

XAUDIO LICENSE AGREEMENT

This Xaudio License Agreement ("Agreement") is made this ____ day of _____, 2000 ("Effective Date") by and between Xaudio Corporation., a Delaware corporation with its principal place of business located at 4750 Patrick Henry, Santa Clara, California 95054 ("Xaudio") and _____, a _____ corporation with its principal place of business located at _____ ("Licensee").

1 Definitions

"End User" means a third party entity which acquires a Licensee Product from Licensee for use without modification.

"Licensee Product" means those software, hardware and services designated on Schedule A that are developed and marketed by Licensee for use by an End User.

"Licensed Software" means (i) the software products designated on Schedule A hereto provided to Licensee by Xaudio in object code executable form (but not source code), (ii) related program documentation ("Documentation"), and (iii) updates, modifications, maintenance releases, bug fixes or work-arounds that may be provided by Xaudio.

2. **Term.** The initial term of this Agreement shall be one (1) year from the Effective Date ("Term"). The term shall automatically extend for additional one (1) year renewal terms provided neither party provides the other with written notice of termination at least thirty (30) days before the expiration of the initial term or any renewal term.

3. **Grant of License Rights.** Subject to all the terms of this Agreement, Xaudio grants Licensee a non-transferable, non-exclusive, royalty free, and worldwide license to: (i) reproduce and distribute the Licensed Software, in object code executable form, solely as part of and for use with Licensee Products; and (ii) sublicense to an End User of a Licensee Product the right to use the Licensed Software with and as part of Licensee Product.

4. License Restrictions

4.1 **End User Licenses.** Licensee shall only sublicense the Licensed Software under Section 3(ii) above pursuant to end user license agreements that: (i) do not conflict with this Agreement, and (ii) include provisions that provide as much protection to Xaudio as this Agreement, including without limitation terms substantially the same as set forth in Sections 4.4, 4.5, 5, 6, 10, 11 and 13. Licensee shall promptly provide Xaudio with copies of its forms of end user license agreement for Xaudio's review and verification of compliance herewith.

4.2 **DRM Support.** Licensee shall not, without the prior written consent of Xaudio, use any portion of the Licensed Software to develop or support the deployment or operation of any digital rights management technology, including but not limited to any secure distributed rights management and/or secure, distributed event or transaction management technologies and/or products other than technology or products of InterTrust Technologies Corporation. Licensee acknowledges that no license to any technology or products of InterTrust Technologies Corporations is granted hereby. Licensee shall not use, support or permit the use of Licensed Software or Licensee Product to infringe or violate any third party's intellectual property or other proprietary rights, right of privacy or other rights, or engage in any unlawful activities.

4.3 **Updates.** Upon notice of an update or new release of the Licensed Software, Licensee will update its Licensee Product to incorporate such update or new release in all upgrades or new versions of Licensee Products within ninety (90) days of receipt

of such notice. Copies of all such Licensee Products, updates, and any new releases thereof, shall be promptly provided to Xaudio.

4.4 **Restrictions and Reservations.** Nothing contained in this Agreement shall be construed as conferring upon Licensee, by implication, estoppel or otherwise, any license or other right except the license and rights expressly granted herein. All rights not expressly granted herein are reserved by Xaudio. Licensee agrees that it will not (and will not permit others to) reverse compile or disassemble object code versions of the Licensed Software or otherwise create, or attempt to create or permit, allow or assist others to create the source code of the Licensed Software.

4.5 **Proprietary Rights Notices.** Licensee shall not remove, obscure or alter any of Xaudio's copyright, trademark and other proprietary rights notices affixed to or contained within the Software. All copies of the Licensed Software or its related documentation must reproduce copyright notices, restrictive rights legends, proprietary notices and other notices as contained in the Licensed Software in whole or in part for any use or purpose, other than as provided herein. All copies of Licensee Products shall include, where applicable, the following notice: "Includes Xaudio software Copyright © 1996-2000 Xaudio Corporation All Rights Reserved."

5 **Ownership of Licensed Software.** The Licensed Software (including such portions as are incorporated in Licensee Products), and the intellectual property rights embodied therein are and shall be owned by and remain the property of Xaudio.

6. **Confidential Information.** Licensee agrees that all code, inventions, know-how and ideas contained in the Licensed Software and all other business, technical and financial information it obtains from Xaudio are confidential property of Xaudio and its licensors ("Proprietary Information"). Except as expressly and unambiguously allowed herein, Licensee will hold in confidence and not use or disclose any Proprietary Information except as expressly authorized by this Agreement and shall similarly bind its employees in writing. The parties' nondisclosure obligation shall not apply to information that: (i) is at the time of disclosure generally known by or available to the public or became so known or available thereafter through no fault of Licensee; (ii) is legally known to Licensee at the time of disclosure without any obligation of confidentiality; (iii) is furnished to Licensee without any obligation of confidentiality by a third party who legally obtained said information and the right to disclose it; or (iv) is developed independently by Licensee's employees who had no access to such Proprietary Information where it can document such independent development. Because of the unique and proprietary nature of the Confidential Information, it is understood and agreed that each party's remedies at law for a breach by the other of its obligations under this Section will be inadequate and that such party shall, in the event of any such breach, be entitled to equitable relief (including without limitation provisional and permanent injunctive relief and specific performance) in addition to any other remedies under this Agreement or available at law.

7. **Termination.** This Agreement and all licenses will terminate (i) thirty (30) days (immediately in the case of a breach of Section 4 or 8) after notice from one party of any breach by the other party remaining uncured at the end of such notice period; or (ii) immediately upon the commencement of any bankruptcy proceeding (or other insolvency proceeding) of Licensee, or the dissolution of Licensee. Upon termination or expiration of this Agreement, all licenses to the Licensed Software shall immediately cease, and Licensee shall destroy all copies of

Licensed Software and certify such destruction to Xaudio; provided however that then existing sublicenses to End Users granted in accordance herewith shall continue and survive such termination in accordance with the terms thereof. Sections 1, 4.4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of this Agreement shall survive any termination or expiration of this Agreement.

8. **Trademarks.** Licensee shall use Xaudio's then-current names, marks, logos, and other identifiers for the Licensed Software ("Trademarks") on or in connection with the Licensed Software, packaging and advertising for the Licensee Product, provided that Licensee shall: (i) only use Trademarks in the form and manner, and in accordance with the quality standards, that Xaudio prescribes (and which it may change from time to time); (ii) at Xaudio's request, submit samples of Licensee Product, packaging, advertising, and Licensed Software to Xaudio for review and approval; and (iii) upon termination of this Agreement for any reason, immediately cease all use of the Trademarks. Licensee will not use, register or take other action with respect to any name, logo, trademark, service mark, or other identifier used anywhere in the world by Xaudio, except to the extent authorized in writing by Xaudio in advance.

9. **Indemnification.** Licensee shall hold Xaudio and affiliates harmless from liability to third parties for any claim resulting from or arises out of the use or distribution of a Licensee Product (except any claim that arises out of use or distribution of the Licensed Software alone). Xaudio agrees to (i) promptly notify Licensee of the claim, (ii) gives Licensee control of the defense of such claim except Xaudio may participate in such defense and will have sole control of any claim that relates to the Licensed Software or any intellectual property right of Xaudio. Each party shall be entitled to prior written notice of any settlement and to reasonable approval of a settlement to the extent such party's rights would be directly and materially impaired.

10. **Warranty Disclaimer.** OTHER THAN EXPRESSLY PROVIDED ABOVE, THE LICENSED SOFTWARE IS PROVIDED "AS IS" AND XAUDIO MAKES NO WARRANTIES OR REPRESENTATIONS AS TO ITS LICENSED SOFTWARE OR AS TO ANY SERVICES RENDERED TO LICENSEE OR ANY OTHER PERSON. TO THE EXTENT PERMITTED BY APPLICABLE LAW, XAUDIO DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERRUPTION OF USE, AND/OR ERROR FREE. LICENSEE ACKNOWLEDGES THAT IT IS LICENSEE'S RESPONSIBILITY TO DETERMINE AND OBTAIN ANY NECESSARY PATENT LICENSE FROM THIRD PARTIES, IF ANY, IN CONNECTION WITH LICENSEE'S USE OF THE LICENSE SOFTWARE AND/OR THE LICENSEE PRODUCT, INCLUDING WITHOUT LIMITATION ANY PATENTS RELATING TO THE MPEG STANDARD.

11. **Limitation of Liability.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, XAUDIO SHALL NOT BE LIABLE OR OBLIGATED WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE FEES PAID TO IT HEREUNDER, IF ANY, WITH RESPECT TO THE APPLICABLE LICENSED SOFTWARE PRIOR TO THE CAUSE OF ACTION; (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS,

TECHNOLOGY, SERVICES OR RIGHTS; (III) FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (IV) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. THE FOREGOING LIMITATION SHALL APPLY REGARDLESS OF WHETHER A PARTY KNOWS OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSS, COSTS OR EXPENSES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN.

12. **Foreign Law Representation.** As a condition of Licensee's rights hereunder, Licensee warrants and agrees that neither this Agreement (or any term hereof) nor the performance of or exercise of rights under this Agreement, is restricted by, contrary to, in conflict with, ineffective under, requires registration or approval or tax withholding under, or affects Licensor's intellectual property right (or the duration thereof) under, or will require any termination payment or compulsory licensing under, any law or regulation of any organization, country, group of countries or political or governmental entity.

13. **Miscellaneous**

13.1 Neither the Agreement or any rights or obligations hereunder may be assigned, transferred or delegated by Licensee (or by estoppel, implication or operation of law) without the prior written consent of Xaudio; any attempt to do so shall be void. Xaudio may assign this Agreement in whole or in part.

13.2 Licensee agrees that it is an independent contractor and that this Agreement and relations between Xaudio and Licensee hereby established do not constitute a joint venture, agency or contract of employment between them, or any other similar relationship. Neither party has the right or authority to assume or create any obligation or responsibility on behalf of the other.

13.3 Any notice, report, approval or consent required or permitted hereunder shall be in writing and shall be deemed duly given on the date when delivered personally or by facsimile with a confirmation by express courier, or five (5) days after the date of mailing if sent by registered mail, postage pre-paid, return receipt requested.

13.4 No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. Any waivers or amendments shall be effective only if made in writing.

13.5 If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

13.6 This Agreement shall be governed solely by the laws of the United States of America and the Commonwealth of Virginia, excluding Virginia's Uniform Commercial Code and that body of law relating to conflict of laws. The parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Each party hereby unconditionally and irrevocably consents to the exclusive jurisdiction of and venue in the U.S. District Court for the Eastern District of Virginia (Alexandria Division) (or any direct successor thereto), unless jurisdiction does not properly lie in federal court, in which case exclusive jurisdiction and venue shall be in the Commonwealth courts there located.

13.7 Licensee acknowledges that because one or more aspects of the License Software may comprise components, information or material that are subject to the export control laws, regulations, and requirements of the United States and other

jurisdictions, Licensee shall, at Licensee's expense, comply with all applicable laws (including applicable U.S. export control laws and regulations) and obtain all necessary governmental consents and approvals in connection with the distribution of or export or re-export of Licensee Products that contain any part of the Licensed Software in accordance herewith

13.8 The prevailing party in any action to enforce this Agreement will be entitled to recover its attorney's fees and costs in connection with such action.

13.9 This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by an officer duly authorized as of the date first above written.

("Licensee")

Sign: _____

Name (print or type): _____

Title: _____

Date: _____

Xaudio Corporation

Sign: _____

Name (print or type): _____

Title: _____

Date: _____

SCHEDULE A

1. **Licensed Software**

The following Licensed Software products and their associated online documentation will be provided:

- Xaudio MPEG Playback Library and associated utilities for Microsoft Windows, Linux, MacOS and other supported Unix platforms in the form of binary Dynamically Linkable Library (DLL) files (e.g. xaudio.dll, xanalyze.dll) or statically Linkable Library files (e.g. xaudio.lib, xanalyze.lib);

2. **Licensee Products:**

Product Name: _____

Product Description (explain what product does): _____

Product URL (if any): _____

Supported Platforms: _____

The definition of Licensee Product may be amended from time to time during the term of this Agreement to include other products developed and distributed by Licensee upon the mutual written agreement of Licensee and Xaudio.

