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PLAINTIFF'S EXHIBIT
2317
Comes v. Microsoft

RECEIVED
JUN 19 1995

AMENDMENT NUMBER 13
Amendment Date: June 1, 1995
to LICENSE AGREEMENT FOR MICROSOFT PRODUCTS #1107-3000
between MICROSOFT CORPORATION, a Washington, USA Corporation
and COMPAQ COMPUTER CORPORATION, a Delaware, USA Corporation

Effective as of the Amendment Date indicated above, the below signed parties agree that the indicated portions of the above referenced license agreement (hereinafter the "Agreement") are hereby amended by this instrument (hereinafter the "Amendment"), as follows:

1. Exhibit M6 is added to the Agreement.
2. Exhibit C17 (BackOffice) is added to the Agreement.
3. This Amendment No. 13 is null and void unless it is signed by both parties on or before June 9, 1995.

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement. The terms of this Amendment shall supersede any inconsistent terms contained in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment in duplicate as of the date first written above. All signed copies of this Amendment shall be deemed originals.

MICROSOFT CORPORATION

[Signature]

By (Signature)

J. J. [Signature]
Name (Printed)

Director OEM
Title

6-9-95
Date

COMPAQ COMPUTER CORPORATION

[Signature]

By (Signature)

Gene Austin
Name (Printed)

Vice-President, Marketing
Title

6/9/95
Date

ATTORNEY'S EYES ONLY

MSS 5132374
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MICROSOFT LICENSE NO.

06/06/95 51370019.DOC

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EXHIBIT C17 (PER SYSTEM)

PRODUCT NAME: Microsoft® BackOffice

VERSION NO: 1.x and 2.x

LANGUAGE VERSION(S): English, and other languages if and as available.

PRODUCT DELIVERABLES AND PRODUCT SPECIFICATIONS:

OEM Distribution Kit consisting of Product in object code form and preinstall utilities. Single copy of Product documentation for support purposes only. The Product will have features as specified in the Product documentation. Product will include software intended for installation on a server ("Server Software") and software intended to permit access to the server when installed on client workstations connected to the server ("Client Software").

ROYALTY PAYMENTS AND REPORTING REQUIREMENTS:

(a) COMPAQ agrees to pay MS a royalty of Five Hundred Dollars (US \$500.00) for each full or partial Customer System, identified in Exhibit M6, distributed or placed in use by or for COMPAQ, net of returns. Although no minimum commitments are associated with this Exhibit, the joint expectation is for COMPAQ to distribute 10,000 Customer Systems identified in Exhibit M6 on or before March 31, 1996.

(b) In addition, COMPAQ agrees to pay MS the Non-English Additional Royalty of Zero Dollars (US \$0.00) for each full or partial unit of non-English versions of Product distributed or placed in use by COMPAQ. Non-English versions are provided if and when available.

(c) Where one or more "Releases" (i.e. Update Releases, Version Releases or Product Releases), language versions, or media version of a Product are licensed for the same Customer Systems, COMPAQ may grant to the end user the right to: (i) use one copy of the Server Software on one server ("Server License"), and (ii) use one copy of the Server Software on more than one (1) server provided that the above royalty is paid for each such server for which such use is authorized by COMPAQ.

(d) Any Customer System licensed on a Per System basis for a Product, but distributed without Product, shall bear the base royalty for the most recent Release of the Product licensed.

(e) COMPAQ's quarterly royalty report shall specify number of Customer Systems licensed or distributed by or for COMPAQ during that calendar quarter. In the event that no Customer Systems were licensed or distributed by or for COMPAQ during a calendar quarter, COMPAQ shall indicate this on the report.

NOTE: The above royalties are exclusive of any charges by the Authorized Replicator, as applicable, for copies of Product ordered by COMPAQ. The above royalties are for Product for use on Customer Systems with no more than four (4) processors.

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EULA:

(a) For the purposes of this Exhibit C17, Section 6(c)(i) of the Agreement shall be replaced in its entirety by the following:

(a) (i) COMPAQ shall distribute and license the use of Product to end users only pursuant to its end user license agreement (EULA). COMPAQ's EULA agreement may be a "break-the-seal" end user license agreement or in electronic form appearing on the sign-on screen of the Product which is conspicuous to the end user as agreed by the parties. COMPAQ's EULA shall be substantially similar to the MS Sample License Agreement.

EXHIBIT C17 (PER SYSTEM)
(Continued)

(b) If during the term of this Agreement, MS amends or revises its EULA or licensing practices for Product, MS will use reasonable best efforts to notify COMPAQ of such amended terms and their effective date as far in advance of such effective date as is practical. Entirely at its option, COMPAQ may amend its EULA to include all or any part of such changes which shall be effective no earlier than the effective date of MS' amended terms. COMPAQ may grant to end users of Product distributed under the original COMPAQ EULA part or all of any such additional rights or terms but only to the same extent that MS grants such amended terms to end users of Product distributed under the original MS EULA.

UPGRADES:

(a) (1) Free Upgrade-Product Licensed Other Than From COMPAQ. COMPAQ may distribute Product as an Upgrade (as defined in Section 1(h)) with no royalty due to MS to end users of Customer Systems who licensed a previous retail version of Product other than from COMPAQ during the period, if any, in which MS makes commercially available a "no charge" retail Upgrade version of Product ("MS Free Upgrade Period"). provided that COMPAQ provides such Upgrade on a "no charge" basis (except that COMPAQ may charge its reasonable costs of materials, freight and handling in order to qualify for no royalty due to MS). This Section shall apply only in the event that MS makes commercially available a "no charge" retail Upgrade version of Product.

(2) Free Upgrade-Product Licensed From COMPAQ. COMPAQ may distribute Product as an Upgrade with no royalty due to MS, to those end users of Customer Systems who have licensed previous version of Product from COMPAQ as follows: (A) in the event COMPAQ commences distribution of following the MS Free Upgrade Period, COMPAQ may distribute Upgrades to end users who licensed Product from COMPAQ commencing with the MS Free Upgrade Period and ending on the earlier of the date that COMPAQ commences distribution of Product or four months after conclusion of the MS Free Upgrade Period; (B) in the event COMPAQ commences distribution of Product prior to expiration of the MS Free Upgrade Period, COMPAQ may distribute Upgrades until expiration of the MS Free Upgrade Period. In either case (A) or (B) above, COMPAQ shall provide such Upgrade on a "no charge" basis (except that COMPAQ may charge its reasonable costs of materials, freight and handling in order to qualify for no royalty due to MS). This Section shall apply only in the event that MS makes commercially available a "no charge" retail Upgrade version of Product.

TERMINATION:

(a) Notwithstanding anything to the contrary in this Agreement, License rights to Products in this Exhibit C17 expire on September 30, 1996.

(b) COMPAQ may, at its discretion, terminate this Exhibit C17 on December 31, 1995 by providing prior written notification to MS.

(c) If this Exhibit C17 is still in effect after December 31, 1995 either party may, at its discretion, terminate this Exhibit C17 on March 31, 1996 by providing (30) days prior written notification to the other party. In such event, COMPAQ shall have 60 days after March 31, 1995 to distribute its existing inventory.

EXHIBIT C17 (PER SYSTEM)
(Continued)

ADDITIONAL PROVISIONS

(a) Microsoft BackOffice includes the following individual Products: Windows NT Server, Microsoft SQL Server, Microsoft SNA Server, Microsoft Systems Management Server, and Microsoft Mail Server. Mail Server operates only on Intel-based platforms. (Microsoft Mail Server will be replaced by Microsoft Exchange in the future.) Access to BackOffice from a client workstation requires separate Client Access Licenses which are available through MS reseller channels. The royalty for BackOffice does not include Client Access Licenses, as defined in the EULA for this Product. BackOffice is licensed for use only on a single Customer System pursuant to the EULA for the Product. The individual Products which comprise BackOffice shall be distributed together with one Customer System and may not be distributed separately.

(b) In order to support end-users, COMPAQ agrees to employ for so long as COMPAQ continues to market and support the Product at least one support technician who has successfully completed, at COMPAQ's expense, the Microsoft Certified Professional program for BackOffice. COMPAQ agrees to provide support to COMPAQ channel partners and end user customers for SmartStart installation and optimization of BackOffice. MS agrees to allow end user customers to purchase software support through MS' available support programs. MS is not responsible for providing free support to COMPAQ resellers or customers.

(c) COMPAQ agrees to use reasonable best efforts to provide monthly sales out reporting, including part number, description, quantity of units, and zip code or country of sales out destination. COMPAQ shall use reasonable best efforts to obtain this information from its dealers and others in its distribution channels. MS shall treat all such information as COMPAQ Confidential and shall distribute such information to MS field sales management in a timely manner. MS shall use such information solely to determine sales recognition and/or sales compensation for MS' sales force.

(d) COMPAQ agrees to include a MS Product registration card with each Customer System in Exhibit M6 distributed by COMPAQ. MS shall provide COMPAQ with MS Product registration information it has collected relating to end users of COMPAQ Customer Systems on an on-going basis.

(e) The SmartStart utility shall ship with each Customer System in Exhibit M6. COMPAQ may utilize zero cost encryption keys for the purpose of tracking and reporting.

(f) Where applicable: (a) COMPAQ agrees to endorse MS BackOffice as a premier application server solution and as a good file and print server solution, and (b) MS agrees to endorse the COMPAQ Proliant server family as a premier BackOffice server platform.

(g) COMPAQ may modify existing Customer Systems or add additional Customer Systems (which are uniquely configured) to Exhibit M6 on a Per System basis at a royalty of US \$500.00 by providing a written request. MS reserves the right to approve modifications or additions for new Customer Systems submitted by COMPAQ. Such approval will not unreasonably be withheld.

(h) MS agrees to adjust the royalty for BackOffice by a commensurate percentage, if the Estimated Retail Price (ERP) of the equivalent BackOffice retail SKU changes during the term of this Exhibit C17. MS agrees to use reasonable best efforts to provide written notice to COMPAQ at least (30) thirty days prior to a change in the Estimated Retail Price (ERP) of the equivalent BackOffice retail SKU. Such adjustment shall not be retroactive.

WIN NT SERVER	778-352-X06 ✓	System Management Server	779-100-X01 ✓
	778-352-AL01 ✓		779-100-AL01 ✓
SQL SERVER	788-421-X05 ✓	MS Server	779-100-X02 ✓
	788-421-AL01 ✓		
SNA SERVER	789-200-X02 ✓		
	789-200-AL01 ✓		

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EXHIBIT C17 (PER SYSTEM)
(Continued)

(i) COMPAQ and MS mutually agree to create a US \$4,500,000.00 fund for joint activities specified in a jointly developed marketing plan to encompass: field engagement, training, channel development, promotion, public relations, events, and other key activities. Each party shall contribute a portion of funds on or before July 14, 1995 as described below. If after December 31, 1995 this Exhibit C17 is still in effect, the balance of the joint fund shall be contributed. If this Exhibit C17 is extended beyond March 31, 1996, left over funds shall be available for additional joint activities. COMPAQ and MS shall contribute funds as follows:

(i) COMPAQ shall contribute US \$2,000,000.00, of which US \$500,000.00 shall be allocated for COMPAQ equipment purchased at COMPAQ's fully burdened manufacturing cost. COMPAQ shall allocate US \$750,000.00 in cash on July 14, 1995. On or before January 1, 1996 COMPAQ shall allocate the remaining US \$750,000.00 in cash provided this Exhibit C17 is still then in effect. The timing for the allocation of the US \$500,000.00 in COMPAQ equipment shall be determined by the jointly developed marketing plan.

(ii) MS shall contribute US \$2,500,000 in cash. MS shall allocate US \$500,000.00 upon signing of this Amendment, and US \$1,375,000.00 on July 14, 1995. On or before January 1, 1996, MS shall allocate the remaining US \$625,000.00 in cash provided this Exhibit C17 is still then in effect.

(iii) COMPAQ and MS shall each designate individuals responsible for jointly managing the BackOffice marketing plan and funds. The cash portion of the joint fund shall reside with MS.

(iv) Upon termination of this Exhibit C17, COMPAQ and MS agree to split the remaining balance of the joint funds in the same proportion as each party's cash contribution at the point of termination.

(j) Provided Amendment No. 13 is signed by both parties prior to June 10, 1995, COMPAQ and MS agree to jointly make an announcement regarding the BackOffice/COMPAQ solution at PC EXPO in New York City in June, 1995.

(k) COMPAQ agrees to provide SmartStart utilities for Windows NT Server and Microsoft SQL Server at first shipment of BackOffice on all Customer Systems in Exhibit M6. Provided that MS: (i) provides COMPAQ with adequate Product information, and (ii) makes appropriate adjustments to the BackOffice set up utility, COMPAQ agrees to provide SmartStart utilities for the remaining components of BackOffice on all Customer Systems in Exhibit M6 concurrent with COMPAQ's distribution of BackOffice 2.0.

(l) Notwithstanding anything to the contrary in the Agreement, COMPAQ agrees to limit the distribution of BackOffice/ Customer Systems in Exhibit M6 to North America and Europe.

(m) No royalty shall accrue to MS for up to 500 server licenses and 1,000 client access licenses of Product to be used by COMPAQ solely for the purposes of: (i) testing, (ii) demonstration, (iii) support, or (iv) development. Product used for demonstrations to prospective customers must be clearly marked "For Demonstrations Purposes Only" or the like. COMPAQ agrees not to use such royalty-free Product for internal business use.

(n) Where a COMPAQ customer has a purchase commitment with MS for Product, MS agrees to permit such customers to apply purchases of Product received from COMPAQ under this Agreement toward the customers' purchase commitment to MS.

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EXHIBIT C17 (PER SYSTEM)
(Continued)

(o) At any given volume level, royalty rates charged COMPAQ for Product in this Exhibit C17 will be at least as favorable as royalty rates for such Product charged to any Strategic BackOffice OEM (as defined by MS) which licenses Product under the same material terms and conditions as those applicable to Product in this Exhibit C17. Any adjustment to COMPAQ's royalties based on the foregoing shall be made at the time of first shipment of Product by such Strategic BackOffice OEM. Such adjustments shall continue only for as long as such Strategic BackOffice OEM distributes Product. This Additional Provision (o) does not apply to any other Product in the Agreement and terminates the earlier of: (i) the termination of this Exhibit C17, or (ii) September 30, 1996.

(p) MS agrees in good faith to renegotiate the terms and conditions in this Exhibit C17, if: (i) MS offers a retail SKU of BackOffice bundled with (1) one or more Client Access Licenses, and (ii) MS and COMPAQ mutually determine that such retail SKU has an adverse material impact on sales of COMPAQ Customer Systems in Exhibit M6. This Additional Provision (p) does not apply to any other Product in the Agreement and terminates the earlier of: (i) the termination of this Exhibit C17, or (ii) September 30, 1996.

Exhibit to the License Agreement dated October 1, 1992, between MICROSOFT CORPORATION and COMPAQ COMPUTER CORPORATION. (Added by Amendment No. 13 dated June 1, 1995)

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EXHIBIT M6

COMPAQ'S CUSTOMER SYSTEMS

For purposes of this Exhibit C17, COMPAQ's Customer Systems shall be defined as the following 1 - 4 CPU computer system products:

1. Proliant 4500 (tower cabinetry)
Pentium 133 MHz
64 MB Memory
Netflex-3 Network Interface Card
CD ROM
Floppy Drive
Smart Array Controller
Cheyenne ArcServe
SmartStart utility

2. Proliant 4500 (rack mount cabinetry)
Pentium 133 MHz
64 MB Memory
Netflex-3 Network Interface Card
CD ROM
Floppy Drive
Smart Array Controller
Cheyenne ArcServe
SmartStart utility

Model numbers for Customer Systems 1 & 2 above to be provided by COMPAQ to MS in writing by 8/30/95.

Exhibit to the License Agreement dated October 1, 1992, between MICROSOFT CORPORATION and
COMPAQ COMPUTER CORPORATION. (Added by Amendment No. 13 dated June 1, 1995)

Page 7

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