MICROSOFT WINDOWS MEDIA TECHNOLOGY DISTRIBUTION AGREEMENT
WINDOWS MEDIA PLAYER 11
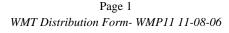
This Microsoft Windows Media Technology Distribution Agreement ("**Agreement**") is made and entered into as of the latter of the two signature dates below ("**Effective Date**"), by and between **Microsoft Corporation**, a Washington corporation, with offices at One Microsoft Way, Redmond, WA 98052-6399 ("Microsoft"), and the "**Company"** (which may be a sole proprietorship, corporation, educational institution, non-profit or other entity) identified in the table below.

"Company"		
	Company Name:	
	Place of Incorporation:	
	Headquarter's Mailing Address *(if different than Company Contact Address):*	
"Company Contact"	**Contact Name:**	
	Contact Title:	
	Contact Mailing Address (no PO Boxes)	
	Contact Telephone Number:	
	Contact Fax Number:	
	Contact Email:	

AGREEMENT

1. DEFINITIONS

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

1.2 "**Company Product**" means Company's product (software or hardware) or service that allows end users to access or manipulate digital media content in formats also supported by the Microsoft Software.

1.3 "**Microsoft Software**" means Windows Media Player 11.

1.4 "**Term**" means the period commencing on the Effective Date and ending at the earlier of (i) five (5) years or (ii) the date Microsoft ceases to offer "Extended Support" for the Microsoft Software in accordance with Microsoft's then current published software support policies.

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1.5 "**Updates**" means any subsequent build of the Microsoft Software provided to Company during the Term.

1.6 "**Security Updates**" are Updates that Microsoft releases to repair a security issue in the Microsoft Software.

2. **LICENSE GRANTS AND RESTRICTIONS; OWNERSHIP**

2.1 <u>Distribution License</u>. Subject to the terms and conditions of this Agreement, Microsoft hereby grants Company a worldwide, royalty-free, non-exclusive, non-transferable, limited license during the Term to reproduce and distribute, directly and indirectly through Company's Channel Entities, the Microsoft Software solely as part of or in conjunction with the Company Product.

2.2 <u>General License Limitations and Restrictions</u>.

(a) *Excluded Licenses*. The license granted in Section 2.1 does not include the right to, and Company shall not, distribute the Microsoft Software in any manner that would cause the Microsoft Software 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) *Standalone Distribution*. Company may distribute the Microsoft Software only as part of or for use with a Company Product. Company may not distribute the Microsoft Software as a standalone product.

(c) *Internet Distribution*. If the Company Product can be downloaded from a web page and the Company Product includes the Microsoft Software, Company shall display the notice "Includes Microsoft Windows Media Technology" on the web page in a location that end users can easily discover and read.

(d) *Reverse Engineering*. Company shall not reverse engineer, decompile, modify or disassemble the Microsoft Software in any way, except and only to the extent such activity is permitted by law notwithstanding this limitation.

(e) *No Modifications*.

   (i) Company shall not modify or customize the Microsoft Software except in the manner described (if any) in Microsoft's documentation or SDK for the Microsoft Software.

   (ii) When Company distributes the Microsoft Software, Company shall distribute the Microsoft Software in its entirety.

   (iii) Company shall use the set-up and installation component of the Microsoft Software to install the Microsoft Software.

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(iv)   Company shall not alter or remove any copyright or other protective notices contained in the Microsoft Software.

(f)   *End User Licenses*. Company shall distribute the Microsoft Software subject to the terms of the Microsoft-supplied End User License Agreement ("**EULA**") associated with the Microsoft Software. Company shall include a copy of the EULA with each copy of the Microsoft Software it distributes, and Company shall present the EULA in such a manner that it is accepted by the end user prior to the installation of the Microsoft Software.

(g)   *Distributors*. If Company engages Channel Entities to distribute the Microsoft Software with Company Products, Company shall (i) engage each Channel Entity under a written agreement that obligates the Channel Entity to the same (or greater) obligations relative to the Microsoft Software as Company agrees to under this Agreement and (ii) agree to be liable for any acts or omissions by the Channel Entity which if performed or not performed by Company would be a breach of this Agreement.

(h)   *No Warranties*. Company shall not make any representations, warranties, or promises on behalf of Microsoft or its suppliers.

2.3   Ownership. Subject to the license granted to Company in Section 2.1, Microsoft retains all right, title and interest in and to the Microsoft Software.

2.4   No Other Rights. Under no circumstances should anything in this Agreement be construed as granting to Company, by implication, estoppel or otherwise, (i) a license to any Microsoft technology other than the Microsoft Software or (ii) any additional license rights for the Microsoft Software than the licenses expressly granted in this Agreement.

3.   UPDATES

3.1   Updates Which Are Not Security Updates. With respect to any Updates other than Security Updates, Company shall commence distribution of the Update, in lieu of prior versions of the Microsoft Software, in the following manner after the release of the Update: (i) within five (5) business days for online distributions of the Microsoft Software, and (ii) within ninety (90) days for all other distributions of Microsoft Software.

3.2   Security Updates. With respect to Updates that Microsoft notifies Company as being Security Updates, Company must use commercially reasonable efforts to commence distribution of the Security Update, in lieu of prior versions of the Microsoft Software, with copies of Company Products manufactured as soon as practicable but no longer than thirty (30) days after the receipt of Microsoft's notice. For the avoidance of doubt, Company is not required to destroy or recall any copies of Company Products that include prior versions of the Microsoft Software which Company Products were manufactured or released into Company's distribution channel prior to the date which is thirty (30) days after Company's receipt of Microsoft's notice regarding the Security Update.

4.   INDEMNITY

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Company shall indemnify, hold harmless, and at Microsoft's option, defend Microsoft from and against any claims or lawsuits, including attorneys' fees, that arise or result from the use, manufacture or distribution of Company's Products and/or Company's breach of this Agreement.

5.   NO WARRANTIES; DISCLAIMER

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MICROSOFT SOFTWARE IS PROVIDED AS IS AND WITH ALL FAULTS. MICROSOFT AND ITS SUPPLIERS HEREBY DISCLAIM WITH RESPECT TO THE MICROSOFT SOFTWARE ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY (IF ANY) WARRANTIES, DUTIES 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, QUITE ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE REMAINS WITH COMPANY.

6.   EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR: LOSS OF PROFITS, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, BUSINESS INTERRUPTION, PERSONAL INJURY, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY (INCLUDING OF GOOD FAITH OR OF REASONABLE CARE), NEGLIGENCE, AND ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE MICROSOFT SOFTWARE OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION HEREIN, EVEN IF MICROSOFT OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.   LIMITATION OF LIABILITY

NOTWITHSTANDING ANY DAMAGES THAT COMPANY MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED ABOVE AND ALL DIRECT OR GENERAL DAMAGES), THE ENTIRE LIABILITY OF MICROSOFT AND ANY OF ITS SUPPLIERS UNDER ANY PROVISION HEREIN AND COMPANY'S EXCLUSIVE REMEDY FOR ALL OF THE FOREGOING SHALL BE LIMITED TO ACTUAL DAMAGES INCURRED BY COMPANY BASED ON REASONABLE RELIANCE UP TO US$50.00. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

8.   TERM & TERMINATION

   8.1   Term. This Agreement commences as of the Effective Date and expires at the end of the Term, unless earlier terminated as provided below.

8.2   <u>Termination For Cause</u>. Either party may terminate this Agreement immediately upon written notice at any time if (i) the other party is in material breach of any provision of this Agreement, other than those contained in Section 2.2(a) or 3.2, and fails to cure that breach within thirty (30) days after written notice thereof or (ii) the other party is in material breach of Section 2.2(a) or 3.2.

8.3   <u>Termination for Convenience</u>. Either party may also terminate this Agreement for any reason upon sixty (60) days written notice.

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

(a)   Unless this Agreement is terminated (i) by Company pursuant to Section 8.2 following a Microsoft breach or (ii) by Microsoft pursuant to Section 8.3 in the absence of a Company breach, upon the expiration or termination of this Agreement Company's rights under Section 2.1 terminate upon the effective date of termination.

(b)   If this Agreement is terminated (i) by Company pursuant to Section 8.2 following a Microsoft breach or (ii) by Microsoft pursuant to Section 8.3 in the absence of a Company breach, the license rights under Section 2.1 survive for a period of time not to exceed ninety (90) days (from the termination date if terminated pursuant to Section 8.2 or from the date of written notice if terminated pursuant to Section 8.3) solely to the extent necessary for Company to (i) include copies of the Microsoft Software in the Company Product to fulfill existing orders for the Company Product placed prior to termination of this Agreement and (ii) deplete its inventory of Company Product containing the Microsoft Software.

(c)   In the event this Agreement is terminated or expires, Company shall destroy all full or partial copies of the Microsoft Software in Company's possession or under its control within ten (10) days following the termination or expiration date.

(d)   Sections 2.3, 2.4, 4-7, 8.4, and 9 survive the expiration or any termination of this Agreement. In addition, if Company continues to exercise its distribution rights under Section 8.4(b), Sections 2.1 and 2.2 also survive for the period described in Section 8.4(b)

9.   **GENERAL**

9.1   <u>Notices</u>. 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 (i) to Company at the address on the first page of this Agreement and (ii) to Microsoft at the following address: Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052 ATTN: WMP Licensing with a copy to Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052 ATTN: Law and Corporate Affairs, Windows Client. Either party may change the address for notice purposes upon notice to the other party.

9.2   <u>Exporting</u>. Company acknowledges that the Microsoft Software is subject to U.S. export jurisdiction. Company agrees to comply with all applicable international and national

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laws that apply to the Microsoft Software, 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, see http://www.microsoft.com/exporting/.

9.3   Independent Contractors. Company and Microsoft are independent contracting parties. Nothing in this Agreement should be construed as creating an employer-employee relationship, partnership, joint venture, agency relationship or as granting a franchise.

9.4   Assignment. 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 shall be void. In the event of such assignment or attempted assignment by Company, Microsoft shall have the right to immediately terminate this Agreement.

9.5   Dispute Resolution. This Agreement will be construed and controlled by the laws of the State of Washington, and Company consents to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, unless no federal subject matter jurisdiction exists, in which case Company consents to exclusive jurisdiction and venue in the Superior Court of King County, Washington. Company waives all defenses of lack of personal jurisdiction and forum non-conveniens. 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 will be entitled to recover its reasonable attorneys' fees, costs, and other expenses.

9.6   Waiver. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

9.7   Construction. 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. Each party acknowledges that no other party, or any agent or attorney of any party, has made any promise, representation, or warranty whatsoever, expressed or implied, not contained herein, concerning the subject matter hereof, to induce it to execute this document, and each party acknowledges that it has not executed this document in reliance on any such promise, representation, or warranty not contained herein. This Agreement has been jointly drafted by the parties following negotiations between them and their respective counsel. It will be construed according to the fair intent of the language as a whole, and not for or against either party.

9.8 <u>Entire Agreement</u>. This Agreement does not constitute an offer by either party and it will not be effective until signed by both parties. This Agreement, including the Exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. This Agreement may 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 duly authorized representatives.

IN WITNESS WHEREOF, Microsoft and Company have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

MICROSOFT CORPORATION   **COMPANY**

_____   _____
By (Signature)   By (Signature)

_____   _____
Name (Print)   Name (Print)

_____   _____
Title   Title

_____   _____
Date   Date

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