MICROSOFT PLAYREADY SERVER AGREEMENT

This Microsoft PlayReady Server Agreement (the “Agreement”) is between Microsoft Corporation, a Washington company, on behalf of itself and its Affiliates (“Microsoft”) and the entity identified in the table below (“Company”). This Agreement will be effective on the date of Microsoft’s signature below (the “Effective Date”).

This Agreement consists of:

- The following terms and conditions; and
- Any attached Exhibits.

Addresses and contacts for notices

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<tbody>
<tr>
<td><strong>Microsoft</strong></td>
<td><strong>Company</strong></td>
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<tr>
<td>Place of Incorporation:</td>
<td>Place of Incorporation:</td>
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<tr>
<td>Washington State, United States</td>
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<tr>
<td>Contact Name: IP Licensing</td>
<td>Contact Name:</td>
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<tr>
<td>Mailing Address: One Microsoft</td>
<td>Mailing Address (no PO Boxes):</td>
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<tr>
<td>Way Redmond WA 98052</td>
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<tr>
<td>Main Phone for courier: 011-425</td>
<td>Contact Phone Number:</td>
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<tr>
<td>- 882-8080</td>
<td>E-mail:</td>
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<tr>
<td>E-mail: <a href="mailto:ipla@microsoft.com">ipla@microsoft.com</a></td>
<td>Portal: wmlalicensing.com</td>
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Term

<table>
<thead>
<tr>
<th>Term of Agreement:</th>
<th>Technical contact (software will only be provided to this technical contact)</th>
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<tbody>
<tr>
<td>Three years from</td>
<td>Contact Name:</td>
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<tr>
<td>the Effective Date</td>
<td>Contact Phone Number:</td>
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<td>Contact E-mail:</td>
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Company Affiliates (see Section 2)

- All Affiliates Included
- Some Affiliates Included. If checked, this means that only the following Company Affiliates are included: [list by each Affiliate’s full name], and any others upon which Company and Microsoft mutually agree in writing. 
- No Affiliates Included
1. Definitions

1.1 “Affiliate” means any legal entity that owns, is owned by, or is commonly owned with a party. “Own” means having more than 50% ownership or the right to direct the management of the entity. An entity will be an Affiliate only so long as that ownership exists.

1.2 “Authorized Contractors” means third-party installers, contract manufacturers and service providers (other than individual independent contractors covered by Section 5.1).

1.3 “Certificate” means a unique PlayReady object used to assess trust.

1.4 “Compliance Rules” means Microsoft’s then-effective compliance rules for the Licensed Technology. The Compliance Rules are available, as of the Effective Date, at http://go.microsoft.com/fwlink/?LinkId=213822.

1.5 “Confidential Information” means all non-public information disclosed under this Agreement that the disclosing party designates, either in writing or orally, as being confidential, or that, under the circumstances of disclosure, ought to be treated as confidential. The Licensed Technology is Microsoft Confidential Information. This Agreement’s terms are also Confidential Information. Confidential Information does not include information that was known to the receiving party before its disclosure to Company, or information that becomes publicly available through no fault of the receiving party.

1.6 “Disclosed Standard” means any standards published (in draft or final form) by bona fide standards development organizations (e.g., ITU, ISO, IEC, 3GPP, OMA, MPEG, W3C, IETF), consortium (e.g., UPnP), trade associations (e.g., Infiniband), or special interest groups (e.g., USB, SALT Forum), including MPEG-2 Systems (aka “MPEG-2 Transport Stream”).

1.7 “Licensed Technology” means the following PlayReady technology: Microsoft’s PlayReady server software development kit (including sample source), applicable Certificate(s), Specifications, tools, and test utilities, as well as Microsoft-selected media, printed materials, and online or electronic documentation for the foregoing.

1.8 “Modified Sample Source” means source code located in the “samples” directory provided by Microsoft as part of the Licensed Technology, which has been modified pursuant to the rights granted to Company under this Agreement.

1.9 “Necessary Claim” means each claim of a patent or patent application that is: (a) owned or controlled by Microsoft or its Affiliate, or sublicensable by that party without payment of royalties to or requiring the consent of an unaffiliated third party, now or in the future; and (b) necessarily infringed in connection with the Licensed Technology’s use or implementation pursuant to this Agreement’s terms. But, Necessary Claims do not include any claims: (x) to any enabling technologies that may be needed to make or use any product or service that includes the Licensed Technology (e.g., enabling semiconductor manufacturing technology, compiler technology, object oriented technology, operating system technology, protocols, programming interfaces, etc.); (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.

1.10 “PlayReady” means Microsoft’s PlayReady™ content access and protection technology.

1.11 “PlayReady Content” means digital content that has been encrypted using PlayReady in accordance with the applicable Specifications.

1.12 “PlayReady Policy” means the actions permitted and/or required with respect to specific PlayReady Content, and the restrictions on those actions, as described in the data structure associated with that PlayReady Content. That data structure contains, but is not limited to, PlayReady Policy and encrypted key(s) used to decrypt the associated PlayReady Content.

1.13 “Server Application” means a software application that (a) runs on a server operating system version specified by the then-current Specifications; and (b) uses the Licensed Technology to encrypt PlayReady Content, set PlayReady Policy, and issue licenses containing PlayReady Policy and encrypted key(s) used to decrypt associated PlayReady Content.
1.14 “Service” means a service offering that: (a) incorporates a Server Application; and (b) is intended for commercial access or use by end users.

1.15 “Specifications” means technical documents and specifications provided or otherwise made available by Microsoft under this Agreement related to the Licensed Technology.

1.16 “Update” means each version of the Licensed Technology released after the Effective Date. It includes bug fixes, maintenance releases, error corrections, upgrades, enhancements, updates, localized versions, additions, improvements, extensions, modifications, successor versions, functionally equivalent replacements (including replacements with enhanced technologies), and substitutions. “Update” does not include Pre-Release Versions (as defined in Exhibit A).

2. Company Affiliates

2.1 If the “All Affiliates Included” box on page 1 is checked:

(a) Company enters into this Agreement on behalf of itself and its Affiliates, and “Company’s” rights and obligations under this Agreement extend to each of Company’s Affiliates just as if that Affiliate had executed this Agreement itself;

(b) Company may distribute copies of the Licensed Technology to each of its Affiliates, if Company uses a secure means to do so (e.g., providing access through a secure firewall to the Licensed Technology stored on Company’s computers located at Company’s premises);

(c) Company will cause each of its Affiliates to comply with this Agreement’s terms, and Company will be jointly and severally liable with each of its Affiliates for breach of this Agreement by Company or any Company Affiliate;

(d) if Microsoft terminates this Agreement after a breach by Company or a Company Affiliate, this Agreement will terminate with respect to Company and all of its Affiliates;

(e) all remedies available to Microsoft, including injunctive relief, apply to Company Affiliates; and

(f) all the references to Company’s Affiliates in this Agreement will apply. But, the references to Company’s Affiliates in Sections 2.2-2.3 will not apply.

2.2 If the “Some Affiliates Included” box on page 1 is checked, then Sections 2.1(a)-(e) and the first sentence in Section 2.1(f) apply, but only to the Company Affiliates included as stated on page 1.

2.3 If the “No Affiliates Included” box on page 1 is checked, or if none of the Affiliate boxes on page 1 is checked, then:

(a) Company will not disclose Microsoft’s Confidential Information made available to Company under this Agreement to Company Affiliates, unless this Agreement expressly authorizes that disclosure. This Section 2.3(a) does not modify Company’s obligations under Section 7; and

(b) the only references to Company’s Affiliates that will apply are those in Sections 2.3 and 3.6, and in Exhibit A.

3. License grants and limitations

3.1 License scope limited. The licenses granted in Sections 3.2 and 3.3 extend only to Company’s Server Applications and Services.

3.2 License grant. Subject to Company’s compliance with this Agreement’s terms, Microsoft grants to Company a non-exclusive, personal, non-transferable, non-assignable, non-sublicensable (except as expressly stated), royalty-free, worldwide license, under Microsoft’s copyrights and trade secret rights in the Licensed Technology and under its Necessary Claims, to:

(a) use and reproduce the Licensed Technology, and modify the sample source included in the Licensed Technology, on Company’s computers that are running on a server operating system version specified by the then current Specifications, to: (i) design, develop, install, test, deploy and operate Company’s Server Applications; and (ii) operate Services that conform to the Compliance Rules;

(b) make, have made (subject to Section 5.1), distribute, import, sell, and offer for sale: (i) Modified Sample Source, solely: (A) for evaluation and development of, and inclusion in, Server Applications; and (B) as incorporated into Company’s Server Applications; and (ii) Services using the Licensed Technology; and

(c) sublicense the rights granted in Section 3.2(a) to Authorized Contractors solely as needed for them to install and test Company’s Server Applications for Company, subject to Section 5.1.

3.3 Demonstrations. Microsoft grants to Company a non-exclusive, personal, non-transferable, non-assignable, non-sublicensable (except as expressly stated), royalty-free, worldwide license to use and publicly display Company’s Server Applications solely for demonstration to trade press and potential customers. Those demonstrations must not disclose any Microsoft Confidential Information, including Licensed Technology source code and trade secrets. In those demonstrations, Company will prominently indicate that Company’s Server Application contains PlayReady technology licensed from Microsoft.

3.4 License limitations.

(a) This Agreement does not grant any right to, and Company will not, distribute the Licensed Technology (or derivative works of it, including Modified Sample Source) in any manner that would subject any Licensed Technology to an Excluded License.
An “Excluded License” is any license requiring, as a condition of use, modification, and/or distribution, that the software or other software combined and/or distributed with it be (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.

(b) This Agreement does not grant any right to, and Company will not, use the Licensed Technology (or its features or functionality) or any other Microsoft Confidential Information to design, develop, distribute, or operate (or authorize others to operate) Server Applications, Services, or modified Sample Source that: (i) enable or facilitate the use or manipulation of PlayReady Content in a manner inconsistent with the PlayReady Policy associated with that PlayReady Content; or (ii) otherwise circumvent the rights and restrictions in the PlayReady Policy for specific PlayReady Content.

3.5 Scope of license from Microsoft. This Agreement grants Company no right to distribute the Licensed Technology, except: (i) as stated in Section 3.2(b)(i) with respect to Modified Sample Source; and (ii) to Affiliates, Authorized Contractors, Cloud Services Providers (as defined in Section 5.1), Company’s independent contractors who are individuals, and Company’s employees, all solely for their use as authorized by this Agreement. For example, while Section 3.2 allows Company to create a Server Application, and to sell that Server Application to a third party that will use that Server Application to operate a Service for itself, this Agreement does not license Company to distribute that Server Application with Licensed Technology included in that Server Application (other than Modified Sample Source). Instead, to allow the third party to use that Server Application to operate a Service for itself, Company would need to distribute the Server Application without any Licensed Technology included in it (other than Modified Sample Source), and the third party would need to have its own license from Microsoft to obtain and add the Licensed Technology so that it could run that Service.

3.6 Defensive suspension. If Company or any of its Affiliates sues Microsoft, any of its Affiliates, or any third party to which Microsoft (or its Affiliate) has licensed PlayReady for patent infringement, on account of the manufacture, use, sale, offer for sale, importation or other disposition or promotion of that entity’s implementation of the Licensed Technology, then Microsoft and/or its Affiliates may terminate all license grants and any other rights provided under this Agreement.

3.7 No trademark license. Nothing in this Agreement grants either party the right to use any logo or trademark of the other party. Company will not refer to any Server Applications, Services, Licensed Technology, or Modified Sample Source in any way that may create the appearance that Company is the owner or developer of the Licensed Technology. Company may make descriptive reference to Microsoft’s non-stylized word marks in documentation, advertising, and marketing materials, including web pages, according to Microsoft’s standard trademark guidelines (see www.microsoft.com/trademarks).

3.8 Other rights reserved. Each party reserves all rights not expressly granted under this Agreement. Other than those express grants, this Agreement does not grant any rights to either party’s intellectual property rights, by implication, estoppel, exhaustion, or otherwise. Without limiting the previous two sentences, the Licensed Technology does not include, and this Agreement does not grant any rights for, any audio or visual compression algorithms or codecs or other content protection systems.

4. Updates; Pre-Release Versions; SDKs

4.1 Updates. In its sole discretion, Microsoft may provide Company with Updates. Each Update, once provided to Company, will become part of the Licensed Technology.

4.2 Pre-Release Versions; Client SDKs. In its sole discretion, Microsoft may provide Company with Pre-Release Versions and Client SDKs (each as defined in Exhibit A), for Company’s evaluation and testing purposes only. Exhibit A’s terms apply to each Pre-Release Version and Client SDK. Sections 3.1, 3.2, 3.3, 3.5, 5.1, 5.4, 5.5, and 9, and all provisions in the main body of this Agreement concerning Certificates, will not apply to any Pre-Release Version or Client SDK.

5. Company Conditions and Obligations

5.1 Authorized use locations and entities.

(a) Licensed Technology may be used only at: (i) Company’s and its Affiliates’ premises (owned and leased); (ii) Company-authorized work sites of Authorized Contractors and the entities listed in Sections 5.1(b)(ii)-(iii) below, by access through a secure firewall to the Licensed Technology stored on Company’s or its Affiliates’ computers located at Company’s or its Affiliates’ premises; and (iii) at Cloud Service Providers’ premises (owned and leased).

(b) Licensed Technology may be used only by: (i) Authorized Contractors pursuant to Section 3.2(c); (ii) Company’s independent contractors who are individuals; (iii) Company’s employees; and (iv) Cloud Services Providers, and only if those Authorized Contractors, contractors, employees, and Cloud Services Providers: (A) have a need to know about or use the Licensed Technology in order to create, install, or test Server Applications or operate Services for Company; (B) are bound by a written non-disclosure agreement at least as protective of the Licensed Technology as this Agreement’s terms are; and (C) are bound to written terms that make Company the sole owner of all intellectual property rights, confidential information and materials arising from any work created by them relating to the Licensed Technology, or that bars them from creating such work. “Cloud Services Provider” means a third-party information technology outsourcing services provider, solely to the extent that it provides dedicated outsourced IT support services to Company.
5.2 Notice of Service launch; brand reporting. Whenever Company begins operating a Service, Company will notify Microsoft within 30 days of the applicable Service’s identifying trademarks and of the legal owner of those trademarks. Also, within 14 days of Microsoft’s written request, Company will provide Microsoft with a report of all brand names and/or trademarks that identify Services then being operated pursuant to a license granted under this Agreement. Microsoft will not make any such request more often than once every 12 months.

5.3 PlayReady Certificates.

(a) Company may request Certificates by completing and submitting a PlayReady Certificate request from the licensing portal at http://wmalicensing.com. If Certificates are provided to it in response to its requests, Company may use them in connection with operating Services.

(b) Each Company PlayReady deployment Certificate will expire no sooner than the next yearly anniversary of the Effective Date after that Certificate’s issuance. To continue to use any PlayReady deployment Certificate after it would otherwise expire, Company must request a reissuance of that PlayReady deployment Certificate from Microsoft through the licensing portal at least 25 days before that expiration date. Microsoft may delay or decline to reissue Company’s PlayReady deployment Certificate(s) or any other Certificate if Company breaches this Agreement.

5.4 Required Updates. Microsoft may identify any Update as a “Required Update,” when or promptly after it is made available to Company. Within six months after Microsoft provides that identification as to any Required Update, Company will: (a) incorporate the Required Update into Company’s Server Applications and Services; and (b) to the extent that the Update includes updates to sample source code that is part of Modified Sample Source previously distributed to Company’s customers under this Agreement, provide Modified Sample Source that includes the Update to those customers.

5.5 End user notices. Company will place the following statement in its end-user terms of use or other documentation for its Services:

Content owners use Microsoft PlayReady™ content access technology to protect their intellectual property, including copyrighted content. This service uses PlayReady technology to protect certain content. If the PlayReady technology fails to protect the content, content owners may require the service to restrict or prevent the delivery of protected content to specified devices or PC software applications. In certain cases, you may be required to upgrade the PlayReady technology to continue to access the service’s content. If you decline such an upgrade, you will not be able to access content that requires the upgrade.

5.6 No warranties on Microsoft’s behalf. Company will not make any representation or warranty to any third party (including its Services customers) on Microsoft’s behalf.

5.7 PlayReady implementations. Company will use the Licensed Technology only to develop Server Applications that issue and manage Certificates and keys and encrypt, set PlayReady Policy for, and issue licenses for PlayReady Content, all as further described in the Specifications. Company will not use the Licensed Technology for any other purpose, including developing new or different digital rights management or other content-protection or content-access technology. For clarity, the previous sentence does not bar Company from including in its Server Applications other such technologies that Company independently develops or licenses. Company will not use or modify the Licensed Technology in any way that enables the Server Application to encrypt, set PlayReady Policy for, or issue licenses for PlayReady Content without obtaining a deployment Certificate from Microsoft (or a Microsoft Affiliate).

5.8 Reverse engineering.

(a) Company will not reverse engineer, decompile, or disassemble the Licensed Technology (or otherwise access Licensed Technology source code that is provided in object code form), except (i) as permitted by applicable law despite this Section 5.8(a); or (ii) as authorized by Microsoft or a Microsoft Affiliate in a separate written agreement.

(b) Company will use commercially reasonable efforts to design Company’s Server Applications and operate Services that prevent third parties from reverse engineering, decompiling or disassembling Company’s Server Applications and Services and to prevent end users from discovering any of the source code of Company’s Server Applications and Services.

6. Security compliance

6.1 Compliance Rules. Company will cause all Services Company operates to conform to the Compliance Rules, subject to Section 6.2.

(a) Company will provide a copy of the Compliance Rules (and any updates to them) to its personnel who are responsible for the design, development, and operation of Company’s Server Applications and Services, and tell them that Services must conform to the Compliance Rules.

(b) For each Server Application that Company creates and all Services that it operates, Company will: (i) have documentation detailing how the Services conform to the Compliance Rules and how the Server Application does and
Confidentiality and Feedback

6.2 Updates to Compliance Rules.

(a) Microsoft may update the Compliance Rules upon notice to Company. New Services or updates to existing Services, if deployed by Company more than six months after that notice, must conform to the updated Compliance Rules. But, if any Service enables optional features or functions added as part of the updates to the Compliance Rules, then it must conform to the updated rules immediately.

(b) Microsoft will provide to and require that all other Microsoft PlayReady server licensees comply with the same updates to the Compliance Rules as it provides to Company under Section 6.2(a).

6.3 Compliance recommendations. Microsoft may occasionally provide Company with recommendations for improving the security of Server Applications and Services (“Security Precautions”). But, Microsoft is not obligated to do this, and Server Applications and Services are not required to conform to Security Precautions. Security Precautions do not modify the Compliance Rules, and Services must conform to the Compliance Rules regardless of the Security Precautions. Security Precautions are Microsoft’s Confidential Information.

6.4 Cooperation with other Microsoft PlayReady licensees. If Microsoft identifies a Material Security Problem (defined below) in a Service using Company’s Server Application or Modified Sample Source, Company will (a) promptly make a technical contact available to work with Microsoft, the customer of the Service, the third-party operating the Service (if any), and other suppliers for that Service in analyzing the security failure; (b) cooperate in sharing information as reasonably necessary to identify and isolate the parts of the Service that are the source of the Material Security Problem; and (c) if the Material Security Problem is attributable (in whole or in part) to Company’s Server Application or Modified Sample Source, promptly develop and distribute a patch, fix, or new version of that Server Application or Modified Sample Source as quickly as commercially feasible, taking into account the severity and potential risk to PlayReady Content caused by the Material Security Problem. “Material Security Problem” means: (x) the failure of a Service to conform to the Compliance Rules; (y) a security breach in a Service that enables or facilitates the use or manipulation of PlayReady Content in a manner inconsistent with the PlayReady Policy associated with such PlayReady Content; or (z) any material breach of the applicable license agreement that enables or facilitates the use or manipulation of PlayReady Content in a manner inconsistent with the PlayReady Policy associated with that PlayReady Content.

6.5 Third-party beneficiary rights. Company acknowledges that certain third parties (including specific PlayReady Content owners or their designees) will be third party beneficiaries of this Agreement (each, a “Third Party Beneficiary”). If a Service containing Licensed Technology fails to conform to the Compliance Rules and Microsoft does not revoke the Certificates associated with that Service, Company agrees that Third Party Beneficiaries will be entitled to bring a third party beneficiary claim against Company under this Agreement. The sole and exclusive remedies available to Third Party Beneficiaries with respect to any such third party beneficiary claim will be (a) injunctive relief against the continued operation of the Service; and (b) an award of reasonable attorneys’ fees incurred in connection with the third party beneficiary claim.

7. Confidentiality and Feedback

7.1 Confidential Information. At all times during this Agreement’s term, each party will hold in strictest confidence the other’s Confidential Information, and will not use or disclose it to any third party except as expressly permitted pursuant to this Agreement. Either party may disclose the other’s Confidential Information as required by a judicial or other governmental order, if the party either (a) gives the other party reasonable notice before such disclosure to allow it a reasonable opportunity to seek a protective order or equivalent (unless applicable law bars giving such notice), or (b) obtains written assurance from the applicable government entity that the entity will give the Confidential Information the highest level of protection allowed under applicable law. But, Company may not disclose any source code that contains Confidential Information in accordance with such an order unless Company complies with Section 7.1(a).

7.2 Residuals. 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. “Residuals” 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. But, this Section 7.2 does not grant a license under either party’s copyrights or patents.

7.3 Feedback.

(a) Company has no obligation to give Microsoft any suggestions, comments or other feedback relating to theLicensed Technology (“Feedback”). However, except as provided in Section 7.3(b), if Company does voluntarily provide Feedback, Microsoft may use and include that Feedback to improve the Licensed Technology and other related Microsoft technologies. Accordingly, Microsoft and its licensees may freely use, reproduce, license, distribute, and otherwise commercialize that Feedback in the Licensed Technology or other related technologies. Company will not provide any Feedback that (i) Company knows is subject to any third party’s patent, copyright or other intellectual property right; or (ii) is subject to an Excluded License.
(b) Section 7.3(a) does not apply to any Feedback that Company provides in writing if: (i) Company first submits a request to drmfeed@microsoft.com describing the general subject matter, but not the details, of the Feedback and stating that Company wants to provide the Feedback under this Section 7.3(b); (ii) Microsoft agrees in writing to accept the proposed Feedback; and (iii) Company provides the Feedback in a single document that includes both the Feedback and a prominent notice that the Feedback is being provided without any rights for Microsoft to use or implement it.

7.4 Publicity. Neither party will issue any press releases or other publicity that relate to the parties’ relationship or this Agreement, without the other party’s prior written approval. But, Company consents to Microsoft’s listing: (a) Company as a licensee of the Licensed Technology at an appropriate Microsoft web page; and (b) Company’s Server Applications at an appropriate Microsoft web page.

8. Warranties

8.1 Warranties.

(a) Microsoft and Company each represents and warrants that:

(i) it has the full power to enter into this Agreement; and

(ii) it has legal authority to bind itself and its Affiliates to all of this Agreement’s terms to the same extent as if each such Affiliate had executed this Agreement individually.

(b) Company further represents and warrants that it is entering into this Agreement for the bona fide purpose of developing Server Applications and commercially operating Services that conform to the Compliance Rules.

8.2 Disclaimer of further warranties. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AND ITS SUPPLIERS AND AFFILIATES PROVIDES THE LICENSED TECHNOLOGY, SERVICES, SERVER APPLICATIONS, AND CONFIDENTIAL INFORMATION (COLLECTIVELY, THE “MATERIALS”) AND ANY TESTING OR SUPPORT SERVICES RELATED TO THEM “AS IS” AND WITH ALL FAULTS. EACH PARTY AND ITS SUPPLIERS AND AFFILIATES DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES AND CONDITIONS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, LACK OF VIRUSES, COURSE OF DEALING OR TRADE USAGE, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, WORKMANLIKE EFFORT, AND LACK OF NEGLIGENCE.

9. Indemnification

9.1 Scope. Each party will indemnify, hold harmless, and defend the other party and its directors, officers, employees, agents, and Affiliates from and against any and all third-party claims, actions, demands, legal proceedings (and resulting liabilities, damages, losses, judgments, settlements, costs and expenses, including reasonable attorney’s fees) (collectively, “Claims”) that, if proven, would establish:

(a) infringement or misappropriation of any patent, copyright, or trade secret of any third party (including direct or contributory infringement) by the following:

(i) where Microsoft is the indemnifying party, the Licensed Technology alone, without combination or modification, but: (A) only to the extent that Company’s allegedly infringing use of the Licensed Technology was within Company’s rights granted under this Agreement; and (B) not with respect to Claims for alleged infringement by an implementation of a Disclosed Standard; or

(ii) where Company is the indemnifying party, Company’s Server Applications and Services, but not with respect to Claims for infringement by the Licensed Technology standing alone, without combination or modification;

(b) the indemnifying party’s breach of Section 7; or

(c) the indemnifying party’s breach of any other provision of this Agreement, but only for Claims brought by or on behalf of a PlayReady Content owner.

9.2 Process. When seeking protection under Section 9.1, the indemnified party will promptly: (a) notify the indemnifying party of the Claim; (b) allow the indemnifying party to have sole control over defense and settlement of the Claim, through counsel that it reasonably selects. But, the indemnifying party will not enter into any settlement without the indemnified party’s consent (not to be unreasonably withheld), except for settlements that impose only an obligation to pay for which the indemnifying party is fully responsible under this Section 9. The indemnified party may retain counsel of its choosing and participate in the defense or settlement of any Claim at its sole expense. The indemnified party will provide the indemnifying party with reasonable assistance in the defense of Claims, at the indemnifying party’s reasonable expense.

9.3 Other remedies. In addition to performing its obligations stated in Section 9.1(a), if Microsoft receives information concerning a Claim under that section, Microsoft may, at its expense:

(a) procure for Company copyright, trademark, or patent rights as may be necessary to resolve the Claim, or

(b) replace or modify the Licensed Technology or trademark to make it non-infringing. If and when Microsoft provides such a non-infringing alternative: (i) Company will immediately cease use of the allegedly infringing item; and (ii) Microsoft will not be obligated to indemnify Company for any Server Applications or Services that use the allegedly infringing item.
that are developed or operated by Company at any time beginning within a reasonable time (but not more than 60 days) after Microsoft provides the non-infringing alternative.

10. Term and termination

10.1 Term. This Agreement starts on the Effective Date and will continue for the term stated on the first page of this Agreement, unless terminated earlier according to its terms.

10.2 Termination by either party for cause

(a) Either party may terminate this Agreement immediately for cause if the other party breaches this Agreement and fails to cure the breach within 30 days’ notice.

(b) Either party may terminate this Agreement immediately for cause, upon notice, if the other party breaches Section 7 or infringes that party’s intellectual property rights.

(c) Subject to applicable law, either party may terminate this Agreement immediately if the other 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. Termination under this Section 10.2(c) will be effective upon notice to the non-terminating party or as soon thereafter as permitted by applicable law.

10.3 Termination by Company for convenience. Company may terminate this Agreement without cause by providing at least 30 days’ advance notice to Microsoft.

10.4 Effects of termination. When this Agreement ends for any reason, all licenses granted under it to Company end too, and Company will cease all use of the Licensed Technology (and any derivative works of it, including Modified Sample Source). But, if Company terminates this Agreement for Microsoft’s uncured material breach, Company may continue to operate Services that it had made commercially available as of the termination date for a period not to exceed the earlier of (i) six months after termination, or (ii) expiration of the applicable deployment Certificate, in accordance with all of this Agreement’s terms and conditions. Within ten business days after this Agreement ends (or after the six-month wind-down period above ends, if any), Company will destroy all copies of the applicable Licensed Technology, Modified Sample Source, and other items embodying Microsoft’s Confidential Information in its possession or control, and certify that destruction in writing to Microsoft. But, Company may keep up to five copies of the Modified Sample Source solely for support and maintenance purposes, if this Agreement was not terminated for Company’s breach. The following provisions will survive any termination of this Agreement: Sections 1 (and all other definitions in the Agreement), 2, 3, 8, 5.1(c), 6, 7, 8, 9 (but only as to claims arising before this Agreement ends), 10.4, 11 and 12, and Exhibit A’s Sections A, B, D, E (but only as to claims arising before this Agreement ends), and F.

11. Limitation Of liabilities

11.1 LIMITATION OF AMOUNTS OF LIABILITY. EACH PARTY’S AND ITS RESPECTIVE AFFILIATES’ TOTAL COMBINED LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED $500,000.

11.2 EXCLUSION OF CERTAIN DAMAGES. NEITHER PARTY OR ITS AFFILIATES WILL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR THAT RELATE IN ANY WAY TO THIS AGREEMENT OR ITS PERFORMANCE. THIS EXCLUSION WILL APPLY EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES, EVEN IN THE EVENT OF FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT OR PRODUCT LIABILITY, AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11.3 APPLICABILITY. THE LIMITATIONS AND EXCLUSIONS IN SECTIONS 11.1-11.2 WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND REGARDLESS OF WHETHER THE LIABILITY IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTIES, OR ANY OTHER LEGAL THEORY. BUT, SECTIONS 11.1-11.2 WILL NOT APPLY TO: (a) BREACHES OF OR CLAIMS UNDER SECTION 7; (b) BREACHES OF OR CLAIMS UNDER SECTION 9; (c) EITHER PARTY’S INFRINGEMENT OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS; OR (d) EITHER PARTY’S WILLFUL MISCONDUCT RELATING TO THIS AGREEMENT.

12. General

12.1 Notices. Notices under this Agreement are deemed given as of the day they are received by the recipient by electronic mail, messenger, delivery service, or in the physical mails, postage prepaid, certified or registered, return receipt requested. The persons identified on the first page of this Agreement will receive notices on behalf of their respective companies. Either party may change the persons to whom notices will be sent by giving notice to the other.

12.2 Independent contractors; non-exclusive. The parties are independent contractors. This Agreement does not create an agency, partnership, joint venture, franchise, or employment relationship and does not create a franchise. Neither party has the authority to make any statements, representations or commitments on the other’s behalf. This Agreement is nonexclusive. It does not restrict either party’s ability to acquire, license, develop, manufacture or distribute similar technology performing the same or similar functions as the Licensed Technology, or to market and distribute such technology in addition to, or instead of,
the Licensed Technology. Nothing in this Agreement prohibits Company from using or including third-party digital rights management or content protection technologies in its products.

12.3 **Governing law.** The laws of the State of Washington govern this Agreement. If federal jurisdiction exists, the parties consent to exclusive jurisdiction and venue in the federal courts in King County, Washington. If not, the parties consent to the exclusive jurisdiction and venue in the Superior Court of King County, Washington. Both Company and Microsoft waive all defenses of lack of personal jurisdiction and forum non conveniens for actions commenced in those courts. In any action or suit to enforce any right or remedy under this Agreement or to interpret any of its provision, the prevailing party is entitled to recover its reasonable attorneys’ fees, costs and other expenses.

12.4 **Export restrictions.** Company acknowledges that the Licensed Technology is subject to U.S. export jurisdiction. Company will 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/.

12.5 **English language.** This Agreement is written only in the English language, and that language will be controlling in all respects. Versions of this Agreement in any other language are only for accommodation and are not binding on the parties. To be effective, communications and notices made or given pursuant to this Agreement must be in the English language, except as otherwise required by applicable law.

12.6 **Assignment.** Company may not assign this Agreement, or any rights or obligations under it, whether by operation of contract, law or otherwise, except with Microsoft’s written consent. Any attempted assignment by Company in violation of this Section 12.6 is void.

12.7 **Construction.** If a court of competent jurisdiction finds any part of this Agreement to be unenforceable, that part will be enforced to the maximum possible extent to effect the parties’ intent, and the remainder of this Agreement will continue in full force and effect. A party’s delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy. Unless otherwise expressly stated, when used in this Agreement the words “include,” “includes,” and “including” will be deemed in each case to be followed by the words “without limitation.” Unless otherwise specified, all references to “days” mean “calendar days.” All references to “dollars” or “$” mean U.S. dollars. This Agreement will be construed according to the fair intent of the language as a whole, and not for or against either party.

12.8 **Entire agreement.** This Agreement (including any exhibits) is the entire agreement between the parties regarding the Licensed Technology and its other subject matter. This Agreement may not be modified except by a written agreement dated after the Effective Date and signed by both parties. The parties may execute this Agreement in counterparts. Each counterpart will be deemed an original and all counterparts will constitute one agreement binding both parties. Facsimile signatures will be considered binding.
EXHIBIT A
Pre-Release Versions, Client SDKs

This Exhibit A does not apply to anything that is provided under any Microsoft PlayReady Master Evaluation Agreement entered into between the parties.

A. Definitions.

1. “Pre-Release Version” means a version of items included in the Licensed Technology, which is provided after the Effective Date and is identified by Microsoft as “pre-release,” “Pre-Release,” or similar designation when or promptly after it is provided. A Pre-Release Version is notLicensed Technology, except as stated in Section F(2).

2. “Client SDK” means the following in object code form with SL150 certificates, in production and/or pre-release versions:
   • PlayReady Client SDK for iOS: Microsoft’s implementation of the PlayReady porting kit, in object code form, that is designed to run on the Apple iOS operating system, including all certificates, libraries, specifications, sample code, tools and associated documentation, as well as media, printed materials, and online or electronic documentation.

3. “Evaluation Term” means, for each Test Software item that Microsoft provides under this Exhibit A, the remainder of this Agreement’s term after the provision date, unless Microsoft states otherwise in writing as to that item.

4. “Test Software” means the tangible items of technology (either a Pre-Release Version or Client SDK) provided or otherwise made available to Company under this Exhibit A. For the avoidance of doubt, “Test Software” does not include the Licensed Technology.

B. Affiliates.

Company’s rights and obligations under this Exhibit A extend to Company’s Affiliates to the same extent that Company’s other rights and obligations under this Agreement extend to those Affiliates pursuant to the Agreement’s Section 2. With respect to any Company Affiliate to which those other rights and obligations do not apply, pursuant to the Agreement’s Section 2, Company will not (i) distribute copies of the Test Software it receives or that is made available to Company under this Exhibit A to that Affiliate, or (ii) disclose any Confidential Information regarding the Test Software to that Affiliate.

C. License.

1. Grant. Subject to Company’s compliance with the Agreement’s terms that apply to the Test Software, and this Exhibit A’s terms, Microsoft grants Company a limited, non-exclusive, non-assignable, non-transferable, non-sublicensable (except as expressly stated), worldwide, fully paid-up, royalty-free license during the applicable Evaluation Term to install, reproduce, and use internally up to 20 copies of the Test Software solely to: (a) develop and test the Test Software (applies to any Test Software provided in source code form); and (b) evaluate and test the Test Software (applies to any Test Software provided in object code form). Unless and until Microsoft provides any given Test Software item under this Exhibit A, no license rights are granted for that Test Software item under this Agreement.

2. Authorized use locations and entities. The Test Software may be used under Section C(1) only at: (a) Company’s and its Affiliates’ premises (owned and leased); and (b) Company-authorized work sites of the entities listed in (x)-(y) below, by access through a secure firewall to the Test Software stored on Company’s computers located at Company’s premises. The Test Software may be used only by: (x) Company’s independent contractors who are individuals; and (y) Company’s employees.

3. Demonstrations. Microsoft grants to Company a non-exclusive, personal, non-transferable, non-assignable, non-sublicensable (except as expressly stated), royalty-free, worldwide license to use and publicly display the Test Software solely for demonstration to trade press and potential customers, at Company’s and its Affiliates’ premises (owned and leased). Those demonstrations must not disclose any Microsoft Confidential Information, including Test Software source code and trade secrets. In those demonstrations, Company will prominently indicate that the Test Software contains PlayReady technology licensed from Microsoft.

4. No distribution. Except for distribution to Company Affiliates as expressly permitted under this Exhibit A, Company will not rent, lease, lend, sell, sublicense, assign, transfer or otherwise distribute any portion of the Test Software. For the avoidance of doubt, Company may not distribute the Test Software to Authorized Contractors or Cloud Services Providers, or sublicense them any rights under this Exhibit A.

5. Confidential Information. The Test Software is Microsoft’s Confidential Information.

6. Limited use. The Test Software is provided solely for the internal testing, evaluation and development purposes described in Section C(1), and any features or products (including applications, devices, utilities, tools, or content solutions) created using the Test Software may be used only for such purposes. Company will not use the Test Software in a live or production operating environment where it is, or may be, relied upon to perform in the same manner as a commercially released product or with data that has not been sufficiently backed up. Company will not commercially release any products containing the Test Software.

7. Certificates. Microsoft may deliver to Company a set of Certificates (if applicable) as part of the Test Software. Company may use those Certificates solely for the purpose of evaluating, developing and testing the Test Software. Company will not distribute or disclose those Certificates, except to employees and independent contractors as authorized in the Agreement’s Section 5.1.
D. **Conflicts.** This Exhibit A’s terms will control with respect to Test Software, to the extent that they conflict with terms in the main body of the Agreement, except for terms concerning the term and termination of the Agreement.

E. **Indemnity.** Company will indemnify, hold harmless, and defend Microsoft and its directors, officers, employees, agents, and Affiliates from and against any and all Claims that, if proven, would establish Company’s breach of this Exhibit A. **THE LIMITATIONS AND EXCLUSIONS IN THE AGREEMENT’S SECTIONS 11.1-11.2 WILL NOT APPLY TO COMPANY’S OBLIGATION TO DEFEND UNDER THIS SECTION E.**

F. **General.**
   1. **Agreement terms applicable.** The Agreement’s provisions, other than those listed in the Agreement’s Section 4.2, will apply to the Test Software in the same way that those provisions apply to the Licensed Technology.
   2. **After commercial release.** If and when Microsoft makes a Pre-Release Version generally commercially available as a fully released Update to the Licensed Technology, it will become part of the Licensed Technology, and the Agreement’s Section 4.2 will no longer apply to it. (This Exhibit A does not require Microsoft to make any Pre-Release Version generally commercially available.)