

From: Will Friedman
Sent: Tuesday, July 18, 2000 12:38 PM
To: Mike Beckerman
Cc: Cory Van Arsdale (LCA); Tony Dawcutt
Subject: FW: Caching contract

Importance: High

Mike,

At Will's direction, we sent out the "version 0.9" of the caching license to the vendors, and have begun negotiating it. Do you have any last changes that you wanted to get in before we close these deals? Clearly we want to minimize any changes at this point, but I did want to make sure we have your final blessing.

WPoole does not have time to review it.



Microsoft Appliance
Cache License

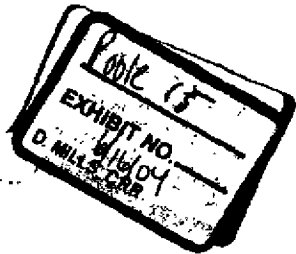
Thanks,
Will

—Original Message—
From: Will Poole
Sent: Tuesday, July 18, 2000 7:34 AM
To: Will Friedman
Cc: Tony Bewcutt
Subject: RE: Caching contract

have not reviewed. you should go forward assuming kurt and mikebeck have reviewed.

—Original Message—
From: Will Friedman
Sent: Monday, July 17, 2000 10:22 AM
To: Will Poole
Cc: Tony Bewcutt
Subject: Caching contract
Importance: High

Do you have any comments on the caching contract?



MS-CC-Bu 000000112250
HIGHLY CONFIDENTIAL

Plaintiff's Exhibit
6798
Comes V. Microsoft

MS-PCAIA 5012893

DRAFT 0.9
DISCUSSION PURPOSES ONLY

**MICROSOFT WINDOWS MEDIA
LICENSE AND DISTRIBUTION AGREEMENT
FOR DEDICATED CACHING APPLIANCES**

This Microsoft Windows Media License and Distribution Agreement for Dedicated Caching Appliances ("Agreement") is entered as of _____, 2000 ("Effective Date"), by and between MICROSOFT LICENSING, INC., a Nevada corporation located at 6100 Neil Road, Reno, Nevada 89520 ("MSLI"), and LICENSEE as specified below.

RECITALS

MSLI is an Affiliate (defined below) of Microsoft Corporation, a Washington corporation located at One Microsoft Way, Redmond, WA 98052.

Microsoft is the owner and/or authorized licensor of the Confidential Materials (defined below) consisting of certain portions of Windows Media technologies, source code, specifications and associated documentation.

Licensee develops and distributes certain Dedicated Caching Appliances (defined below).

Licensee wishes to license the Confidential Materials solely for use in accordance with the terms of this Agreement.

MSLI, on behalf of itself and its Affiliate Microsoft Corporation (collectively and interchangeably "Microsoft") and Licensee desire to have Licensee use the Confidential Materials to develop Authorized Product(s) (defined below) and to have the companies work together.

The parties hereby agree as follows.

AGREEMENT

This Agreement is entered into with reference to the following information and defined terms (the "Table") as well as the definitions set forth below:

Licensor Name & Address:	
State of Incorp.:	
Licensor Contact Information:	Contact/Title: - Phone: Fax: Email:
Microsoft Contact Information:	Contact/Title: Phone: (425) _____ Fax: (425) 936-7329 Email: @microsoft.com
"Licensor Web Site" (includes any successors and new versions of such Web	

site created, owned or controlled by Licensee during the Term):	<provide complete URL to Licensee Web Site home page>
"Initial Payment Amount:"	Four Hundred Thousand Dollars (U.S. \$400,000.00)
"Maintenance Fee"	Two Hundred Thousand Dollars (U.S. \$200,000.00)
"Licensee Product(s)":	<provide additional description in Exhibit E>
"Term."	A period of two (2) years, commencing upon the Effective Date

1. DEFINITIONS

- 1.1 "Affiliate" means, with respect to any legally recognizable entity, any other such entity directly or indirectly Controlling, Controlled by, or under common Control with such entity. "Control," as used in this Section 1.1, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a legally recognizable entity, whether through the ownership of voting shares, by contract, or otherwise. Where such entity is a partnership, limited liability company, corporation, or similar entity and has partners, members, or shareholders with equal ownership interests or equal control interests, by contract or otherwise, then each such partner, member, or shareholder will be deemed to possess, directly or indirectly, the power to direct or cause the direction of the management and policies of that entity.
- 1.2 "Authorized Product" means a version of a Licensee Product described in the Table and in Exhibit E that (i) is a Dedicating Caching Appliance any part of whose hardware and/or software components have been developed by Licensee using the Confidential Materials and (ii) has passed testing by a Testing Center for compliance with the Test Specification in accordance with Section 2.2(a).
- 1.3 "Break Interoperability" means to: (i) Transcode, Convert or Encapsulate WMC Content (whether protected by DRM or not) into or out of a disk-based or network-transmitted form that is not fully supported by and interoperable with Windows Media Technologies; and/or (ii) to impair or disable programs or applications that can validly create, access, or utilize WMC Content (whether protected by DRM or not) by exposing a means or method by which such programs or applications access or utilize WMC Content.
- 1.4 "Bug Fix" means, as to the Confidential Materials, all bug fixes and minor enhancements thereto that (i) have been designated as Bug Fixes by Microsoft and (ii) made available by Microsoft, in its sole discretion, to other similarly situated third parties during the Term. In no event shall such Bug Fixes be construed to include any new release, version or successor to the Confidential Materials.
- 1.5 "Cache Proxy Server" means a Web Page Cache Proxy Server and/or Streaming Media Cache Proxy Server.
- 1.6 "Codecs" means the audio and video compression/decompression algorithms used by or provided with the SDK to compress and decompress Content.

- 1.7 "Compromise Interoperability" means exposing a means or method (including, but not limited to, publicly defined interfaces or debugging information left in a Authorized Product) by which other programs, plug-ins, applications, or services can access or utilize Content extracted from WMC Content by the Authorized Product.
- 1.8 "Confidential Information" means: (i) Confidential Materials; (ii) any source code of software disclosed by either party; (iii) any trade secrets and/or other proprietary non-public information not generally known relating to the foregoing and either party's product plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how; and (iv) the terms and conditions of this Agreement. "Confidential Information" shall not include information that: (a) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party; (b) is known and has been reduced to tangible form by the receiving party prior to the time of disclosure and is not subject to restriction; (c) is independently developed by the receiving party without the use of the Confidential Materials or other party's Confidential Information; (d) is lawfully obtained from a third party that has the right to make such disclosure; or (e) is made generally available by the disclosing party without restriction on disclosure.
- 1.9 "Confidential Materials" means the Licensed Software and Licensed Documentation.
- 1.10 "Confidential Materials Implementation" means solely that portion of an Authorized Product, such as source code, microcode, object code, firmware or similar media, which implements, incorporates or otherwise discloses the Confidential Materials.
- 1.11 "Content" means digital audio (including, but not limited to, timeline-synchronized audio, music, voice and sounds), digital video, and other digital information including text (such as script command data and related metadata including a song title or an artist's name), digital images and combinations of any or all of the foregoing.
- 1.12 "Convert" means: (i) to decompose WMC Content into one or more pieces of Content, and then to recompose into any form other than WMC Content; or (ii) to remove any DRM protection from WMC Content for any purpose not explicitly authorized by the DRM Flags of the license for that content, including, but not limited to, writing that unprotected DRM content to disk or to a network.
- 1.13 "Dedicated Caching Appliance" means a Cache Proxy Server product that (i) is a single self-contained device that includes all of the hardware and software necessary to perform the tasks for which it is designed; (ii) performs solely the functions of a Cache Proxy Server and contains no functionality or applications other than those strictly necessary to serve as a Cache Proxy Server; (iii) is not useable as a commercially viable substitute for a general purpose server, personal computer or workstation; (iv) is not built on a Windows Platform; and (v) does not contain any Unlicensed Functionality.
- 1.14 "DRM" means Microsoft's digital rights management system for Windows Media Technologies that enables enforcement of business rules and license-based access to WMC Content.
- 1.15 "DRM Flag(s)" means the flag(s) describing license condition(s) for, and set by the creator or authorized licensor of, WMC Content protected with DRM as more fully described in the SDK.

- 1.16 "Encapsulate" means to place any form of containment around, or to remove such containment from, any portion or entirety of WMC Content, including by way of example but not limited to wrapping or embedding WMC Content in another file format or protocol.
- 1.17 "Independent Contractor" means a third party who is under written agreement with Licensee to design and develop or assist with the design and development of the Licensee Product as an Authorized Product, solely on behalf of and for the benefit of Licensee, where such written agreement is accordance with the terms and conditions of this Agreement, including Sections 2 and 6.
- 1.18 "Licensed Documentation" means: (i) the networking protocol specifications listed in Exhibit A specifically related to Windows Media Server and Windows Media Player, as set forth in Exhibit A; (ii) associated documentation for the Licensed Software; and (iii) any Bug Fixes.
- 1.19 "Licensed Software" means the portions of Windows Media Technologies source code specified in Exhibit A, and including any Bug Fixes.
- 1.20 "Licensee Product" means Licensee's product(s) identified in the Table and further described in Exhibit E.
- 1.21 "Origin Server" means a computer or device that delivers WMC Content across a network, including without limitation wired or wireless communications media, using Windows Media Technologies protocols, and whereby that WMC Content was (i) created directly on such computer or device, including by way of example: (a) generation of WMC Content by the Windows Media Encoder, (b) archiving of WMC Content by a Windows Media Server, and (c) generation of WMC Content by an application created pursuant to a license agreement with Microsoft for the Windows Media Format Software Development Kit; or (ii) stored locally on such computer or device by the WMC Content owner or at the WMC Content owner's direction.
- 1.22 "Proposed Authorized Product" means a Licensee Product that has been submitted for testing as further described in Section 3.2(d).
- 1.23 "SDK" means the Microsoft Windows Media Format Software Development Kit and updates thereof during the Term.
- 1.24 "Streaming Media" means (i) Content that is transmitted and played, displayed, executed or otherwise experienced incrementally, or in semi-real time, such that it can be heard, viewed or received by an end user with minimal, if any, download delays.
- 1.25 "Streaming Media Cache Proxy Server" means a Licensee Product that is a server that is used solely to stream or deliver (i) Streaming Media other than WMC Content and/or (ii) WMC Content that it has received from either (a) a WM Origin Server, or (b) a Cache Proxy Server. In no event shall the term "Streaming Media Cache Proxy Server" include an Origin Server.
- 1.26 "Transcode" means to alter the current encoding or form of Content that was that was encoded using Codecs, including by way of example but not limited to: (i) decompression of an audio or video stream and recompression using a different compression algorithm; and (ii) decompression of an audio or video stream and recompression using the same compression algorithm but with different settings.
- 1.27 "Unlicensed Functionality" means features or functions that are not essential to cache or proxy WMC Content, including by way of example (a) a graphical user interface; (b) the

- capability to run personal productivity software including, but not limited to, word processors, spreadsheets or time management software; (c) print serving functionality; (d) database software; (e) e-mail server functionality; (f) the capability to serve as an WM Origin Server; (g) Internet router functionality.
- 1.28 "Updates" means, with respect to any Microsoft software, all subsequent public releases thereof during the Term, including Bug Fixes, public maintenance releases, service packs, error corrections, upgrades, enhancements, additions, improvements, extensions, modifications and successor versions.
- 1.29 "Web Page Cache Proxy Server" means a server that is used solely to store and transmit, using Hypertext Transport Protocol ("HTTP"), copies of recently accessed Web Page Components that have originated from a Web server, for the purpose of improving the access speed of such data and reducing network traffic.
- 1.30 "Web Page Components" means, other than Streaming Media, Content and other components comprising a Web page, including, but not limited to, GIF and JPEG images, Visual Basic Scripts, and IScripts and JavaScripts.
- 1.31 "Windows Media Container" means the current version, and any Updates during the Term, of extensible file storage format developed by or for Microsoft for authoring, storing, editing, distributing, streaming, playing, referencing, or otherwise manipulating Content, as used by the Windows Media Technologies during the Term.
- 1.32 "Windows Media Encoder" means the current version, and Updates during the Term, of Microsoft's Windows Media Technologies real-time encoder.
- 1.33 "Windows Media Player" means the client technology developed by Microsoft that plays or displays Windows Media Formats and other formats of Streaming Media and other multimedia data-types, and all Updates to such technology that are commercially released during the Term.
- 1.34 "Windows Media Server" means version 4.x, as publicly released by Microsoft during the Term, of Microsoft's Windows Media Services for Windows Platforms, and all Updates to such technology that are commercially released during the Term.
- 1.35 "Windows Media Technologies" means the currently shipping (and Updates thereof during the Term) versions of the Windows Media Player, Windows Media Server, Windows Media Encoder, Windows Media SDK and all its sub-components (including but not limited to, the Windows Media Format SDK), and WMC Content creation tools that Microsoft may choose, solely in its discretion, to release as part of the Platforms.
- 1.36 "Windows Platforms" means Microsoft's Windows NT 4.0 and Windows 2000 operating system platforms, successor operating system platforms, and any upgrades, Updates and/or modifications to the foregoing publicly released by Microsoft during the Term, regardless of naming conventions, version numbers and/or other nomenclatures.
- 1.37 "WM Origin Server" means an Origin Server that is running (i) Windows Media Server, (ii) Windows Media Encoder, or (iii) an application created pursuant to a license agreement with Microsoft for the Windows Media Format Software Development Kit.
- 1.38 "WMC Content" means Content, contained within a Windows Media Container, and optionally protected with DRM. WMC Content includes, but is not limited to WMP Content.

1.39 "WMF Content" means Content encoded solely with Codecs, contained within a Windows Media Container, and optionally protected with DRM.

2. LIMITED LICENSE; LICENSEE OBLIGATIONS

2.1 License Rights.

- (a) Development License. Expressly subject to Licensee's compliance with the limitations set forth in Section 2.2, Microsoft hereby grants to Licensee during the Term a non-exclusive, personal, non-sublicensable, non-transferable, non-assignable, limited license to (i) use, reproduce, review and reference the Licensed Documentation and (ii) use, reproduce, modify and create derivative works of the Licensed Software; both solely for purposes of supporting Licensee's internal design and development of Authorized Product(s).
- (b) Distribution License. Expressly subject to Licensee's compliance with the limitations set forth in Section 2.2, Microsoft hereby grants to Licensee during the Term a non-exclusive, personal, non-transferable, non-assignable, royalty-bearing limited license to: (i) reproduce and have reproduced Confidential Materials Implementation(s) solely as part of the reproduction of the software component of Authorized Product(s); and (ii) license, rent, lease, sell or otherwise distribute ("Distribute") and have Distributed the Confidential Materials Implementation(s) solely in object code form and solely as part of the Distribution of an Authorized Product.

2.2 Express Limitations. Licensee's rights under Section 2.1 are expressly conditioned upon Licensee's compliance with each of the following limitations:

- (a) Testing and Logo Usage. Licensee may only Distribute a version of an Authorized Product if such version: (i) meets the Test Specification (defined below); (ii) has passed testing by either Microsoft or a Microsoft designated testing center ("Testing Center") which will administer tests based upon the Test Specification; (iii) is at a level of quality at least commensurate with the quality of products distributed by Licensee before the Effective Date; and (iv) has a "Windows Media Compatible" logo or other logo provided by Microsoft in its sole discretion ("Logo") permanently affixed to each such Authorized Product. All use of the Logo shall be in accordance with the relevant Logo license, which shall be provided to Licensee as set forth in Section 3.2(e). Licensee will not use Microsoft's name, logo or trademarks to market or promote any Authorized Product, except as permitted by such Logo license. Further, Licensee may only use the Logo in association with versions of Authorized Products that have passed testing by a Testing Center.
- (b) Origin Server Functionality. Licensee will not use the Confidential Materials to (i) create any product that operates as an Origin Server, or (ii) create any product that contains all or any part of the Unlicensed Functionality.
- (c) Non-Malicious Intent. Authorized Products shall not be specifically designed to degrade, overload, or stress any component of Windows Media Technologies.
- (d) Interoperability. Regardless of any express right set forth in this Agreement, Authorized Products will not Break Interoperability or Compromise Interoperability, or modify the WMF Content within the networking packets Authorized Products receive.

- (e) End User License Agreements. Licensee will Distribute Authorized Products with an end user license agreement consistent with, and no less protective of Microsoft's rights than, this Agreement. Such end user license agreement will contain all relevant restrictions, including without limitation, prohibitions against using Authorized Products as Origin Servers or adding Unlicensed Functionality to Authorized Products.
- (f) Commercial Hosting. Licensee and its Affiliates shall not use Authorized Products to provide commercial hosting services to third parties.

2.3 Further Licensee Obligations.

- (a) Real-Time Broadcast Streams. To the extent that Licensee chooses to implement features as set forth in this Section 2.3(a), Licensee shall use commercially reasonable efforts to ensure that for real-time broadcast streams of WMC Content: (i) an Authorized Product may only stream WMC Content which originates from a WM Origin Server; (ii) an Authorized Product is allowed to archive a real-time stream as WMC Content so long as the Authorized Product ensures that the archived WMC Content can also be directly and simultaneously streamed from a WM Origin Server.
- (b) On-Demand Streams or Archived WMC Content. To the extent that Licensee chooses to implement features as set forth in this Section 2.3(b), Licensee shall use commercially reasonable efforts to ensure that for on-demand streams or archived WMC Content: (i) an Authorized Product may only stream WMC Content that can be directly and simultaneously streamed from a WM Origin Server; and (ii) when streamed from the Authorized Product to an end user there is no reduced functionality (as compared to the end user experience of receiving such WMC Content stream directly from a WM Origin Server), including without limitation fast forward, rewind and seek through WMC Content that is encoded for such capabilities.
- (c) License Restrictions. To the extent an Authorized Product incorporates the features set forth in Section 2.3(a) or 2.3(b), Licensee's licenses (including end user license agreements) for the Authorized Product shall restrict use of the Authorized Product as set forth in Sections 2.3(a) and 2.3(b).
- (d) Confidential Materials Use. Licensee may not modify the Licensed Documentation. Licensee may copy the Confidential Materials as reasonably necessary to exercise its license rights in Section 2.1. Licensee may only use the Confidential Materials for purposes of designing and developing an Authorized Product. Licensee shall use its commercially reasonable efforts to ensure that the use or distribution of the Licensee Product as an Authorized Product shall not in any way disclose or reveal the Confidential Materials. The Confidential Materials Implementation may not be distributed in any manner other than as part of the implementation of an Authorized Product.
- (e) Independent Contractors. Licensee may utilize Independent Contractors to develop Authorized Products, provided, however that Licensee will notify Microsoft and obtain Microsoft's approval in writing prior to using any such Independent Contractor, which approval shall not be unreasonably withheld or delayed. Other than authorized Independent Contractors, Licensee shall not allow or enable any third party or sublicensee to use or access the Confidential Materials except as Distributed as part of an Authorized Product.

- 2.5 **Use of Bug Fixes.** If Microsoft provides Licensee with Bug Fixes for the Confidential Materials which correct actual or potential security breaches, Licensee will use commercially reasonable efforts to incorporate such Bug Fixes into Licensee's bug fixes and/or updates to Authorized Products and make such Licensee bug fixes and/or updates available to users of Authorized Products as soon as commercially practical.
- 2.6 **Feedback.** During the Term, Licensee shall, as deemed appropriate by Licensee, provide Microsoft with detailed and specific feedback regarding the Confidential Materials and Windows Media Server. As to such feedback, Licensee hereby grants Microsoft, under all Licensee intellectual property and proprietary rights, a non-exclusive, worldwide, perpetual, irrevocable, royalty-free license to (i) make, use, copy, modify and create derivative works of such feedback, (ii) publicly perform, display, import, broadcast, transmit, distribute, license, offer to sell, and sell, rent, lease or lend such feedback (and derivative works thereof), and (iii) sublicense to third parties the foregoing rights, including the right to grant further sublicenses.
- 2.7 **Authorized Product Development.** Nothing herein shall be deemed to limit Licensee's ability to support other Streaming Media technologies in Licensee Products. Licensee shall offer Microsoft the opportunity to purchase each version of each Authorized Product at Licensee's cost upon each such product's commercial release, and shall provide Microsoft with beta releases, if any, of each version of Licensee Product(s) at Microsoft's request, according to the same schedule that it provides beta releases to other companies.
- 2.8 **Ownership.** Except as expressly licensed to Licensee in Section 2.1, Microsoft retains all right, title and interest in and to the Confidential Materials. Licensee retains all right, title and interest in and to Licensee Products, including Licensee Products as Authorized Products, Confidential Materials Implementation (except to the extent that such Confidential Materials Implementation incorporates Confidential Materials) and to any feedback regarding Licensee Products that may be provided by Microsoft under this Agreement.
- 2.9 **No Other Rights.** Except as expressly granted in Section 2.1 of this Agreement or in other duly authorized written agreement(s) between the parties, no other licenses to patents, copyrights, trade secrets or other intellectual property are granted by implication, estoppel, exhaustion or any other theory. Under no circumstances will the license grant set forth in Section 2.1 be construed as granting, by implication, estoppel or otherwise, a license to any Microsoft technology other than the Confidential Materials. Licensee may not use the Confidential Materials for any purposes not expressly set forth in this Agreement. All rights not expressly granted herein are reserved by Microsoft.

3. MICROSOFT OBLIGATIONS

- 3.1 **Delivery and Acceptance.** Microsoft shall provide Licensee with a copy of the Confidential Materials within fourteen (14) days of the Effective Date. Licensee shall notify Microsoft in writing whether it accepts or rejects such Confidential Materials within seven (7) days after receipt by Licensee. The acceptance criteria for such Confidential Materials shall be whether Microsoft has delivered all files listed in Exhibit A. In the event Licensee rejects such Confidential Materials, Microsoft shall have seven (7) days ("Correction Period") in which to re-deliver the Confidential Materials. If Microsoft fails to re-deliver the Confidential Materials, or if Licensee reasonably rejects such re-delivery based upon the acceptance criteria set forth herein, Licensee may, at its option, (a) extend the Correction

Period, or (b) terminate this Agreement pursuant to Section 9.2(a). The date on which the Licensee accepts the Confidential Materials will be known as the "Acceptance Date."

3.2 Support and Testing.

- (a) Provision of Bug Fixes. During the Term, Microsoft may elect to issue Bug Fixes for the Confidential Materials. In such event, Microsoft shall use commercially reasonable efforts to provide Licensee with access to such Bug Fixes as early as such Bug Fixes are available to other similarly situated third parties. Notwithstanding the foregoing, Microsoft has no obligation to provide any Bug Fixes or Updates to Licensee. Microsoft shall have no obligation to provide Licensee any source code or other technology materials under this Agreement other than the Confidential Materials.
- (b) Technical Support. As partial consideration for the Initial Payment Amount during the first year of the Term, and for the Maintenance Fee during the second year of the Term, Microsoft shall use commercially reasonable efforts to provide Microsoft technical support and assistance with respect to Licensee's use of the Confidential Materials to develop Licensee Products as Authorized Products. Such support may be provided by a Microsoft Affiliate or contractor. The first support period begins as of 12:00am Pacific Standard Time on the Acceptance Date, and ends at 11:59pm Pacific Standard Time on the day before the first anniversary of the Acceptance Date. The second support period begins as of 12:00am Pacific Standard Time on the first anniversary of the Acceptance Date, and ends at 11:59pm Pacific Standard Time on the day before the second anniversary of the Acceptance Date. Each such period shall be referred to herein as a "Support Year". Such support and assistance may be rendered by e-mail, telephone, and/or meetings, and shall not exceed one hundred (100) hours during a Support Year. Such support and assistance will be provided by Microsoft to Licensee during normal business hours, excluding the public holidays recognized by Microsoft. In the event Licensee requests additional technical support beyond a cumulative total of one hundred (100) hours during a Support Year, Microsoft shall be entitled to use Microsoft Consulting Services to fulfill these requirements and to charge Licensee at Microsoft's then-current rates for Microsoft Consulting Services. Such support and assistance may, in Microsoft's sole discretion, include providing access to Microsoft development engineers. Support requests shall be initiated by Licensee through a Microsoft designated technical contact who will diagnose, triage, and/or address issues and escalate a specific issue as required. In no event shall such support include any support to Licensee's customers.
- (c) Test Specification. Microsoft will use commercially reasonable efforts to provide Licensee with a test specification for Authorized Products ("Test Specification") within ninety (90) days of the Effective Date. The Test Specification shall cover in detail the areas outlined in the Testing Overview attached hereto as Exhibit D. Microsoft may modify the Test Specification from time to time, provided that it gives Licensee one (1) month notice before doing so.
- (d) Testing. Pursuant to Section 2.2(a), each version of each Proposed Authorized Product must be separately tested by a Testing Center for compliance with the Test Specification. If, for example, Licensee wishes to sell similar versions of Authorized Products with different capabilities, each such version must be tested individually. Licensee shall be responsible for delivering each version of its Proposed Authorized Product to the testing facility, and for supplying any necessary staff to operate the Proposed Authorized Product for testing purposes. A full test pass will consist of a

single run through of each of the tests in the Test Specification on an individual version by a Testing Center ("Test Pass"). Re-testing of a Proposed Authorized Product that fails one or more such tests shall be considered a new Test Pass. As partial consideration for the Initial Payment Amount, Microsoft will authorize and pay a Testing Center to perform up to seven (7) Test Passes per Support Year on proposed Authorized Products. Such seven (7) Test Passes may be used on one proposed Authorized Product, or divided among several (e.g. three (3) Test Passes on proposed Authorized Product X and four (4) Test Passes on proposed Authorized Product Y). Such testing will be performed in accordance with the Test Specification and pursuant to a separate agreement Licensee executes with a Testing Center. Licensee will pay the Testing Center for any additional Test Passes it needs beyond the seven (7) Test Passes provided by Microsoft during any particular Support Year. Licensee shall schedule Test Passes at least one (1) month in advance of the beginning of each test pass. Testing will be performed by the Testing Center subject to the availability of its resources and staff.

- (c) Logo License. Once a version of an Authorized Product has passed testing for compliance with the Test Specification by a Testing Center, Microsoft shall offer to licensee its then-current standard license agreement for the Logo. The Logo may be used solely in conjunction with versions of Authorized Products that have passed such testing and in accordance with the terms and conditions of the Logo license agreement.
 - (f) Software Development Kits. During the Term, upon Licensee's request Microsoft shall offer to Licensee all Windows Media related software development kits under Microsoft's standard terms and conditions for such software development kits.
 - (g) Technical Support Source Code. Microsoft may, in its sole discretion, provide Licensee with access to certain additional source code and/or documentation for technical support purposes. Such access to additional source code and/or documentation, if any, shall be pursuant to a separate written agreement.
- 3.3 Microsoft Web Site. In the event any Authorized Product has passed testing through a Microsoft designated testing center, Microsoft will use commercially reasonable efforts during the Term to include a link (a "Licensee Web Site Link," which will be a text link or, at Microsoft's sole discretion and subject to Licensee's applicable logo usage guidelines, an icon) to the Licensee Web Site from a Microsoft Web site. Microsoft will determine, in its sole discretion, the placement of any such Licensee Web Site Links within a Microsoft Web site.

4. ROYALTIES; PAYMENT

- 4.1 Royalties and Fees. During the Term, Licensee shall pay royalties in accordance with Exhibit B for each Authorized Product Distributed. In the event an Authorized Product is returned to Licensee, Licensee shall not be permitted to credit such return against royalties due to Microsoft. Notwithstanding the foregoing, in the event Licensee re-Distributes such returned Authorized Product, no additional royalty shall be due to Microsoft as a result. If an Authorized Product is rented, leased or loaned by Licensee or its Affiliates to a third party for any purpose other than evaluation of the Authorized Product for a period of thirty (30) days or more, such Authorized Product shall be considered Distributed and payment of royalties shall be due to Microsoft in accordance with Exhibit B. The Initial Payment Amount shall be due and payable by Licensee thirty (30) days after the Effective Date.

During the Term, the Maintenance Fee shall be due and payable by Licensee thirty (30) days after each anniversary of the Effective Date. Royalties and other fees hereunder exclude any taxes, duties, fees, excises or tariffs imposed on any of Licensee's activities in connection with this Agreement. Such charges, taxes, duties, fees, excises or tariffs, if any, shall be paid by Licensee.

4.2 Payment Terms. Royalties shall be due and payable by Licensee no later than the fifteenth (15th) day after the end of the last month of each calendar quarter and thirty (30) days after termination or expiration of this Agreement for the final full or partial quarter. Licensee shall pay the Initial Payment Amount, the Maintenance Fee, and the royalties due hereunder in accordance with the requirements of Section 4.1 and Exhibit B. All payments due hereunder shall be made in United States Dollars in accordance with the requirements set forth in Exhibit C hereto. A ten percent (10%) late charge and a one percent (1%) monthly finance charge will be assessed on all amounts that are past due.

4.3 Reporting. With each royalty payment due under this Agreement, Licensee shall provide Microsoft with a report containing with respect to the previous quarter, the number Distributed, type, SKU and number of Caching Units (defined in Exhibit B) associated with each SKU, model, or version of Authorized Product(s) Distributed during the previous quarter. Such report shall be certified as complete and correct and signed by a duly authorized officer or director of Licensee. Licensee shall submit one copy of such report in accordance with Exhibit C, and another copy to the Microsoft Contact identified in the Table.

4.4 Audit Rights and Inspections.

- (a) During the Term and for a period of three (3) years thereafter, Licensee shall keep all usual and proper records and books of account and all usual and proper entries relating to each Authorized Product sufficient to substantiate the number of copies of Authorized Product Distributed or otherwise disposed of by or for Licensee, the Caching Units associated with each such Authorized Product and the royalties due under this Agreement. Licensee shall maintain such records on Licensee premises.
- (b) In order to verify statements issued by Licensee and Licensee's compliance with the terms of this Agreement, Microsoft may cause (i) an audit to be made of Licensee's books and records and/or (ii) an inspection to be made of Licensee's facilities and procedures. Any audit and/or inspection shall be conducted during regular business hours at Licensee's facilities, with or without notice. Any audit shall be conducted by an independent certified public accountant selected by Microsoft (other than on a contingent fee basis).
- (c) Licensee agrees to provide any audit or inspection team designated by Microsoft access to all relevant Licensee records and facilities.
- (d) Prompt adjustment shall be made to compensate for any errors or omissions disclosed by such audit. Any such audit shall be paid for by Microsoft unless material discrepancies are disclosed. "Material" shall mean the lesser of Ten Thousand Dollars (US \$10,000.00) or five percent (5%) of the amount that was reported. If material discrepancies are disclosed, Licensee agrees to pay Microsoft for the costs associated with the audit. Further, Licensee shall pay Microsoft an additional royalty of twenty-five percent (25%) of the applicable royalty in Exhibit B for each Caching Unit Licensee failed to report that is in excess of five percent (5%) of the number of Caching Units actually reported by Licensee ("Penalties"). In no event shall audits be

made more frequently than semi-annually unless the immediately preceding audit disclosed a material discrepancy.

4.5 Taxes.

- (a) Licensee will be responsible for the billing, collecting and remitting of sales, use, value added, and other comparable taxes determined by Licensee to be due with respect to the collection of any revenues by Licensee, or any portion thereof. Microsoft is not liable for any taxes, including without limitation income taxes, withholdings, value added, franchise, gross receipts, sales, use property or similar taxes, duties, levies, fees, excises or tariffs incurred in connection with any Licensee revenues or related to the sale of Authorized Products or Licensee Products. Licensee takes full responsibility for all such taxes, including penalties, interest and other additions thereon.
- (b) In the event income taxes are required by law to be withheld on royalty payments made under this Agreement, Licensee may deduct such income taxes from the amounts owed and timely pay such taxes to the duly constituted and authorized taxing authority. Licensee shall in turn promptly secure and deliver to Microsoft an original official receipt for any income taxes withheld.

5. NONEXCLUSIVELY

Nothing in this Agreement shall be deemed to restrict either party's ability to license, develop, sublicense, manufacture, deploy, support, promote, or distribute software, applications, devices or any other technology, whether or not similar to the Confidential Materials, Licensee Product(s) or Authorized Product(s).

6. CONFIDENTIALITY

- 6.1 The license grant in Section 2.1 is expressly conditioned upon Licensee retaining in confidence all Confidential Information, and Licensee will make no use of the Confidential Information except under the terms and during the existence of this Agreement.
- 6.2 Licensee may disclose Confidential Information as required by governmental or judicial order, provided Licensee gives Microsoft prompt notice of such order and complies with any protective order (or equivalent) imposed on such disclosure.
- 6.3 Licensee shall not reproduce, duplicate, copy or otherwise disclose, distribute, or disseminate the Confidential Information in any media, other than as expressly permitted in Section 2. Any use of the Confidential Information shall take place solely on Licensee's premises by Licensee's employees and authorized Independent Contractors under agreement to protect the Confidential Information (an agreement which protects Licensee confidential information and which covers the Confidential Information is sufficient).
- 6.4 Either party shall be free to use for any purpose the residuals resulting from access or work with such Confidential Information, provided that such party shall maintain the confidentiality of such Confidential Information as provided in this Section 6. The Term "residuals" means information in non-tangible form, which may be retained by persons who have had rightful and good faith access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein, provided such persons have not intentionally memorized such ideas, concepts, know-how or techniques. Neither party shall have 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 shall not be deemed to grant to either party a license under the other party's copyrights or patents.

7. WARRANTIES; DISCLAIMER OF WARRANTIES

7.1 Warranties. Microsoft represents, warrants and covenants that it has the full power to enter into this Agreement and to provide Licensee the licenses set forth under this Agreement. Licensee represents, warrants and covenants that it has the full power to enter into this Agreement.

7.2 Disclaimer of Warranties. SECTION 7.1 CONTAINS THE ONLY WARRANTIES MADE BY MICROSOFT OR ITS SUPPLIERS. MICROSOFT AND ITS SUPPLIERS HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY (IF ANY) IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF LACK OF VIRUSES, OF ACCURACY OR COMPLETENESS OF RESULTS, OF REASONABLE CARE OR WORKMANLIKE EFFORT, OF RESULTS, AND OF LACK OF NEGLIGENCE OR LACK OF WORKMANLIKE EFFORT, ALL WITH REGARD TO THE LICENSED SOFTWARE, LICENSED DOCUMENTATION, ANY CONFIDENTIAL INFORMATION AND OTHER TECHNOLOGY PROVIDED HEREUNDER. FURTHER, THERE IS NO, AND MICROSOFT DISCLAIMS ANY, WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT, WITH REGARD TO THE LICENSED SOFTWARE, LICENSED DOCUMENTATION, ANY CONFIDENTIAL INFORMATION AND OTHER TECHNOLOGY PROVIDED HEREUNDER.

8. LIMITATIONS OF LIABILITY; DISCLAIMERS

8.1 LIMITATION OF LIABILITY. MICROSOFT AND ITS SUPPLIERS' TOTAL LIABILITY TO LICENSEE UNDER THIS AGREEMENT, SHALL BE LIMITED TO ONE HUNDRED PERCENT (100%) OF THE AMOUNT HAVING ACTUALLY BEEN PAID BY LICENSEE TO MICROSOFT HEREUNDER. LICENSEE RELEASES MICROSOFT AND ITS SUPPLIERS FROM ALL OBLIGATIONS, LIABILITY, CLAIMS OR DEMANDS IN EXCESS OF THIS LIMITATION.

8.2 DISCLAIMER OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HERETO, OR ITS SUPPLIERS, BE LIABLE IN CONNECTION WITH THIS AGREEMENT FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE ANY SOFTWARE AND OTHER TECHNOLOGY AND INTELLECTUAL PROPERTY LICENSED OR TRANSFERRED BY ONE PARTY TO THE OTHER PARTY HERETO IN

CONNECTION WITH THIS AGREEMENT, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF EITHER PARTY TO THIS AGREEMENT OR ANY SUPPLIER THERETO, AND EVEN IF SUCH PARTY OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THIS SECTION 8.2 SHALL NOT APPLY TO SECTION 6 (REGARDING CONFIDENTIALITY).

8.3 Further Limitation of Remedies.

- (a) As partial consideration for the rights granted to Licensee hereunder, Licensee agrees not to (i) sue, or (ii) bring, prosecute, assist or participate in any judicial, administrative or other proceedings of any kind against Microsoft, its Suppliers or its licensees (including without limitation Licensee's customers and end users) for infringement of Licensee Patents (as defined below) which occurs during the Immunity Period (as defined below) on account of the manufacture, use, sale, offer for sale, importation or distribution of:
- 1) Any releases of the Licensed Software, Licensed Documentation, Windows Media Server or Confidential Information licensed to Licensee hereunder (the "Microsoft Products"), except as otherwise provided in subsection (e), below; or
 - 2) Updates to the Microsoft Products, or replacement or successor versions thereof, to the extent such future releases or replacement or successor versions use or embody inventions used or embodied in a version of such Microsoft Products.
- (b) "Licensee Patents" as used in this Section 8.3 means all patents throughout the world, other than design patents or the equivalent, owned or licensable by Licensee or any of its wholly owned subsidiaries, for inventions made prior to termination or expiration of this Agreement, or for which Licensee has or acquires rights prior to the termination or expiration of this Agreement. The "Immunity Period" shall commence upon the first to issue and shall terminate upon the last to expire, of any of the Licensee Patents (in any jurisdiction).
- (c) In the event Licensee assigns Licensee Patents or rights to enforce Licensee Patents, Licensee shall require as a condition of any such assignment that the assignee agree to be bound by the provisions of this Section 8.3.

9. TERM & TERMINATION

9.1 **Term.** This Agreement shall continue through the Term unless earlier terminated in accordance with this Section 9.

9.2 **Termination.** Either party may suspend performance and/or terminate this Agreement:

- (a) Immediately upon written notice at any time, if the other party is in material breach of any material warranty, term, condition or covenant of this Agreement, other than those contained in Section 2.1, 2.2, 6 and/or 10.6, and fails to cure that breach within thirty (30) days after written notice thereof; or

- (b) Immediately upon written notice at any time, if the other party is in material breach of Section 2.1, 2.2, 6 and/or 10.6.
- 9.3 Termination for Convenience. After the first anniversary of the Effective Date, Licensor may terminate this Agreement for convenience upon thirty (30) days' written notice to Microsoft, provided that Licensee's termination for convenience shall not prevent Microsoft from alleging a termination for material breach under Section 9.2 of this Agreement.
- 9.4 Effect of Termination. If this Agreement is terminated for any reason, Licensee shall (i) return all copies of the Confidential Materials and Confidential Information, and related materials in Licensee's possession or under its control within ten (10) days following the effective date of termination or expiration of the Term of this Agreement and (ii) cease all further Distribution of Confidential Materials Implementations. If requested by Microsoft, Licensee shall provide a declaration signed by an officer of Licensee attesting that all such copies have been returned to Microsoft or have been destroyed. If the Term of this Agreement expires, or if this Agreement is terminated by Licensee for Microsoft's material breach or for convenience, then Licensee may retain two (2) copies of Confidential Materials then in its possession and may use the Confidential Materials solely for purposes of supporting (as of the effective date of termination) previously sold versions of Authorized Products developed prior to expiration or termination of this Agreement.
- 9.5 Survival. The provisions of Sections 1, 2.8, 2.9, 4, 5, 6, 7.2, 8, 9 and 10 shall survive termination of this Agreement.

10. GENERAL

- 10.1 Notices. All notices and requests in connection with this Agreement shall be deemed given as of the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as set forth on page 1 of this Agreement. Copies of such notices shall be addressed to each party's General Counsel.
- 10.2 Governing Law. This Agreement will be governed by the laws of the State of Washington, without reference to the conflict of law principles thereof. Any action or litigation concerning this Agreement will take place exclusively in the federal or state courts in King County, Washington, and the parties expressly consent to jurisdiction of and venue in such courts and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to such courts. Licensee hereby agrees to service of process by mail or other method acceptable under the laws of the State of Washington.
- 10.3 Attorneys' Fees. 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 shall be entitled to recover its costs, including reasonable attorneys' fees.
- 10.4 Independent Parties. Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture, agency relationship or as granting a franchise.
- 10.5 Enforceability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- 10.6 Assignment. This Agreement and any rights or obligations hereunder may not be assigned or sublicensed by Licensee (by contract, merger, operation of law, or otherwise) without

Microsoft's prior written approval. For purposes of the foregoing, an assignment shall be deemed to include, without limitation, any transfer or ownership, whether by a sale of assets, a sale of stock, or other controlling interests, merger, reorganization, or other change of control of Licensee. Any attempted assignment, sublicense, transfer, encumbrance or other disposal by Licensee without such consent will be void and will constitute a material default and breach of this Agreement for which Microsoft may terminate this Agreement in accordance with Section 9.2(b). Except as otherwise provided, this Agreement will be binding upon and inure to the benefit of the parties' successors and lawful assigns.

- 10.7 Export Licenses. Licensee acknowledges that the Confidential Information or any part thereof, or any process or service that is the direct product of the Confidential Information (the foregoing collectively referred to as the "Restricted Components") are of U.S. origin. Licensee agrees to comply with all applicable international and national laws that apply to these products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information on exporting Microsoft products, see <http://www.microsoft.com/exporting/>.

Licensee shall, at its own expense, obtain and arrange for the maintenance in full force and effect of all governmental approvals, consents, licenses, authorizations, declarations, filings, and registrations as may be necessary or advisable for the performance of all of the terms and conditions of the Agreement including, but not limited to, foreign exchange approvals, import and offer agent licenses, fair trade approvals and all approvals which may be required to realize the purposes of the Agreement.

- 10.8 Restricted Rights. All Confidential Information provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described elsewhere herein. All Confidential Information provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.
- 10.9 Section Headings. The section headings herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions of this Agreement.
- 10.10 Counterparts. This Agreement may be executed by the parties in counterparts, each of which shall constitute an original but all of which together will constitute one and the same instrument. Any facsimile copy of a signed counterpart shall be treated the same as a signed original.
- 10.11 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of Licensee and Microsoft by their respective duly authorized representatives. 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.

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

MICROSOFT LICENSING, INC.	LICENSEE
By:	By:
Name (print):	Name (print):
Title:	Title:
Date:	Date:

EXHIBIT A

DESCRIPTION OF CONFIDENTIAL MATERIALS

The Confidential Materials consist of any non-public information disclosed to Licensee under this Agreement, the following documents and any upgrades, updates and/or modifications to any of the foregoing released to Licensee during the Term:

Licensed Documentation:

The Licensed Documentation consists of networking protocol specifications and cache/proxy specifications that detail communications between two servers running Windows Media Server and between a server running Windows Media Server and Windows Media Players as required to support the streaming of WMC Content. This includes the Windows Media HTTP, MMS, and MSBD protocols. Specific files include:

\\Specs\HTTP streaming.doc
\\Specs\MMS streaming.doc
\\Specs\MSBD Specification.doc

Licensed Software:

The Licensed Software consists of source code that implements communications between two servers running Windows Media Server version 4.x and between a server running Windows Media Server version 4.x and Windows Media Players and/or SDK applications as required to support the streaming of WMC Content. Specific files include:

\\srcfindexr\srcfindriver.h	\\srccore\include\hmgwnd.hxxx
\\srcfindexr\srcfindriver.vl.h	\\srccore\include\hmgmntpl.h
\\srcfindexr\srcfindmaker.vl.cpp	\\srccore\include\libreg.h
\\srccore\include\src2info.h	\\srccore\include\linklist.hxxx
\\srccore\include\srcgen.h	\\srccore\include\linkmsg.h
\\srccore\include\srcnsid.h	\\srccore\include\list.hxxx
\\srccore\include\srcntlog.h	\\srccore\include\list.inl
\\srccore\include\srcnport.h	\\srccore\include\lock.hxxx
\\srccore\include\srcnpt.h	\\srccore\include\logfield.h
\\srccore\include\srcnsect.hxxx	\\srccore\include\logw3c.h
\\srccore\include\srcnshg.h	\\srccore\include\makefile
\\srccore\include\srcnbug.hxxx	\\srccore\include\mcompetr.h
\\srccore\include\srcnscutil.hxxx	\\srccore\include\mndscsid.h
\\srccore\include\srcnscm.hxxx	\\srccore\include\mndspiv.hxxx
\\srccore\include\srcnsc.inl	\\srccore\include\mndsch.hxxx
\\srccore\include\srcnscmsg.h	\\srccore\include\mndstrid.h
\\srccore\include\srcnscrc	\\srccore\include\mediasrv.h
\\srccore\include\srcnscutil.hxxx	\\srccore\include\messages.h
\\srccore\include\srcnscutil.hxxx	\\srccore\include\mmsdef.h
\\srccore\include\srcnscutil.hxxx	\\srccore\include\mmserror.def
\\srccore\include\srcnscutil.hxxx	\\srccore\include\mmsfile.h
\\srccore\include\srcnscutil.hxxx	\\srccore\include\mmsvcp.h
\\srccore\include\srcnscutil.hxxx	\\srccore\include\mmswide.h

lmscore\include\lmpapi.h
lmscore\include\lmpgdef.h
lmscore\include\lmsaudio.h
lmscore\include\lmsbmsg.h
lmscore\include\lmsresample.h
lmscore\include\lmsvidkey.h
lmscore\include\lmsvmsg.h
lmscore\include\lmsdefs.cpp
lmscore\include\lmsdefs.h
lmscore\include\lmsastat.h
lmscore\include\lmsafign.h
lmscore\include\lmscomm.ver
lmscore\include\lmserror.def
lmscore\include\lmserr.mc
lmscore\include\lmsfilter.bxx
lmscore\include\lmslcom.ver
lmscore\include\lmslverp.h
lmscore\include\lmsmvmmsg.h
lmscore\include\lmsmtitle.h
lmscore\include\lmsmvmmsg.h
lmscore\include\lmspropsack.h
lmscore\include\lmsreginfo.bxx
lmscore\include\lmsregistry.h
lmscore\include\lmsasapi.h
lmscore\include\lmsServerLog.h
lmscore\include\lmsixty4.h
lmscore\include\lmsources
lmscore\include\lmswitch.h
lmscore\include\lmsynchro.h
lmscore\include\lmsnc.h
lmscore\include\lmsvmsg.h
lmscore\include\lmsvodinfo.h
lmscore\include\lmswtamps.h
lmscore\include\lmswitch.h
lmscore\include\lmswz.bxx
lmscore\include\lmswz.inl
lmscore\parse\lib\common.src
lmscore\parse\lib\decoder
lmscore\parse\lib\dirs
lmscore\parse\lib\dynamic
lmscore\parse\lib\encoding.cpp
lmscore\parse\lib\encoding.h
lmscore\parse\lib\lmsstafle.h
lmscore\parse\lib\parsetst
lmscore\parse\lib\static
lmscore\parse\lib\lmsparse.cpp
lmscore\parse\lib\lmsparse.h
lmscore\parse\lib\lmsunicode
lmscore\parse\lib\decoder\decoder.cpp

lmscore\parse\lib\decoder\makefile
lmscore\parse\lib\decoder\sources
lmscore\parse\lib\dynamic\makefile
lmscore\parse\lib\dynamic\sources
lmscore\parse\lib\parsetst\makefile
lmscore\parse\lib\parsetst\parsetst.cpp
lmscore\parse\lib\parsetst\sources
lmscore\parse\lib\static\makefile
lmscore\parse\lib\static\sources
lmscore\parse\lib\unicode\makefile
lmscore\parse\lib\unicode\readme.txt
lmscore\parse\lib\unicode\sources
lmscore\pkt\filter\asfite.cpp
lmscore\pkt\filter\asfite.h
lmscore\pkt\filter\basefilter.cpp
lmscore\pkt\filter\basefilter.h
lmscore\pkt\filter\common.src
lmscore\pkt\filter\dirs
lmscore\pkt\filter\dynamic
lmscore\pkt\filter\indexParser.cpp
lmscore\pkt\filter\indexParser.h
lmscore\pkt\filter\lmsfilter.cpp
lmscore\pkt\filter\lmsfilter.h
lmscore\pkt\filter\loadStuff.h
lmscore\pkt\filter\packetFilter.cpp
lmscore\pkt\filter\packetFilter.h
lmscore\pkt\filter\static
lmscore\pkt\filter\unicode
lmscore\pkt\filter\dynamic\makefile
lmscore\pkt\filter\dynamic\sources
lmscore\pkt\filter\static\makefile
lmscore\pkt\filter\static\sources
lmscore\pkt\filter\unicode\makefile
lmscore\pkt\filter\unicode\readme.txt
lmscore\pkt\filter\unicode\sources
lmscore\streamer\asfwalk.cpp
lmscore\streamer\asfwalk.h
lmscore\streamer\authcache.cpp
lmscore\streamer\authcache.h
lmscore\streamer\BASIC.IC0
lmscore\streamer\BASIC.RC
lmscore\streamer\basic_pi.h
lmscore\streamer\bitvect.h
lmscore\streamer\lmswcontroller.cpp
lmscore\streamer\lmswcontroller.h
lmscore\streamer\common.src
lmscore\streamer\crabis.cpp
lmscore\streamer\crabis.h
lmscore\streamer\dirs

hscore\streamer\DLG_PWH
hscore\streamer\dlmain.cpp
hscore\streamer\dynamic
hscore\streamer\filecrab.cpp
hscore\streamer\filecrab.h
hscore\streamer\filestrm.cpp
hscore\streamer\filestrm.h
hscore\streamer\functset.cpp
hscore\streamer\frmatset.h
hscore\streamer\gatekeep.h
hscore\streamer\httpplr.cpp
hscore\streamer\httpplr.h
hscore\streamer\httppxy.cpp
hscore\streamer\httppxy.h
hscore\streamer\httpstn.cpp
hscore\streamer\httpstn.h
hscore\streamer\httpshp.h
hscore\streamer\hmsstrm.cpp
hscore\streamer\hmsstrm.h
hscore\streamer\hmsstrm.cpp
hscore\streamer\hmsstrm.h
hscore\streamer\hmsbuffer
hscore\streamer\hmsbuffer.cpp
hscore\streamer\hmsbuffer.src
hscore\streamer\hmsstrm.cpp
hscore\streamer\hmsstrm.h
hscore\streamer\passstor.cpp
hscore\streamer\passstor.h
hscore\streamer\rcrabis.cpp
hscore\streamer\rcrabis.h
hscore\streamer\rtspstn.cpp
hscore\streamer\rtspstn.h
hscore\streamer\select.cpp
hscore\streamer\static
hscore\streamer\statistics.cpp
hscore\streamer\statistics.h
hscore\streamer\streamer.idl
hscore\streamer\streamer.mak
hscore\streamer\streamer.mdp
hscore\streamer\strncore.cpp
hscore\streamer\strncore.h
hscore\streamer\strndll
hscore\streamer\strndll.rc
hscore\streamer\strndll.h
hscore\streamer\strndll.rc
hscore\streamer\strmpch.h
hscore\streamer\walker.h
hscore\streamer\dynamic\makefile
hscore\streamer\dynamic\sources

hscore\streamer\hmsbuffer\makefile
hscore\streamer\hmsbuffer\sources
hscore\streamer\static\makefile
hscore\streamer\static\sources
hscore\streamer\strndll\makefile
hscore\streamer\strndll\sources
hscore\streamer\strndll\strndll.def
hscore\streamer\strndll\makefile
hscore\streamer\strndll\sources
hscore\streamer\strndll\strndllh.def
hserver\client.cpp
hserver\client.h
hserver\httpclnt.cpp
hserver\httpclnt.h
hserver\hmsstuff.h
hserver\pktpair.cpp
hserver\pktpair.h

EXHIBIT B

ROYALTIES

For purposes of this Agreement, "Caching Unit" means, for a particular Authorized Product, an encoding rate in kilobits per second ("Kbps") multiplied by the maximum number of streams that such Authorized Product can support simultaneously at such encoding rate. For purposes of this Exhibit, "version" means a particular configuration of an Authorized Product, as identified by a SKU, model number or version number.

The royalties due and payable by Licensee in accordance with Section 4 are based upon the number of Caching Units rounded to the nearest Megabit per second ("Mbps") associated with each Authorized Product Distributed by Licensee. For a particular version of Authorized Product, royalties shall be calculated by multiplying the number of Authorized Products distributed by Licensee by the Royalty indicated in the table below based on the number of Caching Units for that particular version. Caching Units must be calculated at an encoding rate of 100 kilobits per second ("Kbps"). For example, if a version of an Authorized Product is capable of handling up to 333 streams at 100 Kbps, the number of Caching Units would be 33, and the royalty payment due for each such version Distributed would be \$500. The royalties for each version of each Authorized Product Distributed by Licensee must be calculated separately, since each such version may have a different number of Caching Units associated with it.

<u>Caching Units (in Mbps) supported by Authorized Product</u>	<u>Royalty (US \$) payment per Authorized Product Distributed</u>
0 - 28	250.00
29 - 56	500.00
57 - 112	1000.00
113 - 168	1500.00
169 - 224	2000.00

For Caching Units above 224: \$2000 + \$500 for each set of 56 Caching Units above 224.

During the first year of the Term, Licensee may distribute up to Two Hundred Thousand Dollars (U.S. \$200,000.00) worth of Caching Units before paying any royalties. For example, if during the first year of the Term, Licensee Distributes 1000 Authorized Products that are capable of handling up to 333 streams at 100 Kbps, (33 Caching Units each), the total royalties due would be \$500 per Caching Unit x 1000 Authorized Products = \$200,000.00 = \$500,000.00 - \$200,000.00 = \$300,000.00. In the event Licensee fails to Distribute Two Hundred Thousand Dollars (U.S. \$200,000.00) worth of Caching Units during the first year of the Term, no credit against royalties will carry over to the next year of the Term.

After the first anniversary of the Effective Date, Licensee may distribute up to One Hundred Thousand Dollars (U.S. \$100,000.00) worth of Caching Units during the second year of the Term before paying any royalties. In the event Licensee fails to Distribute One Hundred Thousand Dollars (U.S. \$100,000.00) worth of Caching Units during the second year of the Term, Licensee will not be entitled to a refund.

Licensee shall be responsible for accurately identifying the number of Caching Units associated with each version of each Authorized Product and reporting such information to Microsoft. In the event that Licensee, its agents or marketing materials represent that a particular Authorized Product is capable of a higher number of Caching Units (i.e. that an Authorized Product can simultaneously support a higher maximum number of streams at a particular encoding rate) than Licensee has reported to Microsoft, Licensee shall (i) identify the new Caching Unit figure to Microsoft and (ii) pay, within thirty (30) days, additional royalties plus Penalties as defined in Section 4.4(d) based on all previous Distribution of Authorized Products where the royalties were calculated based on the old Caching Unit figure.

EXHIBIT C

PAYMENT

Licensee shall submit all reports and payments due and payable to Microsoft pursuant to Section 4 of this Agreement to the following address:

Nationsbank
Attn: Microsoft Licensing Inc. #100430
6000 Feldwood Road
5 Southside East
College Park, GA 30349

EXHIBIT D

TESTING OVERVIEW

In order to insure compatibility, interoperability and a high level of quality for streams delivered via Authorized Products, a series of Quality Assurance tests must be run prior to shipment. Microsoft will provide a detailed test specification, which will include, but not be limited to, the following areas of testing:

1. Transmission quality of WMC Content encoded at different bitrates, including but not limited to multiple bitrate scenarios.
2. Support for Intelligent Streaming (Multiple Bitrate Encoding).
3. Automatic detection of client connection rate.
4. Proper handling of authorization and authentication challenges.
5. Proper support for logging.
6. Support for current and previously released versions of Windows Media Player.
7. Interoperability testing.

EXHIBIT E

ADDITIONAL DESCRIPTION OF LICENSE PRODUCT(S) AND AUTHORIZED PRODUCT(S)

(12014C3B-02EB-4C81-1CB8-03326PC919E3). See Microsoft Confidential

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