

April 19, 2002

**TV-ANYTIME FORUM, INC. ("TVAF")
CONTRIBUTOR'S AGREEMENT**

In order to make Contributions to TVAF, Non-Members must execute this Contributor's Agreement and deliver it to TVAF. Members agree to the terms of this Contributor's Agreement as part of the TVAF Members' Intellectual Property Rights Policy ("IPR Policy").

This Contributor's Agreement, effective as of the date signed below (the "Effective Date"), is by and between TVAF and the undersigned entity, which agrees to become a Contributor in accordance with the following terms and conditions:

1. Definitions

- 1.1. **"Affiliate"** means any entity that a Member or Contributor controls. For purposes of this definition, control means direct or indirect ownership of, or the right to exercise, more than fifty percent (50%) of the equity or beneficial interest of the entity or the right to vote for or appoint a majority of the board of directors or other governing body of the entity.
- 1.2. **"Compliant Portion"** means only those specific portions of products (hardware, software, services, or combinations thereof) that (i) implement and are compliant with all relevant portions of a Specification, and (ii) are within the bounds of the Scope.
- 1.3. **"Contribution"** means ideas, suggestions, recommendations, comments, feedback, edits, implementations, computer code, or other submissions, made in response to a TVAF Call for Contributions ("CFC") or made in relation to a Draft Specification without reference to a CFC, whether the Contribution is of a technical, marketing, business, or other nature, and regardless of whether the Contribution is imparted in writing (including a writing in an electronic medium), orally, or in any other form.
- 1.4. **"Contributor"** means a Member, or a Non-Member that has executed an unmodified copy of this TVAF Contributor's Agreement and delivered it to TVAF.
- 1.5. **"Draft Specification"** means a new specification or revised Specification developed by a TVAF Working Group for adoption as a Specification, and includes Provisional Specifications.
- 1.6. **"Essential Claims"** means claims of a patent that are owned or controlled by a Contributor or its Affiliates now or at any future time, where (i) such claims are infringed by an implementation of the portions of a Specification within the bounds of the Scope, and (ii) that infringement cannot be avoided because there is no technically reasonable non-infringing alternative for implementing the portions of that Specification within the bounds of the Scope. "Essential Claims" does not include any claims that do not meet the criteria above, even if contained in the same patent as

Essential Claims; and notwithstanding those criteria, does not include claims: (a) that read solely on an optional implementation example included in a Specification; (b) that read solely on any implementations of any portion of a Specification that are not within the bounds of the Scope; or (c) that, if licensed, would require a payment of royalties or other consideration by the licensor to unaffiliated third parties.

- 1.7. **“Member”** means a legal entity, association, or governmental body that has executed the TVAF Membership Agreement and is a member of TVAF.
- 1.8. **“Non-Member”** means an individual, legal entity, association, or governmental body, other than a Member.
- 1.9. **“Plenary Assembly”** means the Members collectively, as provided for in the Bylaws of TVAF.
- 1.10. **“Provisional Specification”** means a Draft Specification that is submitted by a Working Group for adoption by TVAF.
- 1.11. **“Scope”** means the hardware, software, protocol, and process requirements for television and related multimedia services based on the use of persistent local storage, irrespective of the manner of service delivery, including a metadata protocol description, a content referencing protocol description, and a rights management and protection protocol description, that are disclosed with particularity in a Specification with the sole purpose of enabling products to interoperate, interconnect or communicate as defined within the Specification. Notwithstanding the foregoing, the Scope does not include (a) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a Specification, but that are not themselves expressly set forth in a Specification (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology); (b) the implementation of other TVAF Specifications or published specifications developed elsewhere but referred to in the body of a Specification; (c) any portions of any product and any combinations thereof the purpose or function of which is not required for compliance with a Specification; (d) any implementation examples; or (e) application programming interfaces, device drivers, device driver models, peripheral control languages, and peripheral devices, except for the portions of peripheral devices that are required by an interconnect that is compliant with a Specification.
- 1.12. **“Specification”** means a document adopted and approved for release as a specification by TVAF as provided in the TVAF Members’ IPR Policy, including any updates or revisions to that Specification adopted and approved for release by TVAF.
- 1.13. **“Working Group”** means a group, consisting of a set of Members, established by a vote of the Plenary Assembly for the purpose of drafting a Draft Specification for adoption as set forth in the TVAF Members’ IPR Policy. Each Working Group shall work on only one Draft Specification at a time.

2. Statement on Compliance with Antitrust Laws

TVAF absolutely prohibits anticompetitive behavior within or associated with its activities. The Members and Contributors are committed to fostering open competition in the development of products and services based on TVAF Specifications. Members and Contributors understand that they may be direct competitors in certain lines of business, and that it is imperative they and their representatives act in a manner that does not violate any state, federal, or international antitrust laws or regulations. Accordingly, each Member's and Contributor's representatives who participate in TVAF activities will limit the scope of their discussions and communications (whether during formal meetings, informal gatherings, or otherwise) to topics that relate to the purposes of TVAF, and will not engage in any communications that violate antitrust laws.

3. Contributions

- 3.1. Non-Confidential. Contributions are not confidential, and no Contribution may contain confidential information. Contributors are aware that all Contributions may be made publicly available on the TVAF web and ftp sites or otherwise.
- 3.2. Contributor's Agreement. TVAF shall only accept Contributions that are from Contributors. Contributions not from Contributors shall be rejected; the submitting party may be invited to sign the TVAF Contributor's Agreement and resubmit the Contribution.
- 3.3. Third-Party Rights. When making a Contribution, the Contributor's representative shall identify all copyrights or patents in or relating to the Contribution that he or she actually and personally knows to be held by a third party. TVAF may refuse to accept any such Contribution unless the third party is or becomes a Contributor or a Member and agrees to make the Contribution subject to the terms of this Contributor's Agreement, including the licensing obligations herein.
- 3.4. Breadth of Use.
 - (a) Identification. When making a Contribution in response to a CFC, the Contributor shall identify that CFC. If not in response to a CFC, the Contributor shall identify the Draft Specification for which the Contribution is being made; provided that, unless otherwise indicated, Contributions made in the course of the deliberations of a Working Group are deemed to be made for the development of the Draft Specification that is the subject of that Working Group's efforts. A Contribution submitted in response to a CFC is deemed to be submitted for the development of the Draft Specification(s) that are named in that CFC (including future revisions of such Draft Specification(s) and versions adopted as Specifications). If not in response to a CFC, a Contribution is deemed to be submitted for the development of only one Draft Specification (including future revisions of the Draft Specification and versions adopted as Specifications) unless the Contributor making the Contribution expressly states otherwise. Contributors may expressly submit Contributions for more than one CFC or Draft Specification, and may resubmit their Contributions for other CFCs and/or Draft Specifications.

(b) Limitation. Contributions to the development of one Draft Specification may not be incorporated in the development of any other Draft Specification or for other purposes without the express permission of the Contributor that made the Contribution.

3.5. No Obligation to Use. TVAF and the Members of TVAF have no obligation to incorporate any Contribution into a Specification, or to utilize, publish, or disseminate any Contributions.

4. Licenses

4.1. Copyright License of Contributions. Each Contributor and its Affiliates hereby grant to TVAF, to each Member, and to Non-Members a nonexclusive, sublicensable, perpetual, nontransferable, royalty-free, worldwide license under its copyrights in its Contributions to reproduce, distribute, publicly display, and publicly perform such Contributions, and to create derivative works of such Contributions and reproduce, distribute, publicly display, and publicly perform such derivative works, *solely* for the purpose of developing, publishing, promoting, and distributing the Draft Specifications, Specifications, and/or other documents to which the respective Contributions were made (and related materials), and products and services that implement and comply with the Specifications.

4.2. Patent License of Essential Claims for Implementing Compliant Portions. Each Contributor hereby agrees on behalf of itself and its Affiliates that, effective when TVAF has adopted a Specification pursuant to the procedures set forth in the TVAF Members' IPR Policy, they will (subject to Section 4.4) grant to any other Member or Non-Member, upon its request and on reasonable and non-discriminatory terms, a nonexclusive, nonsublicensable, nontransferable worldwide license under any of their Essential Claims that relate to a Contribution made to that Specification by the Contributor, to allow that other party to make, have made, import, use, offer to sell, sell, lease, and otherwise distribute and dispose of Compliant Portions. Notwithstanding the previous sentence, unless otherwise expressly agreed such licenses do not extend to any part or function of a product in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion. Each Contributor understands that TVAF will not act as an intermediary regarding licensing or enforcement of patents.

4.3. Licensing for Backwards Compatibility. Regardless of the termination or suspension of a Member's membership in TVAF or the dissolution of TVAF, the Contributor's agreement to grant licenses of its Essential Claims under Section 4.2 includes any Essential Claims as to any future Specification adopted by TVAF that (i) are necessary for the future Specification to be backwards compatible with prior Specifications, and (ii) are used in a substantially similar manner and to a substantially similar extent with a substantially similar result as the same Essential Claims were used in a prior Specification for which the Contributor is obligated to grant licenses.

- 4.4. Reciprocity. The provisions of Section 4.2, above, as they relate to the granting of patent licenses between Contributors, shall not be effective as to any other Contributor or that other Contributor's Affiliates, if that Contributor or any of its Affiliates do not, in fact and practice, make the licensing of Essential Claims under Section 4.2 available to all Members and Non-Members.
- 4.5. Transfer of Essential Claims. Each Contributor agrees that it will not transfer, and has not transferred, patents having Essential Claims for the purpose of circumventing Section 4.2. Any transfer of a patent having Essential Claims from a Contributor or its Affiliates to a third party shall be subject to: (i) the terms and conditions of this Contributor's Agreement, and (ii) the agreement by the Contributor to grant licenses to Members and Non-Members pursuant to Sections 4.1 and 4.2 of this Contributor's Agreement.
- 4.6. Good Faith Dealing. Each Contributor represents and warrants that it has power to cause all intellectual property owned or controlled by it and all of its Affiliates to be licensed as set forth in this Contributor's Agreement.

5. Term; Survival

- 5.1. Term. This Agreement will be effective as of the Effective Date, and will continue until the dissolution of TVAF pursuant to the Bylaws of TVAF, unless terminated as provided herein.
- 5.2. Membership Not Required. Termination or suspension of a Member's membership in TVAF shall have no effect on the rights and obligations set forth in this Contributor's Agreement.
- 5.3. Termination. A Non-Member Contributor may terminate this Agreement at any time, effective upon providing notice to TVAF pursuant to Section 6.6. Termination of this Agreement terminates the Non-Member's status as a Contributor and its right to submit Contributions to TVAF, but, pursuant to Section 5.4, shall not affect its licensing obligations with respect to Contributions submitted before termination. A Member of TVAF may not terminate this Agreement while still a Member.
- 5.4. Survival of Licensing Provisions. Sections 1 (Definitions), 4 (Licenses), 5 (Survival), and 6 (General) shall continue in full force and effect upon the termination of this Agreement.

6. General

- 6.1. Ownership; No Other Licenses. Except as expressly provided in this Contributor's Agreement, all patents, copyrights, and other intellectual property owned or created by any Contributor shall remain the property of that Contributor, and such ownership shall not be affected in any way by the Contributor's participation in TVAF unless the Contributor specifically agrees otherwise. Except for the rights expressly provided by this Contributor's Agreement, no Contributor or its Affiliates hereby grants or receives, by implication, estoppel, or otherwise, any licenses, rights, or immunity under any

patents, copyrights, or other intellectual property rights. All rights not expressly granted hereunder are expressly reserved by each Contributor. Notwithstanding anything herein to the contrary, each Contributor reserves all underlying ownership rights in each of its respective Contributions; no assignment or transfer of such rights is contemplated by this Contributor's Agreement.

- 6.2. No Warranty. All Contributors acknowledge that all information provided as part of the Specification development process, including, without limitation, all Contributions, and the Specifications themselves, are all provided "AS IS" WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. TVAF AND THE MEMBERS AND CONTRIBUTORS EXPRESSLY DISCLAIM ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL, SPECIFICATION, OR EXAMPLE.
- 6.3. Limitation of Liability. IN NO EVENT WILL TVAF OR MEMBERS OR CONTRIBUTORS BE LIABLE TO EACH OTHER, EITHER DIRECTLY OR INDIRECTLY BASED ON A THIRD-PARTY CLAIM, FOR LOST PROFITS OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, OR LOSS OF DATA) WHETHER UNDER CONTRACT, TORT, WARRANTY, OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS CONTRIBUTOR'S AGREEMENT OR ANY OTHER RELATED AGREEMENT, WHETHER OR NOT THE MEMBER OR CONTRIBUTOR HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.
- 6.4. Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of Delaware as such laws apply to contracts performed within Delaware by its residents. In such a dispute, legal process may be served upon the Contributor in the same manner as provided in Section 6.6 of this Contributor's Agreement for delivery of non-electronic notices.
- 6.5. Compliance with Laws. Each Contributor is solely responsible for its own compliance with all laws and regulations applicable to its business (including, without limitation, export control laws) and its performance of the obligations set forth in this Contributor's Agreement.
- 6.6. Notices. Except where e-mail notice is expressly authorized in this Contributor's Agreement, all notices, authorizations, and requests in connection with this Contributor's Agreement must be in a non-electronic writing delivered in person or sent (postage or charges prepaid) by registered or certified mail (return receipt requested), recognized courier or overnight delivery service with delivery tracking, or confirmed facsimile transmission to the respective Member's or Contributor's address on file with TVAF (if to a Member or Contributor) and/or to Lynne Apodaca, TVAF Program Manager, Bishop Ranch 2, 2694 Bishop Drive, Suite 275, San Ramon, CA 94583,

USA (if to TVAF). Notice will be effective when sent by certified mail or courier or delivery service, or else when received. Each Contributor and Member may change its address for notices by providing notice to TVAF, and TVAF may change its address for notices by providing notice to the Members and Contributors.

- 6.7. Assignment. This Contributor's Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, that no Contributor may assign this Contributor's Agreement, in whole or in part, or any of its rights or duties under it, without the prior written approval of TVAF.
- 6.8. Entire Agreement; Modification; No Implied Waiver; Severability. This Contributor's Agreement, including all references to the TVAF IPR Policy, the TVAF Membership Agreement, and the Bylaws of TVAF, contains the entire understanding of the Contributor and TVAF with respect to the matters and transactions contemplated herein. It may not be modified except by a two-thirds (2/3) majority vote of the Members constituting a quorum present at a scheduled general meeting of the Plenary Assembly, ignoring any abstentions or invalid votes, under the voting rules established by the Plenary Assembly pursuant to the Bylaws of TVAF. TVAF's or a Contributor's delay or failure to enforce any provision of this Contributor's Agreement will not be deemed a waiver of enforcement of that or any other provision. No course of dealing or usage of trade may be invoked to modify the terms and conditions of this Contributor's Agreement or to preclude the full exercise of any right. No waiver of any breach of any provision of this Contributor's Agreement is effective unless made in a writing signed by an authorized representative of the waiving party, and unless expressly stated by the waiving party no waiver constitutes a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof. If any provision of this Contributor's Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions will remain in full force and effect.
- 6.9. Not Partners; No Exclusivity. Nothing in this Contributor's Agreement shall be construed as creating an employer-employee relationship, a partnership, a joint venture, a franchise, or an agency relationship between any Contributors or Members. This Contributor's Agreement does not give any Contributor or Member any authority to enter into agreements of any kind on behalf of any other Contributor or Member, or to offer or create any warranty or other obligation, express or implied, on behalf of any other Contributor or Member. The rights granted to and obligations due to each Contributor and Member under this Contributor's Agreement are non-exclusive, and nothing in this Contributor's Agreement shall be deemed or construed to prohibit any Contributor or Member from participating with third parties in organizations similar to or competitive with TVAF.

On behalf of ,
I accept and agree to the terms and conditions of this TVAF Contributor's Agreement.

Signature: Date:

Printed name:

Job Title:

Address:
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Telephone:

Fax:

E-mail:

Primary point of contact for TV-Anytime Forum activities:

Name:

Job Title:

Address:
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Telephone:

Fax:

E-mail: