

PLAINTIFF'S EXHIBIT
2561
Comes v. Microsoft

OFT OEM LICENSE AGREEMENT
FOR DESKTOP OPERATING SYSTEMS

#1172-6201 dated October 1, 1996

with HEWLETT-PACKARD COMPANY ("HP"), a corporation of California.

SIGNED ORIGINAL

This License Agreement ("Agreement") is made and entered into as of the date first set forth above ("Effective Date"), by and between MICROSOFT CORPORATION, a Washington, U.S.A. corporation, ("MS"), and the company specified above ("HP"). This Agreement covers Products licensed for distribution with Customer Systems distributed by HP's Personal Information Products Group ("PPG") divisions. HP and MS agree to execute by November 15, 1996 an Amendment to this Agreement that will cover Product licensed for distribution with Customer Systems distributed by other non-PPG divisions. MS and HP will negotiate in good faith to carry forward any existing rights currently used and enjoyed by the non-PPG divisions. Until November 15, 1996, the MSA (defined below) shall continue to apply to the Products licensed for distribution with Customer Systems distributed by non-PPG divisions.

1. DEFINITIONS.

(a) "Associated Product Materials" or "APM" shall mean a certificate of authenticity, an end user license agreement, a MS product registration card, and/or other materials reasonably designated by MS from time to time which MS requires of all OEMs and which HP may acquire from an Authorized Replicator. HP shall not be obligated to distribute any printed or ancillary "other materials" which are not related to the protection of the Product(s) and/or of MS intellectual property generally.

(b) "Authorized Replicator" shall mean a third party approved by MS from which HP may acquire Product reproduced in accordance with MS specifications. MS shall provide HP with a list of Authorized Replicators and shall notify HP from time to time of changes to this list.

(c) "HP Subsidiary" shall mean a company listed in Exhibit X, in which, on a class by class basis, more than fifty percent (50%) of the stock entitled to vote for the election of directors is directly owned by HP, but only so long as such ownership exists.

(d) "Customer System" shall mean HP's computer system product(s) described in the applicable Exhibit(s)M. Unless otherwise expressly specified in the applicable Exhibit M, a Customer System shall be an assembled computer system which (i) is configured for use only by a single user, (ii) is designed to use a video display and keyboard, and (iii) includes at least a CPU, a motherboard, a power supply, and a case. Unless otherwise provided in applicable Exhibits C, M or D, Customer Systems shall be marketed and distributed only under a brand name which includes HP's name.

(e) "EULA" shall mean an end user license agreement for the Product as available from the Authorized Replicator. MS' current standard EULA for most Products is attached hereto as Exhibit A.

(f) "Product" shall mean the copyrighted and/or patented MS product(s) (including, where applicable, Product software in object code form, Product end user documentation, APM, and Product hardware) identified in the attached Exhibit(s) C. Only those Product(s) for which royalty rate(s) and Customer System(s) are specified in the applicable Exhibit M are licensed under this Agreement.

(g) "Product Deliverables" shall mean (i) Product software in object code form (ii) installation utilities and related

documentation, if applicable, (iii) a single copy of Product end user documentation; and (iv) any other deliverables identified in Exhibit C or otherwise identified by MS as Product Deliverables.

(h) "Product Release" shall mean a release of Product which MS designates as a change in the digit(s) to the left of the decimal point in the Product version number [(x).xx] or a change in the annual identifier (e.g., 96 or 1996).

(i) "Supplement" shall mean a release of a supplement to, or replacement of, any portion of Product as MS may provide to HP from time to time.

(j) "Update Release" shall mean a release of Product which MS designates as a change in the digit(s) to the right of the tenths digit in the Product version number [x.x(x)].

(k) "Version Release" shall mean a release of Product which MS designates as a change in the tenths digit in the Product version number [x.(x)x].

(l) "MSA" shall mean the Master Software Agreement between MS and HP #1172-8158 dated May 23, 1988.

(m) "Patent Cross License Agreement" shall mean that "Patent Cross License Agreement" entered into by and between MS and HP as of August 8, 1996.

2. LICENSE GRANT.

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(a) Subject to limitations in this Agreement and HP's compliance with all terms and conditions of this Agreement, MS grants to HP a non-exclusive, limited license to:

(i) install one (1) copy of Product software on a Customer System hard disk or ROM ("Preinstalled Product Software") in accordance with instructions accompanying the Product Deliverables,

(ii) distribute with Customer System(s):

- (A) one (1) copy of Preinstalled Product Software,
- (B) one (1) copy of Product software on external media (i.e., diskette or CD-ROM) as acquired from Authorized Replicator, and
- (C) one (1) copy of Product end user documentation as acquired from Authorized Replicator; and

(iii) reproduce a reasonable number of copies of Product software for internal but non-production use by HP on HP premises solely for the purpose of testing HP's Customer Systems with such Product software or for customer demonstration use.

With respect to Supplements, MS may also grant to HP one or more non-exclusive, limited additional rights, including without limitation, those set forth in Exhibit F hereto, in a "Supplement Addendum" for such Supplement. If HP decides to exercise any such additional rights granted for a particular Supplement, HP agrees to fully comply with all of the terms and conditions of the applicable Supplement Addendum, regardless of whether the particular terms of the Supplement Addendum are described in Exhibit F.

(b) Except as otherwise provided in Exhibit(s) C, HP's license rights granted herein shall be worldwide. Except as necessary to install Preinstalled Product Software and as otherwise provided in

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Under this Agreement, HP may not reproduce any part of Product Deliverables. HP shall make no use of Product Deliverables except as described in Section 2(a) of this Agreement.

(c) (i) Unless otherwise provided in the Agreement, HP's license to distribute the Product is limited to distribution only with those Customer System(s) listed on Exhibit(s) M for the particular Product(s) and only inside the Customer System package.

(ii) HP shall comply with the additional provisions, if any, provided in Exhibit(s) C with respect to Product.

(iii) HP may supplement but shall not modify or translate Product end user documentation. HP shall not remove or modify the package contents of Product or APM.

(d) HP shall include APM with Product software distributed by HP. As indicated in Exhibit(s) C, some Products must be shipped with Product and end user documentation. For Product(s) for which this is not required, HP shall make Product end user documentation available to its licensed end users of the Product either with Customer Systems distributed with Product software or as a mail order fulfillment item directly from HP or a MS designated fulfillment source. Product end user documentation shall not be available through any other HP distribution channel.

(e) If HP distributes the Product software (other than as Preinstalled Product Software), HP shall distribute the Product software on separate media (e.g., separate diskettes, CD-ROM disc, etc.) from other products.

(f) Unless otherwise provided in the Agreement, HP shall place Product packages inside Customer System packages and install Product software on the hard disk drive or ROM of a Customer System solely on HP premises by HP employees.

(g) HP shall not reverse engineer, decompile or disassemble any Product except as permitted by applicable law without the possibility of contractual waiver. HP acknowledges that information on interoperability of the Product with other products is readily available.

(h) All distribution and use of the Product is by license only. MS does not authorize the Product to be "issued to the public", "put into circulation", or subject to a "first sale" as the copyright laws may use those (or similar) terms. HP's license to distribute the Product is limited to distribution of the Product by HP to end users (directly or through HP distribution channels) for use pursuant to a EULA. HP shall adapt the EULA as may be required by the laws of any non-U.S.A. jurisdiction in which HP distributes the Product. HP may use its name in place of references to "PC Manufacturer" in the EULA. Notwithstanding anything to the contrary in the foregoing, HP may distribute Products (except for Windows NT Workstation v. 4.0) with HP's current end user license agreement until February 28, 1997. As of March 1, 1997, HP shall distribute Products subject to the applicable MS EULA as available from the Authorized Replicator. If HP distributes Customer Systems with an all-in-one software end user license agreement, as of March 1, 1997 HP may ship Products (other than Windows NT Workstation v. 4.0) subject to such HP all-in-one license agreement provided that (i) HP shall include in such all-in-one license all terms required by MS as of November 30, 1996 with respect to applicable Products, and (ii) HP shall revise such all-in-one license from time to time to include all revised and additional terms requested by MS with respect to applicable Products within ninety (90) days of MS' making any such request(s). At all times that this Agreement is in effect, HP shall

use the EULA for Windows NT Workstation v. 4.0 as made available by Authorized Replicators in the form attached as Exhibit A-1.

(i) HP agrees that it shall not distribute Product in encrypted form, except as otherwise specifically provided in this Agreement.

(j) HP acknowledges that MS may require the Authorized Replicator to refuse to fill orders for Product in quantities beyond those which, in MS' opinion, HP will be able to distribute or make timely payment for in compliance with the terms of this Agreement. HP further acknowledges that MS may suspend HP's license rights hereunder and/or require Authorized Replicator to refuse to fill HP's orders if (i) HP or any HP Subsidiary fails to comply with any provision of this Agreement or any other agreement between HP or any HP Subsidiary and MS, or if (ii) Product licensed to HP is made available other than inside Customer System package without MS's approval.

(k) HP's license shall extend to Update Releases, Version Releases, and Supplements. HP's license shall not extend to new Product Releases unless specifically licensed in a new Exhibit C. The parties acknowledge that any such new and/or amended Exhibit(s) C may include mutually agreed-to Additional Provisions which may supersede certain portions of the Agreement.

(l) HP may grant to HP Subsidiaries the rights granted to HP in this Agreement, subject to all the terms and conditions set forth in this Agreement. HP hereby irrevocably and unconditionally guarantees each of its HP Subsidiaries' compliance with the terms and conditions of this Agreement. HP agrees that it shall be jointly and severally liable with each HP Subsidiary for any breach of the terms and conditions of the Agreement by a HP Subsidiary. At least thirty (30) days prior to exercising any license rights or receiving any confidential information under this Agreement, each HP Subsidiary shall execute and deliver to MS the HP Subsidiary Agreement in the form indicated in Exhibit X. The requirement to execute and deliver the HP Subsidiary Agreement is waived for the four Subsidiaries currently listed on the attached Exhibit X, however those Subsidiaries are still subject to the terms set forth in such form. Subsidiaries of HP (or any other entities) which distribute Customer Systems received fully assembled and packaged with Product in accordance with this Agreement from HP or HP Subsidiaries need not be listed on Exhibit X as HP Subsidiaries.

(m) MS reserves all rights not expressly granted including, without limitation, modification rights, translation rights, rental rights, and rights to source code. MS expressly reserves its exclusive right under applicable copyright, patent, and trademark laws to distribute copies of Product by any means. Except as otherwise provided in this Agreement, MS does not authorize HP, and MS reserves its exclusive right, to distribute the Product separately from Customer Systems; any such unauthorized distribution by HP shall constitute a violation of this Agreement and MS' distribution right under applicable law. HP acknowledges that MS (and/or its suppliers, if applicable) shall retain all copyright, patent, moral, trademark, title and other proprietary and intellectual property in the Product software, Product Deliverables and components thereof, in whole or in part in any form.

3. PAYMENT AND REPORTING.

(a) (i) HP agrees to pay MS the royalties in Exhibit(s) C. Royalties are based upon HP's estimated shipment volume indicated in Exhibit(s) C. Royalties exclude any charges by Authorized Replicator for units of Product or APM ordered by

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HP's royalties also exclude any taxes, duties, excises or tariffs imposed on any of HP's or HP's Subsidiaries' activities in connection with this Agreement. Such charges, taxes, duties, fees, excises or tariffs, if any, shall be paid by HP. In the event HP fails to accrue any royalties due MS under this Agreement prior to termination or expiration, MS may charge HP an administrative fee in the amount of Ten Thousand Dollars (US\$10,000.00).

(ii) For Product(s) specified in the applicable Exhibit C as licensed on a "per system" basis, HP agrees to pay MS the royalty set forth in the applicable Exhibit C for each Customer System distributed or placed in use by or for HP. For Product(s) specified in the applicable Exhibit C as licensed on a "per copy" basis, HP agrees to pay MS the royalty rates set forth in the applicable Exhibit C for each unit of Product licensed or distributed by HP.

(iii) Unless otherwise superseded by a Patent Cross License Agreement, if in any three consecutive monthly reporting periods, HP's reported shipments of the applicable Customer Systems (for Product licensed on a per system basis) or Product (for Product licensed on a per copy basis), respectively, are twenty percent (20%) or more below HP's estimated monthly volume specified in the Product table in the applicable Exhibit C, HP and MS shall negotiate an increase in the royalty rate(s) to reflect HP's lower shipment volumes. If, for any reason, MS and HP are unable to agree upon new royalty rate(s) within thirty (30) days after the date HP's royalty report is due for the third such low-volume month, HP's royalty rate(s) for each Product included in the volume estimate accompanying the royalty rate shall increase by twenty percent (20%). Such increased royalty rate(s) shall be in effect for the remainder of the term of the Agreement commencing with the monthly reporting period following the third low-volume month. Provided, however, that if HP's reported monthly volume returns to or exceeds the original estimated monthly volume for any three (3) consecutive months thereafter, HP's royalty rate(s) shall be restored to the rate(s) specified in the Product table in the applicable Exhibit C commencing with the monthly reporting period following such three (3) consecutive months.

(iv) In addition, HP agrees to pay MS the Localization Additional Royalty specified in Exhibit(s) C for each unit of non-US English version of Product distributed or placed in use by HP.

(v) Where multiple "Releases" (i.e., Update Releases, Version Releases or Product Releases), language versions, or media versions (e.g., MS-DOS and MS-DOS ROM) of a Product are licensed for the same Customer Systems, HP may distribute only one copy of Product software in addition to one copy of Preinstalled Product Software in one language and Release for use on each such Customer System. HP shall pay MS the royalty applicable to the Release and language version shipped. Any Customer System licensed on a per system basis for more than one Update Release or Version Release of a Product, but distributed without Product, shall bear the base royalty for the most recent Release of Product licensed.

(vi) In addition to MS' other remedies, for each copy of the Product(s) available other than inside the Customer System package without MS' authorization, MS may charge HP an additional royalty equal to thirty percent (30%) of the highest royalty rate stated in Exhibit C for the Product. HP shall pay such additional royalty within thirty (30) days of receipt of MS' invoice.

(b) HP further agrees to pay MS the initial payment amount(s) ("Initial Payment Amount(s)") specified in Exhibit(s) C upon signing of this Agreement. Provided HP has complied with all

material terms and conditions of this Agreement, such Initial Payment Amount(s), as reduced, by set off or otherwise, of any outstanding amounts or obligations due to MS, will be refunded to HP within forty-five (45) days of HP's final royalty report and payment under this Agreement. HP may not recoup the Initial Payment Amount(s) against royalties due to MS or payments made to any Authorized Replicator.

(c) In the event income taxes are required to be withheld by any non-U.S.A. government on payments to MS required hereunder, provided that HP promptly delivers to MS an official receipt for any such taxes withheld or other documents necessary to enable MS to claim a U.S.A. Foreign Tax Credit, HP may deduct such taxes from the amount owed MS and shall pay them to the appropriate tax authority. HP will make certain that any taxes withheld are minimized to the extent permitted by the applicable law.

(d) HP agrees to make consolidated (i.e., on behalf of HP and HP Subsidiaries) monthly royalty reports to MS as specified in Exhibit N within thirty (30) days after the end of each calendar month, and thirty (30) days after termination or expiration for the final full or partial month.

(i) In the event that HP's monthly report is not received by MS within the above-specified thirty (30) day period, HP authorizes MS to bill HP, and HP agrees to pay MS, based on reports submitted to MS by the Authorized Replicator(s) for the subject month and, at MS' option, for all subsequent months during the term of this Agreement. MS' monthly billing of HP based on reports submitted by the Authorized Replicator(s) shall not relieve HP of any reporting or payment obligations under the Agreement.

(ii) HP's report shall be certified as complete and correct and signed by a duly authorized representative of HP. A copy of HP's report shall be sent to MS electronically or via facsimile in addition to the original copy sent in accordance with Exhibit N. HP's royalty reports shall be in the royalty report format substantially similar to the attached Exhibit R or other format as MS may provide from time to time and shall specify royalties for each Product described in Exhibit(s) C distributed with English and non-English versions of Product. As of the Effective Date, HP's duly authorized representative shall be the Personal Information Product Group Controller.

(e) HP agrees to make consolidated (i.e., on behalf of HP and HP Subsidiaries) payments to MS forty-five (45) days after the end of each calendar month, and forty-five (45) days after termination or expiration for the final full or partial month. A five percent (5%) late charge and a one percent (1%) monthly finance charge will be assessed on all amounts that are thirty (30) days or more past due, including receipts for foreign taxes withheld.

(f) No royalty shall accrue to MS for Product software (i) used by HP solely for testing systems; (ii) shipped to replace copies defective in media or reproduction, provided that HP distributes such replacement copies only directly to end user (without use of dealers or other intermediaries) at no charge, except for HP's reasonable cost of materials and shipping and handling costs. Until March 1, 1997, the restriction on distribution through dealers and other intermediaries shall not apply; (iii) shipped as a backup copy in addition to Preinstalled Product Software in accordance with Section 2(a)(ii); or (iv) used solely for demonstrations of Customer Systems to prospective customers if clearly marked "For Demonstration Purposes Only", not to exceed seven thousand five hundred (7,500) copies total for all copies made pursuant to Sections (i), (ii) and (iv) above.

(g) Upon request by MS, HP shall provide a copy of its U.S.A. state resale exempt certificate, if applicable.

(h) Upon request by MS, HP will provide MS with HP's current audited financial statements.

4. DELIVERY AND LIMITED WARRANTY

(a) For each Product licensed hereunder, MS shall deliver Product Deliverables to HP.

(b) MS warrants that Product software conforms substantially to the Product end user documentation.

(i) If Product software fails to conform substantially to the Product end user documentation, then within thirty (30) days after MS' delivery to HP of Product Deliverables for each release of Product licensed hereunder, HP may report such deviations from end user documentation ("Deviations") to MS in writing. If HP reports any Deviations prior to acceptance, then MS shall have sixty (60) days to correct such Deviations. Upon delivery of a corrected release of Product to HP, HP shall have thirty (30) days in which to reject the Product software for failure to meet specifications.

(ii) If MS fails to correct Deviations prior to acceptance, then as HP's sole remedy for such failure HP may terminate this Agreement with respect to such release of Product. "Acceptance" shall be deemed to occur at the earlier of (A) the end of the applicable correction period listed above or (B) HP's first commercial distribution of the Product.

(iii) MS shall make available "bug fixes" or "patches" which correct errors or problems discovered in the current release and version of each Product. MS shall provide such bug fixes or patches to HP for distribution by HP to end-users by the same method(s) of distribution as MS authorizes its other OEMs to distribute such bug fixes or patches, such as those methods set forth in Exhibit F. HP may distribute such bug fixes or patches royalty-free except as set forth in Exhibit F. MS will provide HP with the same updated list(s) of all known bugs and workarounds for all Products and the same supporting documentation, at the same frequency as and no later than MS makes available generally to its other OEMs. HP shall classify such bugs by severity, with "serious errors" being the most critical.

(iv) If any deviations from specifications in a Product are discovered by HP following acceptance and during the term of this Agreement, MS agrees to use all reasonable best efforts (commensurate with the severity of the deviation) to eliminate such deviations. In the event MS cannot correct a "serious" defect within ninety (90) days of HP's notification of the defect's existence then MS shall provide an agreed upon number of HP employees access to source code for such Product at MS Corporate Headquarters in an effort to correct such deviation, and MS shall provide the appropriate resources to support HP in such effort. A "serious" error or defect is one which causes (i) a Customer System to stop functioning or (ii) loss of data, and for which there is no workaround.

(c) MS shall have no liability for failure to deliver Product Deliverables by any particular date. HP shall not distribute for revenue any release of any language version of a Product until MS delivers Product Deliverables to HP identified by MS as final Product Deliverables and MS advises its OEM customers generally that Customer Systems may be distributed with such release of language version of Product.

(d) (i) MS warrants that it has sufficient right, title and interest in each Product licensed hereunder and full power and authority to grant HP the rights granted herein.

(ii) MS warrants that the Products licensed hereunder violate or infringe any trademark, trade secret, copyright, patent or other proprietary right of any third party enforceable in any country in which MS distributes the applicable Product, and further that use of the appropriate Product trademarks and descriptors as provided in Section 7(b) will not violate or infringe any trademark of any third party enforceable in any such country.

(iii) Unless otherwise superseded by a Patent Cross License Agreement, MS warrants that the prices set forth herein for the Products are equal to or as favorable as those paid by other parties obtaining such Products under the same or similar terms, conditions and volumes as HP. In the event HP in good faith believes that a third party has obtained more advantageous prices than HP and HP notifies MS of such belief, MS agrees to in good faith examine its other agreements and to make whatever adjustments are appropriate to comply with the above warranty. Furthermore, if MS knows that the terms of an agreement with a third party are more advantageous than those given HP hereunder, then MS will promptly so notify HP and make such terms available to HP.

5. DEFENSE OF INFRINGEMENT CLAIM

(a) MS will, at its expense, defend or settle any action brought against HP, HP's distributors, dealers, and others in its distribution channels or end-users in any country in which MS distributes (directly or indirectly) the applicable Product, based on a claim that a Product when licensed as provided for by this Agreement, or any Product documentation or Product trademark or descriptor used in accordance with Section 7(b) infringes any trademark, trade secret, copyright, patent or other proprietary right of any third party in any country in which MS distributes the applicable Product. MS will hold HP harmless and pay any award based on such infringement, subject to the limitation set forth in Section 12 below. HP agrees to promptly notify MS in writing of such claim and to permit MS to control its defense and settlement.

(b) Notwithstanding the provisions of Section 5(a), MS shall have no liability if an alleged infringement arises: (i) solely from modifications by HP to a Product or Product documentation; (ii) from HP's continued distribution of a Product which MS believes to infringe any copyright, patent, trade secret or other proprietary right of any third party after MS notifies HP of the alleged infringement and MS commences reasonable commercial efforts to provide HP with a non-infringing substitute for that Product; or (iii) combination of a Product with any other product, program, or data, to the extent the alleged infringement arises from such combination. For all claims and/or suits arising under this Section 5(b), HP will indemnify MS for all MS' costs, damages, expenses and reasonable attorneys' fees. Any such costs, damages, expenses and attorneys' fees shall not be payable until and unless there has been a final judgment adverse to MS.

6. ADDITIONAL RESTRICTIONS.

(a) HP shall (A) contractually obligate (e.g., by contract, invoice or other written instrument) all distributors, dealers and others in its entire distribution channels to comply with Section 2(c); (B) deliver copies of such contracts (or relevant portions thereof) to MS upon request; (C) promptly discontinue distribution of Product to any such distributor, dealer or other in its distribution channel which does not comply with Section 2(c); and (D) cooperate with MS in investigating instances of distribution of Product which does not comply with Section 2(c).

(b) Where HP distributes Preinstalled Product Software, HP shall place a notice over either the Customer System power switch in the "off" position or the power inlet connector which informs the

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end user that turning on the Customer System is acceptance of the terms of the EULA. HP may use alternative procedures previously approved in writing by MS, and/or other alternative procedures, subject to MS review and approval, provided that (i) the end user is required to take some affirmative action to use or install the Product software, such as breaking a seal, (ii) the end user is advised that taking such action indicates acceptance of the terms and conditions of the EULA; and (iii) the end user has the opportunity to read the EULA and the applicable warranty in its entirety before taking such action.

(c) (i) This Agreement does not include technical support by MS to HP, its distributors, dealers or end users. Technical support may be available from MS or an MS subsidiary pursuant to a separate agreement.

(ii) HP agrees to provide end user support for the Product(s) under terms and conditions at least as favorable to the end user as the terms under which HP provides support for HP's Customer Systems to end users generally. HP further agrees to provide end users with telephone customer support and to prominently display its customer support telephone number for such assistance in or on Customer System documentation.

(d) HP shall not advertise or otherwise market the Products as separate items, but shall clearly indicate in all marketing materials relating to the Products and Customer System(s) that the Products are available only as part of a Customer System. HP shall not publish or otherwise mark a separate price for the Product(s).

7. INTELLECTUAL PROPERTY NOTICES.

(a) HP will not remove any copyright, trademark or patent notices that appear on the Product as delivered to HP.

(b) HP shall market the Product only under the Product name(s) and version number for such Product provided to HP. HP agrees to use the appropriate trademark, product descriptor and trademark symbol (either "TM" or "®"), and clearly indicate MS' or applicable third parties' ownership of its trademark(s) whenever the Product name is first mentioned in any advertisement, brochure or in any other manner in connection with the Product. HP shall not, at any time, use any name or trademark confusingly similar to an MS or licensed third party trademark, trade name and/or product name. HP shall undertake no action that will interfere with or diminish MS' right, title and/or interest in MS' or licensed third party's trademark(s), trade name(s) or Product name(s). HP shall, upon request, provide MS samples of all HP marketing literature which uses Product name(s).

(c) HP shall not use or display any MS logo (i.e., including without limitation any stylized representation of the MS name used by MS) in its materials or packaging, except as provided by separate written agreement with MS. HP may, however, use appropriate Product trademarks, product descriptors and trademark symbols as required under Section 7(b).

8. PROHIBITION AGAINST ASSIGNMENT AND SUBLICENSE.

This Agreement, and any rights or obligations hereunder, shall not be assigned or sublicensed by HP (by contract, merger, operation of law, or otherwise) except to HP Subsidiaries as provided in Section 2(l).

9. TERM OF AGREEMENT.

The term of this Agreement shall run from the Effective Date until one (1) year from the end of the calendar quarter in which the Effective Date occurs. HP may renew this Agreement for one (1)

additional year by giving written notice between 90 and 120 days prior to expiration of the original term of this Agreement.

10. DEFAULT AND TERMINATION.

(a) The non-defaulting party may terminate this Agreement if any of the following events of default occur: (i) if either party materially fails to perform or comply with any provision of this Agreement; (ii) if HP manufactures or distributes any MS product which is not properly licensed under this Agreement or another valid agreement with MS or an MS licensee; (iii) if Product is made available other than inside the HP's Customer System package without MS approval; (iv) if HP 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 default or continuing default by HP under any other agreement between HP and MS.

(b) Termination due to breach of Sections 2(c)(i), 2(g), 6(d), 8, 13, 14(c) or (if applicable) Exhibit S shall be effective upon notice to the defaulting party. Termination due to Section 10(a)(iv) shall be effective upon notice or as soon thereafter as is permitted by applicable law. At the option of the non-defaulting party, termination due to a breach of any provision of this Agreement may be effective upon notice to the defaulting party if such party has received two (2) or more previous notices of default during the term of this Agreement (whether or not such previous defaults have been cured). In all other cases, termination shall be effective thirty (30) days after notice of default to the defaulting party if the defaults have not been cured within such thirty (30) day period.

(c) In the event of HP's default, MS may terminate this Agreement in its entirety or as to any individual Product(s). Termination of this Agreement as to any particular Product(s) will not affect the terms and conditions of this Agreement as they apply to the other Product(s) licensed under this Agreement.

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11. OBLIGATIONS UPON TERMINATION.

(a) Within ten (10) days after termination or expiration of this Agreement, HP shall deliver to MS, or at MS' direction, destroy, ~~all units of Product for which a royalty has not been paid and all Product Deliverables.~~ HP and each HP Subsidiary may, however, retain one unit of each Product for support purposes only. There shall be no refund or adjustment for amounts paid for Product(s) returned to MS in accordance with this Section 11(a).

(b) All amounts which HP has contracted to pay under this Agreement shall be due and payable immediately upon termination of this Agreement as a result of HP's default.

(c) Upon termination or expiration of this Agreement, all of HP's license rights herein shall cease and HP shall cease all distribution of Product. Sections 5, 12, 13, 14, 15 and 16 of this Agreement and Section S1(d) of Exhibit(s) S, if applicable, shall survive termination or expiration of this Agreement. All EULAs granted pursuant to this Agreement shall also survive any termination or expiration of this Agreement.

12. LIMITATION OF LIABILITY AND REMEDY.

(a) With respect to all Releases of each Product, MS' liability to HP, and HP's liability to MS under any provision of this Agreement, or any transaction contemplated by this Agreement, other than for disclosure of source code, breaches related to Exhibit I, the payment of royalties, or liability arising under Section 5, shall be limited to the greater of the total amount of the royalties paid to MS for each such Product under the MSA and

under this Agreement or Two Million One Hundred Thousand Dollars (US\$2,500,000.00). MS' liability to HP, and HP's liability to MS for disclosure of source code, or action(s) arising under Section 5, shall be limited to Ten Million Dollars (US\$10,000,000.00). HP's liability to MS for violations of Exhibit I shall be limited to Five Million Dollars (US\$5,000,000.00) per third party installer; provided that MS shall be entitled, as "direct damages", to the corresponding royalty for any Product distributed by a third party installer in violation of Exhibit I, plus other direct damages, if any, attributable to such violation.

(b) The rights and remedies granted to HP under Sections 4 and 5 constitute HP's sole and exclusive remedy against MS, its officers, agents and employees for any and all claims arising in connection with the Products or the Product Deliverables including but not limited to claims regarding MS' duties to correct any Deviations, MS' delivery of Product or Product Deliverables, or indemnification or contribution from MS with respect to any infringement of the rights of a third party, whether arising under statutory or common law or otherwise.

(c) SECTION 4 CONTAINS THE ONLY WARRANTIES MADE BY MS. ANY AND ALL OTHER WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING THOSE FOR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY, MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. MS MAKES NO WARRANTY THAT THE PRODUCT WILL OPERATE PROPERLY ON ANY CUSTOMER SYSTEM(S), EXCEPT FOR DAMAGES RESULTING FROM THE DISCLOSURE OF SOURCE CODE OR AS DAMAGES ARE INCLUDED IN ANY AWARD ARISING UNDER SECTION 5. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, ECONOMIC OR PUNITIVE DAMAGES UNDER THIS AGREEMENT EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. NONDISCLOSURE AGREEMENT.

HP shall keep confidential: (a) installation utilities and related documentation included in the Product Deliverables; (b) other materials included in the Product Deliverables which are not made generally available to end users which MS labels as MS Confidential or Proprietary, if possible; (c) the terms and conditions of this Agreement; and (d) other non-public information and know-how disclosed to HP by MS. As used in the preceding sentence "if possible" means that MS will use all reasonable efforts to identify in writing and/or mark with an appropriate legend or marking, any materials included in the Product Deliverables which MS considers confidential. Notwithstanding the above, for the purposes of this Agreement, any object code programs or other Product Deliverables that MS makes generally available to end users shall not be considered confidential. Further notwithstanding the above, HP may disclose the terms and conditions of this Agreement in confidence to its immediate legal and financial consultants as required in the ordinary course of HP's business.

14. AUDITS AND INSPECTIONS.

(a) During the term of this Agreement and for three (3) years thereafter, HP agrees to keep all usual and proper records and books of account and all usual and proper entries relating to each Product licensed sufficient to substantiate the number of copies of Product and the number of Customer Systems distributed by or for HP. HP shall maintain on HP premises such records for itself and for each HP Subsidiary which exercises rights under this Agreement.

(b) In order to verify compliance used by HP and HP's compliance with the terms of this Agreement, MS may cause (i) an audit to be made of HP's and/or HP's Subsidiaries' relevant books and records and/or (ii) an inspection to be made of HP's and/or HP's Subsidiaries' facilities and procedures. Any audit and/or inspection shall be conducted during regular business hours at HP's and/or HP's Subsidiaries' facilities, with reasonable notice. Any audit shall be conducted by an independent certified public accountant selected by MS (other than on a contingent fee basis).

(c) HP agrees to provide MS' designated audit or inspection team access to the relevant HP's and/or HP's Subsidiaries' records and facilities.

(d) Prompt adjustment shall be made to compensate for any errors or omissions disclosed by such audit. Any such audit shall be paid for by MS unless material discrepancies are disclosed. "Material" shall mean the lesser of Ten Thousand Dollars (US\$10,000.00) or five percent (5%) of the amount that was reported. If material discrepancies are disclosed, HP agrees to pay MS for the costs associated with the audit. Further, HP shall pay MS an additional royalty of twenty-five percent (25%) of the applicable royalty on Exhibit(s) C for each unit HP failed to report that is in excess of five percent (5%) of the number of units actually reported by HP. In no event shall audits be made more frequently than semi-annually unless the immediately preceding audit disclosed a material discrepancy.

15. CONTROLLING LAW; ATTORNEYS' FEES.

(a) This Agreement and all matters relating to this Agreement shall be construed and controlled by the laws of New York, and HP consents to jurisdiction and venue in the state and federal courts sitting in the State of Washington. Process may be served on either party in the manner set forth in Section 16 for the delivery of notices or by such other method as is authorized by applicable law or court rule.

(b) If either MS or HP employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses.

16. NOTICES.

All notices, authorizations, and requests in connection with this Agreement shall be deemed given (i) three days after the day they are deposited in the U.S.A. mails, postage prepaid, certified or registered, return receipt requested; or (ii) the day after the day they are sent by air express courier, charges prepaid; and addressed as stated in Exhibit N (or to such other address as the party to receive the notice or request so designates by written notice to the other).

17. GENERAL.

(a) HP agrees that it will not export or re-export Product to any country, person, entity or end user subject to U.S.A. export restrictions. Restricted countries currently include, but are not necessarily limited to, Cuba, the Federal Republic of Yugoslavia (Serbia and Montenegro), U.N. Protected Areas and areas of Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces, Iran, Iraq, Libya, North Korea, and Syria. HP warrants and represents that neither the U.S.A. Bureau of Export Administration nor any other federal agency has suspended, revoked or denied HP's export privileges.

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(b) This Agreement does not constitute an offer and it shall not be effective until signed by both parties. Upon execution by both parties, this Agreement shall constitute 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 signed on behalf of HP and MS by their respective duly authorized representatives. Any statement appearing as a restrictive endorsement on a check or other document which purports to modify a right, obligation or liability of either party shall be of no force and effect.

(c) Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture or agency relationship or as granting a franchise.

(d) If any provision of this Agreement or license of any particular Product shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions and license for remaining Products, as applicable, shall remain in full force and effect.

(e) No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

(f) HP shall, at its own expense, promptly obtain and arrange for the maintenance of all non-U.S.A. government approvals, if any, and comply with all applicable local laws and regulations as may be necessary for HP's performance under this Agreement.

(g) Any Product which HP distributes or licenses to or on behalf of the United States of America, its agencies and/or instrumentalities (the "Government"), shall be provided with RESTRICTED RIGHTS in accordance with DFARS 252.227-7013(c)(1)(ii), or as set forth in the particular department or agency regulations or rules, or particular contract which provide MS equivalent or greater protection.

18. EXHIBITS.

The following Exhibits are part of this Agreement

Exhibit A	Sample End User License Agreement
Exhibit(s) C	Product and Customer Systems
Exhibit D	Brand Names and Trademarks
Exhibit F	Supplement Rights
Exhibit I (if attached)	Company Use of Third Party Installers
Exhibit(s) M	Customer Systems
Exhibit N	Addresses
Exhibit R	Royalty Report
Exhibit X (if executed)	HP Subsidiaries

The terms of the Exhibit(s) shall supersede any inconsistent terms contained in this Agreement.

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NOTICE:

For Product(s) specified in Exhibit C as licensed under the "per system" royalty calculation provisions, please note the following:
This is a Microsoft Per System License. As a Customer, you may create a "New System" at any time that does not require the payment of a royalty to Microsoft unless the Customer and Microsoft agree to add it to the License Agreement.

Any New System created may be identical in every respect to a system as to which the Customer pays a Per System royalty to Microsoft provided that the New System has a unique model number or model name for internal and external identification purposes which distinguishes it from any system the Customer sells that is included in a Per System License. The requirement of external identification may be satisfied by placement of the unique model name or model number on the machine and its container (if any), without more.

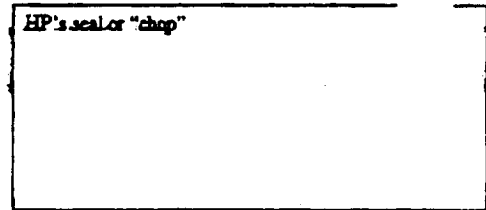
If the Customer does not intend to include a Microsoft operating system product with a New System, the Customer does not need to notify Microsoft at any time of the creation, use or sale of any such New System, nor does it need to take any particular steps to market or advertise the New System.

Under Microsoft's License Agreement, there is no charge or penalty if a Customer chooses at any time to create a New System incorporating a non-Microsoft operating system. If the Customer intends to include a Microsoft operating system product with the New System, the Customer must so notify Microsoft, after which the parties may enter into arm's length negotiation with respect to a license to apply to the New System.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the date set forth above. All signed copies of this Agreement shall be deemed originals. Each individual signing on behalf of HP below hereby represents and warrants that he or she has full authority to sign this Agreement and bind HP to perform all duties and obligations contemplated by this Agreement. If HP is located in a jurisdiction in which a corporate seal or "chop" is commonly used as an instrument of agreement execution, in addition to the individual signature provided below, HP's seal or "chop" should be entered below HP's signature block.

MICROSOFT CORPORATION
By (Signature) [Signature]
Name (Print) Bengt Akerlind
Title Director, OEM Sales
Date OCT 28 1996

HEWLETT-PACKARD COMPANY
(HP NAME)
By (Signature) [Signature]
Name (Print) Diane Zitzler
Title VP & GM of Personal Info. Products Group (PA)
Date 10/4/96

HP's seal or "chop"


NOTICE:
This is an OEM distribution license. Product can only be distributed with a Customer System, as specified in Section 2.

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EXHIBIT - TYPE END USER LICENSE AGREEMENT

IMPORTANT—READ CAREFULLY: This End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and the manufacturer ("PC Manufacturer") of the computer system ("COMPUTER") with which you acquired the Microsoft software product(s) identified above ("SOFTWARE PRODUCT" or "SOFTWARE"). If the SOFTWARE PRODUCT is not accompanied by a new computer system, you may not use or copy the SOFTWARE PRODUCT. The SOFTWARE PRODUCT includes computer software, the associated media, any printed materials, and any "online" or electronic documentation. By installing, copying or otherwise using the SOFTWARE PRODUCT, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, PC Manufacturer and Microsoft Corporation ("Microsoft") are unwilling to license the SOFTWARE PRODUCT to you. In such event, you may not use or copy the SOFTWARE PRODUCT, and you should promptly contact PC Manufacturer for instructions on return of the unused product(s) for a refund.

SOFTWARE PRODUCT LICENSE

The SOFTWARE PRODUCT is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The SOFTWARE PRODUCT is licensed, not sold.

1. GRANT OF LICENSE. This EULA grants you the following rights:

- **Software.** You may install and use one copy of the SOFTWARE PRODUCT on the COMPUTER.
- **Network Services.** If the SOFTWARE PRODUCT includes functionality that enables the COMPUTER to act as a network server, any number of computers or workstations may access or otherwise utilize the basic network services of that server. The basic network services are more fully described in the printed materials accompanying the SOFTWARE PRODUCT.
- **Storage/Network Use.** You may also store or install a copy of the computer software portion of the SOFTWARE PRODUCT on the COMPUTER to allow your other computers to use the SOFTWARE PRODUCT over an internal network, and distribute the SOFTWARE PRODUCT to your other computers over an internal network. However, you must acquire and dedicate a license for the SOFTWARE PRODUCT for each computer on which the SOFTWARE PRODUCT is used or to which it is distributed. A license for the SOFTWARE PRODUCT may not be shared or used concurrently on different computers.
- **Back-up Copy.** If PC Manufacturer has not included a back-up copy of the SOFTWARE PRODUCT with the COMPUTER, you may make a single back-up copy of the SOFTWARE PRODUCT. You may use the back-up copy solely for archival purposes.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.

- **Limitations on Reverse Engineering, Decompilation and Disassembly.** You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.
- **Separation of Components.** The SOFTWARE PRODUCT is licensed as a single product. Its component parts may not be separated for use on more than one computer.
- **Single COMPUTER.** The SOFTWARE PRODUCT is licensed with the COMPUTER as a single integrated product. The SOFTWARE PRODUCT may only be used with the COMPUTER.
- **Rental.** You may not rent or lease the SOFTWARE PRODUCT.
- **Software Transfer.** You may permanently transfer all of your rights under this EULA only as part of a sale or transfer of the COMPUTER, provided you retain no copies, you transfer all of the SOFTWARE PRODUCT (including all component parts, the media and printed materials, any upgrades, this EULA and, if applicable, the Certificate(s) of Authenticity), and the recipient agrees to the terms of this EULA. If the SOFTWARE PRODUCT is an upgrade, any transfer must include all prior versions of the SOFTWARE PRODUCT.
- **Termination.** Without prejudice to any other rights, Microsoft may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the SOFTWARE PRODUCT and all of its component parts.

3. UPGRADES. If the SOFTWARE PRODUCT is an upgrade from another product, whether from Microsoft or another supplier, you may use or transfer the SOFTWARE PRODUCT only in conjunction with that upgraded product, unless you destroy the upgraded product. If the SOFTWARE PRODUCT is an upgrade of a Microsoft product, you now may use that upgraded product only in accordance with this EULA. If the SOFTWARE PRODUCT is an upgrade of a component of a package of software programs which you licensed as a single product, the SOFTWARE PRODUCT may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

4. COPYRIGHT. All title and copyrights in and to the SOFTWARE PRODUCT (including but not limited to any images, photographs, animations, video, audio, music, text and "applets," incorporated into the SOFTWARE PRODUCT), the accompanying printed materials, and any copies of the SOFTWARE PRODUCT, are owned by Microsoft or its suppliers. You may not copy the printed materials accompanying the SOFTWARE PRODUCT. All rights not specifically granted under this EULA are reserved by Microsoft.

5. DUAL-MEDIA SOFTWARE. You may receive the SOFTWARE PRODUCT in more than one medium. Regardless of the type or size of medium you receive, you may use only one medium that is appropriate for the COMPUTER. You may not use or install the other medium on another computer. You may not loan, rent, lease, or otherwise transfer the other medium to another user, except as part of the permanent transfer (as provided above) of the SOFTWARE PRODUCT.

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EXHIBIT A
(Continued)

6. **PRODUCT SUPPORT.** Product support for the SOFTWARE PRODUCT is not provided by Microsoft or its subsidiaries. For product support, please refer to PC Manufacturer's support number provided in the documentation for the COMPUTER. Should you have any questions concerning this EULA, or if you desire to contact PC Manufacturer for any other reason, please refer to the address provided in the documentation for the COMPUTER.
7. **U.S. GOVERNMENT RESTRICTED RIGHTS.** The SOFTWARE PRODUCT and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software—Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Microsoft Corporation/One Microsoft Way/Redmond, WA 98052-6399.

FOR THE LIMITED WARRANTIES AND SPECIAL PROVISIONS PERTAINING TO YOUR PARTICULAR JURISDICTION, PLEASE REFER TO YOUR WARRANTY BOOKLET INCLUDED WITH THIS PACKAGE OR PROVIDED WITH THE SOFTWARE PRODUCT PRINTED MATERIALS.

APPENDIX
WARRANTY AND SPECIAL PROVISIONS
FOR
THE UNITED STATES OF AMERICA AND ANY OTHER COUNTRY

LIMITED WARRANTY

LIMITED WARRANTY. PC Manufacturer warrants that (a) the SOFTWARE will perform substantially in accordance with the accompanying written materials for a period of ninety (90) days from the date of receipt, and (b) any Microsoft hardware accompanying the SOFTWARE will be free from defects in materials and workmanship under normal use and service for a period of one (1) year from the date of receipt. Any implied warranties on the SOFTWARE and Microsoft hardware are limited to ninety (90) days and one (1) year, respectively. Some states/jurisdictions do not allow limitations on duration of an implied warranty, so the above limitation may not apply to you.

CUSTOMER REMEDIES. PC Manufacturer's and its suppliers' entire liability and your exclusive remedy shall be, at PC Manufacturer's option, either (a) return of the price paid, or (b) repair or replacement of the SOFTWARE or hardware that does not meet this Limited Warranty and which is returned to PC Manufacturer with a copy of your receipt. This Limited Warranty is void if failure of the SOFTWARE or hardware has resulted from accident, abuse, or misapplication. Any replacement SOFTWARE or hardware will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

NO OTHER WARRANTIES. To the maximum extent permitted by applicable law, PC Manufacturer and its suppliers disclaim all other warranties, either express or implied, including, but not limited to implied warranties of merchantability and fitness for a particular purpose, with regard to the SOFTWARE, the accompanying written materials, and any accompanying hardware. This limited warranty gives you specific legal rights. You may have others which vary from state/jurisdiction to state/jurisdiction.

NO LIABILITY FOR CONSEQUENTIAL DAMAGES. To the maximum extent permitted by applicable law, in no event shall PC Manufacturer or its suppliers be liable for any damages whatsoever (including without limitation, special, incidental, consequential, or indirect damages for personal injury, loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the use of or inability to use this product, even if PC Manufacturer has been advised of the possibility of such damages. In any case, PC Manufacturer's and its suppliers' entire liability under any provision of this agreement shall be limited to the amount actually paid by you for the SOFTWARE and/or Microsoft hardware. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to you.

SPECIAL PROVISIONS

U.S. GOVERNMENT RESTRICTED RIGHTS. The SOFTWARE PRODUCT and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software—Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Microsoft Corporation/One Microsoft Way/Redmond, WA 98052-6399.

If you acquired the SOFTWARE in the United States of America, this Software License Agreement and Warranty are governed by the laws of the State of Washington, U.S.A. If you acquired the SOFTWARE outside the United States of America, local law may apply.

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Exhibit A-1
Sample Windows NT Workstation v4.0 EULA

MICROSOFT® _____ **VERSION** _____
Maximum Number of Processors: _____

END-USER LICENSE AGREEMENT FOR MICROSOFT DESKTOP OPERATING SYSTEMS

IMPORTANT—READ CAREFULLY: This End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and the manufacturer ("PC Manufacturer" or "Manufacturer") of the computer system or computer system component ("HARDWARE") with which you acquired the Microsoft software product(s) identified above ("SOFTWARE PRODUCT" or "SOFTWARE"). If the SOFTWARE PRODUCT is not accompanied by a new computer system or computer system component, you may not use or copy the SOFTWARE PRODUCT. The SOFTWARE PRODUCT includes computer software, the associated media, any printed materials, and any "online" or electronic documentation. By installing, copying or otherwise using the SOFTWARE PRODUCT, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, Manufacturer and Microsoft Corporation ("Microsoft") are unwilling to license the SOFTWARE PRODUCT to you. In such event, you may not use or copy the SOFTWARE PRODUCT, and you should promptly contact Manufacturer for instructions on return of the product(s) for a refund.

SOFTWARE PRODUCT LICENSE

The SOFTWARE PRODUCT is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The SOFTWARE PRODUCT is licensed, not sold. The term "COMPUTER" as used herein shall mean the HARDWARE, if the HARDWARE is a computer system, or the computer system with which the HARDWARE operates, if the HARDWARE is a computer system component.

1. GRANT OF LICENSE. This EULA grants you the following rights:

- **Software Installation and Use.** You may only install and use one copy of the SOFTWARE PRODUCT on the COMPUTER.
- **Network Services.** Except as otherwise provided below, if the SOFTWARE PRODUCT documentation indicates that the SOFTWARE PRODUCT includes functionality that enables the COMPUTER to share resources over a network with other computers or workstations, any number of computers or workstations may access or otherwise utilize the basic network services of SOFTWARE PRODUCT on the COMPUTER. The basic network services are more fully described in the printed materials accompanying the SOFTWARE PRODUCT and include file and print services and peer Web services.
- **Windows NT Workstation Network Services.** If the SOFTWARE PRODUCT is Windows NT Workstation, a maximum of ten (10) inbound peer connections may simultaneously access or otherwise utilize the basic network services of the SOFTWARE PRODUCT on the COMPUTER. The ten-connection maximum includes any indirect connections made through software or hardware that pools or aggregates connections.
- **Storage/Network Use.** You may also store or install a copy of the computer software portion of the SOFTWARE PRODUCT on the COMPUTER to allow your other computers to use the SOFTWARE PRODUCT over an internal network, and distribute the SOFTWARE PRODUCT to your other computers over an internal network. However, you must acquire and dedicate a license for the SOFTWARE PRODUCT for each computer on which the SOFTWARE PRODUCT is used or to which it is distributed. A license for the SOFTWARE PRODUCT may not be shared or used concurrently on different computers.
- **Back-up Copy.** If Manufacturer has not included a back-up copy of the SOFTWARE PRODUCT with the COMPUTER, you may make a single back-up copy of the SOFTWARE PRODUCT. You may use the back-up copy solely for archival purposes. **Back-up Utility.** If the SOFTWARE PRODUCT includes a Microsoft back-up utility, you may use the utility to make the single back-up copy. After the single back-up copy is made, the backup utility will be permanently disabled.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.

- **Windows NT Workstation.** If the SOFTWARE PRODUCT is Windows NT Workstation, the following additional restriction(s) apply. Processor Limitation - The SOFTWARE PRODUCT may be used by no more than the maximum number of processors of the COMPUTER indicated at the top of this EULA.
- **Multiple Processor Version Selection.** The CD or diskette(s) on which the SOFTWARE PRODUCT resides may contain several copies of the SOFTWARE PRODUCT, each of which is compatible with a different microprocessor architecture, such as the x86 architecture or various RISC architectures ("Processor Version(s)"). You may install and use only one copy of one Processor Version of the SOFTWARE PRODUCT on the COMPUTER.
- **Language Version Selection.** Manufacturer may have elected to provide you with a selection of language versions for one or more of the Microsoft software products licensed under this EULA. If the SOFTWARE PRODUCT is included in more than one language version, you are licensed to use only one of the language versions provided. As part of the setup process for the

selected by you will be set up on the COMPUTER and the language version(s) not selected by you will be automatically and permanently deleted from the hard disk of the COMPUTER.

- **Operating System Selection.** Manufacturer may have elected to provide you with a selection of Microsoft operating system software for the COMPUTER. If the SOFTWARE PRODUCT includes more than one (1) Microsoft operating system software (i.e., Windows 95, Windows NT Workstation, Windows for Workgroups, Windows, MS-DOS, MS-DOS and Windows, or MS-DOS and Windows for Workgroups) ("Microsoft OS"), you are licensed to use only one of the Microsoft OS selections provided. As part of the setup process for the SOFTWARE you will be given a one-time option to select one (1) Microsoft OS. Upon selection, the one Microsoft OS selected by you will be set up on the COMPUTER, and the other Microsoft OS(s) not selected by you will be automatically and permanently deleted from the hard disk of the COMPUTER.
 - **Limitations on Reverse Engineering, Decompilation and Disassembly.** You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.
 - **Separation of Components.** The SOFTWARE PRODUCT is licensed as a single product. Its component parts may not be separated for use on more than one computer.
 - **Single COMPUTER.** The SOFTWARE PRODUCT is licensed with the HARDWARE as a single integrated product. The SOFTWARE PRODUCT may only be used with the HARDWARE as set forth in this EULA.
 - **Single EULA.** The package for the SOFTWARE PRODUCT may contain multiple versions of this EULA, such as multiple translations and/or multiple media versions (e.g., in the user documentation and in the software). In this case, you are only licensed to use one (1) copy of the SOFTWARE PRODUCT.
 - **Rental.** You may not rent or lease the SOFTWARE PRODUCT.
 - **Software Product Transfer.** You may permanently transfer all of your rights under this EULA only as part of a permanent sale or transfer of the HARDWARE, provided you retain no copies, you transfer all of the SOFTWARE PRODUCT (including all component parts, the media and printed materials, any upgrades, this EULA and, if applicable, the Certificate(s) of Authenticity), and the recipient agrees to the terms of this EULA. If the SOFTWARE PRODUCT is an upgrade, any transfer must also include all prior versions of the SOFTWARE PRODUCT.
 - **Termination.** Without prejudice to any other rights, Microsoft may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the SOFTWARE PRODUCT and all of its component parts.
3. **UPGRADES.** If the SOFTWARE PRODUCT is labeled as an upgrade, you must be properly licensed to use a product identified by Microsoft or Manufacturer as being eligible for the upgrade in order to use the SOFTWARE PRODUCT ("Eligible Product"). For the purpose of upgrade products only, "HARDWARE" shall mean the computer system or computer system component with which you received the Eligible Product. A SOFTWARE PRODUCT labeled as an upgrade replaces and/or supplements the Eligible Product which came with the HARDWARE. You may use the resulting upgraded product only in accordance with the terms of this EULA and only with the HARDWARE.
4. **COPYRIGHT.** All title and copyrights in and to the SOFTWARE PRODUCT (including but not limited to any images, photographs, animations, video, audio, music, text and "applets," incorporated into the SOFTWARE PRODUCT), the accompanying printed materials, and any copies of the SOFTWARE PRODUCT, are owned by Microsoft or its suppliers. You may not copy the printed materials accompanying the SOFTWARE PRODUCT. All rights not specifically granted under this EULA are reserved by Microsoft.
5. **DUAL-MEDIA SOFTWARE PRODUCT.** You may receive the SOFTWARE PRODUCT in more than one medium. Regardless of the type or size of medium you receive, you may use only one medium that is appropriate for the COMPUTER. You may not use or install the other medium on another computer. You may not loan, rent, lease, or otherwise transfer the other medium to another user, except as part of the permanent transfer (as provided above) of the SOFTWARE PRODUCT.
6. **PRODUCT SUPPORT.** Product support for the SOFTWARE PRODUCT is not provided by Microsoft or its subsidiaries. For product support, please refer to Manufacturer's support number provided in the documentation for the HARDWARE. Should you have any questions concerning this EULA, or if you desire to contact Manufacturer for any other reason, please refer to the address provided in the documentation for the HARDWARE.
7. **NOTE ON JAVA SUPPORT.** THE SOFTWARE PRODUCT MAY CONTAIN SUPPORT FOR PROGRAMS WRITTEN IN JAVA. JAVA TECHNOLOGY IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE AS ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF JAVA TECHNOLOGY COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

FOR THE LIMITED WARRANTIES AND SPECIAL PROVISIONS PERTAINING TO YOUR PARTICULAR JURISDICTION, PLEASE REFER TO YOUR WARRANTY BOOKLET INCLUDED WITH THIS PACKAGE OR PROVIDED WITH THE SOFTWARE PRODUCT PRINTED MATERIALS.

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EXHIBIT C1
WINDOWS DESKTOP FAMILY
 Effective October 1, 1996

Product Name and Version	Language Version(s) **	Applicable Additional Provisions	Per System Royalty	Per Copy Royalty	Localization Additional Royalty	Customer System Number	Added by Amendment Number
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1. Windows Desktop Family:		(a)	<u>Royalty:</u> US\$61.00	<u>Royalty:</u> US\$72.75		Exhibits M2, M4, M6, M7	
A. Windows® 95 operating system, OR	EN and all languages if and when available	(a), (b), (c), (f), (m), (n)	Royalty Specified for Windows Desktop Family Above	Royalty Specified for Windows Desktop Family Above	US\$2.50		
B. MS-DOS® operating system Version 6.22 and Enhanced Tools for MS-DOS® Version 1.0 and Windows® operating system Version 3.11, OR	EN and all languages if and when available	(a), (c), (e), (f), (m)	Royalty Specified for Windows Desktop Family Above	Royalty Specified for Windows Desktop Family Above	US\$0.00		
C. MS-DOS® operating system Version 6.22 and Enhanced Tools for MS-DOS® Version 1.0 and Windows® for Workgroups operating system Version 3.11, OR	EN and all languages if and when available	(a), (c), (d), (f), (m)	Royalty Specified for Windows Desktop Family Above	Royalty Specified for Windows Desktop Family Above	US\$0.00		
D. Windows NT® Workstation Version 3.51 or Version 4.0 (x86/Pentium™ compatible version)	EN and all languages if and when available	(a), (c), (g), (m), (n)	US\$123.50	US\$147.75	US\$10.00	Exhibit M8	
			Estimated Monthly Volume for Windows Desktop Family: 200,000	Estimated Monthly Volume for Windows Desktop Family: 200,000			

2. Windows® for Workgroups operating system Version 3.11	EN and all languages if and when available	(c), (d), (f), (h)	<u>Royalty</u> US\$ _____	<u>Royalty</u> US\$ _____	US\$		
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3. Windows® operating system Version 3.11	EN and all languages if and when available	(c), (e), (f)	Royalty US\$43.50	Royalty US\$50.50	US\$	Exhibit M3	
4. MS-DOS® operating system Version 6.22	EN and all languages if and when available	(c), (e), (f), (i), (l)	Royalty US\$10.00	Royalty US\$20.25	US\$0.00	Exhibit M1	
5. Enhanced Tools for MS-DOS® 6.22 Version 1.02	EN and all languages if and when available	(c), (e), (f), (i), (l)	Royalty US\$4.00	Royalty US\$	US\$0.00	Exhibit M1	
6. MS-DOS CD-ROM Extensions	EN and all languages if and when available	(j), (l)	Royalty US\$	Royalty US\$1.50	US\$0.00		
7. Windows Run-Time (Windows 3.11 except for program.com and waffle.exe)	EN and all languages if and when available	(k), (l)	Royalty US\$4.00	Royalty US\$	US\$0.50	Exhibit M3	
8. MS-DOS Limited Application Environment (USA version) V1.0 and all subsequent versions	EN and all languages if and when available	(o)	Royalty US\$0.00	Royalty US\$	US\$0.00		

* A Product is not licensed hereunder unless royalty rate(s) are indicated in the Product table and the Product is indicated as licensed for one or more Customer System(s) in the Customer System table in the corresponding Exhibit(s) M.

** Language Version Key: A = Arabic, BP = Portuguese (Brazil), CE = Cyrillic Enabled, CH = Traditional Chinese, CZ = Czech, D = German, DA = Danish, DU = Dutch, E = Spanish, EE = Eastern and Central European, EN = USA English, F = French, FF = France's French, FI = Finnish, HAN = Hangeul, HB = Hebrew, HUN = Hungarian, I = Italian, J = Japanese, N = Norwegian, P = Portuguese, PE = Pan European English, POL = Polish, PRC = PRC Simplified Chinese, RU = Russian, SL = Slovenian, SW = Swedish, TH = Thai, TR = Turkish, Z = International English. If HP is licensed for the EN version of Product and if a Localization Additional Royalty is specified in the Product table above, then in addition to the language versions specified in the Product table above, HP may receive Product Deliverables for the licensed Product in available language versions listed in the Language Key (except CH, HAN, J, and PRC which may only be added by amendment) by sending a written request to the attention of OEM Accounting Services at the address listed in Exhibit N for royalty reports.

INITIAL PAYMENT AMOUNT

The Initial Payment Amount for Products licensed under this Exhibit C shall be Zero Dollars (US\$0), and shall be paid in accordance with Section 3(b) of the Agreement.

ADDITIONAL PROVISIONS KEY

(Note: Only those Additional Provisions applicable to licensed Product(s) appear. Section lettering may not be consecutive.)

(a) If HP is licensed for the Windows Desktop Family, HP may distribute not more than one (1) of the listed Product combinations or Products (i.e., A or B or C or D) with each licensed Customer System. HP'S report shall separately indicate the number of each such Product or combination (A, B, C, or D) that HP distributes. In the event that the Patent Cross License Agreement is not executed by the parties on or before September 30, 1996, HP's royalties for Products 1A, 1B and 1C shall increase by One Dollar and Fifty Cents (\$1.50) and HP's royalty for Product 1D shall increase by Six Dollars (\$6.00), and such increased royalties shall be deemed to have taken effect as of August 1, 1996 for Products 1A, 1B and 1C and as of July 1, 1996 for Product 1D.

(b) (1) If HP wishes to include its name and/or logo on the Product software "start-up" screen, HP will do so only in the location and manner as designated in the OPK User's Guide provided in the Product Deliverables. Otherwise, HP shall not alter the content or sequence of the Product software "start-up", initialization or other screens. The current OPK is dated December, 1995. HP shall use the most currently available OPK provided in the Product Deliverables.

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(2) If HP enters registration information on behalf of end users in the boxes provided for the on-screen user registration process for the Product software, HP shall not enter its own name or make any other false or fictional registrations. HP may not (i) relieve end users of their obligations to enter Certificate of Authenticity ("COA") registration numbers in the on-screen end user registration process and to reply to on-screen end user license agreement inquiries or (ii) insert COA registration numbers or reply to end user license agreement inquiries for or on behalf of end users.

(3) If and only if HP distributes the Product software solely as Preinstalled Product Software (i.e., without a back-up copy of the Product on CD, diskette, magnetic tape, or other external media) with any Customer System, then HP shall also preinstall the Microsoft Create System Disk Tool together with the back-up diskette images ("CAB" files) contained in the OPK on the hard disk drive of such Customer System to enable the end user to make a back-up copy of the Product software according to the terms of the EULA. Diskette images may only be used with the Microsoft Create System Disk Tool. HP may not distribute, use, or authorize the use of the Microsoft Create System Disk Tool or diskette images except as provided in this Additional Provision or as specified in the OPK.

(4) Notwithstanding anything to the contrary contained in the definition of "Product Release" in this Agreement, Windows 95 (and any subsequent releases of Windows which may be designated by a change in the calendar year - e.g., Windows 96, 97, 98, etc.) shall be deemed to be a Product Release.

(5) Any EULA for the Product distributed by HP must be identical to the on screen EULA presented to the end user during Product setup.

(6) Windows 95 includes Microsoft At Work fax transmission software, Remote Access Service, and Remote Procedure Calls, each of which provide methods for stand-alone and networked computers to send and receive messages with certain security levels. French law (Decree 92-1358 of December 1992) generally prohibits the use in France of such technology, unless special approvals are granted. Accordingly, Windows 95 has been designed to disable the security in each of these features when the default locale assigned during installation is France.

(c) (1) Except as otherwise provided in Exhibit D, HP may distribute this Product only with Customer Systems which are marketed and distributed under HP's or HP Subsidiaries' brand names and trademarks. The Products licensed under this Exhibit C may not be distributed with Customer Systems which are marketed or distributed under any third party brand names or trademarks.

(2) The royalty rate(s) specified above require pre-installation of the Product as the "default" operating system on each Customer System distributed with the Product (i.e., the Product will set up and execute unless the user configures the Customer System otherwise). HP shall preinstall the Product software solely in accordance with the installation instructions set forth in the "OPK User's Guide" included in the preinstallation kit portion of the Product Deliverables ("OPK") if such OPK exists for the Product. HP may use the information, tools and materials contained in the OPK solely to preinstall the Product software in accordance with the OPK User's Guide and for no other purpose. Other than as specified in the OPK User's Guide, HP shall not modify the Product software, nor delete or remove any features or functionality without the written approval of MS in each instance.

(3) The following shall replace Section 3(a)(iii) with respect to Products licensed in accordance with this Exhibit C:

"(iii) Unless otherwise superseded by a Patent Cross License Agreement executed by the parties, if in any three consecutive monthly reporting periods, HP's reported shipments of the applicable Customer Systems licensed for the Windows Desktop Family (if licensed on a per system basis) or units of Windows Desktop Operating System Family (if licensed on a per copy basis) are twenty percent or more below HP's estimated monthly volume specified for such basis (i.e., per copy or per system) for the Windows Desktop Family in the Product table above, HP and MS shall negotiate an increase in the royalty rate(s) for all Product(s) licensed under this Exhibit C on such basis to reflect HP's lower shipment volumes. If, for any reason, MS and HP are unable to agree upon new royalty rate(s) within thirty (30) days after the date HP's royalty report is due for the third such low-volume month, HP's royalty rate(s) for each of the Products licensed under this Exhibit C on such basis shall increase by twenty percent (20%). Such increased royalty rate(s) shall be in effect for the remainder of the term of the Agreement commencing with the monthly reporting period following the third low-volume month. Provided, however, that if HP's reported monthly volume for such basis of Windows Desktop Family returns to or exceeds the original estimated monthly volume for any three (3) consecutive months thereafter, HP's royalty rate(s) for all Product(s) licensed under this Exhibit C on such basis shall be restored to the rate(s) specified in the Product table above commencing with the monthly reporting period following such three consecutive months. Any such negotiation shall take into account market conditions beyond HP's control which may have contributed to HP's failure to reach such monthly volumes."

(4) Shipments of (i) Windows, Windows for Workgroups, MS-DOS, and Enhanced Tools licensed hereunder on an individual Product basis, or (ii) of Customer Systems licensed solely for such Products on an individual Product basis, shall not be included in the calculation of HP's shipments for purposes of determining the Estimated Monthly Volume(s) for Windows Desktop Family Products in the Product table above. Accordingly, shipment of such Products and Customer Systems shall not be included in the calculation of shipments necessary to maintain the current royalty rate(s) in accordance with Additional Provision (c)(3) above.

(5) HP's license for this Product under this Exhibit C shall be effective as of the Effective Date of the Agreement. HP's license rights to Products under Exhibits C2 (MS-DOS) C40 (Enhanced Tools for MS-DOS), C3 (Windows 3.x), C39 (Windows for Workgroups 3.x) and C58 (Windows NT Workstation) under the MSA shall terminate on the Effective Date of this Agreement with respect to Products distributed by PPG, and November 15, 1996 with respect to Products distributed by non-PPG divisions.

(6) If the same Customer System is licensed on a per system basis for both the Windows Desktop Family and for individual operating system Product(s) (e.g., Windows, Windows for Workgroups, or MS-DOS) in this Exhibit C, HP shall be relieved of its obligation to pay the royalty for the individual operating system Product(s) provided that (i) HP does not ship both the individual operating system Product(s) and the Windows Desktop Family with such Customer System; and (ii) HP reports and pays MS the royalty due for the Windows Desktop Family.

(7) HP may not (i) distribute both Windows or other MS operating system Product with a Customer System; (ii) distribute both Windows NT Workstation and any other MS operating system Product with the same Customer System; or (iii) distribute both Windows and Windows for Workgroups with the same Customer System.

(8) Provided a "per copy" royalty rate is listed for the Product in the table above, if HP distributes this Product with a computer system which is not listed as licensed for this Product in the Customer System table of the applicable Exhibit M, but which otherwise meets all of the requirements for a "Customer System" for this Product, then such computer system shall be deemed a licensed Customer System for the Product on a per copy basis and HP agrees to comply with all of the terms and conditions of this Agreement with respect to any such distribution of Product.

(9) Notwithstanding anything to the contrary contained in Section 2, HP must distribute Product documentation with each Customer System distributed with Product software. A COA must be affixed to or accompany each copy of Product documentation.

(10) HP may report and receive "credits" for Windows 95 royalties (Product A) to partially offset royalties due for Windows NT Workstation (Product D) in the situation where Customer Systems distributed by an HP division which include Windows 95 (for which royalties have been reported to MS) are reconfigured by another HP division to include Windows NT Workstation, provided that HP advises MS in advance of the specific Customer Systems models for which such credit shall be taken.

(d) Windows for Workgroups version 3.11 includes Microsoft At Work fax transmission software, which provides methods for stand-alone and networked computers to send and receive fax messages with certain security levels. French law (Decree 92-1358 of December 1992) generally prohibits the use in France of such technology, unless special approvals are granted. Accordingly, OEMs should provide only the version of Windows for Workgroups version 3.11 designed for France to avoid violating the Decree.

(e) (1) The PRC language version of the Windows operating system Product is version 3.2. The Japanese language version of the MS-DOS operating system is version 6.2/V. The Japanese language version of Enhanced Tools for MS-DOS 6 is 1.0/V.

(2) The PRC language versions of Windows and MS-DOS are available with only simplified Chinese character fonts licensed from a third party. HP acknowledges that such fonts may differ in quality and characteristics to Chinese character fonts available in other Microsoft Products.

(3) The PRC language versions of Windows and MS-DOS are available only through selected Authorized Replicators as specified by MS. From time to time, MS shall provide an updated list of Authorized Replicators through which the PRC language version of this Product is available.

(4) The packaging for the PRC language version of this Product distributed with Customer Systems within or to the PRC shall be clearly marked in both English and simplified Chinese, "Not for distribution or use outside the People's Republic of China".

(f) (1) Notwithstanding anything to the contrary in Sections 2, 3 and 6 of the Agreement, HP may install one or more language versions (listed in the Language Version box above) of Product software with each applicable Customer System provided that HP complies with the following restrictions.

(i) HP may distribute such multiple language versions of Product software only in the form of Preinstalled Product Software. HP may distribute only one backup copy of Product software in one language version for use on each such Customer System;

(ii) HP shall use the MS set-up utility included in the Product Deliverables which allows the end-user to choose one, and only one, language version of Product for the Customer System;

(iii) HP shall follow all guidelines and procedures set forth in the Product Deliverables regarding the installation, set-up, and initialization of multiple language versions of Product software; and

(iv) HP shall clearly indicate to end-users, including without limitation, in advertising and on Customer System packaging, that end-users shall have access to one language version only.

(2) HP will, at its expense, defend or settle any action brought against MS based on a claim resulting from HP's distribution of multiple language versions including, without limitation, claims that the end-user is entitled to use more than one language version of the Product or that advertisements, Customer System packaging, or other representations made by or for HP are false and/or misleading. HP will pay any award based on any such claim or settlement to which HP consents. MS agrees to promptly notify HP in writing of such claim and to permit HP to control its defense and settlement. Notwithstanding the above, HP shall have no liability pursuant to this provision if a claim is solely attributable to the directions of MS.

(3) HP's report shall separately indicate the number of Customer Systems distributed with English and any non-English language versions of Product.

(4) Provided HP complies with all terms and conditions of this Agreement, including this Additional Provision (f), for purposes of the royalty calculation provisions of Section 3, preinstallation of multiple language versions of Product performed in accordance with the instructions for multiple language installation provided in the OPK shall constitute "one language" version. In such event, HP shall pay the highest royalty applicable to the language versions distributed.

(5) If HP does not comply with all of the requirements stated above, in addition to any other remedies MS may have, HP shall pay MS the applicable royalty for each language version of Product software included with the Customer System.

(g) (1) Notwithstanding anything to the contrary contained in Section 2 of the Agreement, HP's license for this Product shall extend to Windows NT Workstation version 4.0, if such version is released by MS to other OEM customers generally during the term of the Agreement.

(2) In order to support end-users of this Product, HP agrees to employ at all times at least one technician who has successfully completed, at HP's expense, the Microsoft Certified Professional program for this Product.

(3) Though the Product Deliverables for this Product may include versions of the Product designed for other types of microprocessors, HP is licensed to distribute the Product only with and for use on Customer Systems based on the Intel x86, Pentium or compatible architecture.

(4) If Customer System(s) licensed for this Product under the applicable Exhibit M are also licensed for this Product under another agreement, then:

(i) HP's license to distribute the Product with such Customer Systems under the other agreement shall expire as of the end of the calendar quarter in which the Effective Date of this Agreement occurs; and

(ii) HP shall pay and report for the Product only under this Agreement for such Customer Systems thereafter.

(5) The royalty rates specified in the Product table apply to shipment of Customer Systems which are capable of utilizing two (2) or fewer central processing units ("CPUs"). For Customer Systems which are capable of utilizing three (3) or four (4) CPUs, HP agrees to pay MS 1.8 times the royalty rates specified in the Product Table [i.e., Royalty = 1.8 x Windows NT Workstation royalty]. HP is not licensed to distribute this Product on Customer Systems which are capable of utilizing more than four (4) CPUs.

(b) If the same Customer System is licensed on a per system basis for both Windows and Windows for Workgroups, but is not licensed for the Windows Desktop Operating System Family on a per system basis, HP shall be relieved of its obligation to pay the royalty for Windows provided that (i) HP does not ship both Windows and Windows for Workgroups with such Customer System; and (ii) HP reports and pays MS the royalty due for Windows for Workgroups.

(i) (1) As requested by HP, Customer Systems designated in this Exhibit C1 shall exclude from HP's per system royalty obligations "NSD Server" computer systems ("Excluded Customer Systems") shipped without a MS operating system provided that: (i) the number of such Excluded Customer Systems shall not exceed seven percent (7%) of the total number of Customer Systems distributed by HP in any month; (ii) HP separately identifies Excluded Customer Systems on its monthly royalty reports; and (iii) HP shall report and pay MS the applicable royalties for copies of MS-DOS, Enhanced Tools for MS-DOS and Microsoft CD-ROM Extensions shipped with such Excluded Customer Systems, as applicable.

(2) Notwithstanding anything to the contrary in this Agreement, MS is granting HP the right to license MS-DOS 6.22 and Enhanced Tools 1.02 with GPCD Model 1 Customer Systems identified in this Exhibit C1 and/or Exhibit M1 which do not include a hard disk drive, provided such Model 1 Customer Systems do not represent more than 7% of GPCD's total shipments of all Customer Systems. HP shall separately identify such Customer Systems on its monthly royalty reports. In the event Model 1 shipments are greater than 7% of GPCD's total shipments, MS and HP agree to discuss this exception further.

(3) In the event HP decides to develop a Customer System with multiple CPU's, HP shall pay and report to MS a single royalty for such Customer System(s).

(j) (1) HP agrees to pay MS a royalty of One Dollar and Fifty Cents (US\$1.50) for each full or partial copy of Product licensed or otherwise disposed of by HP during the term of this Agreement.

(2) Notwithstanding Additional Provision (j)(1), HP shall pay to MS a royalty of Zero Dollar (US\$0.00) for copies of Product distributed by HP in conjunction with HP3000 computer systems and/or HP CD Extensions for MPE/AX ("OneDrive") product and/or other general HP CD Extensions upgrades offered to HP's MS-DOS based computer systems in the HP Software Services and Technology Division.

(3) HP's royalty for Product shall be Zero Dollars (US\$0.00) when shipped with a Customer System which includes MS-DOS 6.X.

(4) Notwithstanding the provisions of Section 2, HP may grant the same rights granted to HP by MS under Section 2 to third parties provided that HP and such third parties execute a written agreement which imposes the same terms and conditions on such third parties as those imposed on HP under this Agreement.

(k) (1) In the event HP decides to develop a Customer System with multiple CPU's, HP shall pay and report to MS a single royalty for such Customer System(s).

(2) Notwithstanding anything to the contrary in this Agreement, HP shall have royalty free right to distribute the Product on HP NetServer Navigator CD subscriptions to HP NetServer Navigator owners where HP has paid a royalty to MS on the customer's original purchase of the HP NetServer with NetServer Navigator. By October 30, 1996, the NetServer Navigator CD will contain MS technical, support and marketing information.

(3) Product may be distributed solely for use to facilitate Customer System configuration, setup, installation, diagnostics, documentation access and/or product registration on the applicable HP Customer System.

(4) HP may propose to add additional Customer Systems to Exhibit M5 by giving MS thirty (30) days prior written notice. MS and HP shall mutually agree on whether or not to add such Customer Systems.

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- (l) Notwithstanding anything to the contrary in this Agreement, (a) (i), License Grant, HP shall not be required to install one (1) copy of Product software on the Customer System hard disk or ROM.
- (m) MS and HP agree to negotiate in good faith and to further discuss and clarify any specific third party installation rights HP may need to implement new channel projects referred to as HP as Extended Build to Order ("EBTO"), Extended Configuration to Order ("ECTO") and Bundled Build to Order ("BBTO"). MS approval will not be unreasonably withheld. Any potential third party installers for these or similar programs must be preapproved by MS in accordance with the notice provisions described in Exhibit I, including MS review and acceptance of the final, signed third party installation agreement between HP and the third party installer. As of the effective date of this Agreement, no such third parties have been approved by MS.
- (n) The parties acknowledge and agree that the royalties for this Product are subject to adjustment in accordance with the provisions of the Patent Cross License Agreement.
- (o) (a) The Product Deliverables include the Product in Object code form.
- b) Royalty Pricing is \$0.00 per EISA System shipped for or by HP with the HP Easy Config Utility on HP EISA Systems and with HP diagnostic disks shipped externally.
- c) The Product is intended for use with the HP Easy Config Utility, used to configure or reconfigure an HP EISA personal computer system. HP will guarantee that the Product (i) does not provide user access to MS-DOS commands (ii) does not permit general program access to the MS-DOS API (Application Programming Interface) other than that intended or required by the configuration process and (iii) does not allow the user to access programs other than the HP Easy Config Utility shipped with the Licensed Program.
- d) HP may ship the Product on its diagnostic disk used for support of HP PCs. For those diagnostic disks using the Product, that are shipped internal to HP for support purposes, HP will pay Zero Dollars (US\$0.00) royalty. For all other diagnostic disks shipped, HP will pay Zero Dollars (US\$0.00) per copy.
- e) HP may ship the Product on the ISA (Industry Standard Architecture) Vectra Setup disk currently shipping with its Vectra ISA line for Zero Dollars (US\$0.00) royalty. The ISA Vectra Setup disk shall NOT contain the file command.com.
- f) HP may ship the Product only for use with the HP Easy Config Utility (as set forth in (c)) for use with its diagnostic disks (as set forth in (d)) and for use with the HP ISA Vectra Setup disk (as set forth in (e)).
- g) The Product will be supported solely by HP.

CUSTOMER SYSTEMS

HP's Customer Systems shall be the assembled computer systems described in the applicable Exhibit M which (i) are configured for use only by a single user; (ii) are designed to use a video display and keyboard; and (iii) include at least a CPU, a motherboard, a power supply, a hard disk drive (except if the Product software is installed in ROM), and a case. Each listed Customer System must have a unique model line name, model name, or model number which HP uses both internally (in HP's books and records) and externally (on the Customer System case and packaging). For each Product which HP chooses to license for distribution with the listed Customer System, the letter "s" or "c" in the relevant box indicates whether HP is licensing the Product on a "per system" or "per copy" basis, respectively. New models may be added by agreement of the parties. HP will give MS 30 days written notice of new models HP proposes to add to the Agreement.

At HP's option, for purposes of administrative convenience, HP may designate models by model line or series, e.g., "Jaguar model line", "Jaguar Pro series", "Jaguar Pro 750 model line", "Jaguar Pro 950 series", etc.). Customer Systems defined by model line or series shall include all present models which include the designated model line or series name, (e.g., "Jaguar Pro model line" includes Jaguar Pro, Jaguar Pro 950, Jaguar Pro S, etc.; "Jaguar series" includes Jaguar, Jaguar Pro, Jaguar Pro 950, Jaguar S400, etc.; "Jaguar Pro 950 series" includes Jaguar Pro 950, Jaguar Pro 955, etc.).

In the event that HP designates models by model line or series in the applicable Exhibit M, then HP may elect to include as Customer System(s) new models in the model line or series by including any such new model(s) on its royalty report for the reporting period in which each such new model is first distributed with the Product. Unless otherwise agreed to by the parties prior to HP's first distribution of a new model with the Product, each such new model designated on a royalty report shall be licensed for the remainder of the term of the Agreement on the same basis (i.e., per system or per copy) as the other models in the model line or series and shall bear the applicable royalty set forth in this Exhibit C. Any new model in the model line or series which is not included in a royalty report as a licensed Customer System (and is thus not licensed for the applicable Product) must have a unique model number or model name used for internal and external identification purposes which distinguishes it from any model which HP has designated previously as a Customer System.

Product Number Key: 1 = Windows Desktop Family; 2 = Windows for Workgroups 3.11; 3 = Windows 3.11; 4 = MS-DOS 6.2; 5 = Enhanced Tools for MS-DOS 6.2; 6 = MS-DOS CD-ROM Extensions; 7 = Windows Run-Time

Royalty Basis Key: C = per copy, S = per system; if Product box is blank, such Product is not licensed for distribution with the listed Customer System.

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