

MICROSOFT INTERNET EXPLORER OEM/SYSTEM BUILDER LICENSE AND DISTRIBUTION AGREEMENT

Document Version 2.0 – August, 2001

This Microsoft Internet Explorer OEM/System Builder License and Distribution Agreement ("Agreement") is entered into as of ____ day of _____, 200____ ("Effective Date") by and between **MICROSOFT LICENSING, INC.**, a Nevada corporation ("Microsoft"), and **COMPANY** which by its selection of the "I Accept" button, agrees and accepts the following terms and conditions of this Agreement.

1. DEFINITIONS

- a. "Content" means data, text, audio, video, graphics, photographs, artwork and other technology and materials.
- b. "IEAK" means a collection of tools, as such tools may be updated from time to time by Microsoft, that enable limited customizations to the Licensed Software (as hereinafter defined), such customizations to be made in accordance with the on-line instructions provided with such tools ("Instructions"), as such Instructions may be amended from time to time.
- c. "Internet Product" means the Company-labeled product(s) and service(s) which provide (i) access to the Internet, (ii) printed or online information about the Internet, and/or (iii) Content or access to Content which is used or viewed in conjunction with the Internet; provided, however, that "Internet Product" does not include a personal computer.
- d. "Internet Site" means Company's Web site(s).
- e. "Customization Code" (applies to IEAK Versions 5.5 and earlier only) means the authorization code provided by Microsoft that enables Company to use the customization features of the IEAK.
- f. "Licensed Software" means in object code form only for Platforms in all available languages requested by Company, the final commercially released versions of the Microsoft software components identified in **Part I of Exhibit A**. Not all software components are available on all Platforms. Exhibit A may be amended from time to time to include new, additional or subsequent versions of the software components as set forth in **Part III of Exhibit A**. Regardless of the term or extended term of this Agreement, inclusion of additional or subsequent versions of the software components into the definition of Licensed Software shall be at Microsoft's sole discretion and may be made without prior notification.
- g. "Logo" means the "Microsoft® Internet Explorer" logo(s) (or any successor(s) thereof) to be licensed to Company by separate agreement. If Company wishes to use the Logo, Company must execute the Logo License Agreement at <http://www.microsoft.com/windows/ieak/>.
- h. "Platforms" means any current and future Microsoft operating system products or platforms that are commercially released during the term of this Agreement, Apple Macintosh, and UNIX.
- i. "System Builder" or "SB" means an original equipment manufacturer, assembler, reassembler, and/or software preinstaller of "Computer Hardware" (as hereinafter defined) intended for resale for value to an unrelated end user.
- j. "Computer Hardware" means an assembled computer system that includes a motherboard with CPU, bootable mass storage drive, power supply and case. Computer Hardware does not include computer systems or motherboards capable of supporting more than two (2) microprocessors.

2. LICENSE GRANTS, CONDITIONS, LIMITATIONS & CUSTOMIZATION RIGHTS

a. License Grant

- i. IEAK. Subject to Company's continued compliance with all material terms of this Agreement, Microsoft grants to Company a nonexclusive, limited, worldwide, royalty-free license to use the IEAK to customize the Licensed Software in accordance with the Instructions and the conditions contained in **Exhibit A**. With respect to IEAK Versions 5.5 and earlier, Company acknowledges and agrees that its use of the IEAK to customize the Licensed Software requires the rightful receipt from Microsoft of a Customization Code allocated to Company. With respect to IEAK Versions 5.5 and earlier, a Customization Code shall be supplied to Company on the condition that Company use such Customization Code only for the exercise of its IEAK license in accordance with this Agreement and not for any other purpose.
- ii. Licensed Software. Subject to Company's continued compliance with all material terms of this Agreement, Microsoft grants to Company a nonexclusive, limited, worldwide, royalty-free license to use, reproduce, sublicense, distribute (including distribution via the Web) and have distributed (directly and indirectly through Company's distribution channels) the Licensed Software in both unmodified form and in customized form(s) created using the IEAK pursuant to Section 2(a)(i), to Company's end user customers and prospective end user customers for use solely as part of or in conjunction with Company's Internet Product.

b. License Conditions The license grants set forth in Section 2 are expressly subject to the following conditions:

- i. No Standalone Distribution/Sublicense. The Licensed Software may only be sublicensed or distributed as part of or for use with Company's Internet Product, and not as a "standalone" product; provided, however, that Company or Company's distributors may distribute updates of the Licensed Software separately for purposes of updating the Internet Product to be used by an existing end user customer.
- ii. Separation of Licensed Software Components. Licensed Software components may not be distributed separately except solely as may be expressly specified in **Exhibit A, Part II**.
- iii. New Releases. If Microsoft makes a new release of Licensed Software available, then Company shall use reasonable commercial efforts to: (A) promptly cease reproduction and distribution of the older version of the Licensed Software (or applicable component thereof); (B) promptly commence reproduction and distribution of the new release of the Licensed Software (or applicable component thereof) with Company's Internet Product, provided that Company may deplete its existing inventory of Company's Internet Product containing a prior version of the Licensed Software; and (C) promptly notify its end users that a new release of the Licensed Software may be available from Company or from Microsoft.
- iv. Use Restrictions. Use of a new release of the Licensed Software may be subject to amended terms as further described in **Exhibit A, Part III**.
- v. End Users and Distributors. Company's sublicenses will not be materially inconsistent with the terms and conditions of Microsoft's end user license agreement associated with the applicable version of the Licensed Software regarding rights granted to and obligations imposed upon Company by Microsoft.
- vi. Settings. For distributions of customized Licensed Software outside of Company pursuant to Section 2(a)(ii), Company shall only use the IEAK in "Service Provider" or "Content Provider" mode to prepare such customized Licensed Software. For distributions of customized Licensed Software within Company

pursuant to Section 2(a)(ii), Company shall use the IEAK in "Corporate" mode. Company shall not alter the IEAK or the IE registry settings, and Company shall not otherwise use the IEAK in a manner not specifically enabled by the Instructions.

- vii. Identified Software. Company's license rights to the Licensed Software are conditioned upon Company (a) not incorporating Identified Software into, or combining Identified Software with, the Licensed Software or a derivative work thereof; (b) not distributing Identified Software in conjunction with the Licensed Software or a derivative work thereof; and (c) not using Identified Software in the development of a derivative work of the Licensed Software. "Identified Software" means software which is licensed pursuant to terms that directly or indirectly (i) create, or purport to create, obligations for Microsoft with respect to the Licensed Software or derivative work thereof or (ii) grant, or purport to grant, to any third party any rights or immunities under Microsoft's intellectual property or proprietary rights in the Licensed Software or derivative work thereof. Identified Software includes, without limitation, any software that requires as a condition of use, modification and/or distribution of such software that other software incorporated into, derived from or distributed with such software be (a) disclosed or distributed in source code form; (b) be licensed for the purpose of making derivative works; or (c) be redistributable at no charge.
- c. License Limitations. Company's license grant in Section 2(a) is further conditioned upon Company's compliance with the following: (i) Company shall not reverse engineer, decompile or disassemble the Licensed Software or the IEAK; (ii) Company shall not authorize further redistribution of the Licensed Software by end users of Company's Internet Product; and (iii) Company shall maintain and not alter or remove any copyright, trademark, and other protective notices contained in the Licensed Software including the end user license agreement which is included in the setup installation of the Licensed Software.
- d. BETA Product. Any BETA or pre-release software which may be delivered by Microsoft to Company under this Agreement shall be used solely for development, internal testing, evaluation and providing feedback to Microsoft. Company may not commercially release any Internet Product which includes Microsoft BETA software without Microsoft's prior written consent, which consent shall be at our sole discretion and if given, may be coupled with such terms and conditions as Microsoft deems appropriate with respect to such BETA distribution

3. COMPANY OBLIGATIONS

- a. Company shall use commercially reasonable efforts to maintain the quality of the Internet Product at a level that meets or exceeds industry standards and that is at least commensurate with the quality of products distributed by Company on or before the Effective Date.
- b. Company may, but is not required to, use the Logo in Company's packaging, advertising and promotional materials. If Company elects to use the Logo, Company must execute/accept the Logo License Agreement at <http://www.microsoft.com/windows/ieak/>.
- c. Company shall display the "Get Microsoft Internet Explorer" link logo, on the home page for Company's Internet Product along with a hot link to <http://www.microsoft.com/windows/ie/> or to Company's Internet Explorer download website in accordance with the guidelines set forth at <http://www.microsoft.com/windows/ieak/>.

Note: Execution of a separate logo license agreement is not required for use of the "Get Microsoft Internet Explorer" link logo.

- d. Company shall digitally sign Licensed Software when made available for download via Internet Site.

4. **OWNERSHIP**

Except as expressly licensed to Company in Section 2, Microsoft retains all right, title and interest in and to the Licensed Software and IEAK. Under no circumstances will anything in this Agreement be construed as granting, by implication, estoppel, or otherwise, a license to any Microsoft technology other than the Licensed Software and/or IEAK. All rights not expressly granted herein are reserved by Microsoft.

5. **ACCEPTANCE AND DISCLAIMER OF WARRANTY**

- a. Company's use of either the Licensed Software or IEAK shall be deemed Company's acceptance of such software.
- b. Neither the Company nor any of its distributors or employees shall have any right to make any representation, warranty or promise on behalf of Microsoft.
- c. **THE LICENSED SOFTWARE AND IEAK ARE PROVIDED TO COMPANY "AS IS" WITHOUT WARRANTY OF ANY KIND. THE ENTIRE RISK AS TO THE RESULTS, USEFULNESS AND PERFORMANCE OF THE LICENSED SOFTWARE AND/OR IEAK IS ASSUMED BY COMPANY AND COMPANY'S END-USER CUSTOMER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER, INCLUDING BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS, OF REASONABLE CARE OR WORKMANLIKE EFFORT, OF LACK OF NEGLIGENCE, AND/OR OF A LACK OF VIRUSES, CORRESPONDENCE TO DESCRIPTION, TITLE AND NON-INFRINGEMENT ALL WITH REGARD TO THE LICENSED SOFTWARE AND/OR THE IEAK ARE EXPRESSLY EXCLUDED. MICROSOFT, MICROSOFT CORPORATION NOR ITS SUPPLIERS MAKES NO WARRANTY THAT THE LICENSED SOFTWARE AND/OR THE IEAK WILL OPERATE PROPERLY AS INTEGRATED INTO OR IN CONJUNCTION WITH COMPANY'S INTERNET PRODUCT.**

6. **LIMITATION OF LIABILITY**

IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES WHATSOEVER, ARISING OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE, ARISING OUT OF THE PERFORMANCE, USE OF, OR INABILITY TO USE, ALL OR PART OF EITHER THE LICENSED SOFTWARE OR THE IEAK, EVEN IF MICROSOFT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. **BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY.**

7. **TERM**

The term of this Agreement shall commence as of the Effective Date and shall continue for a period of one (1) year. Thereafter, this Agreement shall automatically renew for successive one (1) year periods unless either party gives the other party not fewer than sixty (60) days notice of its intent not to renew, unless earlier terminated as provided in Section 8.

8. **DEFAULT AND TERMINATION**

- a. Either party may terminate this Agreement for any reason upon sixty (60) days prior written notice.
- b. Either party may suspend performance and/or terminate this Agreement 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, and fails to cure that breach within sixty (60) days after written notice thereof.
- c. Upon termination of this Agreement for any reason, Company's rights under Section 2(a) shall immediately terminate, provided, however, that Company's license rights under Section 2(a)(ii), including all applicable conditions and limitations set forth in Sections 2(b) and 2(c), shall survive for a period of time not to exceed one hundred eighty (180) days from the date of notice of termination and solely to the extent necessary for Company to (i) include copies of the Licensed Software in the Internet Product to fulfill existing orders for the Internet Product placed prior to termination of this Agreement and (ii) deplete its inventory of Internet Product containing the Licensed Software. Except as provided above, upon termination of this Agreement, Company shall certify to Microsoft that it has destroyed all full or partial copies of the Licensed Software and/or IEAK in Company's possession or under its control within ten (10) days following the termination date.
- d. End-user license agreements for the Licensed Software validly sublicensed prior to expiration or termination of this Agreement shall survive termination or expiration of this Agreement.
- e. Sections 1, 2(c)(i), 4, 5, 6, 8(c), 8(d), 8(e), 9, 10 and 11 shall survive termination of this Agreement.

9. **SUPPORT**

Company shall be responsible for providing support for end users of any versions of the Licensed Software and Company's Internet Product distributed by Company. Microsoft shall not be responsible for providing support for the IEAK and the Licensed Software.

10. **NOTICES AND REQUESTS**

Except as otherwise provided on Exhibit A, all notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are (i) transmitted via electronic mail with a copy deposited in the mails, postage prepaid, certified or registered, return receipt requested; or (ii) sent by overnight courier, charges prepaid, with a confirming fax; and addressed as follows: NOTICES TO Company: See Address on registration page

NOTICES TO Microsoft:

Notices: MICROSOFT LICENSING, INC.
6100 Neil Road
Reno, Nevada 89511-1132
Attn: General Manager,
Copy to: Law & Corporate Affairs, US Legal

MICROSOFT CORPORATION
One Redmond Way
Redmond, WA 98052-6399
Fax: (425) 936-7329

or to such other address as the party to receive the notice or request so designates by written notice to the other.

11. GENERAL

- a. This Agreement shall 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 nonconveniens. 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 shall be entitled to recover its costs, including reasonable attorneys' fees.
- b. 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.
- c. 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.
- d. The rights and obligations hereunder shall inure to the benefit of the successors of the parties hereto, provided any rights or obligations hereunder shall not be assigned by Company without the prior written approval of Microsoft, such approval shall not be unreasonably withheld.
- e. Any Licensed Software which Company distributes or licenses to or on behalf of the U.S. government, pursuant to solicitations issued on or after December 1, 1995, are provided with commercial rights and restrictions described above in this Agreement. Any Licensed Software which company distributes or licenses to or on behalf of the U.S. government pursuant to solicitations issued prior to December 1, 1995, are provided with Restricted Rights as provided for in FAR, 48 CFR 52.227-14 (June 1987) or FAR, 48 CFR 252.227-7013 (October 1988), as applicable.
- f. Company acknowledges that the IEAK and Licensed Software are subject to U.S. export jurisdiction. Company agrees to comply with all applicable international and national laws that apply to the IEAK and Licensed Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments. For additional information on exporting Microsoft products, see <http://www.microsoft.com/exporting/>.
- g. Company shall, at its own expense, promptly obtain and arrange for the maintenance of all non-U.S. government approvals, if any, and comply with all applicable local laws and regulations as may be necessary for Company's performance under this Agreement.
- h. Company shall pay, and be responsible for any and all sales taxes, use taxes and any other taxes imposed by any jurisdiction as a result of (i) the entry into this Agreement; (ii) the performance of any of the provisions of this Agreement; or (iii) the transfer of any property, rights or any other grant hereunder.
- i. 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 Company 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.

EXHIBIT A TO MICROSOFT INTERNET EXPLORER SYSTEM BUILDER/OEM LICENSE AND DISTRIBUTION AGREEMENT

Document Version 2.0 August, 2001

I. Description of Licensed Software.

Licensed Software*	Version	Language Version
Internet Explorer (or "IE")	4.x, 5.x, 6.x	All publicly released
Outlook Express	4.x, 5.x, 6.x	All publicly released
Windows Media Player	5.x, 6.x	All publicly released

II.

In addition to the components listed above, Company may distribute, pursuant to Section 2(a)(ii) of this Agreement, those additional software components that are available via the IEAK 5.x Automatic Version Synchronization (AVS) feature. Such additional components may not be distributed separate from the Internet Explorer operating system updates.

Note: Effective with the release of Internet Explorer Version 6.0, "Messenger" will no longer be customizable under the IEAK Program.

III. Distribution of Standalone Components.

Windows Media Player standalone distribution for Windows Media Player Versions 6.4 and earlier shall be in accordance with the instructions at <http://www.microsoft.com/windows/windowsmedia/default.asp>.

IV. Upgrades and Amendments

All Licensed Software includes the indicated version only. Microsoft reserves the right to amend this Agreement in the event of public release of new versions any of the Licensed Software. In the event that Microsoft elects to amend any of the terms and conditions of this Agreement, upon release of a new release version Microsoft will make available through its <http://www.microsoft.com/windows/ieak/> Web site (or any successor thereto):

1. Identification of the new release version;
2. An amendment to this Agreement ("Amendment"), setting forth the new terms and conditions that shall govern this Agreement;

Microsoft's notice regarding the Amendment will include notice (pursuant to Section 10 of the Agreement) that Microsoft may not renew the Agreement, absent such Amendment, beyond its then current term.

V. Additional License Restrictions.

Notwithstanding any guidelines that may be contained in the Instructions, Company's modifications to the Licensed Software are limited to the following:

1. Toolbar buttons – Company must keep all default toolbar buttons but may add additional toolbar buttons.
2. URLs – Company may customize the homepage URL, search pane URL, and online support page URL
3. Favorites – Company must keep all default favorites but may add additional favorites.
4. Channels – Company must keep all default channels but may add additional channels.
5. Welcome page – Company may customize the welcome page.

- Internet Explorer and Outlook Express, and NetMeeting software technology comprise part of the operating system of Windows 95, Windows 98, Windows NT, Windows 2000, Windows ME and Windows XP.
- Certain versions of Internet Explorer and Outlook technology are available as standalone software for the Macintosh and UNIX operating systems. Customization for Macintosh and/or UNIX operating systems can only be done using IEAK Version 5.0. Later versions of the IEAK do not support these operating systems.