

**PLAINTIFF'S  
EXHIBIT**  
**2488A**  
Comes v. Microsoft

**SIGNED  
ORIGINAL**

AMENDMENT NUMBER 22  
Amendment Date: May 1, 1996  
to LICENSE AGREEMENT FOR MICROSOFT PRODUCTS #1107 - 3053  
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 C17 (BackOffice) is terminated effective March 31, 1996 per item (c) under the TERMINATION section of Exhibit C17. MS provided written notification of termination to Compaq on February 29, 1996.
2. Exhibit C18 (BackOffice) is added to the Agreement effective April 1, 1996.
3. Exhibit M7 (Customer Systems) is added to the Agreement effective April 1, 1996.

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, or any other amendment to 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

By (Signature)

Bengt Akerlind  
Name (Printed)

Director, OEM Sales  
Title

JUN 19 1996  
Date

COMPAQ COMPUTER CORPORATION

By (Signature)

Gene Austin  
Name (Printed)

\_\_\_\_\_  
Title

MAY 31, 1996  
Date

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EXHIBIT C18 (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 pre-install 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").

*Deleted per  
Award 27*

ROYALTY PAYMENTS AND REPORTING REQUIREMENTS:

*Same royalty as Lx. C17*

- (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 M7, distributed or placed in use by or for COMPAQ, net of returns.
- (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 the 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.

EULA:

(a) For the purposes of this Exhibit C18, 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.

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(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 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 C18 expire on September 30, 1996.

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 M7 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 M7. 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 M7 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 C18. 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.

(i) Notwithstanding anything to the contrary in the Agreement, COMPAQ agrees to limit the distribution of BackOffice/Customer Systems in Exhibit M7 to Europe.

(j) No royalty shall accrue to MS for up to 250 server licenses and 500 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.

(k) 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.

(l) MS agrees in good faith to re-negotiate the terms and conditions in this Exhibit C18, 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 M7. This Additional Provision (l) does not apply to any other Product in the Agreement and terminates the earlier of: (i) the termination of this Exhibit C18, 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. 22 dated May 1, 1996)

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EXHIBIT M7

COMPAQ'S CUSTOMER SYSTEMS

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

1. ProLiant 4500 5/133 Model NT/Array (tower cabinetry); Part No: 213425-005  
Pentium 133 MHz  
64 MB Memory  
Netflex-3 Network Interface Card  
CD ROM  
Floppy Drive  
Smart Array Controller  
Cheyenne ArcServe  
SmartStart utility
2. ProLiant 4500R 5/133 Model NT/Array (rack mount cabinetry); Part No: 213435-003  
Pentium 133 MHz  
64 MB Memory  
Netflex-3 Network Interface Card  
CD ROM  
Floppy Drive  
Smart Array Controller  
Cheyenne ArcServe  
SmartStart utility
3. ProLiant 4500 5/133 Model NT/Array (tower cabinetry); Part No: 213425-007  
Pentium 133MHz  
64MB Memory  
Netflex-3 Network Interface Card  
CD ROM  
Floppy Drive  
SMART-2 Array Controller  
Cheyenne ArcServe  
SmartStart utility
4. ProLiant 4500R 5/133 Model NT/Array (rack mount cabinetry); Part No: 213435-004  
Pentium 133MHz  
64MB Memory  
Netflex-3 Network Interface Card  
CD ROM  
Floppy Drive  
SMART-2 Array Controller  
Cheyenne ArcServe  
SmartStart utility

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5. ProLiant 4500 S/166 Model NT/Array (tower cabinetry); Part No: 213455-004  
Pentium 166MHz  
64MB Memory  
Netflex-3 Network Interface Card  
CD ROM  
Floppy Drive  
SMART-2 Array Controller  
Cheyenne ArcServe  
SmartStart utility
6. ProLiant 4500R S/166 Model NT/Array (rack mount cabinetry); Part No: 213465-004  
Pentium 166MHz  
64MB Memory  
Netflex-3 Network Interface Card  
CD ROM  
Floppy Drive  
SMART-2 Array Controller  
Cheyenne ArcServe  
SmartStart utility
7. ProLiant 5000 Model 2 (tower cabinetry); Part No: 219405-003  
Pentium Pro 166MHz  
128MB Memory  
Netflex-3 Network Interface card  
CD-ROM  
Floppy Drive  
SmartArray-2 Controller  
Cheyenne ArcServe  
SmartStart Utility
8. ProLiant 5000 Model 2 (rack mount cabinetry); Part No: 219455-003  
Pentium Pro 166MHz  
128MB Memory  
Netflex-3 Network Interface card  
CD-ROM  
Floppy Drive  
SmartArray-2 Controller  
Cheyenne ArcServe  
SmartStart Utility

Exhibit to the License Agreement dated October 1, 1992, between MICROSOFT CORPORATION and COMPAQ COMPUTER CORPORATION. (Added by Amendment No. 22 dated May 1, 1996).

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