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# ACTIVE DESKTOP MARKETING, DISTRIBUTION & PROMOTION AGREEMENT

This Active Desktop Marketing, Distribution & Promotion Agreement (the "Agreement") is entered into and effective as of June 26,, 1997 (the "Effective Date") by and between MICROSOFT CORPORATION, a Washington corporation located at One Microsoft Way, Redmond, WA 98052 ("Microsoft") and Hollywood Online, Inc., a California corporation located at 1620 26th Street, Suite 370 South, Santa Monica, California 90404 ("Company").

## RECITALS

Microsoft is the owner and/or authorized licensor of the Windows 95 operating system, as well as of certain Internet-related technology, including "browsing" software known as "Internet Explorer" for the Windows 95, Windows NT, Windows 3.xx, Apple Macintosh and Unix operating systems.

Forthcoming versions of Internet Explorer are expected to have a feature known as "Active Desktop," which will enable users to choose pre-selected, and/or create their own, categories of "streaming" content which is automatically and periodically downloaded or webcast to the user via the World Wide Web (the "Web").

Company operates an online content business whereby it owns or licenses content which can be made available to users of Active Desktop, along with associated advertising, if any.

Microsoft and Company wish to enter into a strategic marketing, distribution and promotion agreement whereby the parties will promote and assist each other's efforts in developing the "push" content business on Microsoft platform technology. Company is willing to market, promote and where commercially reasonable and appropriate distribute Microsoft's Internet Explorer and related Microsoft Internet technology as its primary browser platform for designated Company Web sites, and Microsoft is willing to include Company as a provider of content which the Active Desktop is pre-configured to access, and to provide broad distribution of Company's logos/icons that link to Company's webcast content.

The parties hereby agree as follows:

## AGREEMENT

### 1. DEFINITIONS

1.1 "Active Desktop" means the Channel Client feature of Microsoft's Internet Explorer which provides, among other things, facilities to support, all via the Web, "scheduled pull," "push" or "broadcasts" of Channel Content, and Content Rotation.

1.2 "Active Platform Support" means a party's use of Active Platform technology so as to make such party's Web site a demonstrably superior example of Active Platform technology. Exhibit A describes the level of support required in order to meet this standard as of the Effective Date.

1.3 "Active Platform" means Microsoft's line of client, server and development tools and technologies based on Internet standards, including: Internet Explorer, Dynamic HTML, ActiveX, ActiveX Controls, Visual Basic, Jscript, Active Desktop, Internet Information Server and Active Server Pages.

1.4 "Affiliate" means, with respect to any legally recognizable entity, any other such entity directly or indirectly Controlling, Controlled by, or under common Control with such entity. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a legally recognizable entity, whether through the ownership of voting shares, by contract, or otherwise. Where such entity is a partnership, limited liability company, corporation, or similar entity and has partners, members, or shareholders with equal ownership interests or equal

GOVERNMENT EXHIBIT



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control interests, by contract or otherwise, then each such partner, member, or shareholder will be deemed to possess, directly or indirectly, the power to direct or cause the direction of the management and policies of that entity.

1.5 "Category Channel" means a Channel for which an identifying Channel Icon appears in a sub-directory when an End User points to or clicks on a related Category in the top Channel directory visible to End Users upon first starting up or using Active Desktop. For example, "Business" may be a Category in the top Channel directory, and the Channels available by clicking on or accessing the "Business" Category are Category Channels.

1.6 "Category" means a class of Content which concerns similar subject matter, such as Content which focuses primarily on sports, business, or children's entertainment.

1.7 "Channel Client" means software that enables an End User to select and receive Channels in one or more display and/or audio elements, including software that is: (i) an interactive application (such as a Web browser) that displays and/or plays Content within an application (or similar) window or directly upon a operating system desktop; and/or (ii) an animated and network-interactive screen saver application.

1.8 "Channel Icon" means an icon or button which has an identifying logo and/or trademark and an associated pointer/URL contained in the Active Desktop user interface such that an End User, upon first starting up or using Active Desktop, will (if already connected to the Web) be directly linked via a single click to an associated Channel.

1.9 "Channel" means an aggregation of one or more Categories and advertising (if any) that is displayed or played, or available to be selected by an End User for display and/or play, by means of a Channel Client, and which may be further divided into sub-Channels.

1.10 "Company Web Sites" means the following Web sites: _http://www.hollywood.com and successor web sites which are Company's means for distributing entertainment information and services to Web users.

1.11 "Confidential Information" means: (i) any trade secrets relating to either party's product or service plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how; and (ii) the specific terms and conditions of this Agreement. "Confidential Information" shall not include information that: (i) is or becomes generally known or available, whether by publication, commercial use or otherwise, without restriction on disclosure and through no fault of the receiving party; (ii) is known and has been reduced to tangible form by the receiving party at the time of disclosure and is not subject to restriction; (iii) is independently developed or learned by the receiving party without reference to any Confidential Information of the disclosing party; (iv) is lawfully obtained from a third party that has the right to make such disclosure.

1.12 "Content Rotation" means the presentation, through a Channel Client, of Content from one or more different Channels within sequential time segments managed by such Channel Client during which Channel Content and associated advertising (if any) are displayed and/or played on the End User's computer system.

1.13 "Content" means data, text, audio, video, graphics, photographs, artwork and other technology and materials provided for use on Channels or Web sites.

1.14 "End User" means a Third Party, including corporate and similar direct customers, which views and/or plays Content by means of a Channel Client for such Third Party's use and not for further sublicense or distribution.

1.15 "ICP" or an "Independent Content Provider" means an entity which develops its own Content and/or which aggregates and distributes Third Party Content for inclusion in a Channel.

1.16 "Intellectual Property" means all proprietary rights owned or controlled throughout the world, including, but not limited to, copyrights, moral rights, trade secrets, trademarks, and patents.

1.17 "Internet Explorer" or "IE" means Microsoft's English language versions Web browsers and related Internet client technology for all Platforms as marketed by Microsoft under the name "Internet Explorer v. 4.x."

1.18 "Licensed Materials" means Company-provided introductory Company Content ("introductory content" refers to that content which is supplied for the CD-ROM install version of IE)associated ActiveX controls, and any other software code required to use such Content in Active Desktop, as further described in Section 2.5, and provided that Licensed Materials shall not include any Third Party advertisements and shall not exceed one (1) megabyte in size.

1.19 "Licensee(s)" means any Third Party licensee of a party's technology, including, but not limited to OEM, retail and other distributors, software integrators, and End Users of a party's products and/or services.

1.20 "Other Browsers" means Third Party software and related technology for any Platform that (i) is designed to view, render, browse, hear or otherwise interact with Content on the Internet, the Web and/or other public networks now existing or hereafter created (a "browser"); and (ii) ranks in the top two (exclusive of Internet Explorer) most widely used browsers, as such use is measured by Browserwatch (http://browserwatch.iworld.com/stats/stats.html).

1.21 "Platforms" means any and all operating system platforms supported during the Term by Internet Explorer.

1.22 "Pre-Configured Channel" means a Channel which has an identifying Channel Icon contained in the Active Desktop user interface such that the Pre-Configured Channel is available, whether as a Category Channel or otherwise, to the End User upon first use and/or personalization of the Active Desktop and until the End User deletes or changes such configuration.

1.23 "Pre-Configured ICP" means an ICP whose Channel is included as a Pre-Configured Channel in Active Desktop.

1.24 "Term" means the term of this Agreement, which shall be the period commencing upon the Effective Date and ending on the earlier of (i) one (1) year from the firstcommercial release of a final version of Internet Explorer containing Active Desktop, and (ii) December 31, 1998 unless earlier terminated in accordance with Section 12.

1.25 "Territory" means the United States.

1.26 "Third Party" means a person or entity which is not an Affiliate of either party to this Agreement.

1.27 "Win 16" means Microsoft's Windows 3.xx Platform.

1.28 "Win32" means, collectively, the Windows 95 and Windows NT Platforms and their direct successors which are released during the Term.

## 2. COMPANY OBLIGATIONS

2.1 Adoption of Active Platform. Company shall use best commercial efforts to adopt, market, and promote Active Platform, including as follows

(a) For all Company Content and advertising delivered via the Active Desktop, Company shall, at its own expense and continuously during the Term, develop (and/or license from third parties) Content which is customized such that it exhibits the Active Desktop and Active Platform capabilities, including by complying with the Active Platform Support set forth in Exhibit A.

(b) Company shall further provide Active Platform Support (Exhibit A) for Channels and Company Content on Company Web Sites continuously during the Term, including without limitation by complying with updated standards for such support as they are provided by MS to Company during the Term. Company shall not, however, be required to provide Active Platform Support to any advertising, promotions or sponsorship features contained solely within Company Web Sites and not available for viewing and/or playing in a Channel.

2.2 Unique Content/Promotion. Company shall publicly endorse and promote, Active Desktop and Active Platform as the client technologies of choice for Company Web sites, including without limitation by (i) publicly stating in a press release that Company's Web sites are designed to work with Active Desktop; and (ii) including a link to a Microsoft IE download site in each Company Web Site. Company shall also complete the obligations set forth in Exhibit B.

2.3 Exclusive Obligations Concerning IE. During the Term, Company and its Affiliates will promote IE (and no Other Browser) as the browser software of choice for Company Web Sites and Content continuously during the Term, including by complying with the following:

(a) Subject to the license terms referenced in Section 5.2, Company and its Affiliates shall distribute Internet Explorer and no Other Browser as an integral part of any Client for Win 32, Win 16 or Macintosh platforms, which Client is distributed by Company, a Company Affiliate, or a Licensee of either of the foregoing, via any form of physical media, OEM, or online distribution or transmission. Company shall not remove or alter any of the default Categories or Channels without the prior written consent of Microsoft.

(b) Company shall exclusively promote IE and or the Company Channel within all Company Web Sites and shall, subject to the terms set forth in Section 7.1, display an IE logo such as "Best viewed by IE" on the home page of Company Web Sites and any other pages where similar promotions are placed. The sole exceptions to the foregoing exclusivity obligation shall be that Company shall not be restricted in Company Web Sites (i) from accepting paid advertising (excluding promotions or sponsorships) from companies that produce Other Browsers, (ii)from including news and editorial Content concerning such Other Browsers, provided that it is produced independently from companies which produce Other Browsers, and their Affiliates; and (iii) general support features (such as help or FAQ files) for Other Browsers, provided that such features are not linked to Other Browser download sites by promotion through icons or links.

2.4 Content and Logo Restrictions. During the Term, Company agrees that neither it nor its Affiliates - will directly or indirectly license or otherwise authorize distribution, transmission, marketing or promotion in the Territory of Company Content or logos by companies which produce Other Browsers, or their Affiliates,- or otherwise in connection with the promotion, marketing or distribution of Other Browsers.

2.5 Licensed Materials. Company will deliver the initial versions of the Licensed Materials to Microsoft in electronic and (for logos and the like) hard copy form, along with appropriate documentation to

verify the accuracy of such materials, no later than ten (10) working days prior to Microsoft's second public beta release of Active Desktop. Final version of the Licensed Materials shall be provided to Microsoft reasonably in advance of the commercial release of IE, at a date to be determined based on the Internet Explorer product schedule. Microsoft shall be entitled to review and approve for inclusion in Active Desktop such Licensed Materials, provided that such approval shall not be unreasonably withheld or delayed.

2.7 Creation and Maintenance of Company Channel. Company shall create and maintain the Company Channel(s) which will deliver free Content which is substantively implemented and updated pursuant to the terms and at the frequency set forth in Exhibit A. Company acknowledges that its performance under this Section 2.6 is critical to Microsoft. If Microsoft, in its sole and reasonable judgement, determines that such performance under this Section 2.6 is inadequate, Microsoft may enforce the remedies set forth in Section 12.2.

2.7 Licenses. Company will license the Licensed Materials to Microsoft as set forth in Section 5.

## 3. MICROSOFT OBLIGATIONS

3.1 Inclusion as Pre-Configured ICP. During the Term, Microsoft shall include a Company Channel Icon in a Pre-Configured ICP position within North American English versions of Active Desktop for Win32 distributed within the Territory, as follows:

(a) Within the Territory, Microsoft shall list Company's Channel Icon as a Category Channel in the Active Desktop directory for the following Category: _Entertainment

(b) Microsoft shall include the Licensed Materials in Microsoft's retail CD-ROM and OEM distributions of Active Desktop for Win32 distributed within the Territory.

(c) Microsoft does not intend to include more than twenty-five (25) Third Party Pre-Configured ICPs in United States versions of Active Desktop during the Term, and Microsoft does not intend to include more than 10 third party Category Channels within each Category which is presented as a Channel within such versions of Active Desktop during the Term.

(d) Microsoft shall in its sole discretion determine the order of placement on the Active Desktop of the Channel Icons for Channels, Categories and Category Channels.

(e) Company acknowledges and agrees that Microsoft may, notwithstanding anything to the contrary in Sections 3.1(a)-(c): (i) authorize OEM distributors of Active Desktop to include one or more Pre-configured Channel in copies of Active Desktop which they distribute, and to place their Channel Icon in a top directory position within Active Desktop; and (ii) authorize Internet Access Providers (or "IAPs," *i.e.*, companies which market Internet access services to End Users) and licensees of Microsoft' Internet Explorer Administration Kit (or "IEAK") to distribute copies of Active Desktop from which such IAPs or IEAK licensees have deleted the Pre-configured Channels of some or all other Pre-Configured ICPs. Company further acknowledges and agrees that Active Desktop users and IEAK users will be able to re-configure Channels for End User customers, themselves and for others in their organization, including scheduling when Content is downloaded from the Channel, and adding, moving and/or deleting Channels and Channel Icons.

(f) Microsoft will exercise commercially reasonable efforts to require its OEM licensees to include the Company Channel Icon in applicable versions of Active Desktop which they distribute, but Microsoft will be entitled to forego such requirements provided that in no event

shall Microsoft authorize an OEM licensee to delete the Company Channel Icon but not any Microsoft or Microsoft Affiliate Channel Icons from applicable versions of Active Desktop.

(g) Microsoft's intent is that Active Desktop will be presented to the end user upon system setup and/or first use of Internet Explorer.

3.2 Early Releases and Other Development Support. During the Term, Microsoft shall provide Company with early (alpha, beta and, where practical as determined . Microsoft in its sole discretion, pre-alpha) releases of Active Desktop and Internet Explorer to use and reproduce for internal development purposes only.

3.3 Set-up and Installation Requirements. Microsoft's obligations under this Section 3 are contingent on Company's meeting the setup and installation specifications that Microsoft requires for all third party Pre-Configured ICPs, as further described in Exhibit C.

3.4 Licenses. During the Term, Microsoft will license Internet Explorer to Company as set forth in Section 5.

3.5 Microsoft Promotion of Company Content. In order to assist Company's efforts in developing its webcast Content business on Microsoft platform technology, Microsoft agrees during the Term and as set forth in Exhibit B to promote the Company Content in conjunction with Active Desktop within the Territory.

## 4. JOINT OBLIGATIONS

4.1 Announcement. The parties shall issue a joint press release announcing and describing the general terms of this Agreement. The precise content and timing of such press release shall be mutually agreed upon by the parties.

4.2 Marketing Coordination. Each party shall appoint a representative to coordinate marketing plans, advertising guidelines, and other promotional messages to be used by the respective parties in their promotions of one another. Each party shall use reasonable commercial efforts to confirm any substantive changes in such plans and messages with the other party prior to executing marketing or advertising promotions with any such changed messages or plans.

4.3 Support. Each party shall provide all end user support for the products and services that it operates or distributes in connection with this Agreement.

## 5. RIGHTS AND LICENSES

5.1 Intellectual Property License to Microsoft. Company hereby grants to Microsoft, under all Company Intellectual Property, a nonexclusive, irrevocable, perpetual, royalty-free, fully paid up, worldwide right and license to reproduce, license, rent, lease or otherwise distribute, and have reproduced, licensed, rented, leased or otherwise distributed, to and by third parties (including in conjunction with or as included in Active Desktop or Internet Explorer), the Licensed Materials. Solely as it directly pertains to use under terms of this Agreement

5.2 Internet Explorer. During the Term, Microsoft hereby grants to Company, under all Microsoft Intellectual Property, a nonexclusive, royalty-free, fully paid up, worldwide right and license (i) to reproduce and distribute Internet Explorer, either on a stand-alone basis or in conjunction with Company Content, products or services, under Microsoft's standard terms and conditions (as listed on http://www.microsoft.com/ie/ieak or successors thereto); and (ii) during the Term, to sublicense

to Company OEMs, distributors and resellers the rights to reproduce and distribute Internet Explorer in conjunction with Company Content, products or services.

5.3 Patent Issues. If Company (a) sues or (b) brings, prosecutes, assists or participates in any judicial, administrative or other proceedings of any kind against Microsoft or its licensees (including without limitation OEM customers and end users) for infringement of any Company Patents which occurs during the Term on account of the manufacture, use, sale or distribution of technology contained in Internet Explorer, Microsoft may terminate this Agreement as provided in Section 11.2. As used herein, "Company Patents" means any and all patents (other than design patents or the equivalent), or the inventions, ideas or applications therefor, worldwide, whether currently existing, or later developed, applied for, issued prior to the Term, or issuing during the Term, and under which patents (or the inventions, ideas or applications therefor) Company, or any of its Affiliates, now has, or obtains during the Term, the ability or right to license or grant immunity from suit; and (ii) all extensions, divisionals, continuations, continuations-in-part, re-examinations and reissue patents of such patents, as well as patent applications thereof, to the extent rights attach to such applications.

5.4 Other Rights Reserved. Neither party grants any license in this Agreement under its Intellectual Property or Confidential Information except as expressly provided in Sections 3, 5, 7 or 8.

## 6. CONSIDERATION

In addition to the consideration provided by each party under the terms and conditions of this Agreement, including without limitation the restrictions set forth in Section 2.1(d) and 2.2, each party shall provide to the other the further consideration set forth in Exhibit D in the manner further set forth therein.

## 7. TRADEMARKS

7.1 Microsoft Trademarks. Company is hereby granted a non-exclusive license (under Microsoft's standard terms as listed on http://www.microsoft.com/ie/iedist.htm or successors thereto), to use Microsoft trademarks in connection with Company performing its obligations under Section 2. Any fair use, or similar use that is compliant with applicable local law, by Company of "Microsoft Internet Explorer," "Active Desktop" or other Microsoft marks in a truthful context shall not require Microsoft's advance approval unless such use suggests or implies endorsement by Microsoft of Company's or any other parties' products or services.

7.2 Company Trademarks. Microsoft is hereby granted a non-exclusive license to use those Company trademarks relating to the Licensed Materials and other Company Content in Active Desktop and any advertising, marketing, technical or other materials related thereto which are distributed, transmitted or promoted by Microsoft or its distributors for the purpose of furthering promotion of Active Desktop and Company Content under this Agreement. Such use shall be in accordance with Company's then current trademark guidelines to be provided and reasonably updated by Company from time to time. If the trademark guidelines are amended or any Company trademarks are modified or added, Microsoft and its distributors shall have the right to deplete or have depleted in the ordinary course of their businesses existing and contractually committed for inventories of products and materials which may not be in compliance with the amended guidelines or modified/added Company trademarks. Microsoft agrees not to register any Company trademarks without Company's express prior written consent. Company shall promptly notify Microsoft of any finding of infringement or invalidity of any Company trademarks in any jurisdiction. Nothing herein shall require Microsoft to use any Company trademark in any manner, except as expressly provided in Section 3. (Will – Tony made a handwritten comment here to the effect that , in some instances, he has trademark rights only for Web usage and not for non-Web marketing, advertising, etc.. I don't know how to respond to him )

Notwithstanding the foregoing, any fair use, or similar use that is compliant with applicable local law, by Microsoft of Company's trademarks in a truthful context shall not require Company's advance approval unless such use suggests or implies endorsement by Company of Microsoft's or any other parties' products or services.

## 8. CONFIDENTIALITY

8.1 Restrictions on Use and Disclosure. Each party shall protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that such party uses to protect its own like information. Neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Each party will use its best efforts not to disclose to third parties the other's Confidential Information without the prior written consent of the other party. Except as expressly provided in this Agreement, no ownership or license rights are granted in any Confidential Information.

8.2 Residuals. The parties' obligations of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's Confidential Information. Further, either party shall be free to use for any purpose the residuals resulting from access to or work with such Confidential Information, provided that such party shall maintain the confidentiality of the Confidential Information as provided herein. The term "residuals" means information in non-tangible form, which may be retained by persons who have had rightful and good faith access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, this Section 8.2 shall not be deemed to grant to either party a license under the other party's copyrights or patents.

8.3 Limitations. The other provisions of this Agreement notwithstanding, either party will be permitted to disclose the terms and conditions of this Agreement to their outside legal and financial advisors and to the extent required by applicable law; provided however that before making any such required filing or disclosure, the disclosing party shall first give written notice of the intended disclosure to the other party, within a reasonable time prior to the time when disclosure is to be made, and the disclosing party will exercise best efforts, in cooperation with the other party, consistent with reasonable time constraints, to obtain confidential treatment for all non-public and sensitive provisions of this Agreement, including without limitation dollar amounts and other numerical information.

## 9. WARRANTIES

9.1 Company. Company warrants and covenants that:

(a) It has the full power and all necessary rights to enter into and perform according to the terms of this Agreement;

(b) It has the full and exclusive right to grant Microsoft the licenses granted herein to use the trademarks, logos trade names, and firm names licensed under this Agreement, and that it is aware of no claims by any third parties adverse to any of such trademarks, logos trade names, and firm names; and

(c) The Licensed Materials and Company Content available to End Users during the Term do not, and Company will ensure that they do not, to the best of Company's knowledge: (i) contain

defamatory or libelous material or material which discloses private or personal matters concerning any person, without such person's consent; (ii) permit to appear or be uploaded any messages, data, images or programs which are, by law, obscene, profane or pornographic; or (iii) permit to appear or be uploaded any messages, data, images or programs that would knowingly violate the property rights of others, including unauthorized copyrighted text, images or programs, trade secrets or other confidential proprietary information, or trademarks or service marks used in an infringing fashion.

The representations and covenants contained in this Section 9.1 are continuous in nature and shall be deemed to have been given by Company at execution of this Agreement and at each stage of performance hereunder. These representations, warranties, and covenants shall survive termination or expiration of this Agreement.

9.2 Microsoft. Microsoft warrants and covenants that:

(a) It has the full power to enter into this Agreement and grant the license rights set forth herein; and

(b) To the best of its knowledge, Internet Explorer and Active Desktop do not infringe any copyright, trademark, patent, trade secret, or other proprietary right held by any third party.

The representations and covenants contained in this Section 9.2 are continuous in nature and shall be deemed to have been given by Microsoft at execution of this Agreement and at each stage of performance hereunder. These representations, warranties, and covenants shall survive termination or expiration of this Agreement.

## 10. DISCLAIMER OF FURTHER WARRANTIES

10.1 EXCEPT AS EXPRESSLY WARRANTED IN SECTION 9.1, ALL LICENSED MATERIALS, TRADEMARKS LICENSED UNDER THIS AGREEMENT, AND COMPANY CONFIDENTIAL INFORMATION ARE PROVIDED TO MICROSOFT "AS IS" WITHOUT FURTHER WARRANTY OF ANY KIND. WITH THE EXCEPTION OF THE EXPRESS WARRANTIES SET FORTH IN SECTION 9.1, COMPANY DISCLAIMS ALL FURTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.

10.2 EXCEPT AS EXPRESSLY WARRANTED IN SECTION 9.2, INTERNET EXPLORER, TRADEMARKS AND OTHER MATERIALS LICENSED TO COMPANY PURSUANT TO THIS AGREEMENT, AND THE MICROSOFT CONFIDENTIAL INFORMATION ARE PROVIDED TO COMPANY "AS IS" WITHOUT FURTHER WARRANTY OF ANY KIND. WITH THE EXCEPTION OF THE EXPRESS WARRANTIES SET FORTH IN SECTION 9.2, MICROSOFT DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.

## 11. INDEMNITY

11.1 Indemnity by Company.

(a) Company shall, at its expense and Microsoft's request, defend any claim or action brought against Microsoft, and Microsoft's Affiliates, directors, officers, employees, OEMs,

Licensees, agents and independent contractors, to the extent it is based upon a claim (i) that the Licensed Materials or any Company Content infringes or violates any patent, copyright, trademark, trade secret, right of publicity, or other intellectual property, proprietary or contractual right of a third party, or (ii) that, if true, would constitute a breach of a Company warranty under Section 9.1 (collectively, "Company Claims"), and Company will indemnify and hold Microsoft harmless from and against any costs, damages and fees reasonably incurred by Microsoft, including but not limited to fees of attorneys and other professionals, that are attributable to such Company Claims. Microsoft shall: (i) provide Company reasonably prompt notice in writing of any such Company Claims and permit Company, through counsel chosen by Company and reasonably acceptable to Microsoft, to answer and defend such Company Claims; and (ii) provide Company information, assistance and authority, at Company's expense, to help Company to defend such Company Claims. Company will not be responsible for any settlement made by Microsoft without Company's written permission, which permission will not be unreasonably withheld or delayed.

(b) Unless Company obtains for Microsoft a complete release of all Company Claims thereunder, Company may not settle any Company Claim under this Section 11.1 on Microsoft's behalf without first obtaining Microsoft's written permission, which permission will not be unreasonably withheld or delayed. In the event Microsoft and Company agree to settle a Company Claim, Company agrees not to publicize the settlement without first obtaining Microsoft's written permission, which permission will not be unreasonably withheld or delayed.

11.2 Indemnity by Microsoft.

(a) Microsoft shall, at its expense and Company's request, defend any claim or action brought against Company, and Company's Affiliates, directors, officers, employees, agents and independent contractors, to the extent it is based upon a claim (i) that Active Desktop or Internet Explorer infringes or violates any patent, copyright, trademark, trade secret, right of publicity, or other intellectual property, proprietary or contractual right of a third party, or (ii) that, if true, would constitute a breach of a Microsoft warranty under Section 9.2 (collectively, "Microsoft Claims"), and Microsoft will indemnify and hold Company harmless from and against any costs, damages and fees reasonably incurred by Company, including but not limited to fees of attorneys and other professionals, that are attributable to such Microsoft Claims. Company shall: (i) provide Microsoft reasonably prompt notice in writing of any such Microsoft Claims and permit Microsoft, through counsel chosen by Microsoft and reasonably acceptable to Company, to answer and defend such Microsoft Claims; and (ii) provide Microsoft information, assistance and authority, at Microsoft's expense, to help Microsoft to defend such Microsoft Claims. Microsoft will not be responsible for any settlement made by Company without Microsoft's written permission, which permission will not be unreasonably withheld or delayed.

(b) Unless Microsoft obtains for Company a complete release of all Microsoft Claims thereunder Microsoft may not settle any Microsoft Claim under this Section 11.2 on Company's behalf without first obtaining Company's written permission, which permission will not be unreasonably withheld or delayed. In the event Company and Microsoft agree to settle a Microsoft Claim, Microsoft agrees not to publicize the settlement without first obtaining Company's written permission, which permission will not be unreasonably withheld or delayed.

## 12. TERMINATION

12.1 Term. This Agreement shall commence upon the Effective Date and continue in full force and effect until the earlier of (i) termination for cause as set forth in Section 12.2, or (ii) expiration of the Term.

12.2 Termination/Suspension of Performance.

(a) Removal of Company Channel(s). In addition to any other remedies under this Agreement, including termination under Section 12.2(b), should (i) Company fail to adequately perform under Section 2.6 or (ii) Company be in breach of any warranty, term or covenant of Section 9.1(c), Microsoft may remove the applicable Company Channel(s) from the Active Desktop so long as such failure or breach continues. If, after ten (10) business days notice by Microsoft to Company of failure under Section 2.6 or breach of Section 9.1(c) such failure continues or such breach is not cured, Microsoft may remove the applicable Company Channel(s) permanently.

(b) Either party may suspend performance and/or terminate this Agreement immediately upon written notice at any time if: (i) the other party is in material breach of any material warranty, term, condition or covenant of this Agreement, other than those contained in Section 8, and has failed to cure that breach within thirty (30) days after written notice thereof; or (ii) the other party is in material breach of Section 8.

12.3 Effect of Termination. Neither party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms.

12.4 Preservation of Remedies. Neither payment of fees or credits due under this Agreement nor termination of this Agreement shall be a bar to a party's pursuing any remedy for breach provided for under this Agreement or applicable law. Company acknowledges that monetary damages may not be a sufficient remedy for breach of its obligations under Section 2, and that Microsoft may be entitled, without waiving any other rights or remedies (and whether or not Microsoft exercises any right of termination), to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

12.5 Survival. In the event of termination or expiration of this Agreement for any reason, Microsoft's license rights under Section 5 shall survive termination. Company's rights to distribute Internet Explorer under the IEAK terms and conditions, as described in Section 5.2, shall not be affected by termination of this Agreement. Sections -, 5.3, 5.4, 7.2, 8, 9, 10, 11, 13 and 14 shall survive any termination or expiration of this Agreement.

## 13. LIMITATION OF LIABILITIES

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR OTHER RELATED OR SIMILAR DAMAGES (BUT NOT INCLUDING DIRECT DAMAGES) WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE FOR A BREACH OF THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL HAVE NO APPLICATION TO SECTION 8.

## 14. GENERAL PROVISIONS

14.1 Notices. All notices and requests in connection with this Agreement shall be deemed given as of the day they are received by the party to whom they are addressed, either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as indicated below or to such other address as a party may designate pursuant to this notice provision:

| To Company: | To Microsoft: |
|---|---|
| HOLLYWOOD ONLINE<br>1620 26TH STREET SUITE 370S<br>SANTA MONICA, CA 90404 | Microsoft Corporation<br>One Microsoft Way<br>Redmond, WA 98052-6399<br>Attention: Director of Business |
| ATTN: B. CAMERON | Development, Internet Division |
| Phone: 310 586 2012 | Phone: (425) 882-8080 |
| Fax: 310 586 2001 | Fax: (425) 936-7329 |
| Copy to: | Copy to:<br>Microsoft Corporation<br>One Microsoft Way<br>Redmond, WA 98052-6399<br>Attention: Law & Corporate Affairs |
| Fax: | Fax: (206) 936-7409 |

or to such other address as a party may designate pursuant to this notice provision.

14.2 Independent Parties. Nothing in this Agreement shall be construed as creating an employer-employee or agency relationship, a partnership, or a joint venture between the parties.

14.3 Governing Law. This Agreement shall be governed by the laws of the State of Washington as though entered into between Washington residents and to be performed entirely within the State of Washington.

14.4 Attorneys' Fees. 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.

14.5 Assignment. This Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, that neither party may assign this Agreement, in whole or in part, without the prior written approval of the other party, such approval not to be unreasonably witheld For purposes of this Agreement, a merger, consolidation, or other corporate reorganization, or a transfer or sale of any or all of a party's stock, or of all or substantially all of its assets shall be deemed to be an assignment.

14.6 Construction. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. This Agreement has been negotiated by the parties and their respective counsel and will be

interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.

14.7 Entire Agreement. This Agreement does not constitute an offer by Microsoft and it shall not be effective until signed by both parties. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. It shall not be modified except by a written agreement subsequent to the date of this Agreement and signed on behalf of Company and Microsoft by their respective duly authorized representatives.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date written above.

| **MICROSOFT CORPORATION** | HOLLYWOOD ONLINE INC. ("Company") |
|---|---|
| By (Sign) | By (Sign) |
| BRAD CHASE | ANTHONY T. FARWELL |
| Name (Print) | Name (Print) |
| VICE PRESIDENT | PRESIDENT |
| Title | Title |
| 7/14/97 | 7/10/97 |
| Date | Date |

**EXHIBIT A**

**ACTIVE PLATFORM SUPPORT REQUIREMENTS**

The goal of these requirements is to make the content providers Active Channels and existing web site(s) demonstrably superior examples of Active Platform technology. The developers will follow the guidelines below, although specific design and content issues are at the discretion of the content provider.

*Channel Requirements*

1) Support for IE presentation
   - Logo to fit on Channel bar button
   - Full screen view (theatrical view)
   - Support for screen saver functions
2) Create a CDF (Channel Definition Format file) to categorize content for download and offline reading
3) Update CDF and support notification for new Content
4) Optimize the Channel for download:
   - Author content to meet reasonable download size guidelines (TBD)
   - Go beyond that limit only after notifying user
   - Offer personalization to select relevant content
5) Content must be updated at least 5 times per week
6) Use of Dynamic HTML should be maximized. At a minimum, a Channel must support at least 3 of the following 5 capabilities supported by Dynamic HTML on the top page of the channel, and at least 1 of the 5 following capabilities on at least 50% of the remaining pages in the channel:
   - Dynamic Content
     Ability to change elements on HTML page on the fly based on user interaction, without round trip to the server. This allows for better user interactivity, with faster performance.
   - 2D Positioning
     This capability allows site authors to easily and accurately position elements on a page without being forced to resort to ActiveX controls, Java applets, or games with tables. Dynamic HTML supports X,Y and Z plane positioning. Combined with multimedia/animation effects, this capability can dramatically improve the look of your site.
   - Multimedia Effects – Filters, Transitions, Animations, Alpha Channel, etc
     Dynamic HTML also includes a set of high performance multimedia effects that interact with the HTML page.
   - Data Awareness
     The ability to link data from a database and dynamically update your HTML page based on changes in the database automatically. Also, this capability allows for the user to interact with the data without roundtrips to the server.
   - Dynamic HTML Object Model
     This is not a new tag, but a way to control existing HTML tags. For example, existing elements such as <img> tag, will receive a click event if the user clicks on the picture.
7) Support for 2 of the following 4 technologies within the Channel:
   - HTML Mail
     Specify a page for email notification in the CDF
   - "Desktop Components"

Create at least 1 "Desktop Component" that will be updated at least 5 times per week

- Ratings

  Ratings are a mechanism to inform users of the appropriateness of web site content. Support for ratings is a simple process of going to the official ratings site (www.rsac.org) and registering the web site.

8) Deliver multimedia Content in the ASF format (NetShow).
9) Microsoft's standard IEAK product must be able to administer all Channel behavior. The intent is to provide effective central administration such that MIS departments not disable Channel by default with the IEAK. *See note below regarding this requirement.*
10) Introductory Content must (and downloaded content should) optimize for performant operation in standard system configurations
    - Use standard system services wherever possible (channel installation, cache management, data transfer, web event logging, channel selection, screen saver). Any duplication must be noted and approved in advance of submission of Introductory Content to Microsoft.
    - Do not instantiate any processes that increase the static working set (e.g. static memory requirements) or that run when Company's Channel is not visible on screen via the Browser or the Active Desktop screen saver.
    - *See note below regarding this requirement.*

*Note regarding requirements 9 and 10 above*
Content will automatically meet these provisions if it is webcast via standard IE4 system services and does not require installation of custom Active X controls and/or add-on client software. If content does require separate software to be used or displayed, it must be verified to meet requirements 9 and 10.

*Differentiated Content Area Requirements (if separate from channel)*
Creation of "Differentiated Content": Partners shall define easily described and highly visible components of their web site that will exhibit substantially superior features or usability when used with Internet Explorer, making the site a premier example of the added-value differentiation enabled by Microsoft Internet Technology. Some differentiated content may be available only to IE users, some may simply be "best when used with IE", with acceptable degradation when used with other browsers.

1) Create a CDF to categorize content for download and offline reading
2) Update CDF and support notification for new Content
3) Support for six (6) of the following Microsoft technologies (as defined below):
    - Inclusion of COM objects
    - Use of Scripting (VB Script or Jscript)
    - HTML 3.2
    - NetShow
    - HTML Mail
    - Dynamic Content
    - 2D Positioning
    - Multimedia Effects – Filters, Transitions, Animations (IHammer controls)
    - Data Awareness
    - Dynamic HTML Object Model

*Existing Web Site Requirements*
On the home page of the Web Site and at least 15 other most visited Web Site pages:

1) Logo as "Best viewed with IE 4" or other equivalent as may be agreed by the parties
2) Track browser market share based on appropriate user agent strings and report to Microsoft on a monthly basis
3) Create a CDF to categorize content for download and offline reading
4) Update CDF and support notification for new Content
5) Support four (4) of the following Microsoft technologies:
    - Inclusion of COM objects
    - Use of Scripting (VB Script or Jscript)
    - HTML 3.2
    - NetShow
    - HTML Mail
    - Ratings
    - Dynamic Styles
    - Positioning
    - Dynamic Content
    - Multimedia Effects – Filters, Transitions, Animations
    - Data Awareness

In the spirit of being a Platinum Internet Explorer site, Company will use all reasonable efforts to promptly take advantage of new Internet Explorer extensions as they become available in beta and final updates for Internet Explorer, including subsequent versions of Internet Explorer, during the term of this agreement.

***Definitions of Microsoft Technologies (not defined above)***

1 CDF: A Channel Definition Format file that describes the site. The CDF spec is included with the developer materials for IE 4.

2 COM Objects: Inclusion of COM Objects (ActiveX Controls, or Java Applets) - COM objects are self-contained pieces of code that bring unique interactivity to sites not possible with HTML-only pages. COM objects can be written in many languages, such as C/C++ or Java. Web Site must use at least one such control on at least one of its top 5 most visited pages.

3 Scripting: Use of Scripting (VB Script, or Jscript) - Scripts are pieces of code written inline within HTML to automate general purpose COM objects, or to make objects interact with one another, in a web page. Scripts can be written in many languages, such as VB Script or Jscript. Web Site must use at least some such scripting to automate one or more controls.

4 HTML 3.2: Utilization of at least 2 of the following three IE3 and HTML 3.2 standard capabilities:

- Style Sheets - A style sheet is a description of the layout of a document. Style sheets allow page authors to cleanly split structure and Content away from a page's form and appearance. Just as HTML is the language to describe structure and Content, so form and appearance will be described by a style sheet language such as Cascading Style Sheets - a W3C standard spec supported first by IE 3.0.
- Frame Sets - Frames allow you to divide a Web page into separate regions that can display Content independently. A side benefit of frames is that clicking a link can now launch a new window. Borderless frames give you all the power of frames pages with the added benefit of a seamless look. Borderless frames can be

also separated with a custom color or background picture. Floating frames are a revolutionary new feature in IE 3.0. Anywhere you can put an image in IE 2.0 or Netscape, you can put an arbitrary box of HTML (with or without a scrollbar and a 3-D border) in IE 3.0

- Other Key HTML Extensions - IE 3.0 supports several HTML 3.0 table features, including selectable rules and borders, row and column grouping, and aligning text in adjacent cells by baseline. It also supports the ability to put background images in individual table cells. IE 3.0 also supports .BMP and animated .GIF formats. There are additional HTML extensions supported by IE 3.0 that can also be implemented.

**EXHIBIT B**

**PROMOTION; UNIQUE CONTENT**

*Hollywood Online will create, market and publize (exclusive) active desktop components for Hollywood Online users. The main component will be a "real-time" national box-office "ticker" that will feed the most comprehensive box-office information for both professional and consumer use.*
*Hollywood Online will actively promote the use of the box-office "ticker" by promoting its use at hollywood.com as well as advertisements in the LATimes Calendar section and mailings to over 1000 industry professionals.*
*Hollywood Online's marketing and sales staff will do it's best efforts to promote the box-office "ticker" on its sales calls and will work with Microsoft to install the components on key clients desktops.*
*During the course of the Active Desktop Marketing, Distribution & Promotion Agreement Hollywood Online will leverage the "ticker" technology to different channels of the Hollywood Online site. This will include a ticker for at least one or more of the following; the Movie Guide, Video Guide and/or our Showtimes theatre listings.*
*In addition to the "ticker" campaign, Hollywood Online will extensively market and promote the Active Desktop with an e-mail campaign using the ie 4.0 e-mail client "Outlook Express." The e-mail campaign will run through-out the period of the contract and will implement as many "dynamic html tags" as creatively possible. Hollywood Online expects to make "Outlook Express" a major component of it's marketing and sales activity going into the future.*

## EXHIBIT C

## SET UP & INSTALLATION

The following materials should be provided to Microsoft prior to the final release of Internet Explorer 4.0. Exact dates will be provided to Company at least 10 days prior to the first deadline. These requirements are subject to change prior to the final release of Internet Explorer 4.0.

A) Images

Branded Logo

Size: 80 x 32 (wxh) pixels
Pallette: Windows half-tone pallette, 256-colors
Format: GIF
Important Notes:

- The Channel Bar will display the exact 80x32 logo that provided by the Company. Therefore, the publisher's brand name will appear only if it is included in the bitmap itself.
- Users can adjust the width of the Channel Pane beyond 80 pixels. When this happens, the Channel Bar fills in the background with the same color as the top left pixel in the bitmap.

Large Icon

Size: 32x32 pixels
Palette: Windows 16 color halftone palette, 16 color
Format: ICO format

B) URL for Introduction/Setup Page (see below)

The URL for the channel introduction Web page to be included in the channel package with the logos.

C) Channel Name

Company should include a "friendly" name that the Desktop Channel Bar will use in the icon views and the Windows name space. This name must match the name of the actual channel.

**Deliverables Mounted on Publisher's Server**

A) Channel Introduction / Setup Page

Description: Company must have one Web page mounted on a externally accessible server that introduces the Channel. This is the Channel Introduction/Setup Page to which users are taken to when they click on the publisher's icon in the default Channel Bar or subscribing from a Web page.

URL: As specified in the deliverables above.
Size: The page should be designed to look good at all standard PC screen resolutions: 640x480, 800x600, and 1024x768. The page should be optimized for a width of 640 pixels.
Content: The page must include:

- a description or preview of the channel's content once subscribed
- a Subscribe button which links to the channel's CDF so the user can begin the setup process (see SDK for details). Graphic for Subscribe Button is TBD.

This Introduction Page can refer to additional pages which more full describe the channel's offerings, ask for demographic information from the user, or offer personalization. Each supplemental page, however, must link back to the standard Introductory Page, from which users can subscribe to the channel

B) Channel Definition Format File

The CDF must be prepared as described in the SDK.

C) Channel Home Page

The Channel described by the CDF should have at least one page, the Channel's Home Page, mounted on an externally accessible server.

**Operational Channel Site Mounted on Publisher's Server**

The Microsoft Internet Explorer testing group will verify that it is possible to subscribe to the Channel, and that the Channel's Introduction Page and Channel Home Page are viewable in IE4.0. This means all content for all URLs referenced in the channel's CDF should be available on an externally accessible server. This includes:

(a) Pages to be displayed in Full Screen View
(b) Pages to be displayed in the Internet Explorer Screen Saver
(c) Pages to be displayed within Desktop Components on the Active Desktop.

At this time, content must conform to the standards established in Exhibit A

**Pre-Cached Web Pages**

Company agrees that the Pre-cached Web Site will adhere to the following criteria:

(a) All cached pages and links to other cached pages must use Short File Names (8.3)
(b) All Links must be functional (ie no broken links)
(c) No external HTTP links, but if there are external links to the pre-cached pages, they must be blocked out with a message saying "You can only access this site if you are actually connected to the Internet - this is a demo only..."
(d) No CGI Scripting
(e) No Server-side Scripting
(f) No Server-side Image Maps
(g) Should not exceed a resolution greater than 800x600

**EXHIBIT D**

**CONSIDERATION**

**NONE**