COMPANY Name:	**<<TAG: COMPANY NAME>>**
MS Agreement Number:	**<<TAG: AgrNum>>**
Effective Date:	**<<TAG: EffDate>>**
Expiration Date:	**<<TAG: EndDate>>**

WINDOWS MEDIA COMPONENTS FINAL PRODUCT AGREEMENT

This Windows Media Components Final Product Agreement ("Agreement") is effective as of <<AgrEffDate>>, (the "Effective Date") by and between Microsoft Corporation, a Washington corporation, on behalf of itself and its Affiliates, ("Microsoft") and <<Company Corp Name>>, a corporation organized under the laws of <<Incorp>>, ("Company").

1. **Definitions**

   1.1 "Affiliate" means, with respect to any legally recognizable entity, any other such entity Controlling, Controlled by, or under common Control with such entity. "Control" means direct or indirect (i) ownership of more than fifty percent (50%) of the outstanding shares representing the right to vote for members of the board of directors or other managing officers of such entity, or (ii) for an entity that does not have outstanding shares, more than fifty percent (50%) of the ownership interest representing the right to make decisions for such entity. An entity shall be deemed an Affiliate only so long as such Control exists.

   1.2 "Channel Entities" means Company's authorized distributors, resellers, dealers, and others in its distribution channels for Company's own Final Products.

   1.3 "Confidential Information" means nonpublic information regarding the Licensed Technology or Developed Technology (including nonpublic information regarding Company's distribution of Developed Technology) which (i) Microsoft or Company designates as confidential; or (ii) under the circumstances surrounding disclosure, ought to be treated as confidential. "Confidential Information" does not include information that: (x) is or subsequently becomes generally available without breach of any obligation owed to the disclosing party; (y) is or subsequently becomes known to the receiving party from a source other than the disclosing party without any breach of an obligation of confidentiality owed with respect to such Confidential Information; or (z) is independently developed by the receiving party without reference to any Confidential Information supplied by the disclosing party.

   1.4 "Developed Technology" means the modified version(s) of the Licensed Technology, in object code form, that has been (i) developed by Company under a Windows Media Components Interim Product Agreement or a Windows Media Format Components Source Development Agreement with Microsoft Corporation; (ii) developed by another Microsoft Windows Media Licensee under a Windows Media Components Interim Product Agreement or a Windows Media Format Components Source Development Agreement with Microsoft Corporation and supplied to Company under a separate agreement between Company and such Microsoft Windows Media Licensee; or (iii) supplied to Company by Microsoft under this Agreement.

   1.5 "Disclosed Standard" means any standard that is (y) promulgated by any standards development organization, consortium, trade association, special interest group, or like entity, for the purpose of widespread adoption; and (z) disclosed by Microsoft as being implemented, in whole or in part, within the Licensed Technology. Solely by way of illustration, a Disclosed Standard may include, but is not limited to, a technical specification promulgated by organizations like the ITU, ISO, IEC, 3GPP, MPEG, W3C, IETF (various standard development organizations); Infiniband (various trade associations); UPnP (various consortia); USB, SALT Forum (various special interest groups), OMA, etc. Microsoft may disclose a Disclosed Standard to Company at any time during the Term of this Agreement via written or email notice, or via a prominent posting on a Microsoft web site relating to the licensing program for the Licensed Technology, or via the inclusion of such information in the Licensed Technology. Company acknowledges that as of the Effective Date of the Agreement, the standard promulgated by SMPTE as "VC-1" ("SMPTE VC-1 Standard") is a Disclosed Standard implemented in Windows Media Video 9.

   1.6 "Final Product" means a software or hardware product in a final form of manufacturing with a fully functional user interface that is intended for distribution to end users (e.g. media player application, cellular phone, motor vehicle radio, portable digital music player or handheld Internet appliance, etc.).

   1.7 "Interim Product" means a software or hardware product or integrated circuit (e.g., silicon implementation, digital signal processing chip, reference design, software SDK, optical drive mechanism, etc.) that is designed to be incorporated into or combined with a Final Product.

   1.8 "Licensed Technology" means the Windows Media technologies identified as licensed in the applicable Product and Royalty Tables in **Exhibit A** and **Exhibit B**.

   1.9 "Microsoft Windows Media Licensees" means any entity that is licensed under a Windows Media Components Interim Product Agreement, a Windows Media Format Components Source Development Agreement, a Windows Media Format Components Distribution License, Windows Media Components Final Product Agreement or like agreement with Microsoft or an Affiliate of Microsoft.

   1.10 "Necessary Claims" means any and all claim(s), but only such claim(s), of a patent or patent application that (i) are owned, controlled by a party subject to this Agreement, or sublicensable by such party without payment of royalties to or requiring the consent of an unaffiliated third party, now or at any future time; and (ii) are necessarily infringed in connection with the use or implementation of the Licensed Technology pursuant to the terms and conditions of this Agreement. Notwithstanding the foregoing, Necessary Claims do not include any claims: (x) to any enabling technologies that may be necessary to make or use any product or service that includes the

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Licensed Technology (e.g., enabling semiconductor manufacturing technology, compiler technology, object oriented technology, operating system technology, protocols, programming interfaces, etc.); or (y) covering the implementation of other specifications, technical documentation or technology merely referred to in the Licensed Technology; or (z) covering a Disclosed Standard to the extent such claims are available for licensing via a patent pool or other industry-recognized means.

1.11 "PC Software" means software for a general purpose personal computer (including laptop, tablet, or desktop form factors) or computer server, which general purpose personal computer or computer server both (i) is designed and marketed for operating a wide variety of productivity, entertainment, and/or other software applications from unrelated third party software vendors; and (ii) runs a general purpose consumer operating system (e.g., Microsoft Windows XP, Microsoft Windows Vista, Apple Macintosh OS X, Red Hat Desktop Linux, etc.) or computer server operating system (e.g., Windows 2003 Server, Solaris, etc.).

1.12 "Prototypes" means a version of a Final Product that is developed and/or distributed by Company free of charge solely for demonstration and press review purposes, as well for non-commercial testing of hardware products.

1.13 "Royalty Reporting Guidelines" means the then-current format and instructions for electronic submission of royalty reports to Microsoft. Microsoft reserves the right to reasonably modify the Royalty Reporting Guidelines upon sixty (60) days notice.

2. Affiliates and Third Party Brands

2.1 Affiliates. The rights and obligations under this Agreement extend to each of Company's Affiliates just as if each Affiliate had executed this Agreement itself. Company may distribute copies of the Deliverables it receives to each of its Affiliates so long as Company uses a secure means to do so. Company shall cause all of its Affiliates to comply with the terms and conditions of this Agreement, and Company shall be jointly and severally liable with each of its Affiliates for breach of this Agreement by Company or any Affiliate. If Microsoft terminates this Agreement following a breach by Company or any Affiliate, this Agreement terminates with respect to Company and all of its Affiliates. All remedies available to Microsoft, including the ability to obtain injunctive relief, apply to Company Affiliates.

2.2 Third Party Brands. The licenses granted in this Agreement are limited to the distribution of Developed Technology in Final Products bearing the trademarks and brand names of Company and Company's Affiliates. Company is not licensed to, and Company shall not, distribute Developed Technology in Final Products bearing solely the trademarks or brand names of any third parties unless Company executes a third party brand schedule in the form substantially similar to **Exhibit C**.

3. License Grants and Limitations; Ownership

3.1 Distribution Copyright and Trade Secret License. Microsoft grants to Company a non-exclusive, personal, non-transferable, non-sublicensable, non-assignable, royalty-bearing, world-wide license under Microsoft's copyrights and trade secret rights in the Licensed Technology to:

(a) reproduce, install and test Developed Technology on, into, or with Final Product(s);

(b) provide Developed Technology incorporated into Interim Products in object code form to an Authorized Contractor to reproduce, install, and test Developed Technology on or into Final Product(s), on behalf of Company, subject to the restrictions in Section 4.8;

(c) obtain Developed Technology incorporated into Interim Products in object code form and reproduce, install and test such Developed Technology on, into or with Final Products and otherwise use such Developed Technology in the development of Final Products;

(d) distribute Developed Technology in object code form to other Microsoft Windows Media Licensees subject to the terms of their respective licenses with Microsoft and the restrictions in Section 4.9;

(e) distribute to end users, directly or through Company's Channel Entities, Developed Technology included in Final Products;

(f) distribute to end users via web or normal distribution channels updates to copies of Developed Technology integrated into previously distributed Final Products so long as (i) such updates are capable of executing only on the specific Final Product(s) that they are designed to update; and (ii) Company takes commercially reasonable steps in Company's industry to protect any such update from any reverse engineering; and

(g) distribute to end users via web or normal distribution channels Developed Technology as part of an update for a previously purchased Final Product(s) so long as (i) such Developed Technology is capable of executing only on the Final Product that it is designed to update; (ii) Company takes commercially reasonable steps in Company's industry to protect any such update from any reverse engineering; and (iii) the product with the Developed Technology incorporated complies with all of the terms and conditions relating to Final Products under this Agreement as if Company had distributed the original Final Product with the Developed Technology.

3.2 Limited Patent License. Microsoft grants to Company a non-exclusive, personal, non-transferable, non-sublicensable, non-assignable, royalty-bearing, world-wide license under Microsoft's Necessary Claims to:

(a) use (for internal purposes only) and make (subject to the requirements in Section 4.8) Developed Technology in Final Products;

(b) sell, offer for sale, import and otherwise distribute Developed Technology included in Final Products to end users directly or through Company's Channel Entities;

(c) sell, offer for sale, import and otherwise distribute Developed Technology in object code form to other Microsoft Windows Media Licensees subject to the terms of their respective licenses with Microsoft and the restrictions in Section 4.9;

(d) sell, offer for sale, import and otherwise distribute to end users via web or normal distribution channels updates to copies of Developed Technology integrated into previously distributed Final Products so long as (i) such updates are capable of executing

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only on the specific Final Product(s) that they are designed to update; and (ii) Company takes commercially reasonable steps in Company's industry to protect any such update from any reverse engineering; and

(e) sell, offer for sale, import and otherwise distribute to end users via web or normal distribution channels Developed Technology as part of an update for a previously purchased Final Product(s) so long as (i) such Developed Technology is capable of executing only on the Final Product(s) that it is designed to update; (ii) Company takes commercially reasonable steps in Company's industry to protect any such update from any reverse engineering; and (iii) the product with the Developed Technology incorporated complies with all of the terms and conditions of this Agreement as if Company had distributed the original Final Product(s) with the Developed Technology.

Microsoft agrees that any transfer or assignment of a patent or patent application having Microsoft's or its Affiliates' Necessary Claims to a third party shall be subject to this Agreement and shall not affect the license described above. Any purported assignment or transfer of rights in derogation of the foregoing requirement shall be null and void.

3.3 <u>License Limitations.</u>

(a) The licenses granted in Sections 3.1 and 3.2 do not include the right to, and Company shall not, distribute the Licensed Technology (or derivative works thereof, including Developed Technology) in any manner that would cause any Licensed Technology component to become subject to any of the terms of the Excluded License. An "<u>Excluded License</u>" is any license that requires as a condition of use, modification and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (x) disclosed or distributed in source code form; (y) licensed for the purpose of making derivative works; or (z) redistributable at no charge.

(b) The licenses granted in Sections 3.1 and 3.2 do not include the right to, and Company shall not, develop or distribute any Final Products that are designed, manufactured, reproduced, sold, leased, licensed or otherwise transferred through or by Company to a third party (or to customers of, or as directed by, that third party) for the purpose of attempting to circumvent the terms of Section 7 or any obligation to make payments to Microsoft that otherwise would apply to such Final Product if manufactured, sold or otherwise distributed by such third party under a license from Microsoft.

3.4 <u>Prototypes.</u> Company may distribute up to fifty (50) Prototypes to each of Company's business customers on a royalty-free basis solely for each such business customer's internal evaluation purposes. For Prototypes which are cellular telephones, Company may distribute five hundred (500) of such Prototypes to each of its carrier operators, solely for each such carrier operator's testing of the Prototypes and such carrier operators' network. In addition to compliance with the restrictions set forth elsewhere in Sections 3 and 4, Company agrees to the following condition: the Licensed Technology included in such Prototypes must contain the following statement in a prominent position on the physical housing of the device, the header files of the code, or in the accompanying documentation, as applicable: "This product includes technology owned by Microsoft and cannot be used or distributed without a license from Microsoft." Company shall use commercially reasonable efforts in Company's industry to ensure that the creation and distribution of the Prototypes shall not in any way disclose or reveal the source code or trade secrets of the Licensed Technology or related Confidential Information of Microsoft or its suppliers. Notwithstanding the forgoing, Company may distribute the Licensed Technology as part of such Prototypes.

3.5 <u>Scope of License From Microsoft.</u>

(a) Microsoft does not license to Company any rights with respect to any portion of Interim Products or Developed Technology other than the underlying Licensed Technology as embodied in the Developed Technology. All other intellectual property in Interim Products (if any) included in Company's Final Product or Developed Technology must be licensed by Company directly from the Microsoft Windows Media Licensee from whom Company obtained the Interim Product or Developed Technology.

(b) Company agrees that Microsoft is not in any manner responsible or liable to Company or to any third party with respect to (i) Interim Products supplied by other Microsoft Windows Media Licensees; and/or (ii) the actions or omissions of other Microsoft Windows Media Licensees, including but not limited to negligence or any statements made by Microsoft Windows Media Licensees regarding the Interim Products.

(c) Company agrees that Developed Technology provided to Company from another Microsoft Windows Media Licensee does not convey any rights to any Microsoft intellectual property, and Company agrees not to use or distribute such Developed Technology without complying with the terms of this Agreement.

3.6 <u>Ownership.</u>

(a) Except as expressly licensed to Company under this Agreement, Microsoft reserves all other right, title and interest in and to the Licensed Technology.

(b) Subject to Microsoft's ownership of the underlying Licensed Technology, Company reserves all other right, title and interest in and to its Final Products.

3.7 <u>No Implied Licenses.</u> Under no circumstances should anything in this Agreement be construed as granting to Company, by implication, exhaustion, estoppel or otherwise, (i) a license to any Microsoft technology other than the Licensed Technology; or (ii) any additional license rights for the Licensed Technology other than the licenses expressly granted in this Agreement.

4. Company Conditions and Obligations

4.1 <u>Servers.</u> Company shall not use the Networking Protocols components of the Licensed Technology to design or develop any technology or product whose primary purpose is to distribute digital audio and/or video content (including, without limitation, a cache, proxy, gateway or streaming server).

4.2 <u>Proprietary Rights Notices.</u> To the extent reasonably requested by Microsoft, Company agrees to display a proprietary rights notice in the form requested by Microsoft to protect Microsoft's rights in the Licensed Technology. Company shall not remove or obscure and shall retain any copyright, trademark or patent notices that appear in the Licensed Technology.

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4.3   Trademark Usage. Company shall not refer to any Developed Technology in any manner that may create the appearance that Company is the owner or developer of the Licensed Technology.

4.4   Reverse Engineering.

(a)   Company shall not reverse engineer, decompile, disassemble, or otherwise access the source code for any Developed Technology except (i) as permitted by applicable law which cannot be waived by this subsection, or (ii) as authorized by separate agreement by Microsoft.

(b)   Company shall use commercially reasonable efforts to design Final Products to prevent third parties from reverse engineering, decompiling or disassembling Developed Technology and to prevent end users from discovering the source code of any component of the underlying Developed Technology.

4.5   Use by Other Products. To the extent that the Licensed Technology functionality included in the Developed Technology component of Final Products is available via an API, interface, or other similar mechanism created by Company, Company shall: (i) close such mechanisms; or (ii) use such mechanisms while preventing software applications other than Company's Final Products from accessing such API, interface or other similar mechanism. For avoidance of doubt, Final Products may be connected to or controlled by other products via an interface; provided that such reasonable measures are taken to prevent use of the Developed Technology in or by such software applications other than Company's Final Products.

4.6   Final Product Labeling. Company shall place the following statement in a prominent position in at least one of the following places: (i) on the physical housing of each Final Product, (ii) the header files of the code, or (iii) in the accompanying documentation: "This product is protected by certain intellectual property rights of Microsoft. Use or distribution of such technology outside of this product is prohibited without a license from Microsoft."

4.7   PROHIBITED USES.   COMPANY IS EXPRESSLY PROHIBITED FROM MANUFACTURING, MARKETING OR DISTRIBUTING FINAL PRODUCTS THAT ARE DESIGNED TO USE LICENSED TECHNOLOGY IN THE OPERATION OF NUCLEAR FACILITIES, IN AIRCRAFT NAVIGATION, IN AIRCRAFT COMMUNICATION, IN AIRCRAFT FLIGHT CONTROL, IN AIRCRAFT AIR TRAFFIC CONTROL SYSTEMS, OR IN OTHER DEVICES OR SYSTEMS IN WHICH SERIOUS INJURY OR DEATH TO THE OPERATOR OF THE DEVICE OR SYSTEM, OR TO OTHERS DUE TO A MALFUNCTION (INCLUDING, WITHOUT LIMITATION, SOFTWARE RELATED DELAY OR FAILURE) COULD REASONABLY BE FORESEEN.

4.8   Authorized Contractors. If Company engages third party installers, testers and/or contract manufacturers who are not themselves Microsoft Windows Media Licensees ("Authorized Contractors") to reproduce, install, or test Developed Technology on or into Company's Final Products, Company shall

(a)   Notify Microsoft in writing of the identity of the Authorized Contractor prior to engaging the Authorized Contractor;

(b)   Engage such Authorized Contractors under a written agreement that obligates the Authorized Contractor to the same (or greater) obligations relative to the Developed Technology as Company agrees to under this Agreement;

(c)   Use commercially reasonable efforts to correct any breach of this Agreement caused by an Authorized Contractor immediately upon discovery of such breach. Such action shall include, without limitation, providing written notice to such Authorized Contractor to suspend its activity related to the Developed Technology under its agreement with Company; and

(d)   Agree to be liable for any acts or omissions by the Authorized Contractor which if performed or not performed by Company would be a breach of this Agreement.

4.9   Distribution of Developed Technology to Microsoft Windows Media Licensees.

(a)   Prior to any distribution of Developed Technology to other Microsoft Windows Media Licensees ("Potential Authorized Licensee"), Company shall check the list of Microsoft Windows Media Licensees made available by Microsoft on a website designated for such purpose or otherwise ("Licensee List").   As of the Effective Date, such website is accessible at http://wmlicense.smdisp.net/wmcomponents. If such Potential Authorized Licensee is listed as a Microsoft Windows Media Licensee, Company may distribute such Developed Technology to such Potential Authorized Licensee. If such Potential Authorized Licensee is not listed, Company must submit to Microsoft in writing and via email to the general notice contact in **Exhibit D** a request for authorization to distribute Developed Technology to such Potential Authorized Licensee. Microsoft will use commercially reasonable efforts to respond to such request to confirm whether the Potential Authorized Licensee is a Microsoft Windows Media Licensee within twenty (20) business days of receipt. Microsoft will provide Company with written notice indicating whether or not Company's Potential Authorized Licensee is a Microsoft Windows Media Licensee.

(b)   Microsoft may provide Company with written or electronic notice that a Microsoft Windows Media Licensee is no longer a Microsoft Windows Media Licensee ("Former Licensee"). Within ten (10) business days of receiving such notice, Company shall cease all distribution or licensing of Developed Technology to such Former Licensee. In addition, Company shall check the Licensee List at least once every calendar quarter in order to verify that each third party that Company has distributed Developed Technology under Section 4.9(a) is still a Microsoft Windows Media Licensee. If, when Company checks the Licensee List, a third party is no longer listed as a Microsoft Windows Media Licensee, Company shall, within ten (10) business days of the date that Company learns the third party is a Former Licensee, cease all distribution or licensing of Developed Technology to such Former Licensee.

(c)   In all written agreements Company enters into with Microsoft Windows Media Licensees for the distribution of Developed Technology, Company shall include the following term: "This product includes technology owned by Microsoft and recipient is not licensed to use or distribute such technology without a license from Microsoft."

5.   **Royalties and Payments**

5.1   Windows Media Video 9 Fees.

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(a) <u>Discounted Royalties.</u> If (i) a VC-1 Pool is created as described in Section 7.3 below, (ii) Microsoft is a licensor under the VC-1 Pool, (iii) Company provides written notice to Microsoft that it has executed the VC-1 Patent Portfolio License Agreement offered by the VC-1 Pool, and (iv) Company pays all applicable royalties to the VC-1 Pool, then Company will pay to Microsoft the discounted royalties set forth in the applicable Product and Royalty Schedule, **in Exhibit A and Exhibit B,** with respect to its distribution of Microsoft Windows Media Video Decoder and/or Encoder Technology, which may include Microsoft's Necessary Claims not licensed under the VC-1 Patent Portfolio License Agreement, provided that Company remains a VC-1 Pool licensee and pays all applicable royalties to the VC-1 Pool.

(b) <u>Refunds</u>. If Company pays royalties to the VC-1 Pool for units that Company had previously paid royalties to Microsoft under this Agreement or a Prior Agreement, and the royalties paid to Microsoft are above the discounted royalties set forth in the applicable Product and Royalty Schedule in Exhibit A and B, then Company may resubmit their royalty report to Microsoft using such discounted royalties. Upon receipt by Microsoft of a written confirmation from the VC-1 Pool administrator which includes the units and dates reported by Company, and Microsoft's verification that Company's original report accurately shows amounts greater than the resubmitted report, Microsoft will issue a credit to Company for the difference between the original and resubmitted reports. Microsoft may, in its sole discretion, apply such credit to any unpaid amounts due and owing by Company under this Agreement.

5.2 <u>Royalty Calculation and Payment.</u>

(a) <u>General.</u> For each calendar year of the Term, Company must elect to pay royalties using one of two methods for each of the Licensed Technology components licensed: (i) the actual cumulative royalties applicable for each Licensed Technology component as described in the applicable Product and Royalty Schedule in **Exhibit A** or **Exhibit B** ("<u>Per Unit Payment</u>"); or (ii) a single upfront lump sum payment for each calendar year entitling Company to distribute unlimited quantities of the Licensed Technology component during the calendar year ("<u>Annual Fee Payment</u>").

If Company desires to pay the Annual Fee Payment for any of the Licensed Technology component(s) for any calendar year during the Term, then within fifteen (15) days following execution of this Agreement (for the first full or partial calendar year) and within sixty (60) days following the first day of each calendar year thereafter (for successive calendar years), Company shall submit the report required under Section 5.3(d) for each of the Licensed Technology components for which Company elects the Annual Fee Payment. If Company does not provide the report electing the Annual Fee Payment in accordance with this Section 5.2(a) and Section 5.3(d), Company will be deemed to have selected the Per Unit Payment model for the applicable calendar year and royalty payments for such calendar year will be calculated pursuant to Section 5.2(b). Company may not switch from a Per Unit Payment to an Annual Fee Payment during any calendar year.

(b) <u>Per Unit Payment Calculations.</u> If Company elects to pay royalties on the Per Unit Payment basis for a Licensed Technology component, Company shall pay per unit royalties for such component based upon the Per Unit Payment rate for the Licensed Technology Product Number included in the Final Product as described in the applicable Product and Royalty Schedule in **Exhibit A** or **Exhibit B**. Per Unit Payments are due for each unit of Developed Technology distributed by Company either directly to end users or to Channel Entities during the applicable calendar year, except that no royalty is due for the distribution of:

(i) Final Products distributed to end users at no charge (other than Company's reasonable cost of materials and shipping and handling costs) to replace defective units previously acquired by end users;

(ii) Final Products distributed directly to end users at no charge (other than Company's reasonable cost of materials and shipping and handling costs) to update previously distributed units of the Licensed Technology (excluding new versions of the Licensed Technology); or

(iii) Final Products running a validly licensed embedded Microsoft Windows operating system;

(c) <u>Annual Fee Payment Calculations.</u> If Company elects to pay royalties on the Annual Fee Payment basis for a Licensed Technology component, Company shall pay the Annual Fee Payment amount for such component based upon the Licensed Technology Product Number corresponding with such component as described in the applicable Product and Royalty Schedule in **Exhibit A** or **Exhibit B**.

(d) <u>Royalty Payments.</u>

(i) If Company elects to pay royalties on the Per Unit Payment basis, Company must pay the Per Unit Payment within sixty (60) days after the date of Microsoft invoice.

(ii) If Company elects to pay royalties on the Annual Fee Payment basis, Company must pay the Annual Fee Payment within sixty (60) days after the date of Microsoft invoice.

(e) <u>Taxes</u>.

(i) Per Unit Payments and Annual Fee Payments exclude any taxes, duties, fees, excises or tariffs imposed on any of Company's activities in connection with this Agreement. Such charges, taxes, duties, fees, excises or tariffs, if any, shall be paid by Company.

(ii) If Company is required by any non-U.S.A. government to withhold income taxes on payments to Microsoft, then Company may deduct such taxes from the amount owed Microsoft and shall pay them to the appropriate tax authority, provided that Company delivers to Microsoft an official receipt for any such taxes withheld or other documents necessary to enable Microsoft to claim a U.S.A. Foreign Tax Credit within a reasonable amount of time not to exceed sixty (60) days from Company's receipt of such notice from the non—U.S.A. government. Company shall make certain that any taxes withheld

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are minimized to the extent permitted by applicable law. If Company does not deliver such documents to Microsoft in the reasonable time period identified above, Company agrees to pay Microsoft the amounts due by Microsoft in such receipts.

(iii) If Company conducts business in the U.S.A. and qualifies for a state resale or other tax exempt certificate, then Company shall provide Microsoft with a copy of its U.S.A. state resale or other tax exempt certificate, if applicable, with this Agreement when it is returned for signature by Microsoft.

(f) Annual Fee Payment Restrictions. For any Final Product distributed under an Exhibit C Third Party Brand Schedule, Company must elect and pay a separate Annual Fee Payment for each specified Licensed Technology component and each specific Third Party Brand for which the election has been made ("Brand Annual Fee").

For clarification, any Brand Annual Fee paid shall apply only to the specific Third Party Brand and Licensed Technology component for which the Brand Annual Fee has been elected, and shall not constitute an overall payment for all distributions by Company under a Third Party Brand Schedule. In addition, and notwithstanding anything to the contrary in Section 5.2(a)(ii) of the Agreement, Company's distribution of Final Products under a Third Party Brand Schedule is not included in the distributions covered under any Annual Fee payment made by Company under Section 5.2 of the Agreement, and Per Unit Royalties and/or Annual Fees paid by Company under any Third Party Brand Schedule are in addition to any such Annual Fee payments made by Company under the Agreement.

5.3 Reporting.

(a) Within sixty (60) days after the end of each calendar year (including a partial calendar year) in which Company has selected the Per Unit Payment for a component of the Licensed Technology, Company shall complete and electronically submit a royalty report detailing each distribution of Final Products containing such Licensed Technology component for which Company has elected the Per Unit Payment.

(b) In addition, if, at the time of expiration or termination of this Agreement, Company has currently elected the Per Unit Payment for a component of the Licensed Technology, Company shall, within sixty (60) days, complete and electronically submit a royalty report detailing each distribution of Final Products including such Licensed Technology component(s) distributed during the current calendar year for which Company has elected the Per Unit Payment.

(c) Company's reports submitted pursuant to Sections 5.3(a) and 5.3(b) shall report all distribution of Final Products including Licensed Technology components, regardless of whether Company is obligated to pay Microsoft a royalty for such Final Products under this Agreement.

(d) For any calendar year in which Company elects the Annual Fee Payment for a particular Licensed Technology component in accordance with Section 5.2(a), within sixty (60) days following the first day of such calendar year (or within fifteen (15) days following execution of the Agreement for the first full or partial calendar year), Company shall provide a report indicating one (1) Product Number (as described in the applicable Product and Royalty Table in **Exhibit A** or **Exhibit B**) for each of the Licensed Technology components for which Company has elected the Annual Fee Payment for the applicable calendar year.

(e) Company agrees that all reports submitted to Microsoft under Sections 5.2 and 5.3 shall be in accordance with the then current Royalty Reporting Guidelines as provided by Microsoft.

(f) Company agrees that Microsoft may corroborate Company's reporting of such product distribution with reports received from other Microsoft Windows Media Licensees who supply Interim Products to Company. Microsoft may provide information from, and/or reasonably redacted copies of, Company's royalty reports as may be necessary solely to confirm the payment obligations of Company and/or such Microsoft Windows Media Licensees who supply Interim Products to Company, so long as Microsoft requires such Microsoft Windows Media Licensees to maintain the confidentiality of the information contained in Company's royalty reports and to restrict use of such reports only to confirm Company's and/or such Microsoft Windows Media Licensees' payment obligations. Company shall (i) provide reasonable assistance to Microsoft with respect to such corroboration efforts; and (ii) maintain as Confidential Information of Microsoft any information supplied by Microsoft relative to other Microsoft Windows Media Licensee's royalty reports.

6. Audits

6.1 During the Term of this Agreement, and for three (3) years following the end of each year in which royalties are due hereunder, Company shall keep at a single, readily accessible location all usual and proper records and books of account relating to the distribution of all Final Products containing Developed Technology ("Records"). Alternatively, Company may remove all Records to a single, readily accessible location immediately upon receipt of Microsoft's audit notice.

6.2 In order to verify Company's compliance with this Agreement, Microsoft may cause, one time per calendar year (unless a previous audit revealed a Material Discrepancy, as defined below), an audit to be made of Company's Records during regular business hours with five (5) days prior notice to Company. Audits shall be conducted by an independent and internationally recognized certified public accountant selected by Microsoft (other than on a contingent fee basis). Microsoft will not audit the same Records more than once unless a previous audit revealed a Material Discrepancy, as defined below.

6.3 Company agrees to provide any audit team designated by Microsoft access to all Records.

6.4 The audit team shall only provide Microsoft with information pertaining to royalties due under this Agreement, as well as the names of entities from whom Company has received Interim Products (if any).

6.5   Microsoft shall pay the costs of any audit unless the review discovers discrepancies that exceed five percent (5%) of the amount actually due by Company during the time frame that was audited, or an intentional and material breach of any Company obligations under this Agreement ("Material Discrepancy"). In the event of a Material Discrepancy, Company shall pay Microsoft, in addition to unpaid amounts due, the costs of the audit, plus interest equal to ten (10%) percent of the discrepancy or greatest amount permitted by applicable law.

7.   Company Patents

7.1   <u>License to Company Patents</u>. As partial, material consideration for the rights granted to Company under this Agreement:

(a)   Company, on behalf of itself and its Affiliates hereby agrees to grant to Microsoft and its Affiliates, and all other Microsoft Windows Media Licensees a nonexclusive, nontransferable, non-sublicenseable, non-assignable, personal, worldwide license under Company's and its Affiliates' Necessary Claims to make, have made, use, import, offer to sell, sell and otherwise distribute directly or indirectly implementations of the Licensed Technology in any products or services on fair and reasonable terms and conditions. The foregoing agreement to grant does not apply to unique features in Company's Developed Technology, Interim Products or Final Products separate from the Licensed Technology.

(b)   Company agrees that any transfer or assignment of a patent or patent application having Company's or its Affiliates' Necessary Claims to a third party shall be subject to this Agreement and shall not affect any licenses granted hereunder or agreed to be granted hereunder. Any purported assignment or transfer of rights in derogation of the foregoing requirement shall be null and void.

7.2   <u>Defensive Suspension</u>. If Microsoft, Company, or any of their Affiliates (the "<u>Sued Party</u>") is sued for patent infringement by any entity, including a either party hereto or its Affiliates (the "<u>Suing Party</u>"), on account of the manufacture, use, sale, offer for sale, importation or other disposition or promotion of the Sued Party's implementation of the Licensed Technology, then the Sued Party and its Affiliates may terminate all license grants and any other rights provided under this Agreement, or withhold the grant of licenses to its Necessary Claims, to the Suing Party and its Affiliates. Any such termination or withholding shall be applicable only against the Suing Party and its Affiliates.

7.3   <u>VC-1 Joint Patent Licensing Program</u>. Company's obligations under Section 7.1 as to those Necessary Claims which are available for license under an independently administered joint patent licensing program covering the SMPTE VC-1 Standard (currently known as the MPEG LA VC-1 Joint Patent Licensing Program, and referred to herein as the "<u>VC-1 Pool</u>") shall be deemed fulfilled if Company is a licensor under the VC-1 Pool, but only so long as Company remains a licensor under the VC-1 Pool and only with respect to the scope of license granted under the VC-1 Pool license.

8.   Confidentiality and Feedback

8.1   <u>Protection of Confidential Information</u>. Each party shall protect the Confidential Information of the other party from unauthorized disclosure or dissemination and use no less than that degree of care it uses to protect its own like information which shall not be less than a reasonable degree of care. Neither party shall use the Confidential Information of the other party for purposes other than those necessary to directly further the purposes of this Agreement. Neither party shall disclose the Confidential Information of the other party to third parties without the prior written consent of the other party. Except as expressly provided in this Agreement, no ownership or license rights are granted in any Confidential Information.

8.2   <u>Residuals</u>. Each party is free to use for any purpose the Residuals resulting from access to or work with the Confidential Information of the other party, provided that it maintains the confidentiality of the Confidential Information as provided herein. The term "<u>Residuals</u>" means information in non-tangible form, which may be retained in the minds of persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. Neither party has any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of Residuals. However, the foregoing does not grant a license or any other rights under either party's copyrights or patents.

8.3   <u>No Feedback from Company</u>. Company shall not provide suggestions, comments, or other feedback, including, but not limited to code enhancements and bug fixes, ("<u>Feedback</u>") to Microsoft with respect to the Licensed Technology or other Confidential Information. If Company desires to provide such Feedback, Company shall inform Microsoft and the parties shall enter into a separate agreement (or amendment to this Agreement) governing the same.

8.4   <u>Judicial Order</u>. Either party may disclose Confidential Information in accordance with a judicial or other governmental order, provided that such party either (i) gives the other party reasonable notice prior to such disclosure to allow it a reasonable opportunity to seek a protective order or equivalent, or (ii) obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation. Notwithstanding the foregoing, Company shall not disclose any computer source code that contains Confidential Information in accordance with a judicial or other governmental order unless it complies with the requirement set forth in sub-section (i) of this paragraph.

9.   Press Releases

Neither party shall issue any press releases or similar communications regarding the subject matter of this Agreement without the prior written approval of the other party. The content, timing and necessity of such press releases or similar public communications must be agreed upon in writing by both parties. Notwithstanding the foregoing, Company consents to Microsoft's listing (i) Company as a licensee of the Licensed Technology at an appropriate Microsoft web page; and (ii) Company's Final Products containing Developed Technology at an appropriate Microsoft web page. Nothing in this Agreement grants either party the right to use any logo or trademark of the other party.

10.   Non-Exclusive; Independent Development

Company has no obligation to market, sell or otherwise distribute any Developed Technology, either alone or in any of its products. Nothing in this Agreement restricts either party's ability to acquire, license, develop, manufacture or distribute for itself, or have others acquire, license, develop, manufacture or distribute, similar technology performing the same or similar functions as the technology contemplated by this

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Agreement, or to market and distribute such similar technology in addition to, or in lieu of, the technology contemplated by this Agreement. Nothing in this Agreement prohibits Company from using or including in its products other codec bit streams, media or file formats, protocols or other like technologies.

11. Warranties

11.1 Warranties.

(a) Microsoft and Company each represent and warrant that it has the full power to enter into this Agreement.

(b) Company further represents and warrants that (i) it is entering into this Agreement for the bona fide purpose of commercially distributing Final Products; (ii) it has legal authority to bind itself and its Affiliates to the terms and conditions of this Agreement to the same extent as if each such Affiliate had executed this Agreement individually; and (iii) neither it, nor any of its Affiliates have assigned any patent or patent application having one or more claims that otherwise would fall under the definition of a Necessary Claim in anticipation of entering into this Agreement.

11.2 DISCLAIMER OF FURTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY, ITS SUPPLIERS AND AFFILIATES PROVIDE THE LICENSED TECHNOLOGY, DEVELOPED TECHNOLOGY, INTERIM PRODUCTS, FINAL PRODUCTS, AND CONFIDENTIAL INFORMATION (ALL OF THE FOREGOING COLLECTIVELY THE "MATERIALS") AND ANY TESTING OR SUPPORT SERVICES RELATED TO THE MATERIALS ("SUPPORT SERVICES") "AS IS" AND WITH ALL FAULTS. EACH PARTY, ITS SUPPLIERS AND AFFILIATES HEREBY DISCLAIM WITH RESPECT TO THE MATERIALS AND SUPPORT SERVICES ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY (IF ANY) WARRANTIES OR CONDITIONS OF OR RELATED TO: MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, WORKMANLIKE EFFORT AND LACK OF NEGLIGENCE. ALSO THERE IS NO WARRANTY, DUTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NONINFRINGEMENT.

12. Intellectual Property Claims Indemnification by Microsoft

12.1 Scope. With respect to any third party claim made against Company or its Affiliates that the Licensed Technology infringes any third party intellectual property rights, Company shall promptly notify Microsoft in writing of such claim. At Company's written request, Microsoft agrees to defend Company and its Affiliates at Microsoft's expense in a lawsuit, judicial action, or similar proceeding, and pay the amount of any adverse final judgment (or settlement to which Microsoft consents) from such lawsuit, judicial action, or similar proceeding, (i) for any third party claim(s) that the Licensed Technology infringes any trade secret, copyright or trademark rights enforceable in any Included Jurisdictions or any patent(s) issued and enforceable in the Included Jurisdictions as of the Effective Date, other than claim(s) based on alleged infringement by an implementation of a Disclosed Standard, including but not limited to, the SMPTE VC-1 Standard, for which no defense or indemnity obligation from Microsoft applies; or (ii) for any third party claim based upon any breach of this Agreement by Microsoft. Such lawsuits, judicial actions or similar proceedings are referred to as "Microsoft Claims." "Included Jurisdictions" means Australia, Canada, China, the European Union, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Taiwan and the United States.

12.2 Conditions. With regard to any Microsoft Claim, Microsoft's obligations are subject to the following conditions:

(a) Company must promptly notify Microsoft in writing of the Microsoft Claim;

(b) Company must allow Microsoft to have sole control over defense and/or settlement of the Microsoft Claim, so long as Microsoft does not enter into a settlement that requires Company to make a payment to a third party or assume another obligation (other than those relating to the use or non-use of the Licensed Technology) without Company's consent, which shall not be unreasonably withheld or delayed;

(c) Company must provide Microsoft with reasonable assistance in the defense of the Microsoft Claim; and

(d) With respect to a Microsoft Claim based upon allegations of patent infringement, Microsoft's obligations to defend and pay the amount of any adverse final judgment (or settlement to which Microsoft consents) are limited to claims wherein the Licensed Technology alone, without combination or modification, constitutes infringement (including direct or contributory infringement).

12.3 Other Remedies. In addition to the obligations set forth in Section 12.1 above, if Microsoft receives information concerning a Microsoft Claim or potential Microsoft Claim, Microsoft may, at its expense, but without obligation to do so, undertake further actions such as:

(a) procuring for Company such copyright, trademark or patent right(s) or license(s) as may be necessary to resolve the Microsoft Claim, or

(b) replacing or modifying the Licensed Technology or trademark to make it non-infringing (in which case Company shall cease distribution of the allegedly infringing Licensed Technology or use of the allegedly infringing trademark within such commercially reasonable period after delivery of the non-infringing alternative as is necessary to deplete Company's then-existing inventory of Final Products, provided, however, that (i) Microsoft shall have no obligation to indemnify Company for Final Products using the allegedly infringing Licensed Technology or trademark that are distributed by Company after Microsoft provides the non-infringing alternative, and (ii) Company shall indemnify Microsoft for any liability or damage Microsoft may incur in connection with such allegedly infringing Final Products distributed by Company after Microsoft provides the non-infringing alternative).

13. Final Product Indemnification by Company

13.1 Scope. At Microsoft's written request, Company agrees to defend Microsoft and its Affiliates at Company's expense in a lawsuit, judicial action, or similar proceeding, and pay the amount of any adverse final judgment (or settlement to which Company consents) from such lawsuit, judicial action, or similar proceeding, for any third party claim(s) based upon (i) features, attributes, or brand names present

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in Final Products containing Developed Technology wherein such features, attributes or brand names are not present in the Licensed Technology; or (ii) any breach of this Agreement by Company. Such lawsuits or other judicial actions are referred to as a "Company Claims."

13.2 <u>Conditions</u>. With regard to any Company Claim, Company's obligations are subject to the following conditions:

(a) Microsoft must promptly notify Company in writing of the Company Claim;

(b) Microsoft must allow Company to have sole control over defense and/or settlement of the Company Claim, so long as Company does not enter into a settlement that requires Microsoft to make a payment to a third party or assume another obligation without Microsoft's consent, which shall not be unreasonably withheld or delayed;

(c) Microsoft must provide Company with reasonable assistance in the defense of the Company Claim; and

(d) With respect to a Company Claim based upon allegations of patent infringement, Company's obligations to defend and pay a Company Claim are limited to claims wherein such features or attributes of the Final Product alone (excluding the Licensed Technology), without combination or modification, constitutes infringement (including direct or contributory infringement).

14. Termination

14.1 <u>Term</u>. This Agreement shall be effective as of the Effective Date and will continue until December 31, 2017, unless terminated earlier in accordance with Section 14 ("<u>Term</u>").

14.2 <u>Termination By Either Party For Cause</u>. Either party may terminate this Agreement immediately upon written notice at any time if:

(a) The other party is in breach of any provision of this Agreement, other than those contained in Section 8 and fails to cure that breach within thirty (30) days after written notice thereof;

(b) The other party is in material breach of Section 8; or

(c) Subject to applicable law, a party becomes insolvent, enters bankruptcy, reorganization, composition or other similar proceedings under applicable laws, whether voluntary or involuntary, or admits in writing its inability to pay its debts, or makes or attempts to make an assignment for the benefit of creditors. Such termination shall be effective upon notice to such party or as soon thereafter as is permitted by applicable law.

14.3 <u>Termination by Company for Convenience</u>. Company may terminate this Agreement at any time upon thirty (30) days prior written notice to Microsoft.

14.4 <u>Effect of Termination</u>.

(a) Following the expiration or any termination of this Agreement for any reason, all licenses granted to Company terminate and Company shall cease all distribution of the Licensed Technology, unless Company terminates this Agreement for Microsoft's uncured material breach in which case Company may, for a period of six (6) months continue to distribute Final Products in accordance with all of the terms and conditions of this Agreement relative to the distribution of such Final Products in order to deplete Company's then-existing inventory of Final Products.

(b) Company shall pay all monies due to Microsoft under this Agreement within thirty (30) days of expiration or any termination of this Agreement.

(c) Sections 1, 3.6, 3.7, 5.2 (only with respect to amounts owed prior to expiration or termination), 5.3(b) (for the period described therein), 6 (for the period described therein), 7 (but only to Necessary Claims on inventions having an effective filing date earlier than one (1) year after termination or expiration of this Agreement), 8, 10, 11, 12 (but only as to claims arising prior to termination or expiration of this Agreement), 13 (but only as to claims arising prior to termination or expiration of this Agreement), 14.4, 15, and 16 survive the expiration or any termination of this Agreement.

(d) Neither party is liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms.

(e) Nothing in this Agreement obligates Company upon termination or expiration of this Agreement to reacquire Final Products containing Developed Technology that were distributed by Company prior to termination or expiration.

15. Limitation of Liabilities

15.1 <u>LIMITATION OF AMOUNTS OF MICROSOFT'S LIABILITY; EXCLUSIVE REMEDY</u>. COMPANY AGREES THAT TOTAL, CUMULATIVE LIABILITY OF MICROSOFT AND ITS AFFILIATES, WHETHER IN CONTRACT (INCLUDING ANY PROVISION OF THIS AGREEMENT), TORT, OR OTHERWISE SHALL NOT EXCEED THE GREATER OF (I) TWO HUNDRED THOUSAND UNITED STATES DOLLARS (US$200,000) OR (II) ONE HUNDRED PERCENT (100%) OF THE AMOUNT PAID BY COMPANY TO MICROSOFT FOR ANY APPLICABLE LICENSED TECHNOLOGY COMPONENT(S) AT ISSUE DURING THE SIX (6) YEARS IMMEDIATELY PRECEDING THE DATE SUCH LIABILITY OR LIABILITIES FIRST AROSE. EXCEPT AS PROVIDED IN THE FINAL SENTENCE OF THIS SECTION, COMPANY'S AND ITS AFFILIATES' EXCLUSIVE REMEDY FOR ANY BREACH OF THIS AGREEMENT BY MICROSOFT OR A MICRSOFT AFFILIATE WILL BE THE RECOVERY OF DAMAGES INCURRED, LIMITED TO THE FOREGOING AMOUNT. MICROSOFT'S OBLIGATIONS IN SECTION 12 WITH RESPECT TO THE PAYMENT OF ADVERSE FINAL JUDGMENTS (OR SETTLEMENT TO WHICH MICROSOFT CONSENTS) IN CONNECTION WITH MICROSOFT CLAIMS ARE SUBJECT TO THE LIMITATION OF LIABILITY IN THIS SECTION, BUT MICROSOFT'S OBLIGATIONS WITH RESPECT TO DEFENDING COMPANY AND ITS AFFILIATES AGAINST SUCH MICROSOFT CLAIMS ARE NOT SUBJECT TO THE LIMITATIONS OF LIABILITY IN THIS SECTION. NOTHING IN THIS SECTION LIMITS COMPANY'S ABILITY TO TERMINATE THIS AGREEMENT.

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15.2 <u>LIMITATION OF AMOUNTS OF COMPANY'S LIABILITY; EXCLUSIVE REMEDY</u>. MICROSOFT AGREES THAT TOTAL, CUMULATIVE LIABILITY OF COMPANY AND ITS AFFILIATES, WHETHER IN CONTRACT (INCLUDING ANY PROVISION OF THIS AGREEMENT), TORT, OR OTHERWISE SHALL NOT EXCEED THE GREATER OF (I) ONE MILLION UNITED STATES DOLLARS (US$1,000,000); OR (II) ONE HUNDRED PERCENT (100%) OF THE AMOUNT OWED BY COMPANY TO MICROSOFT FOR THE LICENSED TECHNOLOGY DURING THE SIX (6) YEARS IMMEDIATELY PRECEDING THE DATE SUCH LIABILITY OR LIABILITIES FIRST AROSE. MICROSOFT AND ITS AFFILIATES' EXCLUSIVE REMEDY FOR ANY BREACH OF THIS AGREEMENT BY COMPANY OR ITS AFFILIATES WILL BE THE RECOVERY OF DAMAGES INCURRED LIMITED TO THE FOREGOING AMOUNT. THE LIABILITY OF COMPANY AND THE COMPANY REPRESENTATIVES SHALL NOT BE SUBJECT TO THE ABOVE LIMITATION OF LIABILITY IN THE FOLLOWING INSTANCES: BREACH OF SECTIONS 3.3, 4, 7, 8, 11.1(b), AND 13 OF THIS AGREEMENT, ANY AND ALL UNAUTHORIZED REPRODUCTION AND/OR DISTRIBUTION OF ANY PORTION OF THE LICENSED TECHNOLOGY BY COMPANY, ITS AFFILIATES, AN AUTHORIZED CONTRACTOR, OR ANY CHANNEL ENTITY; AND COMPANY'S DEFENSE OBLIGATIONS IN SECTION 13. THE PROVISIONS OF THIS SECTION DO NOT LIMIT MICROSOFT'S ABILITY TO SEEK AND OBTAIN INJUNCTIVE OR OTHER EQUITABLE RELIEF FOR A BREACH OF ANY PROVISION OF THIS AGREEMENT.

15.3 <u>EXCLUSION OF CERTAIN DAMAGES AND LIMITATION OF TYPES OF LIABILITY</u>. EXCEPT WITH RESPECT TO AMOUNTS PAYABLE TO THIRD PARTIES IN CONNECTION WITH THE INDEMNITY OBLIGATIONS HEREUNDER, MISUSE OF THE OTHER PARTIES' INTELLECTUAL PROPERTY OR CONFIDENTIAL INFORMATION AND/OR AS PROHIBITED BY LAW, IN NO EVENT WILL EITHER PARTY, ITS AFFILIATES, OR ITS REPRESENTATIVES BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, LOST PROFITS, LOST REVENUE OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE LICENSED TECHNOLOGY, AND/OR FINAL PRODUCTS. THE FOREGOING EXCLUSION AND LIABILITY LIMITATIONS APPLY EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IN THE EVENT OF FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT OR PRODUCT LIABILITY. THIS EXCLUSION AND LIABILITY LIMITATION SHALL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

16. **General**

16.1 <u>Notices</u>. All notices and requests in connection with this Agreement are deemed given as of the day they are received by the recipient either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as stated in the Addresses Schedule set forth in **Exhibit D**. Company shall keep the contact information current and follow Microsoft's requirements for updating such information.

16.2 <u>Independent Contractors</u>. Nothing in this Agreement should be construed as creating an agency, partnership, joint venture, franchise, or employment relationship between the parties. Neither party has the authority to make any statements, representations or commitments of any kind or to take any action binding on the other except to the extent (if any) provided for in this Agreement.

16.3 <u>Governing Law</u>. This Agreement shall be construed and controlled by the laws of the State of Washington. Venue over all disputes arising under or related to this Agreement must be in the state and federal courts within the State of Washington or the federal courts within the State of New York, but in either case Washington law shall apply. Both Company and Microsoft waive all defenses of lack of personal jurisdiction and forum non conveniens for actions commenced in those courts. Process may be served on either party in the manner authorized by applicable law or court rule. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party is entitled to recover its reasonable attorney's fees, costs and other expenses.

16.4 <u>Export Restrictions</u>. Company acknowledges that the Licensed Technology is subject to U.S. export jurisdiction. Company shall comply with all applicable international and national laws that apply to the Licensed Technology, including the U.S. Export Administration Regulations, as well as end-user, end use and destinations restrictions issued by U.S. and other governments. For additional information, see http://www.microsoft.com/exporting/.

16.5 <u>English Language</u>. This Agreement is written only in the English language, which language will be controlling in all respects. Versions of this Agreement in any other language are only for accommodation and are not binding upon the parties. To be effective, any communications or notices to be made or given pursuant to this Agreement must be in the English language, except as may be required under applicable law.

16.6 <u>Assignment</u>. Company may not assign this Agreement, or any rights or obligations hereunder, whether by operation of contract, law or otherwise, except with the express written consent of Microsoft, and any attempted assignment by Company in violation of this Section is void.

16.7 <u>Construction</u>. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. The parties and their respective counsel have had an opportunity to review this Agreement which will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.

16.8 <u>Entire Agreement</u>. This Agreement does not constitute an offer by Microsoft and it shall not be effective until signed by both parties. This Agreement, including any schedules and/or exhibits attached hereto which are incorporated by this reference, constitutes the entire agreement between the parties with respect to its subject matter and merges all prior and contemporaneous communications. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of Company and Microsoft by their respective authorized representatives. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which taken together shall constitute one and the same Agreement.

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Delivery of an executed counterpart of this Agreement by facsimile transmission is deemed effective as delivery of an originally executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date written above.

MICROSOFT CORPORATION	**<<TAG: COMPANY NAME>>**
A corporation organized under the laws of: State of Washington, U.S.A.	A company organized under the laws of: <<TAG: Incorp>>
By: _____ *(signature)*	By: _____ *(signature)*
Name: _____ *(printed)*	Name: _____ *(printed)*
Title: _____ *(printed)*	Title: _____ *(printed)*
Date: _____	Date: _____

EXHIBITS

EXHIBIT A – Product and Royalty Schedule for Final Products for Embedded Systems

EXHIBIT B – Product and Royalty Schedule for Final Products for PC Software

EXHIBIT C – Third Party Brand Schedule
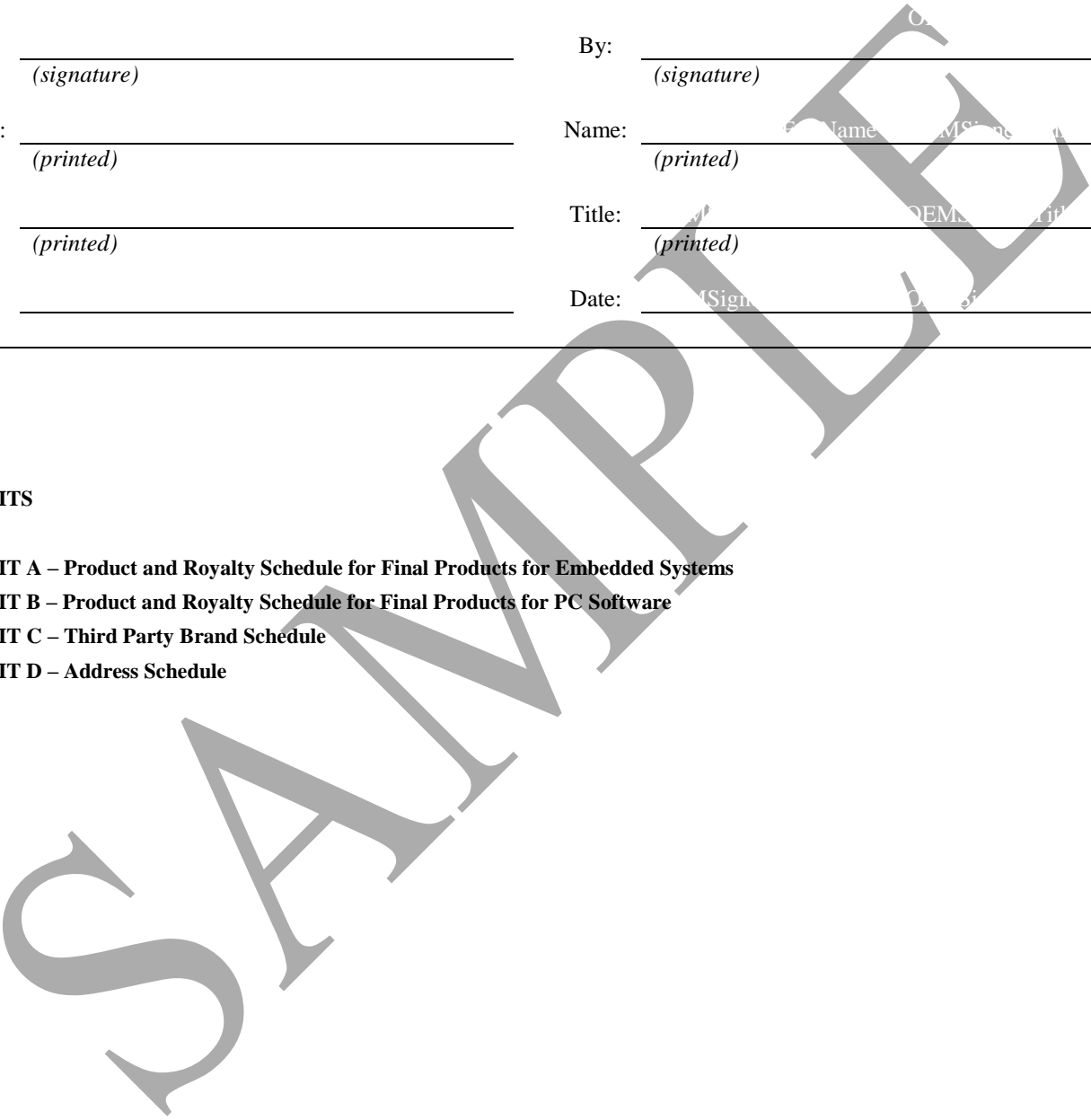
EXHIBIT D – Address Schedule

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Windows Media Components Final Product Agreement, # <<Num and Rev>>, dated <<Agr Eff Date>>, between Microsoft and <<COMPANYNAME>>

PRODUCT AND ROYALTY SCHEDULE
Embedded Systems*

Licensed Technology Component Name and Version	Royalty Per Unit for each Final Product Containing the Applicable Licensed Technology Component US$	Annual Fee Payment for each Licensed Technology Component US$	Royalty Free ** US$	Brand Annual Fee Payment for each Licensed Technology Component US$
1. Windows Media™ Audio Decode - (Final Products supporting 2 Channels or Less)***	$0.10 (F44-00134)	$400,000.00 (F44-00135)	$0.00 (F44-00136)	$300,000.00 (F44-00203)
2. Windows Media™ Audio Decode - (Final Products supporting 3 Channels or More)***	$0.20 (F44-00137)	$800,000.00 (F44-00138)	$0.00 (F44-00139)	$700,000.00 (F44-00204)
3. Windows Media™ Audio Encode	$0.20 (F44-00037)	$800,000.00 (F44-00036)	$0.00 (F44-00038)	$700,000.00 (F44-00200)
4. Windows Media™ Audio Decode & Encode - (Final Products supporting 2 Channels or Less)	$0.25 (F44-00140)	$1,000,000.00 (F44-00141)	$0.00 (F44-00142)	$800,000.00 (F44-00207)
5. Windows Media™ Audio Decode & Encode - (Final Products supporting 3 Channels or More)	$0.35 (F44-00143)	$1,400,000.00 (F44-00144)	$0.00 (F44-00145)	$1,200,000.00 (F44-00208)
6. Windows Media™ Video Decode	$0.10 (F44-00040)	$400,000.00 (F44-00039)	$0.00 (F44-00041)	$300,000.00 (F44-00199)
7. Windows Media™ Video Encode	$0.20 (F44-00043)	$800,000.00 (F44-00042)	$0.00 (F44-00044)	$700,000.00 (F44-00201)
8. Windows Media™ Video Decode & Encode	$0.25 (F44-00111)	$1,000,000.00 (F44-00109)	$0.00 (F44-00110)	$800,000.00 (F44-00205)
9. Windows Media™ Video Decode (VC-1 Licensee)	$0.06 (F44-00209)	$240,000.00 (F44-00210)	$0.00 (F44-00211)	N/A

10. Windows Media™ Video Encode (VC-1 Licensee)	$0.12 (F44-00212)	$480,000.00 (F44-00213)	$0.00 (F44-00214)	N/A
11. Windows Media™ Video Decode & Encode (VC-1 Licensee)	$0.15 (F44-00215)	$600,000.00 (F44-00216)	$0.00 (F44-00217)	N/A
12. Windows Media™ Embedded Network Read Technology	$0.25 (F44-00046)	$1,000,000.00 (F44-00045)	$0.00 (F44-00047)	$800,000.00 **(F44-00202)**
13. Windows Media™ with Embedded HDCD® Technology	$0.10 (F44-00030)	$400,000.00 (F44-00057)	$0.00 (F44-00058)	N/A
14. Windows Media™ Embedded ASFRead Technology	$0.00 (F44-00096)	N/A	N/A	N/A
15. Windows Media™ Embedded ASFWrite Technology	$0.00 (F44-00105)	N/A	N/A	N/A

Numbers listed above in parentheses are Licensed Technology Product Numbers.

* References above to "Embedded" versions of the Licensed Technology mean that the applicable Licensed Technology component is used in a manner **other than** as PC Software as defined on the Product and Royalty Schedule for Final Products for PC Software. "Embedded" versions of the Licensed Technology include, without limitation, uses of the Licensed Technology in Devices, where Devices means hardware products with limited functionality such as cellular phones, handheld Internet appliances, personal digital assistants, video game consoles, digital cameras and camcorders, set top boxes, routers and other networking devices, televisions, portable digital music players, and other consumer electronic devices such as audio receivers and DVD players. The term "Devices" does not include general purpose personal computers, computer servers, or other hardware products upon which PC Software may be run.

** Company shall use the applicable "Royalty Free" Licensed Technology Product Numbers listed in the fourth column above if, and only if, one of the following is true: (a) the Final Product is distributed royalty free to an end user as a replacement for a defective Final Product; (b) the Final Product is distributed royalty free to an end user as an update to previously distributed units of the Licensed Technology; (c) the Final Product is an "Embedded" version designed to operate on an embedded version of Microsoft's Windows operating systems; or (d) the Final Product is a Prototype distributed under Section 3.4 of this Agreement.

*** Windows Media Audio Decode includes WM Audio Standard, Professional, Lossless, and/or Voice technologies. "Channel" shall mean an audio channel. For example, a monaural product utilizes one channel; a stereo product utilizes two channels (left and right,) and a multi-channel product may utilize 5 full-frequency channels and one low frequency effects (LFE) channel. LFE channels are NOT counted for the purpose of royalty calculation. Thus, Final Products supporting stereo and including an LFE channel (e.g. 2.1) are subject to the "2 Channels or Less" Royalty per Unit.

In addition to the per unit fees listed in the table in Exhibit A and Exhibit B, Company shall pay a one time advance fee of ten thousand dollars ($10,000) ("Advance Payment"**)** as a nonrefundable advance payment of royalties due for either Embedded Systems or PC Software under Section 5.2 of this Agreement. The Advanced Payment will be credited by Microsoft against amounts owed by Company for either Embedded Systems or PC Softwareunder Section 5.2 of this Agreement. Company agrees that Microsoft is not obligated to list Company on authorized Licensee List, as applicable, unless and until Microsoft receives payment from Company of its Advance Payment. Microsoft will invoice the Advance Payment immediately upon Agreement execution. Company must pay the Advance Payment within thirty (30) days after the date of Microsoft invoice.

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EXHIBIT B

PRODUCT AND ROYALTY SCHEDULE
PC Software Table*

Licensed Technology Component Name and Version	Royalty Per Unit for each Final Product Containing the Applicable Licensed Technology Component US$	Annual Fee Payment for each Licensed Technology Component US$	Royalty Free** US$
1. Windows Media™ Audio Decode - (Final Products supporting 2 Channels or Less)***	$0.10 (S10-00033)	$20,000.00 (S10-00034)	$0.00 (S10-00035)
2. Windows Media™ Audio Decode - (Final Products supporting 3 Channels or More)***	$0.20 (S10-00036)	$40,000.00 (S10-00037)	$0.00 (S10-00038)
3. Windows Media™ Audio Encode***	$0.20 (S10-00015)	$200,000.00 (S10-00023)	$0.00 (S10-00007)
4. Windows Media™ Audio Encode & Decode - (Final Products supporting 2 Channels or Less)	$0.25 (S10-00039)	$210,000.00 (S10-00040)	$0.00 (S10-00041)
5. Windows Media™ Audio Encode & Decode - (Final Products supporting 3 Channels or More)	$0.35 (S10-00042)	$230,000.00 (S10-00043)	$0.00 (S10-00044)
6. Windows Media™ Video Decode	$0.10 (S10-00013)	$400,000.00 (S10-00021)	$0.00 (S10-00005)
7. Windows Media™ Video Encode	$0.20 (S10-00012)	$800,000.00 (S10-00020)	$0.00 (S10-00004)
8 Windows Media™ Video Encode & Decode	$0.25 (S10-00011)	$1,000,000.00 (S10-00019)	$0.00 (S10-00003)
9. Windows Media™ Video Decode (VC-1 Licensee)	$0.06 (S10-00059)	$240,000.00 (S10-00060)	$0.00 (S10-00061)
10. Windows Media™ Video Encode (VC-1 Licensee)	$0.12 (S10-00062)	$480,000.00 (S10-00063)	$0.00 (S10-00064)
11. Windows Media™ Video Decode & Encode (VC-1 Licensee)	$0.15 (S10-00065)	$600,000.00 (S10-00066)	$0.00 (S10-00067)
12. Windows Media™ Network Read Technology	$0.25 (S10-00010)	$1,000,000.00 (S10-00018)	$0.00 (S10-00002)
13. Windows Media™ HDCD® Technology	$0.10 (S10-00009)	$400,000.00 (S10-00017)	$0.00 (S10-00001)
14. Windows Media™ ASF Read Technology	$0.00 (S10-00025)	N/A	N/A
15. Windows Media™ ASF Write Technology	$0.00 (S10-00026)	N/A	N/A

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Numbers listed above in parentheses are Licensed Technology Product Numbers.

* References above to "PC Software" versions of the Licensed Technology mean that the applicable Licensed Technology component is used as software for a general purpose personal computer (including laptop, tablet, or desktop), which general purpose personal computer both (i) is designed and marketed for operating a wide variety of productivity, entertainment, and/or other software applications from unrelated third party software vendors; and (ii) runs a general purpose consumer operating system such as Apple Macintosh OS X, or consumer versions of the Linux operating system, but not versions of such operating systems designed for computer servers or embedded systems, such as MontaVista Linux Consumer Electronics Edition.

** Company shall use the applicable "Royalty Free" Licensed Technology Product Numbers listed in the fourth column above if, and only if, one of the following is true: (a) the Final Product is distributed royalty free to an end user as a replacement for a defective Final Product; (b) the Final Product is distributed royalty free to an end user as an update to previously distributed units of the Licensed Technology; (c) the Final Product is an "PC Software" version designed to operate on an embedded version of Microsoft's Windows operating systems; or (d) the Final Product is a Prototype distributed under Section 3.4 of this Agreement.

*** Windows Media Audio Decode includes WM Audio Standard, Professional, Lossless, and/or Voice technologies. "Channel" shall mean an audio channel. For example, a monaural product utilizes one channel; a stereo product utilizes two channels (left and right,) and a multi-channel product may utilize 5 full-frequency channels and one low frequency effects (LFE) channel. LFE channels are NOT counted for the purpose of royalty calculation. Thus, Final Products supporting stereo and including an LFE channel (e.g. 2.1) are subject to the "2 Channels or Less" Royalty per Unit.

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EXHIBIT C

THIRD PARTY BRAND NAMES AND TRADEMARKS SCHEDULE

Notwithstanding anything to the contrary contained in the Agreement, Final Products distributed by Company or its Channel Entities may be marketed, licensed, or distributed by a third party under brand names and trademarks which do not include Company's name, provided that such third party brand names, trademarks and model names used for such and Final Products are listed below.

Company's royalty report shall include a separate reporting of the number of units of each Final Product distributed under each third party brand name or trademark.

Name of Third Party that Owns Brand	*Brand Names and / or Trademark that Appears on Final Product*	*Licensed Technology Component Included in Final Product*

Prior to any marketing or distribution by Company or its Channel Entities of Final Products under any third party brand name or trademark not listed on this Third Party Brand Names and Trademarks Schedule, Company shall notify its Account Manager of any third party brand name or trademark that it proposes to add to this Third Party Brand Names and Trademarks Schedule. Provided the parties reach agreement regarding the third party brand name or trademark, Company and Microsoft shall execute an amendment to add such third party brand name or trademark to this Third Party Brand Names and Trademarks Schedule. Company hereby acknowledges and agrees that Microsoft reserves the right to reject a proposed third party name or trademark and/or to execute a direct distribution license with the owner of such proposed third party name or trademark.
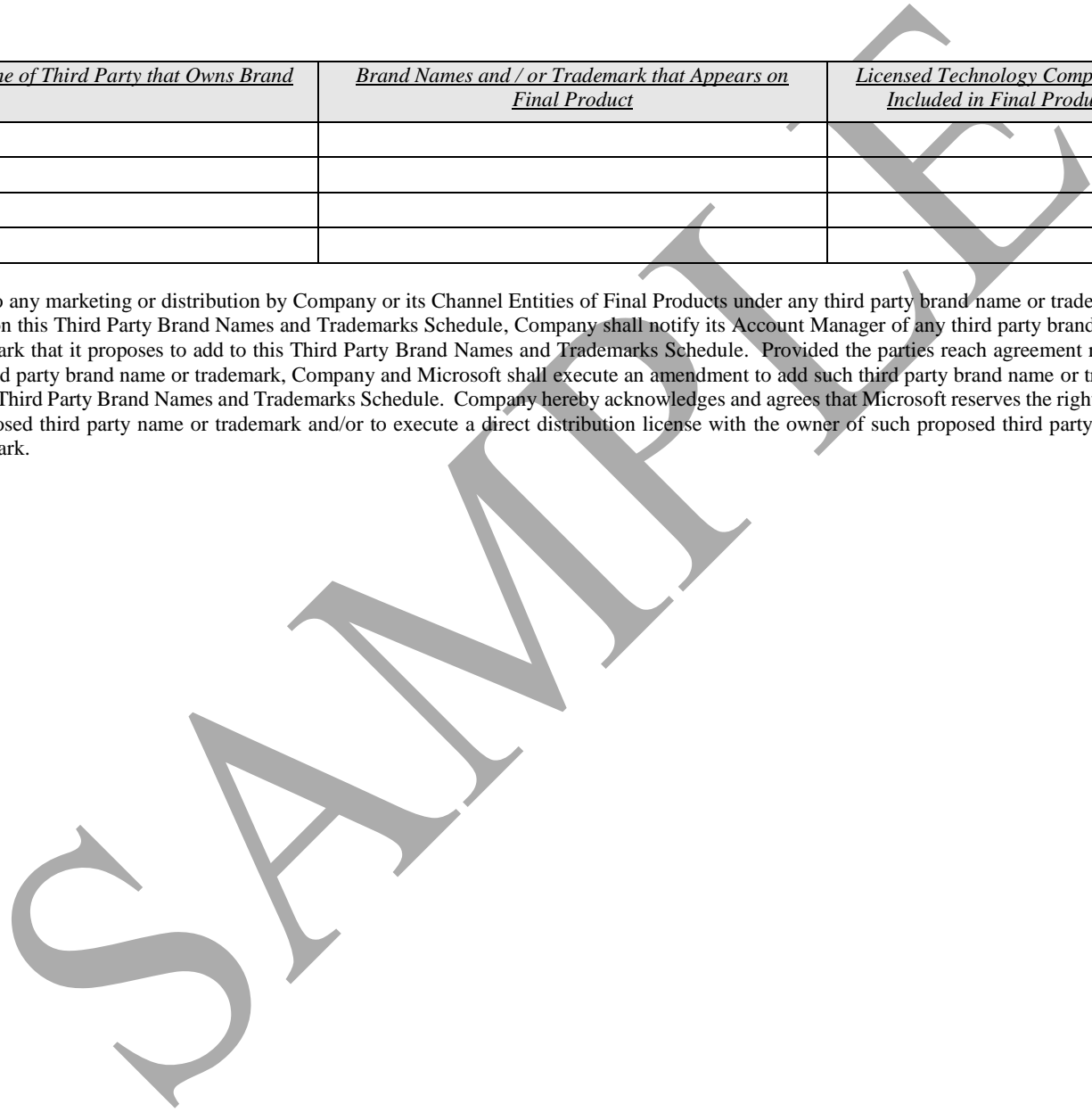
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ADDRESSES SCHEDULE

GENERAL NOTICES

Company Primary Agreement Contact*   **Microsoft Contact Information**

Company Primary Agreement Contact	Microsoft Contact Information
Company Name:	Microsoft Corporation
Primary Contact Name:	Attention: WMLA Licensing
Street Address:	One Microsoft Way
City and State / Province:	Redmond, Washington 98052
Country and Postal Code:	USA
Primary Contact Phone Number:	Phone Number: (425) 882-8080
Primary Contact Title:	
Primary Contact Fax Number:	Fax Number: (425) 936-7329
Primary Contact Email Address:	WMLA@microsoft.com
	Copies of all Company GENERAL NOTICES shall be sent to WMLA Licensing at the address above, with an additional copy to:: Microsoft Corporation One Microsoft Way Redmond, Washington USA 98052 Attention: Law and Corporate Affairs

* The person listed as the Company Primary Contact will receive copies of ALL communications related to this Agreement, including the execution copies and signed originals.

TECHNICAL INFORMATION

Company Technical Contact** (Ship To Contact)

Company Technical Contact
Company Name:
Street Address:
City and State / Province:
Country and Postal Code:
Contact Name:
Contact Phone Number:
Contact Title:
Contact Fax Number:
Contact Email:

** The person(s) listed as the Company Technical Contact will receive all communications regarding technical issues. Additional Technical Contacts may be added after the agreement is executed by faxing a request on Company letterhead to WMLA at: (425) 936-7329

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Windows Media Components Final Product Agreement, # <<Num and Rev>>, dated <<Agr Eff Date>>, between Microsoft and <<COMPANYNAME>>

BILLING

Company Billing Contact***		Microsoft Billing Information
Company Name:		Microsoft Corporation
Street Address:		c/o Bank of America
		1401 Elm Street
City and State / Province:		Dallas, TX 75202
Country and Postal Code:		USA
VAT Number:		ABA # 0260-0959-3 (for bank wires)
		SWIFT Code: BOFAUS3N
		Account # 3750891058
		Beneficiary: Microsoft Corporation
Contact Name:		**Company shall include applicable MS invoice number(s) on all Payments**
Contact Title:		**Send Payments via Wire Transfer Only**
Contact Phone Number:		
Contact Fax Number:		
Contact Email:		

***The person listed as the Company Billing Contact will receive all communications regarding invoicing and collections.

ROYALTY REPORTING AND PAYMENT

Company Royalty Report Submitter****		Microsoft Royalty Reporting Information
Company Name:		Microsoft Corporation
Street Address:		OEM Accounting Services
City and State / Province:		Email: WMReport@MICROSOFT.COM
Country and Postal Code:		
Contact Name:		
Contact Title:		
Contact Phone Number:		
Contact Fax Number:		
Contact Email:		

****The person listed as the Company Royalty Report Submitter will receive all communications regarding royalty reporting and should be the person that submits the annual royalty report and notifications to Microsoft as specified in this Agreement.

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Windows Media Components Final Product Agreement, # <<Num and Rev>>, dated <<Agr Eff Date>>, between Microsoft and <<COMPANYNAME>>