

IMPORTANT NOTE: THIS SAMPLE INSTALLATION AGREEMENT IS PROVIDED SOLELY AS A COURTESY TO COMPANY. NOTHING IN THIS SAMPLE AGREEMENT SHALL MODIFY ANY OF THE TERMS IN COMPANY'S EMBEDDED OEM AGREEMENT(S) WITH MICROSOFT. THIS SAMPLE AGREEMENT MAY NEED TO BE ADJUSTED IN ORDER TO FULLY COMPLY WITH THE TERMS AND CONDITIONS IN COMPANY'S EMBEDDED OEM AGREEMENT REGARDING USE OF THIRD PARTY INSTALLERS, AND LOCAL LAW, AND IT IS SOLELY COMPANY'S OBLIGATION TO DO SO. COMPANY MAY INCLUDE ADDITIONAL AND/OR ALTERNATIVE TERMS IN THE INSTALLATION AGREEMENT, PROVIDED SUCH TERMS ARE NOT LESS PROTECTIVE OF MICROSOFT AND ITS AFFILIATES.

OEM Name	
Installer Name	
Effective Date of this Installation Agreement	
Expiration Date of this Installation Agreement:	

EMBEDDED OEM THIRD PARTY INSTALLATION AGREEMENT

This Embedded OEM Third Party Installation Agreement ("Installation Agreement") is entered into as of the Effective Date ("Effective Date") between the OEM ("COMPANY" or "OEM") and the installation company ("Installer") referenced above, with regard to the following:

RECITALS

WHEREAS, COMPANY has entered into one or more embedded OEM license agreement(s) for certain Microsoft® OEM embedded software products to be installed on and distributed with COMPANY's embedded computer systems and/or computing devices; and

WHEREAS, COMPANY desires to engage Installer to perform on COMPANY's behalf installation and related services of the licensed Microsoft software products on such embedded systems and devices.

NOW, THEREFORE, the parties agree to the terms and conditions set forth below.

TERMS AND CONDITIONS

1. Definitions.

(a) "Associated Product Materials" or "APM" means COAs, printed end user documentation, external media containing software and/or other tangible materials related to the Licensed Product, which MS may designate from time to time as redistributable components of a Licensed Product.

(b) "Certificate of Authenticity" or "COA" means a non-removable sticker designated by MS which is specific to a Licensed Product.

(c) "Embedded OEM License" means an embedded OEM license agreement listed on Attachment 1 between COMPANY and MS pursuant to which COMPANY has licensed certain Licensed Product(s) for installation on and distribution with its Embedded Systems.

(d) "Embedded System" means a COMPANY computer system or computing device which is licensed for installation and distribution with certain Licensed Product(s) pursuant to an Embedded OEM License. A list of Embedded Systems on which Installer is authorized to perform services under this Installation Agreement is set forth in Attachment 1.

(e) "EULA" means an end user license agreement between COMPANY and an Embedded System end user for a Licensed Product or for Images that include Licensed Product software.

(f) "Image" means a software image delivered to Installer by COMPANY that includes Licensed Product software.

(g) "Installation Site" means a facility owned or leased by Installer.

(h) "Licensed Product" means a Microsoft® embedded OEM software product. listed on Attachment 1 which is

licensed by COMPANY pursuant to an Embedded OEM License. The term "Licensed Product" include, where applicable, Licensed Product software, (which may include Supplemental Code), COAs and other APM, and a EULA.

(i) "Licensed Product Deliverables" means the Licensed Product software, external media containing Licensed Product software, OEM documentation, software installation utilities and other tools and deliverables intended for use solely by OEMs such as COMPANY, as identified in the Embedded OEM License or as otherwise identified by MS as components of Licensed Product Deliverables.

(j) "MS" means a subsidiary or affiliate of MSCORP from which COMPANY has license rights under an Embedded OEM License.

(k) "MSCORP" means Microsoft Corporation, a general partner or the direct or indirect parent of MS, as applicable.

(l) "Recovery Image" means a copy of the Image as originally installed on the Embedded System which may be used to reinstall such Image.

(m) "Supplemental Code" means additional or replacement code of any portion of a Licensed Product as MS may provide to COMPANY from time to time.

2. Installer Services.

(a) Subject to the terms and conditions of this Installation Agreement and COMPANY's license rights under its Embedded OEM License(s), Installer is sub-licensed to perform the services indicated below, if and as directed by COMPANY:

(i) Install one (1) or more copies of Licensed Product software as part of the Image on the hard disk drive or in non-volatile solid-state memory of an Embedded System and to place the Image, as installed on non-volatile solid-state memory, into the Embedded System(s)

(ii) Include one (1) copy of each appropriate EULA with each Embedded System inside the sealed Embedded System package.

(iii) Permanently affix one (1) COA for the Licensed Product(s) to an accessible location on each Embedded System, and include one (1) copy of other applicable APM with each Embedded System inside the Embedded System package; and

(iv) Install one (1) copy of a Recovery Image on a separate partition of the Embedded System hard disk drive or on a separate hard disk drive in the Embedded System which is reserved for backup utility programs and files to repair or reinstall the Image that may be accessed only if the Image installed on the main drive fails.

(b) Each of the services identified in subsection 2(a) may be performed only at an Installation Site and only by Installer employees or individuals under Installer's direct supervision and control who are engaged to perform such services pursuant to a contract that includes appropriate non-disclosure and other covenants sufficient to satisfy Installer's obligations under this Installation Agreement.

(c) Installer may only install Images provided by COMPANY. Installer may not configure an Image in any manner.

(d) Installer may not reproduce Recovery Images or Supplemental Code. Installer also may not reproduce or use any portion of the Licensed Product Deliverables even if physically delivered or made available to Installer.

(e) Installer may only use COAs or other APM at COMPANY's direction pursuant to an Embedded OEM License. Installer may order COAs or other APM per COMPANY's direction, but may not reproduce COAs or other APM.

(f) Installer shall maintain COMPANY's COAs and APM in a secure location, separate from COA and APM inventory that Installer maintains for itself or for others. Installer may not distribute, transfer or otherwise provide COAs or APM to any third party except as specifically described in subsection 2(a) above. Installer shall be fully responsible for COAs and APM that are stolen, lost, missing or unaccounted for, or distributed or transferred in a manner not authorized by COMPANY.

(g) Installer may deliver an Embedded System installed with an Image only to COMPANY, to COMPANY's channel partners or to COMPANY's end user customers in accordance with COMPANY's instructions.

(h) Installer shall immediately cease all installation or placement of Images, COAs and other APM upon notice from COMPANY or MS.

- (i) Installer shall not reverse engineer, decompile or disassemble any portion of a Licensed Product.
- (j) COMPANY reserves all rights not expressly granted in this Installation Agreement.

3. MS Prior Approval Required.

The services to be performed by Installer pursuant to this Installation Agreement are subject to the prior written approval of MS pursuant to the Embedded OEM License. Installer is not authorized to perform any services under this Installation Agreement unless and until COMPANY has verified in writing that COMPANY's engagement of Installer for the services contemplated by this Installation Agreement has been approved by MS.

4. Reports to COMPANY.

Within seven (7) calendar days after the end of each month, Installer shall report to COMPANY for such month:

- (a) the number of units of each Embedded System model installed with an Image and delivered to (i) COMPANY, (ii) COMPANY's channel partners, and (iii) COMPANY's end user customers, and
- (b) the number of COAs and APM for each Licensed Product received and affixed to Embedded Systems during the month, and the beginning and ending COA inventory for each Licensed Product for the month.

5. Copyright and Patent Notices.

Installer will not remove, modify, or obscure any copyright, trademark or patent notices that appear in or on a Licensed Products or an Image that includes Licensed Product software delivered to Installer by or on behalf of COMPANY.

6. Term and Limited Extension.

This Installation Agreement shall commence on the Effective Date and continue until the earliest of (i) the expiration date set forth at the top of this Installation Agreement, (ii) termination pursuant to Section 7, or (iii) termination or expiration date of the Embedded OEM License.

7. Default, Suspension and Termination.

- (a) This Installation Agreement may be suspended by MSCORP, MS or COMPANY, or terminated by

COMPANY, if any of the following events of default occur: (i) if Installer fails to perform or comply with any provision of this Installation Agreement; (ii) if Installer makes Licensed Product(s), COAs or other APM available separately from COMPANY's Embedded Systems or other than inside Embedded System packages; (iii) if Installer manufactures, installs or distributes any Microsoft software product, software code or other intellectual property which is not properly authorized under a valid license agreement with MSCORP, MS, or other Microsoft affiliate or Microsoft licensee; (iv) if Installer becomes insolvent, enters bankruptcy, reorganization, composition or other similar proceedings under applicable laws, whether voluntary or involuntary, or admits in writing its inability to pay its debts, or makes or attempts to make an assignment for the benefit of creditors; (v) upon suspension or termination of COMPANY's rights under the Embedded OEM License or COMPANY's rights to engage a third party to perform services contemplated by this Installation Agreement, or (vi) upon notice from MS to COMPANY that COMPANY shall cease use of Installer.

- (b) Suspension or termination resulting from default as outlined in this Section shall be effective immediately upon the giving of written notice to Installer, except that in the case of Section 7(a)(iv), termination shall be effective upon receipt of notice or as soon thereafter as is permitted by applicable law.

- (c) Installer's rights under this Installation Agreement may be suspended or terminated for cause immediately upon written notice to Installer, or without cause upon thirty (30) days' prior written notice to Installer.

8. Obligations Upon Termination.

- (a) Within ten (10) calendar days after the earlier of termination or expiration of this Installation Agreement, or notice to Installer from COMPANY or MS of termination or expiration of an Embedded OEM License or termination or expiration of COMPANY's rights under an Embedded OEM License to engage a third party to perform services contemplated by this Installation Agreement, Installer shall:

- (i) return to COMPANY, at Installer's expense, all copies of the applicable Licensed Product(s) (including Images, Recovery Images, Supplemental Code, COAs and other APM) in its possession or under its control; and

- (ii) provide written notice to COMPANY signed by an officer or director certifying that Installer has fulfilled the obligations of this Section 8.

From and after termination or expiration, Installer's rights under this Installation Agreement regarding such Licensed Product(s) shall cease, and Installer shall not install, distribute or otherwise use any portion of such Licensed Product(s) in any manner whatsoever .

(b) Installer's obligations pursuant to Sections 8, 9, 10, 11 12 and 13 of this Installation Agreement shall survive termination or expiration of this Installation Agreement.

9. Confidentiality.

(a) Installer shall keep confidential the Licensed Product, the terms and conditions of this Installation Agreement, and other non-public information and know-how disclosed to Installer by COMPANY or MS, and Installer will make no use of such materials, information and know-how except for Installer's internal use in accordance with the terms of this Installation Agreement. Installer may disclose the terms and conditions of this Installation Agreement in confidence to its immediate legal and financial consultants as required in the ordinary course of Installer's business.

(b) Installer acknowledges and agrees that notwithstanding any agreement to the contrary, if any, COMPANY may deliver to MS and/or MSCORP information received from and/or about Installer which is reasonably related to or in connection with this Installation Agreement, and MS and/or MSCORP may use such information in connection with COMPANY's and Installer's performance of obligations under this Installation Agreement, COMPANY's Embedded OEM License, the protection of intellectual property rights and for other business purposes.

10. Audits.

(a) During the term of the Installation Agreement and for three (3) years thereafter, Installer shall make available at a single, readily accessible location all accounting, purchase, inventory, sales and other records relating to the acquisition, installation and distribution, or destruction of each Licensed Product ("Records"), including without limitation, records identifying the number of Images installed, and the number of COAs, other APM and Embedded Systems shipped to COMPANY, to COMPANY's channel partners or to COMPANY's end user customers on behalf of COMPANY.

(b) In order to verify Installer's compliance with the terms of the Installation Agreement, COMPANY or MS may cause (i) an audit to be made of Installer's Records and/or (ii) an inspection to be made of Installer's facilities and procedures, either with or without prior notice to Installer. Audits shall be conducted by an independent certified

public accountant selected by the auditing party (other than on a contingent fee basis).

(c) Installer agrees to provide any audit or inspection team designated by the auditing party access to all relevant Installer Records and facilities.

(d) COMPANY or MS shall pay the costs of any audit or inspection unless the review discovers material discrepancies during the time frame that was audited, or a breach of any material obligation of Installer under the terms of this Installation Agreement ("Material Discrepancy"). In the event of a Material Discrepancy, Installer shall pay MS the costs of the audit, plus any amounts for which COMPANY is liable to MS pursuant to an Embedded OEM License and other damages that COMPANY or MS may suffer as a result or in connection with the Material Discrepancy by Installer.

11. Third-Party Beneficiaries.

(a) The parties agree that their respective promised performances under this Installation Agreement are intended for the benefit of MSCORP and MS and their respective subsidiaries, affiliates, successors and assigns. The parties further agree that MSCORP and MS each has the right to directly enforce performance of their respective obligations and duties under this Installation Agreement, and pursuant to such right, may directly sue either party or both parties to enforce any claim for breach of this Installation Agreement by such party(ies).

(b) The rights of MSCORP and MS to enforce the obligations of a party to this Installation Agreement shall not be subject to any defenses that such party may have against the party to whom performance is promised.

12. Notices.

All notices, authorizations, and requests in connection with this Installation Agreement shall be deemed given on the day they are (a) deposited in the national mail system in the country where the party giving notice is located, postage prepaid, certified or registered, return receipt requested; or (b) sent by air express courier, charges prepaid; and addressed as indicated beneath the signature blocks of the respective parties (or to such other address as the party to receive the notice or request so designates by written notice to the other).

13. Controlling Law; Attorneys' Fees.

(a) This Installation Agreement shall be interpreted under and controlled by the laws of the State of Washington as if the Installation Agreement was between Washington

parties on a matter located solely within the State of Washington. With respect to any action brought by MSCORP or MS to enforce its rights hereunder, COMPANY and Installer each consents to exclusive venue and jurisdiction in the state and federal courts sitting in King County, Washington, USA. With respect to any action brought by or between COMPANY and Installer to enforce the terms of this Installation Agreement, COMPANY and Installer each consents to venue and jurisdiction in <<_____ [COMPANY TO INDICATE APPLICABLE STATE/COUNTRY]>>.

(b) Process may be served on either party by the national mail system in the country where the party giving notice is located, postage prepaid, certified or registered, return receipt requested, or by air express courier, charges prepaid, as well as by any other method or procedure authorized by applicable law or court rule.

(c) If MSCORP, MS or COMPANY employs attorneys to enforce any rights against Installer arising out of or relating to this Installation Agreement, such entity shall be entitled to recover reasonable attorneys' fees, costs and other expenses incurred if any material claim asserted against Installer is successful in whole or in material part.

14. Assignment.

This Installation Agreement cannot be assigned by either COMPANY or Installer in whole or in part (by contract, merger, operation of law, or otherwise). Any attempted assignment in violation of this provision shall be void and of no effect.

15. Government Regulations.

(a) Installer acknowledges the Licensed Products are subject to U.S. export jurisdiction, and that releases or versions of certain Licensed Products not localized for a specific country or territory may be prohibited or subject to particular restrictions under applicable laws and regulations of that country or territory. Installer shall comply with all applicable international and national laws and regulations that apply to the Licensed Products, including without limitation the U.S. Export Administration Regulations, as well as importation, manufacturing, end user, end-use and destination restrictions issued by U.S. and other governments. For additional information on exporting Licensed Products from the U.S., see <http://www.microsoft.com/exporting/>.

(b) Installer shall arrange at its own expense all applicable government approvals required to perform the services contemplated by this Installation Agreement.

In Witness Whereof, the parties have executed this Installation Agreement as of the date set forth above, and represent that each signatory has authority to execute this Installation Agreement on behalf of COMPANY and Installer, respectively. All signed copies of this Installation Agreement shall be deemed originals.

_____ COMPANY NAME	_____ Installer NAME
_____ By (Signature)	_____ By (Signature)
_____ Name (Printed)	_____ Name (Printed)
_____ Title	_____ Title

COMPANY Contact Information: _____ _____ _____ Attn: _____ Tel: _____ Fax: _____ Email: _____ With copy to: _____ _____ _____ Attn: _____ Tel: _____ Fax: _____ Email: _____	Installer Contact Information: _____ _____ _____ Attn: _____ Tel: _____ Fax: _____ Email: _____ With copy to: _____ _____ _____ Attn: _____ Tel: _____ Fax: _____ Email: _____
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ATTACHMENT 1

A. Embedded OEM Licenses

License Name	Microsoft OEM Licensing Entity	Effective Date	Expiration Date	Licensed Products	COMPANY Embedded Systems
1.					
2.					
3.					

B. Installation Sites:

Location Address	Contact Information (Name, telephone, fax, email)
1.	
2.	

COMPANY may update the information in this Attachment by sending written notice to Installer in accordance with the notice provisions of the Installation Agreement.