

**MICROSOFT WORK GROUP SERVER PROTOCOL PROGRAM (WSPP)
WARRANTY AGREEMENT**

This **Microsoft Work Group Server Protocol Program (WSPP) Warranty Agreement** (the “**Agreement**”) is entered into between Microsoft Corporation, a Washington corporation, with offices at One Microsoft Way, Redmond, Washington 98052-6399 U.S.A. (“**Microsoft**”), and the person(s) or company(ies) identified below, all of whom are jointly and severally liable under this Agreement (collectively “**Company**”), effective as of the date it has been signed on behalf of all parties (the “**Effective Date**”).

Company Full Legal Name:

Type of Legal Entity (corporation, company, partnership, sole proprietorship or other):

State/Province Organized:

Street Address:

City, State (or equivalent), Country and Postal Code:

Company Contact Name:

Phone Number:

Email:

Appendices:

Appendix 1: Third Party IP Claims (as of the Effective Date)

1. Definitions. Capitalized terms used in this Agreement are defined in this **Section 1** or elsewhere in this Agreement.

1.1 “**Commission**” means the Commission of the European Communities.

1.2 “**Confidential Information**” has the meaning set forth in **Section 5.1**.

1.3 “**Decision**” means the Commission of the European Communities Decision dated March 24, 2004 relating to a proceeding under Article 82 of the EC Treaty (Case COMP/C-3/37.792-Microsoft-Decision).

1.4 “**Implementation(s)**” means only those portion(s) of software developed by or for Company that implement the WSPP Protocols.

1.5 “**Protocol**” means a set of rules of interconnection and interaction between various instances of Windows Server Operating Systems and Windows Client Operating Systems running on different computers in a Windows Work Group Network.

1.6 “**Service Pack**” means updates that Microsoft makes commercially available as a “service pack” to a Windows Client Operating System or a Windows Server Operating System, under the applicable end user license agreement for such product.

1.7 “**Subject Patent Claims**” means those claims of Microsoft-owned or Microsoft-controlled patents that are contained in a patent or patent application that: (a) is listed in the WSPP Patent Map as of the Effective Date; (b) issues from any of the pending patent applications listed in WSPP Patent Map as of the Effective Date; (c) issues from an application with a priority date that is after the Effective Date, provided Microsoft has provided Company with online access to an updated version of the WSPP Patent Map that contain such patent application no later than 45 days after the date such patent application has been filed; (d) is added to the WSPP Patent Map following an update to the WSPP Documentation that causes such patent or patent application to read upon the WSPP Documentation, provided Microsoft has provided Company with online access to an updated version of the WSPP Patent Map that contains such patent or patent application no later than 45 days after the date the updated WSPP Documentation is made available to Company; (e) issues from any continuation, continuation-in-part, or divisional that has priority based

upon any of the patents described in (a), (b), (c), or (d) above; or (f) is a re-issue, renewal, substitution, reexamination or extension of any of the patents described in (a), (b), (c), (d), or (e) above. Microsoft typically publishes patent applications within eighteen (18) months after the date of the application. In addition, upon Company's request at any time after notice under (c) or (d) is provided to Company (or, with respect to the applications listed in the WSPP Patent Map as of the Effective Date, then upon Company's request any time after the Effective Date), Microsoft will promptly provide Company with a copy of any unpublished application identified in such notice, together with the citation list to prior art cited in such application or its counterparts. Subject Patent Claims also do not include any claims (1) to any underlying or enabling technology that may be used or needed to make or use an Implementation, or (2) to any implementation of specifications or technologies that are merely referred to in the body of the WSPP Documentation.

1.8 **"Trustee"** means a trustee appointed by the Commission pursuant to the Decision and the Commission Decision of 28.7.2005 (C (2005) 2988 final) or, if at the time in question there is no such trustee, either the Commission or any person or entity to whom the Commission has properly delegated the determinations identified for the "Trustee" under this Agreement.

1.9 **"Update"** means any critical fix or recommended modification to, or updated component for, a Windows Client Operating System or a Windows Server Operating System, that Microsoft develops and makes commercially generally available (e.g., through its website or any other general distribution means) for the product to which the update applies, under the applicable end user license agreement for such product.

1.10 **"Windows Client Operating Systems"** means the software marketed, distributed and licensed by Microsoft as Windows 98, Windows 98 Second Edition, Windows Millennium Edition, Windows NT Workstation 4.0, Windows 2000 Professional, Windows XP Professional, Windows XP Home, Windows Vista, Windows 7, or Windows 8 including updates (which include, without limitation, security patches) and upgrades (both described in **Section 3.2(a)**) thereto, or their successors (including updates and upgrades thereto) for use on personal computers. "Windows Client Operating Systems" do not include Windows XP Embedded or its successors, Windows CE or its successors, or any other operating system designed for use with non-PC devices such as gaming consoles, television set-top boxes, mobile telephones and personal digital assistants.

1.11 **"Windows Server Operating Systems"** means the software marketed, distributed and licensed by Microsoft as Windows NT Server 4.0, Windows 2000 Server Standard Edition, Windows Server 2003 Standard Edition, Windows Server 2008, Windows Server 2008 R2, and Windows Server 2012, including updates (which include, without limitation, security patches) and upgrades (both described in **Section 3.2(a)**) thereto, or their successors (including updates and upgrades thereto).

1.12 **"Windows Work Group Network"** means any group of (i) personal computers connected to a network and on each of which a Windows Client Operating System is installed and (ii) Windows Work Group Servers, linked together via a computer network. **"Windows Work Group Server"** means a computer connected to a network and on which a Windows Server Operating System is installed.

1.13 **"WSPP"** means the Microsoft Work Group Server Protocol Program licensing program made available by Microsoft and described at the WSPP Website.

1.14 **"WSPP Documentation"** means the specifications for the WSPP Protocols, including updates and corrections per **Sections 3.2 and 3.3(a)**, provided by Microsoft on the WSPP Documentation Website pursuant to Article 5 of the Decision and under this Agreement (and absent a specific reference to WSPP IDL Documentation, includes any applicable WSPP IDL Documentation).

1.15 **"WSPP Documentation Website"** means the website located at <http://msdn.microsoft.com/en-us/library/gg285297.aspx> or successor site.

1.16 **"WSPP IDL Documentation"** means the Interface Definition Language (IDL) specifications for the WSPP IDLs.

1.17 **"WSPP IDLs"** means the file & print and user & group administration IDLs associated with certain WSPP Protocols.

1.18 **“WSPP Patent Map”** means a chart or table indicating Microsoft patent and patent applications covering the WSPP Protocols that is made available: (a) online through the WSPP Website; (b) through use of a mapping tool accessible online through the WSPP Website to produce the applicable WSPP chart or table; or (c) by other reasonable methods determined by Microsoft from time to time.

1.19 **“WSPP Protocols”** means the file & print and user & group administration Protocols disclosed by Microsoft pursuant to Article 5 of the Decision and that are available for license under the WSPP (and absent a specific reference to WSPP IDLs, includes any applicable WSPP IDLs). This includes all WSPP Protocols for which specifications are made available on the WSPP Documentation Website as of the Effective Date and include updates and corrections per **Sections 3.2 and 3.3(a)** of this Agreement.

1.20 **“WSPP Warranty Agreement”** means a then current version of a Microsoft documentation warranty agreement entered into by Microsoft and a Company under the WSPP.

1.21 **“WSPP Warranty Company”** means another entity that is a party to a WSPP Warranty Agreement with Microsoft.

1.22 **“WSPP Website”** means the website located at <http://www.microsoft.com/openspecifications/en/us/programs/wssp/default.aspx> or successor site.

2. Copyright Grant; No Microsoft Statements; No Other Rights; Discussion of Warranty Terms; Notification Regarding Other Warranties

2.1 Copyright Grant.

(a) On the cover page for the WSPP Documentation for each WSPP Protocol, Microsoft has included a statement of the copyrights it has granted in the WSPP Documentation. For the avoidance of doubt, whatever terms are stated on such WSPP Documentation or the terms of use for the Microsoft website that hosts the WSPP Documentation, Company shall at least have the right under Microsoft's copyrights in the WSPP Documentation to make copies of the WSPP Documentation in order to develop Implementations of the technologies described in the WSPP Documentation and to distribute portions of such documentation in Company's Implementations using these technologies or Company's documentation as necessary to properly document the Implementation. Company may also distribute in its Implementation, with or without modification, any schema, IDL's, or code samples that are included in the documentation. This permission also applies to any Microsoft documents that are referenced in the WSPP Documentation.

(b) For purposes of clarification, the foregoing grant does not include any rights under Microsoft patents or patent applications. Microsoft acknowledges that by signing this Agreement, Company is not waiving its right to contest the validity of any of Microsoft's patents, know-how, industrial secrets, trade secrets, and confidential information embodied in the WSPP Protocols and disclosed by the WSPP Documentation or copyrights

2.2 **No Microsoft Statements.** This Agreement does not authorize Company to make any claim, representation, warranty (whether express, implied or statutory), or other statement on behalf of Microsoft, including any statement that:

(a) Creates or purports to create any support or other obligations on the part of Microsoft, with respect to the Implementation or otherwise;

(b) Allows any recovery of damages by any third party directly from Microsoft under any theory of liability for any matter related to the Implementation; or

(c) States or suggests that Microsoft is responsible for, or had any part in, selecting or providing the Implementation.

2.3 **No Other Rights.** Except as expressly provided in this Agreement, no other rights are granted under this Agreement by implication or estoppel or otherwise.

2.4 **Discussion of Warranty Terms; Notification and Opportunity Regarding Other Warranties.** Microsoft acknowledges that this Agreement must be reasonable and non-discriminatory under the terms of the

Decision. In the event that Company believes any term in this Agreement is unreasonable, Company may advise Microsoft of the issue and the reasons why Company believes the term or terms are unreasonable. Microsoft agrees to work with Company in good faith to appropriately resolve the issue in a reasonable and timely manner, i.e. within 60 days after Microsoft received notice from Company. In the event that Microsoft and Company are unable to achieve agreement on such terms after good faith efforts, Microsoft is willing to submit the matter for review by the Trustee. If any other WSPP Warranty Company enters into a WSPP Warranty Agreement for the WSPP Protocols (such WSPP Warranty Agreement, an “**Other Warranty**”), and the Warranty Fee (as defined below) and/or other terms of that Other Warranty are more advantageous to that other WSPP Warranty Company than the terms of this Agreement, Microsoft will promptly incorporate such terms into the template WSPP Warranty Agreement posted on the WSPP Website and Company will have the opportunity to enter into the same agreement as that Other Warranty. Company will also have the opportunity to receive a refund (if applicable) of the Warranty Fee already paid by Company under this Agreement, that reflects the same Warranty Fee adjustment as received by the other WSPP Warranty Company under that Other Warranty.

3. Deliverables; Updates; Support; Comments and Suggestions

3.1 WSPP Documentation – Delivery. Microsoft will provide Company with access to all WSPP Documentation online via the WSPP Documentation Website or other reasonable method determined by Microsoft from time to time as described in this **Section 3.1** and **Section 3.2**.

3.2 WSPP Documentation – Updates.

(a) General. Microsoft will make updated WSPP Documentation for modified and new WSPP Protocols (that are added to WSPP after Microsoft initially provides WSPP Documentation to Company under **Section 3.1**) available to Company under this Agreement:

(i) if applicable, upon release of the First Beta for the relevant Service Pack to the relevant product, or new version of that product, that includes the modified or new WSPP Protocol (documentation provided in such instance, a “**Preliminary Documentation Update**”), or

(ii) if no such First Beta is released, then at least 15 days before the:

(A) commercial release of the Service Pack to the relevant product (i.e., Windows Client Operating System or Windows Server Operating System), or new version of that product, that includes the modified or new WSPP Protocol, or

(B) the day on which the final version of any other Update is released.

“**First Beta**” means the first public beta testing version of the Service Pack or new version of the relevant Windows operating system product made available by Microsoft via an MSDN (Microsoft Developers Network) subscription offering or of which 150,000 or more copies are distributed.

Company will be given automatic access via the WSPP Documentation Website to the WSPP Documentation for any WSPP Protocol modifications made available under this **Section 3.2**, as well as for any new WSPP Protocols added after the Effective Date for no additional charge beyond the Warranty Fee.

(b) Preliminary Documentation Updates. When a Preliminary Documentation Update is made available to Company, Microsoft will also make the WSPP Documentation for the commercially released version of the relevant Service Pack or new product version (such documentation, a “**Final Documentation Update**”) available to Company within 15 days after the relevant date production is authorized for the manufacture of copies of software for commercial availability. THE WARRANTY PROVISIONS OF **SECTIONS 3.3(a) AND 6.3** DO NOT APPLY TO PRELIMINARY DOCUMENTATION UPDATES, BUT DO APPLY TO FINAL DOCUMENTATION UPDATES. SINCE THE FIRST BETA CODE, FEATURES AND/OR FUNCTIONALITY MAY BE SIGNIFICANTLY DIFFERENT FROM THE CODE, FEATURES AND/OR FUNCTIONALITY OF THE COMMERCIALY RELEASED VERSION, COMPANY IS ADVISED THAT THERE ARE RISKS IN ANY RELIANCE ON PRELIMINARY DOCUMENTATION UPDATES, AND TO THE EXTENT THAT COMPANY INCURS ADDITIONAL DEVELOPMENT OR ANY OTHER COSTS AS A RESULT OF SUCH RELIANCE, IT DOES SO AT ITS OWN RISK.

(c) Availability. Once a protocol becomes a WSPP Protocol under the WSPP, Microsoft will continue to make WSPP Documentation for that protocol available during the Term. Subject to the foregoing, nothing in this Agreement requires Microsoft to (i) deliver any WSPP Documentation for any modified or new protocol other than as provided in this **Section 3.2** or (ii) continue to implement any WSPP Protocol in any Windows Client Operating System or Windows Server Operating System. However, Microsoft will provide notice in the relevant portion of the WSPP Documentation of WSPP Protocols that remain available for license but which are no longer used by Microsoft in Windows Client and Server Operating Systems, generally in accordance with the timeframe in **Section 3.2(a)(i)**.

3.3 Support.

(a) Correction Assistance. Microsoft (either itself or through a third party) will (i) specifically acknowledge (i.e., beyond an auto-generated email) any Company requests for correction assistance regarding any inaccuracies or omissions in the WSPP Documentation within 24 hours of such request, and (ii) correct within a reasonable time any confirmed inaccuracies or omissions that prevent the WSPP Documentation from complying with the warranty in **Section 6.3** ("**Correction Assistance**") (including any documents, information or protocols that Company believes should be included in the WSPP Documentation). Microsoft and Company will coordinate on communications to ensure that Company has access to Correction Assistance, and that Correction Assistance (and, at Company's option, the technical support under **Section 3.3(b)**) will provide the primary vehicle to address both issues within the WSPP Documentation and items that Company believes should be included in the WSPP Documentation (as well as any Company-suggested improvements to the WSPP Documentation), including a mechanism to enable Company to report issues and to ensure that Company can track issues to resolution. Correction Assistance does not include development or delivery of any software (including any computer program or code, any product related bug fixes, workarounds, patches, beta fixes or beta builds), or any resolution to implementation issues.

(b) Additional Technical Support. Company may, at its option, obtain free and unlimited managed technical support regarding Microsoft's WSPP Documentation and Windows operating systems products, by entering into an Agreement for Support Services Regarding Microsoft Work Group Server Protocol Program Protocols (form available upon request to protocol@microsoft.com or other address that may be identified by Microsoft from time to time). Microsoft technical support personnel will have access to internal Microsoft technical resources such as its product engineering organization, and Windows operating system products source code as needed. Such technical support may include (i) information about WSPP Protocols or WSPP Documentation; (ii) information about Windows operating systems products publicly or programmatically available to Microsoft's customers or ISVs (independent software vendors), other than source code; and/or (iii) assistance with debugging and verifying actual operation of WSPP Protocols between Windows Server and Windows Client Operating Systems products. Such technical support will not include (A) Company access to source code of Windows operating systems or other Microsoft products, other than by entering into a WSPP Source Code License Addendum (form available upon request to protocol@microsoft.com or other address that may be identified by Microsoft from time to time); (B) any writing by Microsoft support personnel of source code for Implementations; or (C) any assistance regarding Company implementations of any underlying server functionality (as contrasted with the WSPP Protocols). Any information and assistance provided in connection with support described in this **Section 3.3(b)** concerning the behavior, meaning or interdependencies of Microsoft's products or protocol implementations is provided for reference only and Company does not obtain any additional license rights under this Agreement as a result of any disclosure contemplated by this **Section 3.3(b)**.

(c) Third Party IP Rights and Claims.

(i) Rights. Although Microsoft warranty and notice obligations regarding Third Party IP Claims (as defined below) are provided in **Sections 3.3(c)(ii)**, **6.2**, and **6.4**, it is also possible that third parties may have intellectual property rights in the WSPP Protocols of which Microsoft is unaware or under which it is not free to sublicense. Company acknowledges that no such intellectual property rights are licensed under this Agreement.

(ii) Claims. If the Microsoft Law and Corporate Affairs Department receives in its possession during the Term a Third Party IP Claim in which Microsoft is an IP Defendant, Microsoft will provide Company with written notice identifying that Third Party IP Claim. Also, if Company receives in its

possession during the Term a Third Party IP Claim in which Company is an IP Defendant, Company may provide Microsoft with written notice identifying that Third Party IP Claim. “**Third Party IP Claim(s)**” means, with respect to the entity (either Microsoft or Company) who is named as a defendant or against whom a claim is made (the “**IP Defendant**”) (i) litigation in which the IP Defendant is named as a defendant and served with process or (ii) a written threat of litigation against the IP Defendant that a third party or its authorized agent sends to the IP Defendant, and the IP Defendant and the IP Defendant’s internal legal department (to the extent the IP Defendant has one) receives in its possession, which alleges that a WSPP Protocol (or its implementation in a Windows Client Operating System or a Windows Server Operating System) or the WSPP Documentation infringes that third party’s own intellectual property rights, with specificity and in sufficient detail for the IP Defendant to identify (A) the allegedly infringing WSPP Protocol (or its implementation in a Windows Client Operating System or a Windows Server Operating System) or WSPP Documentation, (B) the allegedly infringed intellectual property and (C) the legal and technical basis of the allegation.

(d) Other. Except for the Microsoft obligations expressly described in **Sections 3.3(a), (b) and (c)**, as between Microsoft and Company, Company is solely responsible for all support issues relating to Implementations.

3.4 Comments and Suggestions. Microsoft invites Company’s comments and suggestions on the WSPP Documentation and other items or information provided by Microsoft under this Agreement (“**Comments and Suggestions**”). If Company voluntarily provides (in connection with correction assistance or otherwise) any Comments and Suggestions relating to the WSPP Documentation or matters contained therein, Microsoft may, in connection with Microsoft products and services, use, disclose or otherwise commercialize in any manner, any of those Comments and Suggestions without obligation or restriction based on intellectual property rights or otherwise except that the foregoing does not permit the Comments or Suggestions to be licensed by Microsoft on a standalone basis.

4. Warranty Fee and Payments

4.1 Warranty Fee. Company will pay Microsoft a one-time fee of 10,000 Euros (“**Warranty Fee**”).

4.2 Payments.

(a) Payment Terms and Instructions. Company will pay an invoice issued by Microsoft (or its Payment Agent) for the Company Fee within 30 days of receipt of the invoice. Payment will be made to the Payment Agent (i.e. payments will be made out to the Payment Agent), to the following account or address (or alternate Payment Agent, account or address upon reasonable notice from Microsoft):

Payment Agent: Microsoft Corporation

For all Wire Transfers:

Bank of America
1401 Elm Street
Dallas, Texas 75202 USA

Account # 3750891058
ABA # 0260-0959-3
SWIFT# BOFAUS3N
Attn: Microsoft Corporation

For Approved checks sent via courier (FedEx, UPS, Airborne, etc.):

Bank of America
Attn: Microsoft Corporation #100430
6000 Feldwood Road
College Park, GA 30349-3652

For Approved checks sent via National Mail:

Microsoft Corporation
P. O. BOX 100430
Atlanta, GA 30384-0430

*(Please remit **one week prior** to invoice due date if paying by check. Company is responsible for mailing & courier fees.)*

(b) Manner of Payment. The Warranty Fee is payable in Euros. All references in this Agreement to “€” refer to Euros. The Warranty Fee is non-refundable.

(c) Taxes. This **Section 4.2(c)** governs the treatment of all taxes arising as a result of or in connection with this Agreement, notwithstanding any other provision of this Agreement.

(i) Company is responsible for the billing, collecting and remitting of sales, use, value added, and other comparable taxes due with respect to the collection of any revenues by Company, or any portion thereof. Microsoft is not liable for any taxes (including any penalties or interest thereon), that Company is legally obligated to pay and that are incurred by Company in connection with this Agreement or any Company revenues or related to the licensing or other distribution of any Implementation, and Company takes full responsibility for all such taxes. Company is not liable for any income taxes that Microsoft is legally obligated to pay with respect to any amounts paid to Microsoft by Company under this Agreement.

(ii) The Warranty Fee excludes any taxes, duties, levies, fees, excises or tariffs imposed on any of Company’s activities in connection with this Agreement. Company will pay to Microsoft (pursuant to **Section 4.2(a)**) any applicable taxes that are owed by Company solely as a result of entering into this Agreement and which are permitted to be collected from Company by Microsoft under applicable law, except to the extent Company provides to Microsoft a valid exemption certificate for such taxes. Company agrees to indemnify, defend and hold Microsoft harmless from any sales, use or similar taxes payable by Company or claims, causes of action, costs (including without limitation reasonable attorneys’ fees) and any other liabilities of any nature whatsoever related to such taxes.

(iii) If, after a determination by a tax authority outside the U.S., any taxes are required to be withheld on payments made by Company to Microsoft, Company may deduct such taxes from the amount owed Microsoft and pay them to the appropriate taxing authority; provided however, that Company will promptly secure and deliver to Microsoft (through its Payment Agent) an official receipt for any such taxes withheld or other documents necessary to enable Microsoft to claim a U.S. Foreign Tax Credit. Company will make certain that any taxes withheld are minimized to the extent possible under applicable law.

5. Confidentiality

5.1 Confidentiality and Publicity. Nothing in this Agreement prohibits Company from disclosing the fact that it has entered into this Agreement and that it has implemented WSPP Protocol(s) in Implementation(s), as long as Company does not use any Microsoft logo in so doing. However, Microsoft will not, without Company’s approval, issue any press releases or similar communications during the Term regarding the fact that Company has entered into this Agreement, unless such fact has already been made public by someone other than Microsoft.

5.2 Acknowledgement about Implementation Details. The parties acknowledge that constraints in the protocols specified in the WSPP Documentation may require a level of similarity in some source code elements of Implementations, in comparison to the content of the WSPP Documentation, and that Company may choose to use the same names for protocol elements in the Implementations as Microsoft uses in the

WSPP Documentation. Microsoft will not assert any claim of copyright infringement on the basis of such similarities.

6. Warranties, Limitations of Liability, Exclusive Remedies and Sole Liability

6.1 General. Each party warrants that (i) the person executing this Agreement on behalf of such party has all necessary power and authority to do so, and that upon such signature this Agreement is a legal, valid and binding obligation enforceable against such party, and (ii) that it is entering into this Agreement in good faith.

6.2 Additional Microsoft Warranties.

(a) Microsoft further warrants that the WSPP Protocols and the WSPP Documentation do not infringe any copyright of any third party.

(b) Microsoft further warrants that it will not assert any patent claims other than Subject Patent Claims against Company or any third party for developing, making, using or distributing any Implementation. Microsoft further acknowledges that the inclusion of the Subject Patent Claims in this Agreement does not imply that Company's Implementation(s) infringe the Subject Patent Claims, and Microsoft acknowledges that Company is not waiving its right to contest the validity or applicability of any of Microsoft's patents. Any assignment or other transfer by Microsoft or its related companies of Microsoft's patent claims subject to this **Section 6.2(b)** will be subject to Microsoft's obligations under this Agreement.

6.3 Documentation and Warranty Terms. Microsoft further represents and warrants and undertakes that

(a) the WSPP Documentation is complete and accurate as required by Article 5 of the Decision read in conjunction with Article 1 of the Decision;

(c) the WSPP Documentation is and will be kept updated on an ongoing basis and in a timely manner as required by Article 5 of the Decision read in conjunction with Article 1 of the Decision;

(d) the WSPP Documentation provided by Microsoft under this Agreement will be provided in an organized manner and in a format suitable for analysis and interpretation by software engineers reasonably skilled in the art of server software protocols and familiar with (although not necessarily specialized in) Windows Server Operating Systems developer technologies; and

(e) in offering the terms and conditions under this Agreement to Company (including, without limitation, the financial provisions, warranties and any restrictions imposed on Company hereunder in relation to its right to access and use the WSPP Documentation), Microsoft complies and shall continue to comply with the requirement under Article 5 of the Decision that it must allow undertakings to use the Interoperability Information (as defined in Article 1 of the Decision) on terms which are reasonable and non-discriminatory. If at any time Microsoft grants any Third Party warranty fees, terms and conditions that may be deemed to be more advantageous, Microsoft will promptly incorporate such terms into the template WSPP Warranty Agreement posted on the WSPP Website and at Company's written request, will provide any additional necessary information to determine compliance with this representation and warranty.

6.4 Third Party Claims. Microsoft further warrants that as of the Effective Date, to the best of its knowledge, it does not have any Third Party IP Claims (defined in **Section 3.3(c)(ii)**) other than as may be set forth in **Appendix 1** to this Agreement.

6.5 **LIMITATIONS OF LIABILITY**. EXCEPT AS PROVIDED IN **SECTIONS 6.1-6.4** AND WITH REGARD TO THE IMPLIED WARRANTY OF TITLE AS TO ANY GOODS PROVIDED TO COMPANY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY EXCLUDES ALL CONDITIONS, WARRANTIES AND OTHER TERMS WHICH MIGHT HAVE EFFECT BETWEEN THE PARTIES OR BE IMPLIED OR INCORPORATED INTO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, IN RELATION TO (i) THE WSPP DOCUMENTATION, (ii) PRELIMINARY DOCUMENTATION UPDATES, (iii) CORRECTION ASSISTANCE, (iv) COMMENTS AND SUGGESTIONS, AND (v) ALL INTELLECTUAL PROPERTY IN ANY OF THE FOREGOING (COLLECTIVELY, THE "**MATERIALS**"), WHETHER BY STATUTE, COMMON LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED

CONDITIONS, WARRANTIES AND OTHER TERMS AS TO SATISFACTORY QUALITY, FITNESS FOR PURPOSE AND THE USE OF REASONABLE SKILL AND CARE. EXCEPT AS PROVIDED IN **SECTION 6.2(A) OR 6.4** AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MICROSOFT MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND THAT (i) THE MATERIALS DO NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY OR (ii) ANY IMPLEMENTATION WILL NOT INFRINGE ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY.

6.6 **EXCLUSIVE REMEDIES AND SOLE LIABILITY.** BOTH PARTIES AGREE THAT COMPANY'S SOLE AND EXCLUSIVE REMEDY AND MICROSOFT'S SOLE LIABILITY IN CONNECTION WITH ANY CLAIM RELATED TO:

(a) A VIOLATION OR BREACH OF THE WARRANTY IN **SECTION 6.2(A)** IS A CLAIM FOR INDEMNIFICATION FROM THIRD PARTY CLAIMS UNDER **SECTION 7.1(a)** (SUBJECT TO THE TERMS AND LIMITATIONS SET FORTH IN **SECTION 7**), AND THAT COMPANY IS NOT ENTITLED TO BRING ANY CLAIM FOR DAMAGES AGAINST MICROSOFT BASED ON ANY ALLEGED OR ACTUAL VIOLATION OR BREACH OF THE WARRANTY IN **SECTION 6.2(A)**;

(b) **SECTION 6.4** (INCLUDING WITHOUT LIMITATION ANY BREACH THEREOF) IS FOR COMPANY TO TERMINATE THIS AGREEMENT WITH RESPECT TO ALL WSPP PROTOCOLS THAT ARE THE SUBJECT OF THE RELEVANT THIRD PARTY IP CLAIM AND, FOLLOWING SUCH TERMINATION, TO PURSUE A CLAIM FOR DAMAGES AGAINST MICROSOFT BASED ON A VIOLATION OR BREACH OF THE WARRANTY IN **SECTION 6.4**, PROVIDED THAT SUCH DAMAGES WILL NOT IN ANY EVENT EXCEED (REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED) THE AMOUNT OF THE WARRANTY FEE PAID BY COMPANY TO MICROSOFT HEREUNDER, AND TO THE EXTENT APPLICABLE, TO OBTAIN INDEMNIFICATION AND DEFENSE BY MICROSOFT WITH RESPECT TO THIRD PARTY IP CLAIMS UNDER **SECTION 7.1(b)** SUBJECT TO THE TERMS AND LIMITATIONS SET FORTH IN **SECTION 7**; AND

NOTHING IN THIS **SECTION 6.6** IS INTENDED TO LIMIT THE REMEDIES AVAILABLE TO MICROSOFT WITH RESPECT TO MISREPRESENTATIONS BY COMPANY OR OTHER BREACHES OF **SECTION 6.1**. NOTHING IN THIS AGREEMENT SHALL EXCLUDE MICROSOFT'S LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM NEGLIGENCE.

7. Indemnification

7.1 General. Subject to **Sections 7.2** and **7.3**, Microsoft agrees at its expense and Company's request to indemnify and hold harmless Company and Company's subsidiaries, directors, officers, and employees ("**Indemnified Parties**"), from and against amounts awarded by (or in an award enforceable by) a court of competent jurisdiction or agreed to in a settlement pursuant to **Section 7.3** below ("**Indemnified Damages**") as a result of:

(a) third party claims, demands or actions based on allegations which, if true, would constitute a breach of Microsoft's warranty in **Section 6.2(a)**, and/or

(b) third party claims, demands or actions based on allegations which, if true, would constitute a breach of Microsoft's warranty in **Section 6.4** ("**7.1(b) Covered Claims**"; along with the claims referenced in **Section 7.1(a)**, "**Covered Claims**").

7.2 7.1(b) Claims. Subject to **Section 7.3**, Microsoft also agrees at its expense to defend the Indemnified Parties against 7.1(b) Covered Claims, and the costs of such defense are not capped; provided, however, that such defense obligation, and Microsoft's obligation to indemnify and hold the Indemnified Parties harmless under **Section 7.1(b)**, excludes Company's reverse engineered products or products created by Company prior to the Effective Date.

7.3 Condition and Procedures. Microsoft's obligation to indemnify, hold harmless and defend the Indemnified Parties under **Section 7.1** and **7.2** is conditioned on Company's providing Microsoft with reasonably prompt notice in writing of any Covered Claim, and tendering control of the defense of such Covered Claim to Microsoft. Microsoft will not settle any Covered Claim except with prior written permission

of Company, which permission Company will not unreasonably withhold. Notwithstanding Company's tender of control of defense to Microsoft under this **Section 7.3**, Company may also participate at its own expense in such defense, provided that control over defense strategy decisions remains with Microsoft subject only to the express provisions of this **Section 7.3** regarding settlement approvals.

7.4 Additional Claims. Microsoft agrees at its expense and Company's request to defend Company in a lawsuit, and pay the amount of any adverse final judgment (or settlement to which Microsoft agrees in advance in writing) from such lawsuit, for any third party claim(s) that a WSPP Protocol implemented and distributed in an Implementation in accordance with **Section 2** and the other provisions of this Agreement, infringes third party patent claims that were not known to Microsoft as of the Effective Date (such third party claims, "**Additional Claim(s)**"); provided that:

(a) Company promptly notifies Microsoft in writing of the Additional Claim, in sufficient detail to identify (i) the allegedly infringing WSPP Protocol, (ii) the allegedly infringed patent claims and (iii) the legal and technical basis of the allegation,

(b) Microsoft controls the defense and/or settlement of the Additional Claim,

(c) Company provides Microsoft with reasonable assistance (at Microsoft's expense) in the defense of the Additional Claim,

(d) Microsoft's obligations to defend and pay any Additional Claim shall be limited to Additional Claims wherein the WSPP Protocol alone, without combination or modification, constitutes direct or contributory infringement of such Additional Claim, and

(e) if the lawsuit identified above includes any claim, other than Additional Claim(s), that the Implementation containing the allegedly infringing WSPP Protocol(s) infringes any third party intellectual property rights ("**Other Claims**"), Company reimburses Microsoft for any and all attorney's fees and costs incurred by Microsoft in defending against Other Claims, provided that Company controls the defense and/or settlement of those Other Claims.

Notwithstanding each party's control of defense of Additional Claims and Other Claims under this **Section 7.4**, the other party may also participate at its own expense in such defense, provided that control over defense strategy decisions with respect to (i) Additional Claims remains with Microsoft and (ii) Other Claims remains with Company. Microsoft will have no obligations under this **Section 7.4** for any Additional Claim based on (A) Company's manufacture, use or Distribution of software containing an allegedly infringing WSPP Protocol more than 20 days after Microsoft has provided Company with at least 20 days written notice that (1) Microsoft (at its option) will stop such activity or (2) Microsoft (at its option) will modify the allegedly infringing WSPP Protocol and provide that modified WSPP Protocol to Company for license under this Agreement in lieu of the allegedly infringing WSPP Protocol at or prior to the end of such notice period, or (B) on Company's reverse engineered products or products created by Company prior to the Effective Date. Microsoft's liability under this **Section 7.4** will not exceed, in the aggregate, the Warranty Fee; however, this limitation does not apply to any fees and expenses of attorneys incurred by Microsoft in defending Additional Claim(s).

8. LIMITATIONS OF REMEDIES & LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY IS LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR SPECIAL DAMAGES WHATSOEVER, OR FOR LOSS OF PROFITS, ANTICIPATED SAVINGS, BUSINESS OPPORTUNITY OR GOODWILL OR LOSS OF DATA, ARISING OUT OF OR IN ANY WAY CONNECTED TO THE USE OF OR INABILITY TO USE THE WSPP DOCUMENTATION OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, WHETHER ARISING OUT OF NEGLIGENCE OR OTHERWISE. THE FOREGOING EXCLUSION APPLIES EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE AND EVEN IF ANY AVAILABLE REMEDY FAILS OF ITS ESSENTIAL PURPOSE, BUT DOES NOT APPLY TO (I) BREACH OF **SECTION 6.3** (DOCUMENTATION AND WARRANTY TERMS), (II) INDEMNIFIED DAMAGES, OR (III) ANY INFRINGEMENT OR MISAPPROPRIATION OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS. NOTHING IN THIS

AGREEMENT EXCLUDES MICROSOFT'S LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM NEGLIGENCE.

9. Term & Termination

9.1 Term.

(a) Initial Term. The initial term of this Agreement commences on the Effective Date and remains in effect until the date that is five years from the Effective Date, unless and until this Agreement is earlier terminated in accordance with **Section 9.2** ("**Initial Term**").

(b) Term Extensions. Unless the Agreement has been terminated prior to expiration, Company may extend the term of this Agreement for successive terms of five years ("**Extensions**") by giving written notice to Microsoft during the period beginning 60 days prior and ending on the expiration date of the Initial Term or then-current Extension. The Initial Term, together with any Extensions, constitutes the "**Term**" of this Agreement. To account for the availability of new technology or other developments, Microsoft reserves the right to make any Extension subject to Company's agreement to new or revised terms, including the Warranty Fee amount set forth in **Section 4.1**, provided any such terms are consistent with the Decision. Microsoft may terminate Company's right to obtain Extensions by giving written notice to Company if Microsoft receives permission from the Commission of the European Communities to do so. Following delivery of such notice, the Agreement will expire on the date that is the later of (i) the last day of the Initial Term or then-current Extension (if applicable); or (ii) three years following the date of such notice.

9.2 Termination.

(a) By Company Without Cause. Company may terminate this Agreement at any time, in its sole discretion and without cause, by providing written notice to Microsoft and complying with **Section 9.3(a)**.

(b) By Microsoft for Cause. Microsoft may terminate this Agreement: (i) immediately upon written notice at any time, if Company is in material breach of **Section 5** of this Agreement; (ii) upon written notice at any time if Company is in material breach of any warranty, term or condition of this Agreement and fails to remedy that breach (if such breach is capable of being remedied) within 60 days after written notice thereof; or (iii) upon written notice at any time if Company has received three or more written termination notices under the preceding clause (ii) within the previous 12-month period based on an actual material breach of a material warranty, term, or condition of this Agreement, even if those previous material breaches have been cured. Any material breach has to first be established by a court of competent jurisdiction.

9.3 Effect of Expiration or Termination; Survival.

Upon any expiration or termination of this Agreement: (a) subject to the express license scope and other terms and conditions referenced in **Sections 2 and 5**, the rights granted Company under **Section 2.1** will survive, and Company may retain in its possession and continue to use the WSPP Documentation made available to it by Microsoft during the Term solely to exercise such rights; and (b) the following will also survive such expiration: **Sections 3.2(b)** (Preliminary Documentation Updates), solely as to the warranty and liability exclusions therein; **3.4** (Comments and Suggestions); **4.2(c)** (Taxes); **5** (Confidentiality); **6** (Warranties) with respect to any breach thereof during the Term, **7-8** (Limitations of Liability, Exclusive Remedies and Sole Liability; Indemnification; Limitations of Remedies & Liability); and **10** (Miscellaneous); and this **Section 9** (Termination).

9.4 Remedies Not Exclusive. The rights and remedies set forth in this **Section 9** are cumulative and are not exclusive of any rights or remedies available at law or in equity, subject only to the express waivers and limitations of liability set forth in this Agreement.

10. Miscellaneous

10.1 No Partnership, Joint Venture or Franchise. Neither this Agreement, nor any terms or conditions contained herein, create a partnership, joint venture or agency relationship or grant a franchise as defined in the Washington Franchise Investment Protection Act, RCW 10.100, as amended, 16 CFR Section 436.2(a), or any other similar laws in other jurisdictions.

10.2 Export Laws and Regulations. Products and technical information of Microsoft are subject to U.S. export jurisdiction and other applicable national or international laws and regulations, and the licenses and deliveries of technical information and data contemplated herein may be prohibited by such laws and regulations. Company agrees to comply with all such export control laws. For additional information, see <http://www.microsoft.com/exporting/>.

10.3 Actions on Behalf of the Parties. Microsoft and Company are each liable for, and will be deemed for all purposes of this Agreement to have done or failed to do, any act or omission of their respective officers, employees, temporary personnel, or independent contractors related to acts or omissions in connection with this Agreement.

10.4 Notices. All notices and requests in connection with this Agreement are deemed given on 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 to Company using the contact information indicated on the first page of this Agreement, to Microsoft using the contact information below, or to either party at such other address as the party to receive the notice or request so designates per this notice provision:

Microsoft Corporation
One Microsoft Way
Redmond, Washington 98052-6399 U.S.A.
Attention: Associate General Counsel, Antitrust Group
Phone: (425) 882-8080
Fax: (425) 706-7329
Copy to: Law & Corporate Affairs
Fax: (425) 706-7409

10.5 Company Contests and Complaints.

(a) Microsoft acknowledges that by signing this Agreement, Company is not waiving its right to contest the validity of any of Microsoft's patents, know-how, industrial secrets, trade secrets and confidential information embodied in the WSPP Protocols and disclosed by the WSPP Documentation, or copyrights, and without prejudice to the provisions of **Section 9.2**, Microsoft will not withhold WSPP Documentation from Company or terminate this Agreement on the basis of such a contest by Company.

(b) Nothing in this Agreement will prevent Company from complaining to the Commission of the European Communities with respect to this Agreement or the Decision. Without prejudice to the provisions of **Section 9.2**, Microsoft will not withhold WSPP Documentation from Company or terminate this Agreement on the basis of such a complaint by Company.

(c) This Agreement neither takes away from nor adds (except as expressly stated in this Agreement) to any rights a Company might have under Articles 81 or 82 EC or equivalent provisions of national competition laws.

10.6 Injunctive and Equitable Relief, Liquidated Damages.

(a) Microsoft acknowledges and agrees that (i) monetary damages will not be a sufficient remedy for Microsoft's breach of its obligations under **Section 5**, and (ii) such unauthorized disclosure, use or exercise of rights will cause Company immediate, severe and irreparable injury. Accordingly, notwithstanding the provisions of **Section 10.7**, Microsoft acknowledges that Company will be entitled in such circumstances, without waiving or prejudicing any other rights or remedies, to such injunctive or equitable relief as a court of competent jurisdiction may grant.

(b) The Parties acknowledge and agree that in case of Microsoft's breach of Article 5 of the Decision or the representations, warranties, or undertakings in **Section 6.3**, (i) monetary damages will not be a sufficient remedy; (ii) in any event, the injured party will be entitled to such injunctive or equitable relief as a court of competent jurisdiction may grant, without waiving or prejudicing any other rights or remedies. In the event of any breach by Microsoft of any of the provisions of **Sections 6.3(a), (b), (c) or (d)** of this Agreement, where as a result of such breach (and as long as it continues) Company is unable effectively

to use the WSPP Documentation as contemplated in Article 5 of the Decision for a software development project the planning or actual execution of which is duly substantiated, Microsoft shall pay Company liquidated damages in the amount of one hundred thirty-five thousand euros (135,000) per day for each day in which such breach continues. The parties acknowledge that the foregoing amount reflects their assessment of the damages which Company is likely to incur as a result of such breach including by reason of expected delays in developing products and launching products on the market.

(c) Company acknowledges and agrees that (i) monetary damages will not be a sufficient remedy for Company's breach of its obligations under **Section 5**, or for use of the WSPP Documentation or exercise of rights in the Microsoft intellectual property other than as authorized by **Sections 2** and **5** of this Agreement, and (ii) such unauthorized disclosure, use or exercise of rights will cause Microsoft immediate, severe and irreparable injury. Accordingly, notwithstanding the provisions of **Section 10.7**, Company acknowledges that Microsoft will be entitled in such circumstances, without waiving or prejudicing any other rights or remedies, to such injunctive or equitable relief as a court of competent jurisdiction may grant.

10.7 Governing Law; Jurisdiction; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with English law. Each party hereby submits to the exclusive jurisdiction of the Chancery Division of the High Court of England and Wales in London. Process may be served on either party in the manner authorized by applicable law or court rule. In any formal action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party is entitled to recover its costs, including reasonable attorneys' fees, costs and other expenses. The Parties acknowledge and agree that any formal action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement constitutes an issue relating to the application of Article 82 of the Treaty within the meaning of Article 15 of Regulation 1/2003.

10.8 Assignment.

(a) The party identified as the Company parent on the first page of this Agreement may assign this Agreement if such Company and the proposed assignee have executed and delivered an Assignment and Assumption Agreement in a form acceptable to Microsoft (form available upon request to protocol@microsoft.com or other address that may be identified by Microsoft from time to time), which agreement provides for the assignment of all of Company's rights and obligations under this Agreement to the proposed assignee. Microsoft will promptly sign the Assignment and Assumption Agreement and return an executed copy to Company and the proposed assignee.

(b) Microsoft may terminate this Agreement immediately upon written notice if the party identified as the Company parent on the first page of this Agreement assigns or otherwise transfers, whether by operation of contract, law or otherwise, fifty percent (50%) or more of such Company's assets, excluding this Agreement, in a single transaction or series of transactions, unless either (i) the entity to which such Company proposes to make such assignment or transfer first enters into a Guarantee Agreement in the form posted on the WSPP Website from time to time, or (ii) such Company and Microsoft expressly agree otherwise in writing.

(c) Notwithstanding any other provision of this Agreement, no Company subsidiary or affiliate may assign this Agreement (or its rights or obligations hereunder) in whole or in part.

(d) Any attempted assignment in violation of **Sections 10.8(a), (b) or (c)** is null and void and has no force or effect.

10.9 Construction. This Agreement shall be constructed and applied in light of the operative part of the Decision and statement of reasons for it. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, other than **Sections 2.1** (Copyright Grant), **2.3** (No Other Rights), **5** (Confidentiality), **6.5** (Limitations of Liability), **6.6** (Exclusive Remedies and Sole Liability), **8** (Limitations of Remedies & Liability), or **10.8** (Assignment), to be unenforceable, the rest will remain in effect. If any of the foregoing provisions or any portion thereof are held by a court of competent jurisdiction to be unenforceable, this Agreement terminates immediately.

10.10 Third Parties Rights. Other than **Section 6.2(b)**, a person who is not a party to this Agreement is not a beneficiary of the rights granted to Company under this Agreement, and has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement in contract.

10.11 Entire Agreement. This Agreement does not constitute an offer by Microsoft and is not effective unless and until this Agreement is signed by duly authorized representatives of both parties. This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. This Agreement (including its Appendices) constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous communications, agreements, arrangements and understandings between the parties in connection with this Agreement and on such subject matter. No modifications of this Agreement are effective unless contained in a subsequent written agreement that expressly references this Agreement and its intent to modify its terms, and is signed by duly authorized representatives of Company and Microsoft.

IN WITNESS WHEREOF, the parties, through their duly authorized representatives, have entered into this Agreement, to be effective on the Effective Date.

[COMPANY NAME] (parent)

MICROSOFT CORPORATION

By (Sign)

By (Sign)

Name (Print)

Name (Print)

Title

Title

Date

Date

APPENDIX 1

Third Party IP Claims (as of the Effective Date)

Microsoft has received a Third Party IP Claim (as defined in this Agreement) with respect to the protocols listed below. This notice does not constitute an admission by Microsoft that such Third Party IP Claim has any merit.

The following protocols are the subject of a Third Party IP Claim under the following patents:

U.S. Patent Nos. 7,188,180, 6,502,135, 6,757,717 and/or 6,839,759.
7,802,310, 7,945,539, 7,945,544, 8,001,096, 7,257,706, 7,743,249

Protocol Name
Group Policy: IP Security (IPSec) Protocol Extension
Peer Name Resolution Protocol (PNRP) Version 4.0
Remote Procedure Call (RPC) over HTTP Protocol
Peer-to-Peer Grouping Security Protocol
Peer-to-Peer Graphing Protocol
Remote Differential Compression (RDC) Algorithm
Content Caching and Retrieval Protocols Overview
Remote Differential Compression Algorithm
Rights Management Services (RMS): Client-to-Server Protocol