

Structured Storage License Agreement

This is a legal agreement (“Agreement”) between the undersigned (either an individual or an entity) (“Company”), and Microsoft Corporation (“Microsoft”) (each a “Party” and collectively the “Parties”). If Company wants a license from Microsoft to implement Microsoft’s Structured Storage file format (“Structured Storage”) (as defined below) as required in the AAF Specification (as defined below), Company must sign and return this Agreement to Microsoft. This is an offer to be accepted only on the terms set forth in this Agreement. If changes are made to this Agreement, the offer is revoked.

RECITALS

WHEREAS, Microsoft developed Structured Storage and has submitted it to the Advanced Authoring Format Association, Inc. (“AAFA”) for inclusion in the AAF Specification as a contribution under the terms of the “Intellectual Property Policy of the Advanced Authoring Format Association, Inc.”;

WHEREAS, Company wants a license from Microsoft to implement Structured Storage in Company Implementations (as defined below) solely for Advanced Authoring Format applications as set forth in the AAF Specification;

NOW, THEREFORE, for and in consideration of the premises and mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Microsoft and Company hereby agree as follows:

1. Definitions

1.1. “AAF Specification” means Advanced Authoring Format Specification Version 1.0.1 adopted on January 28, 2004, posted at www.aafassociation.org/html/specs/aafobjects-spec-v1.0.1.pdf. To the extent that Structured Storage (as defined below) is the same for future versions of such Advanced Authoring Format Specification, the terms and conditions of this Agreement will apply to such future versions.

1.2. “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject Party, so long as such control exists. “Control” means direct or indirect ownership of or the right to exercise either (a) more than fifty percent (50%) of the voting stock or equity in the subject entity; or (b) more than fifty percent (50%) of the relevant ownership interest or decisionmaking authority representing the right to make decisions for the subject Party.

1.3. “Company Implementation” means only those specific portions of Company Products (as defined below) that (a) implement and are compliant with all or part of the required portions of Structured Storage for the sole purpose of implementing and being compliant with such required portions of the AAF Specification; and (b) are branded with a trademark owned or controlled by Company.

1.4. “Company Product” means a product branded with a trademark owned or controlled by Company that includes a Company Implementation, either alone or with other components.

1.5. “Company Toolkit” means a Company Implementation developed and licensed by Company that enables an End User (as defined below) to develop an End User Implementation (as defined below), and that is distributed by Company solely in object code to End User for inclusion in an End User Implementation.

1.6. “Effective Date” means the date that this Agreement, fully executed by Company without any changes, is received by Microsoft pursuant to Section 6.3 below.

1.7. “End User” means a third party customer to whom a copy of or access to a product or service containing Company Implementation is licensed or otherwise provided for such customer’s own use, and not for further

sublicense or distribution, except that an End User that creates an End User Implementation using a Company Toolkit may further distribute and sublicense such End User Implementation in object code form to End User's third party customers for their own use, but not for further sublicense or distribution.

1.8. "End User Implementation" means only those specific portions of End User Products, developed through the use of a Company Toolkit, that (a) implement and are compliant with all or part of the required portions of Structured Storage for the sole purpose of implementing and being compliant with such required portions of the AAF Specification; and (b) are branded with a trademark owned or controlled by End User.

1.9. "End User Product" means a product branded with a trademark owned or controlled by End User that includes an End User Implementation. For purposes of clarity, End User Products need not be branded with, or include, a Company brand.

1.10. "Necessary Claims" means claims of a patent or patent application that (a) are owned or controlled by a Party or its Affiliates now or at any future time; and (b) would necessarily be infringed by implementing the required portions of Structured Storage, wherein a claim is necessarily infringed only when it is not possible to avoid infringing it because there is no technically reasonable non-infringing alternative for implementing such portions of Structured Storage and still be fully compliant with the required portions of the AAF Specification. Notwithstanding the foregoing sentence, Necessary Claims do not include any claims:

(i) other than those set forth above even if contained in the same patent as Necessary Claims; or

(ii) that, if licensed, would require a payment of royalties or other fees(s) by a Party to an unaffiliated third party; or

(iii) to any enabling technologies that may be necessary to make or use any product or portion thereof that implements Structured Storage (*e.g.*, enabling semiconductor manufacturing technology, compiler technology, object oriented technology, operating system technology, protocols, programming interfaces, etc.); or

(iv) covering the implementation of other published specifications developed elsewhere and referred to in the body of Structured Storage; or

(v) to any portions of any product and any combinations thereof the purpose or function of which is not required for compliance with Structured Storage; or

(vi) that are necessarily infringed by implementing any optional portions of Structured Storage, including any required aspects of such optional portions.

1.11. "Structured Storage" means Microsoft's contribution to AAFA entitled "Compound File Binary File Format" (Structured Storage version 3) and submitted by Microsoft to AAFA on January 27, 2004.

1.12. "Structured Storage Licensee" means any entity that prior to, on, or after the Effective Date fully executes this Agreement without modification and returns the executed Agreement to Microsoft.

2. License Grants

2.1. Copyright License. Subject to Section 2.5 and Company's grant of licenses in accordance with Section 2.4, Microsoft hereby grants Company under Microsoft's copyrights in Structured Storage a non-exclusive, royalty-free, non-transferable, non-sublicensable, personal, worldwide license to make copies of Structured Storage and to distribute such copies along with Company Implementations and Company Toolkits distributed in accordance with Sections 2.2(a), 2.2(b), and 2.3, provided that all reproductions thereof shall include (1) all copyright notices and disclaimers contained in Structured Storage and the AAF Specification; and (2) the link to the AAF Specification set forth in Section 1.1.

2.2. Patent License.

(a) Company Implementation (except for Company Toolkit). Subject to Section 2.5 and Company's grant of licenses in accordance with Section 2.4, Microsoft and its Affiliates hereby grant Company a non-exclusive, royalty-free, nontransferable, non-sublicensable, personal, worldwide license under Microsoft's Necessary Claims to make, have made, use, import, offer to sell, sell and otherwise distribute or dispose of directly or indirectly to End Users, object code versions of Company Implementations (excluding Company Toolkits, which are covered by the patent license in Section 2.2(b) below) only as incorporated into Company Products and solely for the purpose of complying with Structured Storage and the AAF Specification.

(b) Company Toolkit. Subject to Section 2.5 and Company's grant of licenses in accordance with Section 2.4, Microsoft and its Affiliates hereby grant Company a non-exclusive, royalty-free, nontransferable, non-sublicensable (except as set forth herein), personal, worldwide license under Microsoft's Necessary Claims to make, have made, use, import, offer to sell, sell and otherwise distribute or dispose of directly or indirectly to End Users, object code versions of Company Toolkit solely for the purpose of complying with Structured Storage and the AAF Specification, provided that Company agrees to distribute Company Toolkit under a license agreement to End User which will: (i) require End User to make binding commitments to Microsoft, Company, and Structured Storage Licensees, as applicable, that include terms and conditions that are as protective as, and consistent with, those set forth in Sections 2.4 and 2.5; (ii) include terms and conditions that prohibit End User from reverse engineering, decompiling, or disassembling Company Implementation, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; (iii) include disclaimer and limitation of liability terms and conditions that are as protective as, and consistent with, those set forth in Sections 4.2 and 5 below, and that explicitly state that these provisions cover and are for the benefit of Company's third party providers of intellectual property and their respective affiliates, successors, and assigns; and (iv) include terms and conditions that prohibit modification or redistribution of Company Implementation, except for the redistribution described in Section 1.7.

2.3. Source Code Distribution. Company also has a non-exclusive, royalty-free, non-transferable, non-sublicensable, personal, worldwide license to distribute or otherwise disclose source code copies of Company Implementations licensed under Section 2.2(a) (but not under Section 2.2(b)), but only if Company (a) prominently displays the following notice in all copies of such source code; and (b) distributes or discloses the source code under a license agreement that includes the following notice as a term of such license agreement and does not include any other terms that are inconsistent with, or would prohibit, the following notice:

“This source code may incorporate intellectual property owned by Microsoft Corporation. Our provision of this source code does not include any licenses or any other rights to you under any Microsoft intellectual property. If you would like a license from Microsoft (e.g., rebrand, redistribute), you need to contact Microsoft directly or visit <http://www.microsoft.com/mscorp/ip/standards/>.”

2.4. Reciprocal License. Company, on behalf of itself and its Affiliates, hereby grants Microsoft, and hereby agrees to grant to all other Structured Storage Licensees, a non-exclusive, royalty-free, nontransferable, non-sublicensable, personal, worldwide license under Necessary Claims of Company to make implementations of Structured Storage that are compliant with all or part of the required portions of Structured Storage (for clarification, such implementations must be for the sole purpose of implementing and being compliant with such required portions of the AAF Specification) (“Structured Storage Implementations”), and to have made, use, import, offer to sell, sell and otherwise distribute or dispose of directly or indirectly to End Users, Structured Storage Implementations solely for the purpose of complying with Structured Storage and the AAF Specification.

2.5. Defensive Suspension. If Microsoft, Company or any of their Affiliates (“the sued party”) are first sued for patent infringement by the other Party hereto or any of its Affiliates, on account of the manufacture, use, sale, offer for sale, importation or other disposition or promotion of the sued party's Company Implementation or Microsoft's Structured Storage Implementation, as applicable, then the sued party may terminate all license grants and any other rights provided under this Agreement to such entity and such entity's Affiliates. The foregoing shall not apply if the patent infringement suit that would otherwise trigger such clause is solely based on the sued party's Company

Implementation or Microsoft's Structured Storage Implementation, as applicable, not complying with the scope of the license grants set forth in this Agreement.

2.6. Reservation of Rights. All rights not expressly granted in this Agreement are reserved by Microsoft and Company. No additional rights are granted by implication or estoppel or otherwise. By way of clarification, in order for a third party to distribute source code copies of a Company Implementation as part of its third party branded products, such third party must be authorized to do so by Company and must also execute this license and comply with its terms. However, an End User receiving a Company Implementation pursuant to Section 2.2 need not execute this Agreement, including an End User that creates an End User Implementation and an End User Product.

3. Term

Except as set forth herein, this Agreement and the license grants herein are effective as of the Effective Date and terminate upon the last of Microsoft's and Company's Necessary Claims to expire. The license grants do not include a release for any infringement occurring prior to the Effective Date.

4. Representations and Disclaimers of Warranty

4.1. Company represents and warrants that the person executing this Agreement on behalf of Company and its Affiliates is authorized to do so, that Company is authorized to enter into this Agreement, and that this Agreement is a binding obligation of Company and its Affiliates.

4.2. DISCLAIMERS. STRUCTURED STORAGE, THE AAF SPECIFICATION, AND ALL INTELLECTUAL PROPERTY DELIVERED AND/OR LICENSED BY EITHER PARTY AND/OR ITS AFFILIATES TO THE OTHER PARTY PURSUANT TO THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. EACH PARTY AND ITS AFFILIATES DISCLAIMS ALL WARRANTIES, DUTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

5. Limitation of Liability

MICROSOFT AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES EVEN IF MICROSOFT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

6. Miscellaneous

6.1. No Partnership, Joint Venture or Franchise. Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture or agency relationship or as granting a franchise as defined in the Washington Franchise Investment Protection Act, RCW 19.100, as amended, or 16 CFR Section 436.2 (a), or any similar laws in other jurisdictions.

6.2. Export Regulations. Company acknowledges that implementations of Structured Storage and the AAF Specification may be subject to U.S. export jurisdiction and other applicable national or international laws. Company agrees to comply with all applicable international and national laws that apply to Structured Storage and the AAF Specification, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments, and privacy laws. See <http://www.microsoft.com/exporting/>.

6.3. Executed Agreements. Only one agreement per Company shall be accepted by Microsoft. To be effective, an executed original of this Agreement must be sent by messenger, traceable express mail or prepaid certified mail, return receipt requested, addressed to Microsoft as follows:

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
Attention: Director of Patent Licensing
Copy to: Law & Corporate Affairs

6.4. Governing Law; Jurisdiction; Attorneys' Fees. 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.

6.5. Assignment. Company may not assign this Agreement, or any rights or obligations hereunder, whether by operation of contract, law or otherwise, except with the express written consent of Microsoft, and any attempted assignment by Company in violation of this Section shall be void. For purposes of this Agreement, an "assignment" by Company under this Section shall be deemed to include, without limitation, each of the following: (a) a change in beneficial ownership of Company of greater than twenty percent (20%) (whether in a single transaction or series of transactions) if Company is a partnership, trust, limited liability company or other like entity; (b) a merger of Company with another entity, whether or not Company is the surviving entity; (c) the acquisition of more than twenty percent (20%) of any class of Company's voting stock (or any class of non-voting security convertible into voting stock) by another entity (whether in a single transaction or series of transactions); and (d) the sale or other transfer of more than fifty percent (50%) of Company's assets (whether in a single transaction or series of transactions). In the event of such assignment or attempted assignment by Company, Microsoft shall have the right to immediately terminate this Agreement and/or any license grants to Company.

6.6. Construction. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable (other than Sections 2.3, 2.4 and 2.5), such provision and the rest of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the Agreement will continue in full force and effect. In the event that a court of competent jurisdiction finds that Sections 2.3, 2.4 or 2.5 is unenforceable, this entire Agreement and any licenses granted hereunder shall be rendered null and void. Failure by a Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

6.7. Trademark/Logo Usage. Nothing herein grants Company any right to use or display, or to authorize any third party to use or display, any Microsoft trademark or logo in connection with a Company Implementation or Company Product, or otherwise.

6.8. No Requirement to Implement. Nothing in this Agreement shall be construed as requiring Company to use or implement Structured Storage or the AAF Specification, or limit the Parties from competing in any way without infringing each others' intellectual property, including engaging in activities, independently or with others, that may be deemed competitive with Structured Storage or the AAF Specification.

6.9. Identification of Licensees. The fact that Company is a licensee of Structured Storage is not confidential. Either Party may make public announcements regarding Company's execution of this Agreement. Microsoft, at its option, may list Company as a licensee on its website.

6.10. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and merges all prior and contemporaneous 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.

Agreed to and accepted on behalf of Company:

By (signature):	Company Name:
Name (printed):	Company Address:
Title:	City, State, Zip, Country:
	Dated: