue to respond to all first and second level technical support inquires in the United States, Canada, Germany, Austria and Switzerland for the Acquired Software in accordance with its existing practices and policies. Seller shall have the discretion to use any employee or contractor to perform such services; provided that the level of service is at least equivalent to the current level of service offered by Seller. For the purposes of this **Section 16.1(b)** "first level technical support" and "second level technical support" shall mean all of the technical support services currently provided by MetaCreations' Support Department in Scotts Valley, California and by Software Spectrum in Dublin, Ireland, including, without limitation, technical product inquiries. Seller shall also use commercially reasonable efforts to respond to technical support questions from authorized distributors that originate outside of the United States and Canada, and that are forwarded to MetaCreations' Scotts Valley Office (either telephonically or e-mail). Seller shall provide to Buyer all materials and supplies relating to the Acquired Products and all knowledge related to them and their support, including the identity of and information provided by vendors. Seller shall provide these services to Buyer at no cost.

(c) **Toll and Toll-Free Phone Numbers and E-mail.** Up to and including June 30, 2000, all customer support and technical support toll and toll-free phone numbers and e-mail addresses will remain active and be maintained by Seller. During such period of time, Buyer and Seller shall cooperate to re-direct such phone numbers and e-mail addresses as necessary. On or about June 30, 2000 all such toll and toll-free phone numbers and e-mail addresses will be re-directed to Buyer's customer service and technical support centers, or will provide customers with a voice or e-mail message indicating how they can contact Buyer customer or technical support personnel.

(d) **On-line, Distribution Channel and Other Sales.** On the Signing Date Seller shall discontinue all sales of the Acquired Software in all channels, including sales to distributors, direct sales and sales through on-line web orders for the Acquired Software.

(e) **Returns.** Seller shall bear the burden of and be responsible for any returns made of the Acquired Software that was sold into the channel prior to the Signing Date.

(f) **Seller Web Sites.** From Closing Date to December 31, 2000, Seller shall provide the following items on www.metacreations.com or any successor web site thereto: (i) product descriptions for the Acquired Software; (ii) reference to (and contact information where available for) the catalogs and retailers offering the Acquired Product; (iii) contact information (as soon as Buyer provides) for Buyer; and (iv) a link to a web site to be designated by Buyer where customers can order copies of the Acquired Software.

16.2 Distribution Channel. Buyer and Seller agree that it is intended that channel inventory of Acquired Product at the Signing Date will sell through and be absorbed by customers at the earliest possible time. To facilitate the transition in the distribution channel, Seller and Buyer agree to publish a product position announcement wherein, concurrently with the announcement of the Signing of this Agreement, Buyer will publicly announce that:

(a) if a customer buys a current version of Acquired Software from Seller, Buyer will, subject to proof of purchase and applicable time limits, provide the same upgrade privileges as currently exist;

(b) Buyer will honor Seller's support commitments as described in Section 16.1; and,

(c) that the creator of Poser, Larry Weinberg, with the consent of Seller, is working with Buyer to ensure the continued development and release of Poser.

17. MISCELLANEOUS.

17.1 Announcements; Publicity. Within three (3) days after the Signing Date, Seller and Buyer shall issue a joint press release, which shall also be posted on Seller's web site, acceptable to both with respect to the transactions contemplated by this Agreement. Without the prior written consent of the other, which consent shall not be unreasonably withheld, prior to the Closing, neither Seller nor Buyer shall make any other public announcement regarding the transactions; and with respect to any announcement that any of the parties is required by the Securities Act or regulations thereunder, the Nasdaq Stock Market - National Market to issue, such party shall, to the extent possible under the circumstances, review the necessity for and the timing and content of, the announcement with the other party before issuing the announcement.

17.2 Expenses. Whether or not the transactions contemplated by this Agreement are consummated, each of the parties hereto shall bear its own expenses (including without limitation attorneys' fees) in connection with the negotiation and consummation of the transaction contemplated hereby.

17.3 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and hand delivered, sent by facsimile, sent by certified first class mail, postage pre-paid, or sent by nationally recognized express courier service. Such notices and other communications will be effective: (a) upon receipt if hand delivered; (b) five (5) days after mailing if sent by mail; and (c) one (1) day after dispatch if sent by facsimile (with electronic acknowledgment of successful transmission) or express courier, addressed as follows:

(a) If to Seller:
MetaCreations Corporation
6303 Carpinteria Avenue
P.O. Box 1324
Carpinteria, California 93014-1324
Attention: Bruce A. Telkamp
Telephone: 805-566-6223
Facsimile: 805-566-6384

(b) If to Buyer:
egi.sys AG
Hagellocher Weg 63

D-72070 Tübingen
Germany
Attention: Wolfgang Eichner
Telephone: 011-49-7071 793606 0
Facsimile: 011-49 7071 793606 9

With Courtesy Notice to:
Dickenson, Peatman & Fogarty
809 Coombs Street
Napa, California 94559
Attention: Richard Lemon
Telephone: 707-252-7122
Facsimile: 707-252-6047

17.4 Entire Agreement; Captions. This Agreement, the Exhibits and Schedules hereto (which are incorporated herein by reference) and the agreements to be executed and delivered in connection herewith on the date hereof or on the Signing Date, together constitute the entire agreement and understanding between the parties and there are no other agreements or commitments with respect to the transactions contemplated herein. This Agreement supersedes any term sheet, prior offer, agreement or understanding between the parties with respect to the transactions contemplated hereby.

17.5 Amendment; Waiver. Any term or provision of this Agreement may be amended only by a writing signed by Seller and Buyer. The observance of any term or provision of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party to be bound by such waiver. No waiver by a party of any breach of this Agreement will be deemed to constitute a waiver of any other breach or any succeeding breach.

17.6 No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or to give any person, firm or corporation, other than the parties hereto, any rights or remedies under or by reason of this Agreement.

17.7 Assignment. This Agreement may not be assigned by any party hereto without the prior written consent of each other party; except that Buyer or MetaCreations each may assign in whole or in part this Agreement (and/or all related agreements) to one or more parent, subsidiary or affiliate entities, or by operation of law or in connection with any merger, consolidation or sale of all or substantially all Buyer's assets. Any assignment of the Purchased Assets by Buyer to a third party or other permitted assignee shall include an assumption by such third party or other permitted assignee of all of Buyer's covenants and obligations under this Agreement and the Software License Agreement, including without limitation, the obligation to pay royalties and the non-transferability of the Non-Transferable Software as such is defined in the Software License Agreement.

17.8 Benefit and Burden. This Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by and against, the parties hereto and their respective successors and permitted assigns. As such, any assignment of the Purchased Assets, by the Buyer, to any third party, will include an assumption by such third party of all of Buyer's covenants and obligations under the Agreement and the Software License Agreement.

17.9 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California (excluding application of any choice of law doctrines that could make applicable the law of any other state or jurisdiction) and, where appropriate, applicable federal law.

17.10 Severability. If any provision of this Agreement is for any reason and to any extent deemed to be invalid or unenforceable, then such provision shall not be voided but rather shall be enforced to the maximum extent then permissible under then applicable law and so as to reasonably effect the intent of the parties hereto, and the remainder of this Agreement will remain in full force and effect.

17.11 Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

17.12 Execution. For the convenience of the parties, this Agreement may be executed in counterparts, each of which shall be deemed an original but both of which together shall constitute one and the same instrument, and this Agreement may be executed and delivered by facsimile.

17.13 Currency. Unless otherwise indicated, all references in this Agreement to "\$" or "dollars" shall mean United States dollars.

17.14 Time of Essence. The parties agree that time is of the essence in the performance of the parties' respective obligations under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto, have executed and delivered this Agreement by their duly authorized representatives as of the date first set forth above.

SELLER:
METACREATIONS CORPORATION

BUYER:

Signature: [Signature]
Name: Bruce Talkamp
Title: Vice President of Ops.
Dw.

Signature: [Signature]
Name: WOLFGANG EICHNER
Title: C.E.O.

Signature: [Signature]
Name: Tobias Hüttner
Title: C.S.O.

SIGNATURE PAGE TO AGREEMENT FOR PURCHASE AND SALE OF ASSETS

ASSIGNMENT INCLUDING COPYRIGHTS AND
RIGHTS OTHER THAN PATENT AND TRADEMARK RIGHTS AND
WAIVER OF MORAL RIGHTS

ASSIGNMENT INCLUDING COPYRIGHTS AND
RIGHTS OTHER THAN PATENT AND TRADEMARK RIGHTS AND
WAIVER OF MORAL RIGHTS

MetaCreations Corporation ("MetaCreations"), a corporation formed and operated under the laws of the state of Delaware, U.S.A., with its principal offices at 6303 Carpinteria Ave, Carpinteria, California 93013, U.S.A., hereby assigns egi.sys AG ("egi.sys") a corporation organized under the laws Germany with its registered office Hagellocher Weg 63, D-72070 Tubingen, Germany, MetaCreations' entire right, title, and interest, and all copyrights, mask works, waivers of moral rights, design rights, trade secrets and other intellectual property rights of any kind (other than patent and trademark rights), and any registrations and renewals thereof, in and to, and waives all of its moral rights with respect to, the works specified in the accompanying Schedule 1 and any and all prior and subsequent versions thereof (collectively, the "Works"), recognized or arising under judicial or statutory law or other legal authority. The preceding assignment of copyrights shall include all rights incident to copyright ownership to the maximum extent of applicable law, for all the residue now unexpired of the present term of any and all such copyrights and any term that may thereafter be granted during which the Works are entitled to copyright, together with all claims for damages by reason of past infringement of said copyrights, with the right to sue and recover for the same for the use and benefit of egi.sys.

This assignment is made for good and valuable consideration, receipt of which is hereby acknowledged.

This assignment is made and effective as of April , 2000.

METACREATIONS CORPORATION

Name:
Title:

SCHEDULE 1

WORKS IN WHICH THE COPYRIGHT IS REGISTERED

None

WORKS FOR WHICH COPYRIGHT APPLICATIONS ARE PENDING

None

UNREGISTERED WORKS FOR WHICH NO APPLICATIONS ARE PENDING

Poser
Office Advantage

THE FOLLOWING SOFTWARE IS SPECIFICALLY EXCLUDED FROM THE ASSIGNMENT:

Image IO
SreeD-PB
ASIport

[Schedule 1 to Assignment Including Copyrights]

ASSIGNMENT OF TRADE MARKS

ASSIGNMENT OF TRADE MARKS

MetaCreations Corporation ("MetaCreations"), a corporation formed and operated under the laws of the state of Delaware, U.S.A., with its principal offices at 6303 Carpinteria Ave, Carpinteria, California 93013, U.S.A., hereby assigns to egi.sys AG, a corporation organized under the laws of Germany with its registered office Hagellocher Weg 63, D-72070 Tubingen, Germany, MetaCreations' entire right, title, and interest, including common law rights in and to the following trademarks and service marks (whether written as one word or more than one word, stylized and unstylized, in all languages):

OFFICE ADVANTAGE™

POSER®

as well as the registered trademarks specified in the accompanying Schedule 1, together with the goodwill of the business connected with the use of and symbolized by said marks.

This assignment is made for good and valuable consideration, receipt of which is hereby acknowledged, and the amount of which is set forth in a separate statement.

This assignment is made and effective as of April , 2000.

METACREATIONS CORPORATION

Name:

Title:

SCHEDULE 1

REGISTERED TRADEMARKS

<u>Country</u>	<u>Mark</u>	<u>Registration Serial No.</u>
United States	POSER	1,963,998

[Schedule 1 to Assignment of Trade Marks]

SOFTWARE LICENSE AGREEMENT

SOFTWARE LICENSE AGREEMENT

This Agreement made as of the 7th day of April, 2000 by and between egi.sys AG having its principal place of business at Hagellocher Weg 63, D-72070 Tubingen, Germany ("BUYER") and METACREATIONS CORPORATION having its principal place of business at 6303 Carpinteria Ave, Carpinteria, CA 93013 ("LICENSOR"). Collectively, BUYER and LICENSOR may be referred to as the Parties.

RECITAL

WHEREAS LICENSOR and BUYER are parties to that certain Agreement for Purchase and Sale of Assets dated as of April 7, 2000 (the "Asset Purchase Agreement") pursuant to which, among other things, BUYER has agreed to purchase certain software from LICENSOR; and

WHEREAS BUYER desires to license the object code and source code for related software and LICENSOR is willing to grant BUYER a license to the object code and source code for such related software, subject to the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual promises, covenants and obligations contained herein, the parties agree as follows:

1. INTERPRETATION

Definitions. As used herein:

1.1 "Agreement" means this Software License Agreement, including any schedules attached hereto.

1.2 "Asset Purchase Agreement" means that agreement between LICENSOR and BUYER, dated April 7, 2000, wherein LICENSOR agrees to sell and license, and BUYER agrees to purchase and accept a license to, LICENSOR'S assets and interests in the computer graphics software products Poser and Office Advantage, belonging to LICENSOR. In the event that definitions or provisions of this Agreement conflict with those found in the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall control.

1.3 "Derivative Works" means any translation, incorporation into other products, materials or application, adaptation, modification, extension, upgrade, improvement, compilation, abridgment or other form in which the Transferable Software may be recast, transformed or adapted where such Derivative Work would infringe any intellectual, proprietary, moral, privacy, publicity, or industrial property rights, including, without limitation, audiovisual copyrights, in the Transferable Software.

1.4 "Documentation" means sufficient documentation to allow BUYER to fully and efficiently understand, maintain, modify and create Derivative Works from the Transferable Software and Non-Transferable Derivative Works from the Non-Transferable Software, including programming notes, maintenance manuals and user manuals.

Exhibit B -- Software License Agreement

1.5 "Non-Transferable Derivative Works" means any translation, incorporation into other products, materials or application, adaptation, modification, extension, upgrade, improvement, compilation, abridgment or other form in which the Non-Transferable Software may be recast, transformed or adapted where such Non-Transferable Derivative Work would infringe any intellectual, proprietary, moral, privacy, publicity, or industrial property rights, including, without limitation, audiovisual copyrights, in the Non-Transferable Software.

1.6 "Non-Transferable Software" means the object code and source code versions of the computer software described in Schedule "B" hereto, along with accompanying Documentation.

1.7 "Specifications" means the specifications for the Transferable Software and Non-Transferable Software contained in the Documentation.

1.8 "Territory" means worldwide.

1.9 "Transferable Software" means the object code and source code versions of the computer software described in Schedule "A" hereto, along with accompanying Documentation.

2. GRANT OF TRANSFERABLE LICENSE

2.1 License for Transferable Software. Subject to the terms and conditions hereof, and provided that BUYER satisfies all its payment obligations under the Asset Purchase Agreement, LICENSOR grants to BUYER and BUYER accepts from LICENSOR, a non-exclusive, paid-up, perpetual license within the Territory:

(a) to use, enhance, modify, translate, port, convert, reproduce, have reproduced, and create Derivative Works from the Transferable Software without restriction, including, without limitation, the right to develop, make, have made, use, offer to sell, sell, import, and distribute any product or item related to the Transferable Software and Derivative Works; and

(b) to grant sublicenses to third parties that permit third parties to make use of all or any part of the licenses granted to BUYER in this Section 2.1, including the right to sublicense the licenses granted hereunder.

2.2. Term. The term of the license granted in section 2.1 shall commence after BUYER accepts fulfillment of the conditions of closing in the Asset Purchase Agreement and BUYER pays LICENSOR the first payment obligation due under the Asset Purchase Agreement.

3. GRANT OF NON-TRANSFERABLE LICENSE

3.1 License for Non-Transferable Software. Subject to the terms and conditions hereof, and provided that BUYER satisfies all its payment obligations under the Asset Purchase Agreement, LICENSOR grants to BUYER and BUYER accepts from LICENSOR, a non-exclusive, paid-up, perpetual license within the Territory to use, enhance, modify, translate, port, convert, reproduce, have reproduced, and create Non-Transferable Derivative Works from the Non-Transferable Software without restriction, including, without limitation, the right to develop, make, have made, use, offer to sell, sell,

import, and distribute any product or item, in object code format only, related to the Non-Transferable Software or Non-Transferable Derivative Works.

3.2 Non-Transferability. The license granted in section 3.1 to the Non-Transferable Software is made solely to BUYER for BUYER'S use and may not, at any time, be assigned or transferred, in whole or in part, to any third party, nor may BUYER grant sublicenses to third parties that permit third parties to make use of all or any part of the license granted to BUYER in Section 3.1; except that, upon prior written approval from SELLER, which shall not be unreasonably withheld, BUYER may transfer the Non-Transferable Software only in conjunction with a sale of the entire POSER product, AND provided that any third party to which POSER is transferred accepts and assumes all obligations and restrictions of BUYER under this Software License Agreement and the Asset Purchase Agreement, including without limitation, the restrictions on transferability of the Non-Transferable Software, and, provided further, that the Non-Transferable Software is never used as part of a web play-back engine, that would compete with the MetaStream 3.0 product.

3.3. Term. The term of the license granted in section 3.1 shall commence after BUYER accepts fulfillment of the conditions of closing in the Asset Purchase Agreement and BUYER pays LICENSOR the first payment obligation due under the Asset Purchase Agreement.

3.4 Web Play Back Engine. Neither BUYER nor any permitted assignee of BUYER may use the Non-Transferable Software in a web play back engine, that would compete with the MetaStream 3.0 product.

4. DELIVERABLES

4.1 Deliverables. To the extent not already provided, LICENSOR shall deliver, in electronic format, the Transferable Software and Non-Transferable Software and Documentation to BUYER, upon the Closing Date of the Asset Purchase Agreement.

5. OWNERSHIP

5.1 Software and Modifications. Except for the rights and licenses granted to BUYER under this Agreement, LICENSOR shall retain all right, title and interest, including intellectual property rights in the Transferable Software and Non-Transferable Software. BUYER shall have all right, title and interest, including intellectual property rights in and to all enhancements, modifications, Derivative Works and Non-Transferable Derivative Works developed by or for BUYER, subject to the non-transferability provisions related to the Non-Transferable Software.

5.2 Proprietary Rights Notices. BUYER shall place such reasonable proprietary notices in respect of the Transferable Software and Non-Transferable Software in the printed or electronic user manual or on-line help for any products into which the Transferable Software or Non-Transferable Software is incorporated in the place where BUYER gives credit to other third party developers and in the manner and form as BUYER generally provides credit, identifies trade notices and lists copyright notices.

6. WARRANTIES AND REPRESENTATIONS

6.1 LICENSOR warrants and represents to BUYER as follows: (a) that the Transferable Software and Non-Transferable Software are original works of LICENSOR and will function substantially as described in the Documentation; (b) that LICENSOR is the sole and exclusive owner of the Transferable Software and Non-Transferable Software; (c) that LICENSOR has proper authority to license the Transferable Software and Non-Transferable Software to BUYER and that the Transferable Software and Non-Transferable Software and this license do not infringe any copyright, patent, trademark, trade secret or other proprietary or personal rights of any third party; (d) that LICENSOR and its employees have not entered into any oral or written agreement or understanding which would prohibit the licensing by LICENSOR of the Transferable Software and Non-Transferable Software to BUYER hereunder; (e) that the Transferable Software and Non-Transferable Software delivered to BUYER under this Agreement will not contain any "viruses"; (f) that the Transferable Software and Non-Transferable Software delivered to BUYER under this Agreement will not contain any CPU, data or use dependencies, or other protective devices which would restrict or prevent the use, copying or modification of the Transferable Software and Non-Transferable Software.

6.2 Limitations. The Limitations on Warranty Claims set forth in the Asset Purchase Agreement at Sections 13.1 and 13.3 apply fully to the warranties and representations set forth in this Section 6. The period for bringing any claim for breach of warranties and representations shall be the same period as provided in the Asset Purchase Agreement at Section 13.8 for making claims for indemnification.

7. INDEMNITY

7.1 Indemnity. LICENSOR shall, at its expense, defend or settle, and indemnify BUYER from and against any claim that the Transferable Software and Non-Transferable Software infringes any copyright, trade-mark, trade secret right, patent or other intellectual property right of any third party and will pay any costs, damages and legal fees finally awarded against BUYER as a result of any such claim, provided BUYER gives LICENSOR (i) prompt written notice of such claim, and (ii) the right to control the defense or settlement of such claim. BUYER has the right to participate, at its expense, in any defense or settlement of such claim. LICENSOR shall not settle any claim against BUYER without the consent of BUYER, which consent shall not be unreasonably withheld. The foregoing indemnification does not extend to any claim arising out of (i) a modification by BUYER of the Transferable Software or Non-Transferable Software to the extent such claim would not have arisen had such modification not been made, or (ii) the use of the Transferable Software or Non-Transferable Software other than as permitted under this Agreement.

7.2 Limitation. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ITS SOFTWARE OR ANY OTHER ASPECT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL LICENSOR OR BUYER BE LIABLE AND EACH PARTY COVENANTS NOT TO BRING ANY CLAIM FOR SPECIAL, OR INDIRECT DAMAGES SUCH AS, BUT NOT LIMITED TO, EXEMPLARY OR PUNITIVE DAMAGES (BUT NOT AFFECTING BUYER'S RIGHT TO CONSEQUENTIAL DAMAGES SUCH AS LOST PROFITS), WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN; PROVIDED, HOWEVER, THAT THIS

LIMITATION OF LIABILITY SHALL NOT LIMIT LICENSOR'S INDEMNIFICATION OBLIGATIONS SET FORTH ABOVE.

8. CONFIDENTIALITY

8.1 SELLER's Confidential Information. For the purposes of this Agreement, SELLER's Confidential Information means the Transferable Software, the Non-Transferable Software, Documentation, Specifications, and all other information related to the Transferable Software and Non-Transferable Software. It is agreed that SELLER's Confidential Information will not include information that: (a) BUYER can demonstrate was known to it prior to receipt of such information from SELLER; (b) is disclosed to the BUYER by a third party having the legal right to disclose such information and who is under no legal obligation to SELLER to maintain the confidentiality of such information; (c) is now, or later becomes part of the general public or industry knowledge, other than as a result of a breach of this Agreement by BUYER; or (d) BUYER can demonstrate was independently developed by it without the use of any of SELLER's Confidential Information.

8.2 BUYER's Protection of SELLER's Confidential Information. BUYER shall take all necessary precautions to protect SELLER's Confidential Information from disclosure, including such measures as BUYER takes with respect to its own confidential information. BUYER agrees to protect SELLER's Confidential Information with a fiduciary duty and will adopt and maintain procedures to protect SELLER's Confidential Information commensurate with such duty.

8.3 Treatment of Confidential Information. The employees, affiliates and shareholders of BUYER will not be given access to the SELLER's Confidential Information except on a "need to know" basis. BUYER shall not in any way duplicate all or any part of the SELLER's Confidential Information, except in accordance with the terms and conditions of this Agreement. BUYER shall have an appropriate agreement with each of its employees, contractors and agents having access to the SELLER's Confidential Information sufficient to enable BUYER to comply with all the terms of this Agreement. BUYER shall use reasonable efforts to protect SELLER's Confidential Information from material harm, damage, theft, tampering, sabotage, interference or unauthorized use.

8.4 Confidentiality of Non-Transferable Software. BUYER acknowledges that the Non-Transferable Software is highly confidential information of MetaCreations, the disclosure of which will cause MetaCreations substantial and irreparable harm. BUYER covenants specifically that it will not permit disclosure of the Non-Transferable Software and SELLER's Confidential Information related to it to any third party at any time for any reason.

8.5 Breach of Confidentiality Provisions. Any breach of these confidentiality provisions by BUYER shall not be subject to the limitations imposed on bringing claims for breach of warranties and representations, or the limitations on claims for indemnification set forth in Article 13 of the Asset Purchase Agreement.

8.6 Equitable Relief. In recognition of the unique and proprietary nature of the information disclosed by SELLER, it is agreed that, in the event of a breach of this Article 8, SELLER shall be entitled to seek equitable relief, including without limitation, injunctive relief and specific performance, in addition to any other remedies provided hereunder or available at law.

8.7 Survival. The Confidentiality provisions set forth in this Article 8 shall survive any termination of this Agreement or the Asset Purchase Agreement.

9. NOTICES

9.1 Notices. The notice provisions of the Asset Purchase Agreement shall apply to and govern this Agreement.

10. GENERAL

10.1 Termination. In the event that the Asset Purchase Agreement terminates, this Agreement will be terminated simultaneously.

10.2 Applicable Law. The choice of law and arbitration provisions of the Asset Purchase Agreement shall apply to and govern this Agreement.

10.3 Survival. The provisions of sections 1, 5.1, 8, 9 and 10 shall survive any termination of this Agreement until expressly waived in writing by the party for whom they are of benefit or terminated by a further written agreement of the parties. In the event that this Agreement or the Asset Purchase Agreement is terminated due to a material breach of SELLER, Sections 6 and 7 shall survive, as well.

10.4 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision or part thereof which is necessary to render the provision valid, legal and enforceable, shall be severed from the Agreement and the other provisions and the remaining part thereof of that provision shall remain in full force and effect; provided that the essential bargained-for performance of the parties shall not thereby have been impaired.

10.5 Further Assurances. The parties agree to do all such things and to execute such further documents as may reasonably be required to give full effect to this Agreement.

10.6 Entire Agreement. This Agreement and the Asset Purchase Agreement constitute the entire agreement between the parties concerning the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, expressed, implied or statutory, between the parties other than as expressly set forth in this Agreement and the Asset Purchase Agreement.

10.7 Remedies. The remedies expressly stated in this Agreement and the Asset Purchase Agreement shall be the sole remedies available to the Parties for breaches of this Agreement.

10.8 Waiver. No waiver of any provision of this Agreement by a party shall be enforceable against that party unless it is in writing and signed by an authorized officer of the waiving party.

10.9 Assignment. Neither party may assign this Agreement or the rights granted hereunder without the prior written consent of the other which consent shall not be unreasonably withheld; provided that either may assign this Agreement to a successor corporation in the event of a merger or other

reorganization in which it is not the surviving entity; and provided further that either party may assign all or any part of its rights under this Agreement to a wholly-owned subsidiary of such party.

10.10 Counterparts. This Agreement may be executed by original or facsimile signature and in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

10.11 Independent Contractors. The parties to this Agreement are independent contractors. No relationship of principal to agent, master to servant, employer to employee or franchisor to franchisee is established hereby between the parties. Neither party has the authority to bind the other or incur any obligation on its behalf.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

EGLSYS AG

PER: _____
Name:
Title:

PER: _____
Name:
Title:

METACREATIONS CORPORATION

PER: _____
Name:
Title:

[SIGNATURE PAGE FOR LICENSE AGREEMENT]

SCHEDULE "A"

TRANSFERABLE SOFTWARE

The Transferable Software consists of the following:

Image IO [to the extent such is incorporated into any final or development version of POSER or OFFICE ADVANTAGE]

MC Core [to the extent such is incorporated into any final or development version of POSER or OFFICE ADVANTAGE]

ASIport [to the extent such is incorporated into any final or development version of POSER or OFFICE ADVANTAGE]

in all available languages and operating systems.

SCHEDULE "B"

NON-TRANSFERABLE SOFTWARE

The Non-Transferable Software consists of the following:

SreeD-PB [to the extent such is incorporated into any final or development version of POSER or OFFICE ADVANTAGE]

in all available languages and operating systems.

Exhibit B -- Software License Agreement

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ESCROW AGREEMENT

Schedule 1.1

Acquired Software

The Acquired Software consists of the following:

Products	Operating Systems	Hardware Platform(s)
<u>All Versions of POSER</u>	Windows 95, 98 Windows NT 4.0 or greater Mac OS 7.6 - 9	IBM PC Compatible Macintosh
<u>All Versions of OFFICE ADVANTAGE</u>	Windows 95, 98, 2000 Windows NT	IBM PC Compatible

Schedule 1.2

Acquired Patent Rights

c Acquired Patent Rights consist of the following:

NONE

Content Contracts

The Content Contracts consist of the following:

<u>Date</u>	<u>Parties</u>	<u>Document</u>
<u>General Licensing</u>		
November 6, 1995	Larry Weinberg & Fractal Design (now MetaCreations)	Employment Agreement
June 17, 1994	<i>Same</i>	Software License & Distribution Agreement
November 6, 1995	<i>Same</i>	Amendment to Software License and Distribution Agreement
June 15, 1998	<i>Same</i>	Amendment No. 2 to Software License and Distribution Agreement
February 10, 2000	<i>Same</i>	Memo re Status of Software License and Distribution Agreement

Content & Consulting License Agreements

April 19, 1999	Lionhearth Technologies & MetaCreations	Software Technology Licensing Agreement (Poser 4)
April 30, 1999	Zygote Media Group and MetaCreations	Content License Agreement (Poser 4)
May 23, 1999	Credo Interactive, Inc. and MetaCreations	Content License Agreement (Poser 4)
May 28, 1999	Hunyes Publishing Co. and MetaCreations	Content License Agreement (Poser 4)
May 28, 1999	Forge Studios and MetaCreations	Content License Agreement (Poser 4)

Schedule 1.13

Domain Names

The Domain Names consist of the following:

Office-Advantage.com
Poscr4.net

Schedule 1.17

Excluded Software

With respect to the Acquired Assets, the following technology is excluded:

Foundational Technology which is comprised of:

Image IO
SreeD-PB
ASlport

*Note: With respect to the Foundational Technology, Seller will issue Buyer a non-exclusive, fully paid up, transferable license to the Foundational Technology, in substantially the form as Exhibit B.

Excluded Technology:

Buyer does not acquire rights whatsoever to any of the following products:

1. MetaStream
2. MetaFlash
3. Canoma
4. Carrara
5. Dance Studio
6. Headline Studio
7. MetaSquares
8. KPT
9. KPT Vector Effects
10. Ray Dream Studio
11. Bryce
12. Painter

Schedule 1.34

Trademarks

The Trademarks consist of the following:

Mark Title	Type	Class	Registration/ Filing Date	Registration Serial#
OFFICE ADVANTAGE	TM	09	4/25/99	75/691,150
POSER	®	09	3/26/96	1,963,998

Schedule 2.1

Purchased Assets

The Purchased Assets consist of the following:

1. Intellectual Property Assets
 - Acquired Software
 - Acquired Patent Rights
 - Domain Names
 - Trademarks
 - To the extent they exist, any plans or programs developed by Seller for future business, directly in connection with the Acquired Software.
2. Contracts
 - Content Contracts
 - Proprietary Rights Agreements
 - Third Party Agreements
3. Contracts listed in **Schedule 2.5** to the extent that such agreements are assigned, licensed, transferred or conveyed to Buyer pursuant to the provisions of the Agreement.
4. Business Records, except to the extent Seller is entitled to Shared Use.
5. Customer List Assets, except to the extent Seller is entitled to Shared Use.

Schedule 2.2

Permitted Encumbrances

The Permitted Encumbrances consist of the following:

Product	Encumbering Party	Document	Encumbrance
Poser	Unisys	License	Buyer will be required to obtain license agreement for LZW compression technology, if Buyer does not already have a license with Unisys
Poser	Lionhearth Technologies	Content License	5 NFR copies to Lionhearth of further releases containing Lionhearth content
Poser	Zygote Media Group	Content License	Hot link to Zygote through 9/30/00; Zygote logo on box; direct mail access and NFR copies of future releases
Poser	Credo Interactive, Inc.	Content License	Hot link to Credo until 9/30/00; 3 NFR copies of future releases
Poser	Hunyes Publishing Co.	Content License	Hot link through 9/30/00; 3 NFR copies of future releases; direct mail access
Poser	Forge Studios	Content License	3 NFR copies of future releases; hot link through 10/31/00

Schedule 2.3

Excluded Assets

The Excluded Assets consist of the following:

1. The Excluded Software.
2. Contracts and Content Licenses except to the extent that such Contracts and Content Licenses are assumed under the Agreement and Schedule 2.2 or 2.5.
3. Accounts receivable relating to the Purchased Assets that exist on the Closing Date, and all claims and contract rights relating thereto.
4. International Distribution Agreements.

Product	Party	Document	Description of Exclusion
All Products	Apacabar	Software Distribution Agmt	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	Computer Unlimited	Software Distribution Agmt	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	Esselte BV	Software Distribution Agmt	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	Macron LTD	Software Distribution Agmt	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	Macrotron	Software Distribution Agmt	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	Marubeni	Software Distribution Agmt	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	PICO S.R.L.	Software Distribution Agmt	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	Service & Distribution Benelux NV	Software Distribution Agmt	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	Software Spectrum LTD	Software Distribution Agmt	The Seller retains the rights to accounts receivable as of the Closing Date

Excluded Assets (Continued)

International Distribution Agreements (Continued)

Product	Party	Document	Description of Exclusion
All Products	Tayttopaa	Software Distribution Agmt	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	U.S. TriWorks LLP	Software Distribution Agmt	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	Weblink International, Inc.	Software Distribution Agmt	The Seller retains the rights to accounts receivable as of the Closing Date

5. Domestic Distribution Agreements.

Product	Party	Document	Description of Exclusion
All Products	Digital River, Inc	Electronic Software Distribution Agmt	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	The Douglas Stewart Co.	Distribution Agreement	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	Ingrain Micro Inc.	Distribution Agreement	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	Merisel (formerly Softsel) Computer Products	Distribution Agreement	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	Tech Data Corporation	Software Distribution Agreement	The Seller retains the rights to accounts receivable as of the Closing Date
All Products	MetaStream.com Corp. and Computer Associates International, Inc.	Amended and Restated Licensing and Services Agreement	The Seller retains the rights to accounts receivable as of the Closing Date

Third Party Agreements and Required Notices

A. Third Party Agreements

1. Content Contracts.
2. The rights and obligations, including customer and technical support, related to the Acquired Software arising under Seller's standard form Site License Agreement.
3. The end user license agreements included in the Acquired Software.

B. Required Notices

All Content Contracts listed in Schedule 1.11.

Buyer Assumed Obligations

The Assumed Obligations consist of the following:

1. Technical and Customer Support. As described in Article 16 of the Agreement, the obligations to provide technical support and customer service for the versions of the Acquired Software that Seller is currently supporting.

Additionally, during the transition period Buyer will cooperate with Seller in good faith to the extent necessary to ensure quality service to the end users of the Acquired Software.

2. Purchased Assets. Seller's obligations, if any, arising from and after the Closing Date under the Purchased Assets as described in Schedule 2.1.
3. Permitted Encumbrances. Seller's obligations arising from and after the Closing Date under the Permitted Encumbrances as described in Schedule 2.2.
4. Third Party Agreements. Seller's obligations arising from and after the Closing Date under the Third Party Agreement as described in Schedule 2.5 (A).

Proprietary Information and Inventions Agreement

Seller's EMPLOYEE INVENTION, COPYRIGHT, AND SECRECY AGREEMENT follows:

Schedule 7.8

Seller Financial Statements

The Seller Financial Statements consist of the following documents:

- Form 10K 1999

Schedule 10.1

Employees

The Employees consist of the following:

Name Title Salary 1999 Bonus Hire Date

POSER

Larry Weinberg	Lead Engineer	\$150,000	\$40,000	11/16/95
Seath Ahrens	Sr. Software Engineer	\$95,000	\$4,000	3/6/96
Jianhua Shen	Sr. Software Engineer	\$90,000	\$4,000	9/9/97
Daniel Huver	QA Engineer	\$47,800	\$1,500	2/15/99

OFFICE ADVANTAGE

None