

PLAINTIFF'S  
EXHIBIT  
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Comes v. Microsoft

MICROSOFT OEM LICENSE AGREEMENT  
FOR WITH MINIMUM COMMITMENT PAYMENTS

ORIGINAL

#2811-7060 dated March 1, 1997

with DELL COMPUTER CORPORATION

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 DELL COMPUTER CORPORATION, a Delaware, U.S.A. corporation ("COMPANY" or "DELL").

1. DEFINITIONS.

(a) "Associated Product Materials" or "APM" shall mean a certificate of authenticity, an end user license agreement, a concise printed end user Product guide that does not contain any advertising or material other than instructions for operation of the Product, an MS product registration card (which shall not include any OEM identification information), and/or such other materials or changes to an existing APM as designated by MS from time to time that are reasonable in cost and directly related to the protection of MS intellectual property. Upon written request by COMPANY, any dispute between the parties as to the reasonableness and/or resulting cost of any APM change will be resolved in good faith between MS and COMPANY within fourteen (14) days after MS' receipt of COMPANY'S request. MS will cooperate with COMPANY in (x) reasonably sharing the costs of any APM inventory purge agreed upon between the parties as a result of an APM change and (y) reasonably monitoring COMPANY'S inventory of APM and working with Authorized Replicators to assure adequate, balanced APM supply to COMPANY for the Product(s) COMPANY is preinstalling and shipping with its Customer Systems.

(b) "Authorized Replicator" shall mean a third party approved by MS from which COMPANY may acquire Product reproduced in accordance with MS Product specifications that are generally applicable to all OEMs. MS shall provide COMPANY with a list of Authorized Replicators and shall notify COMPANY from time to time of changes to this list. If COMPANY notifies MS that Product as available from an Authorized Replicator does not comply with the Product specifications referenced in this Agreement, MS shall promptly exert reasonable efforts with the Authorized Replicator to cure the noncompliance as soon as possible.

(c) "Customer System" shall mean COMPANY'S computer system product(s) as defined in the applicable Exhibit C's attached hereto. COMPANY'S computer systems shall include, as a minimum, an assembled power supply, CPU, motherboard and enclosure case.

(d) "Product" shall mean the copyrighted and/or patented MS product(s) (including, where applicable, Product software in object code form, Product 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 C are licensed under this Agreement.

(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) "Initial Term" shall mean the term of this Agreement as set forth in Section 9 as of the Effective Date. The Initial Term shall not include any extension to the term unless expressly agreed in writing by the parties.

(g) "Period" shall mean a period, if described in Exhibit B, such as the First Period.

(h) "Product Deliverables" shall mean (i) Product software in object code form; (ii) installation utilities, if applicable; (iii) a single copy of Product Documentation, including APM; and (iv) any other deliverables identified in Exhibit C or otherwise which are developed by or for MS and identified by MS as Product Deliverables.

(i) "Product Documentation" shall mean the end user Product guide documentation included in the APM.

(j) "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).

(k) "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)].

(l) "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].

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

(n) "Subsidiary" shall mean a corporation, company or entity in which more than fifty percent (50%) of the stock or other ownership interest entitled to vote for the election of the directors, controlling management or managing authority is directly or indirectly owned or controlled by COMPANY or MS, as the case may be, but only so long as such ownership or control exists. Each party's Subsidiaries are listed in Exhibit X. Each party will periodically update Exhibit X to reflect additions/deletions to the list.

(o) "Reporting Period" shall mean the interval described in Section 3 for which COMPANY shall submit its royalty reports and payments.

2. LICENSE GRANT..

(a) MS grants to COMPANY the non-exclusive, worldwide license rights to:

(i) use, reproduce and preinstall Product software pursuant to Section 3(i) (i), (ii) and (iv) below;

(ii) use and reproduce Product-related documentation pursuant to Section 3(i) (i), (ii) and (iv) below;

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MICROSOFT CONFIDENTIAL

MICROSOFT OEM LICENSE AGREEMENT #2811-7060 dated March 1, 1997 with DELL COMPUTER CORPORATION

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(iii) preinstall no more than one (1) copy of Product software on each Customer System hard disk or ROM ("Preinstalled Product Software");

(iv) distribute directly or indirectly and license no more than one (1) copy each of Product software (in addition to Preinstalled Product Software) and APM with each Customer System, for which no additional royalty shall be owed to MS hereunder;

(v) adapt Product(s) for use on Customer Systems as permitted by the Product OPK; and

(vi) With respect to Supplements, MS may also grant to COMPANY 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 COMPANY decides to exercise any such additional rights granted for a particular Supplement, COMPANY 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 necessary to install Preinstalled Product Software and except as otherwise provided above, COMPANY may not reproduce Product or Product Deliverables. COMPANY may supplement Product Documentation but shall not modify or translate Product Documentation without MS' prior written permission, which permission shall not be unreasonably withheld. Upon granting such permission, MS will promptly supply COMPANY with copies of the applicable Product Documentation in digitized format. COMPANY's supplemental documentation distributed in conjunction with the Product software shall be consistent with Product Documentation, if any, provided by MS. COMPANY shall have the right to review Product Documentation in advance of final release by MS under the provisions of MS' BETA process which is made available to OEMs generally. MS shall not unreasonably withhold its consent to a COMPANY request to permit an Authorized Replicator to adapt Product(s) on behalf of COMPANY in compliance with Section 2(a)(v) above. MS shall not unreasonably withhold its consent to a manufacturing, duplication, or reproduction location proposed by an Authorized Replicator(s) used by COMPANY. MS shall provide COMPANY with each and all notices issued to an Authorized Replicator that may reasonably be expected to affect COMPANY's business or COMPANY's relationship with any particular Authorized Replicator or the performance of services or ability to perform services by any Authorized Replicator with which the COMPANY may be doing business. COMPANY shall make no use of Product Deliverables except as described in this Agreement.

(c) The licenses and rights granted herein to COMPANY also are granted to COMPANY Subsidiaries, subject to the terms and conditions set forth in this Agreement. COMPANY hereby guarantees each of its COMPANY Subsidiaries' compliance with the terms and conditions of this Agreement. COMPANY may not distribute Product with Customer Systems that are marketed or distributed under any brand name or trademark not owned or licensed by COMPANY or COMPANY Subsidiaries.

(d) MS shall not require any Authorized Replicator used by COMPANY to report to MS in any manner, directly or indirectly, any specific customer information (e.g., customer name and/or address) for any Product shipped by the Authorized Replicator for the benefit of or on behalf of COMPANY. In the event of any conflict or discrepancy between any data reported to MS in a quarterly or other report issued by an Authorized Replicator as compared to a quarterly or other report issued by COMPANY, the data reported by COMPANY shall control and supersede the conflicting data for purposes of this Agreement. COMPANY acknowledges that MS may require an Authorized Replicator to refuse to fill COMPANY's orders if COMPANY fails to materially comply with any material provision of this Agreement; provided, however, that MS shall not take any termination action or issue any refusal-to-fill-orders directive that affects COMPANY, any COMPANY Subsidiary, or any Authorized Replicator used by COMPANY or any COMPANY Subsidiary unless and until MS has complied completely and in good faith with the provisions of Section 10(b) of this Agreement.

(e) COMPANY shall include a complete APM, selecting from APM options available from Authorized Replicators, with each copy of Product software distributed by COMPANY. COMPANY may preinstall Product(s) in one country and ship same to another country and may ship preinstalled Product(s) to end users via distributors. COMPANY must distribute Product Documentation with the Product.

(f) COMPANY's license rights shall extend to each Update and Version Release.

(g) MS reserves all rights to Product not expressly granted including, without limitation, modification rights, translation rights, rental rights, and rights to source code. To the extent stated in the EULA and herein, and as allowable by law, MS shall retain title to Product software and Product Deliverables.

(h) MS will make available to COMPANY other MS application products not then currently available to COMPANY, and which are made available to any other OEM, or any MS ideas or programs intended for the OEM industry, upon terms and conditions which are as favorable to COMPANY as the terms and conditions granted by MS to any other OEM for such products under similar conditions and circumstances. COMPANY shall receive equally favorable notice and promotion rights as granted and generally available to other OEM customers in any MS promotion or marketing campaign for any MS Product(s) licensed under this Agreement. MS shall make OEM Product releases fully available to COMPANY on or before the time it makes such releases available to other OEM customer(s). MS shall notify COMPANY of the shipment of an OEM Product release as soon as reasonable in advance of such shipment.

(i) The terms and conditions granted to COMPANY hereunder shall be as favorable, or shall be modified to be, as those granted to any other OEM customer(s), provided COMPANY agrees to substantially similar terms, conditions, shipment volumes as are applicable under the agreement(s) between MS and such other OEM customer(s).

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## 3. PAYMENT AND REPORTING.

- (a) (i) COMPANY hereby agrees to pay MS for each Period (A) the minimum commitment amounts for the Period as set forth in Exhibit B, and (B) the amount by which cumulative royalties during a Period exceed minimum commitment amounts for that Period.
- (ii) Minimum commitment and royalty payments made in one Period may not be applied to minimum commitment payment obligations in another Period.
- (iii) The amount by which cumulative royalties during a Period exceed minimum commitment amounts then payable for the same Period shall be calculated as of the end of each Reporting Period and the excess amount shall be referred to as "Excess Royalties". Excess Royalties shall be paid to MS in accordance with Section 3(e). Excess Royalties shall be applied to reduce future minimum commitment payment(s) payable during the Period in which such Excess Royalties accrue.
- (iv) To the extent that cumulative minimum commitment payments during a Period exceed cumulative royalties for such Period, such excess shall be known as "prepaid royalties" and shall be recoupable against future royalties only during the Initial Term of this Agreement and only for the Product(s) licensed herein. Prepaid royalties are not recoupable against payments made to Authorized Replicator.
- (v) Once COMPANY has accepted any release of Product pursuant to Section 4, minimum commitment payments are not refundable.
- (b) (i) COMPANY agrees to pay MS the royalties in Exhibit(s) C. Royalties exclude any charges by Authorized Replicator for units of Product or APM ordered by COMPANY, provided that the fees and charges assessed against an Authorized Replicator for participation (initial or continued) in the Authorized Replication program will be based upon recovery of the costs incurred by MS in administering the Authorized Replicator program. Royalties also exclude any taxes, duties, fees, excises or tariffs imposed on COMPANY or COMPANY's Subsidiaries' activities in connection with this Agreement. Such charges, taxes, duties, fees, excises or tariffs, if any, shall be paid by COMPANY. COMPANY's obligation to pay such for any Product(s) is conditioned upon COMPANY's receipt of the Product from an Authorized Replicator in a form satisfactory to COMPANY which complies with the specifications, terms and conditions referenced or stated in this Agreement.
- (ii) For Product(s) specified in the applicable Exhibit C as licensed on a "per system" basis, COMPANY 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 COMPANY. For Product(s) specified in the applicable Exhibit C as licensed on a "per copy" basis, COMPANY agrees to pay MS the royalty rates set forth in the applicable Exhibit C for each unit of Product licensed or distributed by COMPANY.
- (iii) 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,

COMPANY may distribute only one (1) copy of Product software in addition to one (1) copy of Pre-installed Product Software in one language and Release for use on each such Customer System. COMPANY 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.

(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 COMPANY within a reasonable time promptly delivers to MS an official receipt for any such taxes withheld or other documents necessary to enable MS to pursue, based on the documentation as available and if MS so wishes, a claim for a U.S.A. Foreign Tax Credit, COMPANY may deduct such taxes from the amount owed MS and shall pay them to the appropriate tax authority. In the event multiple levels of withholding taxes are available for designation by COMPANY, COMPANY will use reasonable efforts, consistent with applicable legal requirements, to minimize in its designation any such withholding taxes. COMPANY will reasonably cooperate with MS should MS, in its discretion, choose to undertake efforts to assure that any withheld taxes are minimized to the extent possible under applicable law.

(d) COMPANY agrees to make consolidated (i.e., on behalf of COMPANY and COMPANY Subsidiaries) monthly estimated and non-binding reports to MS within thirty (30) days after the end of each month. These reports shall not be submitted or used for any royalty determination or audit purposes hereunder. The purpose of the reports shall be to use reasonable good faith efforts by COMPANY to report by month to MS the approximate unit sales volume of Products distributed or licensed for revenue hereunder by COMPANY.

(e) COMPANY agrees to make consolidated (i.e., on behalf of COMPANY and COMPANY Subsidiaries) quarterly royalty reports to MS as specified in Exhibit N within thirty (30) days after the end of each fiscal quarter of COMPANY. The reporting frequency will be amended to be consistent with the reporting frequency agreed upon for renewal of Contract No. 2811-5180.

(f) Unless authorized specifically in advance in writing by COMPANY, MS will not communicate directly or indirectly to any Authorized Replicator (via TROIKA or any other electronic or non-electronic system or means of communication) any information concerning any amount, delinquency, discrepancy, reconciliation or dispute regarding any payment, monthly report, royalty report or account receivable from COMPANY.

(g) COMPANY's quarterly royalty report shall be certified as complete and correct and signed by a duly authorized representative of COMPANY. A copy of COMPANY's report shall be sent to MS electronically or via facsimile in addition to the original copy sent in accordance with Exhibit N. COMPANY's royalty reports shall be in the royalty report format attached as Exhibit R and shall specify royalties for each Product and language version described in Exhibit(s) C.

(h) COMPANY agrees to make consolidated (i.e., on behalf of COMPANY and COMPANY Subsidiaries) excess royalty payments as specified in Exhibit N to MS thirty (30) days after the end of each fiscal quarter, and thirty (30) days after termination or expiration for the final full or partial quarter. Each minimum commitment amount shall be payable on the date specified in Exhibit B and COMPANY shall remit payment to MS as specified in Exhibit N within thirty (30) days of such date. A one percent (1%) monthly finance charge will be assessed on all amounts that are past due.

(i) No royalty shall accrue to MS for copies of Product software (i) used by COMPANY solely for testing, demonstrating internally (by COMPANY personnel) or supporting Customer Systems; (ii) shipped or installed as replacement copies for serviced Customer Systems or as replacement copies for copies found to be defective in shipment, materials, manufacture or reproduction; (iii) shipped as a backup copy in addition to Preinstalled Product Software in accordance with Section 2(a)(iii); (iv) used only for training or educational activities or for demonstrations or evaluations of Customer Systems to prospective customers if clearly documented as evaluation copies or clearly marked "For Demonstration Purposes Only"; or (v) returned to COMPANY in compliance with COMPANY's Total Satisfaction Policy (i.e. money-back guarantee).

(j) COMPANY shall provide MS with a copy of its U.S.A. state resale exempt certificate, upon request from MS.

(k) On or before July 1, 1997, MS and Company, pursuant to good faith mutual consultations, will agree on terms for acceptable Type I and Type II royalty reporting. Such terms will be made part of this Agreement by amendment. As soon as practicable after the Effective Date, the parties will begin the process of mutual consultations and will diligently pursue same to timely completion, including issuance of regular joint status reports summarizing progress of the consultations and steps toward agreement and implementation of process. The provision of this Section 3 will be adjusted as appropriate by mutual agreement in connection with and as part of any such amendment.

#### 4. DELIVERY AND LIMITED WARRANTY

(a) For each Product licensed hereunder, MS shall deliver Product Deliverables to COMPANY no later than MS delivers Product Deliverables to the first other OEM to receive any such Deliverables.

(b) MS warrants that Product software performs in accordance with, and conforms to the specifications contained in, Product Documentation, the on-line documentation for the Product (if available), and the Resource Kit for the Product (if available).

(c) If COMPANY reports any significant deviations from Product specifications or defects in Product performance, then MS shall have sixty (60) days to correct such deviations or defects except for a "Severity 1 bug", in which case MS shall have 30 days to correct such deviation. For purposes of this Agreement, a "Severity 1 bug" shall mean a deviation or defect which (A) causes data corruption or significant functional problems causing

Customer Systems to be severely restricted or unusable, (B) is readily reproducible in MS Laboratories and (C) is applicable to the Product when running on computer systems generally and is not unique to the Product running on COMPANY Customer Systems.

If MS fails to correct a problem within a reasonable time (not to exceed the periods stipulated in Section 4(c) above) after the problem is first reported to MS, COMPANY and MS shall negotiate and resolve in good faith viable end user alternatives, commensurate with the severity of the problem, for availability of a viable, commercially acceptable Product substitution or workaround at no additional cost to COMPANY or the end user, other than nominal postage and handling charges, if any.

(d) MS shall have no liability for failure to deliver Product Deliverables by any particular date, except where MS fails to provide Product Deliverables to COMPANY on or before the time that such Product Deliverables are first provided to the first other OEM to receive such Deliverables. COMPANY shall not distribute for revenue any release of a Product until MS delivers to COMPANY Product Deliverables as defined in Section 1(h)(i)-(iv) and (ii) authorizes any release of the Product to end users. MS will cooperate with COMPANY in sharing information and strategy for a comprehensive marketing/sales plan for the Product(s). MS will take reasonable steps to assure that adequate quantities of APM are available to COMPANY on Product introduction from COMPANY's Authorized Replicator(s) of choice.

(e) Authorized Replicator(s) shall provide warranty(ies) for copies of Product provided to COMPANY by such Authorized Replicators. If COMPANY is not able to obtain commercially reasonable warranty(ies) for Product(s) from MS Authorized Replicator(s), COMPANY shall be entitled to duplicate and reproduce the Product(s), or subcontract for same with a third party of COMPANY's choice, such duplication and reproduction to be with MS' prior written consent and cooperation, which consent and cooperation shall be expeditious and not unreasonably withheld.

(f) MS will exercise best efforts to keep COMPANY timely and adequately apprised of any planned changes to any Product(s) to the same extent and as soon as MS does so for the first other MS customer to be informed of any such changes.

#### 5. DEFENSE OF INFRINGEMENT CLAIM

(a) MS agrees to defend COMPANY and COMPANY's resellers, customers and end users who have received Product(s) copy or license from COMPANY against, and pay the amount of, any damages, costs and expenses, including attorneys' fees, (1) awarded by a court or governmental agency of competent jurisdiction for which payment must be made, (2) included in any settlement to which MS consents, and (3) reasonable attorneys fees (if any) incurred by COMPANY in connection with opposing an application for a restraining order, any or all of which result from third party or governmental claim(s) (hereinafter "Indemnified Claims") to the effect that: (i) the Product(s) violate any law or regulation or infringe



(j) copyright, patent, trade secret or other intellectual property right enforceable in any of the Included Jurisdictions (defined in Section 5(d), below); (ii) the Product name(s) or trademark(s) ("Mark(s)") or other items in any of the Product Deliverables or APMs infringe any trademark or substantially equivalent rights enforceable in any of the Included Jurisdictions; or (iii) MS does not have sufficient right, title and interest in a Product to enter into or perform this Agreement for such Product; provided that (x) MS is notified promptly in writing of the Indemnified Claim after knowledge thereof by COMPANY; (y) MS has sole control over its defense or settlement, provided that if MS enters into any settlement that has a material adverse effect on COMPANY's ability to exercise its license rights hereunder, then COMPANY shall be relieved of any obligations hereunder to the extent that the ability to perform or honor such obligations is materially adversely affected; and (z) COMPANY provides reasonable cooperation to MS, at MS' expense, in the defense of same. COMPANY shall have the right to engage separate counsel, at COMPANY's expense, to monitor and advise COMPANY about the status and progress of MS's defense of any Indemnified Claim, and MS shall instruct its counsel to cooperate with COMPANY's counsel in keeping COMPANY informed about the status and progress of each suit or proceeding for each Indemnified Claim for which MS is providing the defense.

(b) In the event MS receives information concerning an intellectual property infringement or governmental claim (including an Indemnified Claim) related to the Product(s) or Mark(s), MS may at its expense, without obligation to do so, either (i) procure for COMPANY the right to continue to distribute, and to use and have others continue to use, the alleged infringing or affected Product ("Infringing Product") or Mark; or (ii) replace or modify the Infringing Product or Mark to make it non-infringing, in which case, COMPANY shall thereupon cease distribution of the alleged infringing Product or Mark. If MS elects to replace or modify the Product, then unless COMPANY consents otherwise in writing, such replacement or modification ("Replacement Product") shall meet substantially the specifications for the Infringing Product. If such Replacement Product should require or result in multiple deliveries of all or parts of Replacement Product (i.e. an "interim" Replacement Product followed by a subsequent Replacement Product), MS will reasonably compensate COMPANY for its out-of-pocket expenses incurred in providing Replacement Product. If a Replacement Product does not substantially conform to specifications applicable to the replaced or infringing Product, MS will use reasonable best efforts to resolve any Replacement Product compatibility problems for mainstream software application products. MS and COMPANY will cooperate on such efforts and develop a plan of action to reduce the impact of such incompatibility and to minimize expense associated therewith. In the event MS provides Replacement Product, MS will accommodate and exercise its best efforts to assure that Authorized Replicators accommodate COMPANY's reasonable election to remain with a prior Product release which is found or agreed not to be infringing or otherwise affected.

(c) MS shall have no liability for any intellectual property infringement claim (including an Indemnified Claim) based

solely on COMPANY's (i) manufacture, distribution, or use of any Product or Mark after receipt of MS' written notice that COMPANY should cease manufacture, distribution, or use of such Product or Mark due to such a claim, provided at the time of such notice MS has either (A) provided a Replacement Product in accordance with the requirements of Section 5(b); (B) advised COMPANY that MS is making reasonably prompt provision for the procurement of such Replacement Product or for continued distribution rights for the Infringing Product; or (iii) combination of a Product with a non-MS product, program or data if such claim would have been avoided by exclusive use of the Product; or (iii) unauthorized adaptation or modification of any Product. For all claims described in clauses (ii) and (iii) of this Section 5(c), COMPANY agrees to defend MS from and against and pay the amount of any damages, costs and expenses, including attorneys' fees, including attorneys' fees, (1) awarded by a court or governmental agency of competent jurisdiction for which payment must be made, (2) included in any settlement to which MS consents, and (3) reasonable attorneys fees (if any) incurred by COMPANY in connection with opposing an application for a restraining order, provided COMPANY is notified promptly in writing of the such indemnified claim after knowledge thereof by MS. COMPANY has sole control over its defense or settlement, and MS provides reasonable cooperation, at COMPANY's expense, in the defense of same. MS shall have the right to engage separate counsel, at MS' expense, to monitor and advise MS about the status and progress of COMPANY's defense of any such claim, and COMPANY shall instruct its counsel to cooperate with MS' counsel in keeping MS informed about the status and progress of each suit or proceeding for each such claim for which COMPANY is providing the defense.

(d) MS shall have no obligation to COMPANY for any Indemnified Claims which arise outside the geographical boundaries of any country into which MS distributes or markets Product ("Included Jurisdictions").

#### 6. ADDITIONAL RESTRICTIONS.

(a) (i) COMPANY shall distribute Product(s) only with Customer System(s) and (x) only inside the Customer System package or in a manner reasonably calculated to prevent sale or distribution of the Product(s) separate from sale or distribution of the Customer System or (y) as a non-point of sale distribution of the Product(s) that represents follow-up activity in support of the original customer transaction for which a Product license was included in the sale of the Customer System. COMPANY shall not remove or modify the package contents of Product or APM as received from the Authorized Replicator or Authorized Distributor in compliance with the terms of this Agreement, except that modifications for the registration card, the end user license agreement ("EULA") and other materials shall be negotiated and resolved in good faith between MS and COMPANY.

(ii) COMPANY shall comply with the additional provisions, if any, provided in Exhibit(s) C with respect to Product to the extent such provisions do not conflict with any terms set forth in the main body of this Agreement.

(iii) COMPANY shall (A) contractually obligate (e.g., by contract, invoice or other written instrument) all



distributors and dealers in its distribution channels to comply with the foregoing provisions of this Section 6(a); (B) make available to MS, upon request and subject to appropriate non-disclosure agreement ("NDA") with MS, copies of such contracts (or relevant portions thereof); (C) promptly discontinue distribution of Product to any such distributor or dealer in its distribution channel which does not comply with the foregoing; and (D) reasonably cooperate with MS in investigating instances of distribution of Product which does not comply with the foregoing.

(iv) If COMPANY distributes the Product(s) software on media other than installed on the Customer System hard disk or ROM, COMPANY shall distribute the Product(s) software on separate media (e.g., separate diskettes, CD-ROM disc, etc.) from other non-MS products.

(b) (i) COMPANY shall acquire all components of each unit of Product to be distributed with a Customer System (i.e., APM, Product end user documentation, and Product software on external media, as applicable) from a single Authorized Replicator and in a single package or stock keeping unit; provided, however, this shall not preclude COMPANY from acquiring separate units of Product Deliverables from multiple Authorized Replicators. MS and/or the Authorized Replicator will provide COMPANY with at least fourteen (14) days advance notice of any change to an existing APM, including any changes in the bill of materials for the APM. MS will assure that each APM (i) complies with commercially acceptable standards of readability, accuracy and quality of end user presentation and (ii) is available to COMPANY on the applicable Product release dates in all languages specified in Exhibit C for the Product to which the APM relates.

(c) COMPANY shall not reverse engineer, decompile or disassemble any Product except as permitted by MS or applicable law. In the event that COMPANY is unable to debug device drivers, support the addition of devices with new device drivers, debug other complex situations related to the form and function of products running in conjunction with Product(s), COMPANY shall request assistance of MS and MS shall respond to COMPANY's request within seventy-two (72) hours.

(d) COMPANY shall distribute and license the use of Product to end users only pursuant to a EULA substantially in the form and content attached hereto as Exhibit A or in such other form and content as mutually agreed pursuant to good faith negotiations between MS and COMPANY. The EULA shall be adapted by COMPANY as may be required by the laws of any non-U.S.A. jurisdiction in which COMPANY distributes the Product; provided that MS shall provide COMPANY with copies of MS' EULAs used by MS for distribution outside of the U.S.A., which COMPANY may use and rely upon in adapting its EULAs. Where COMPANY distributes Preinstalled Product Software, COMPANY may use alternative procedures to request acknowledgment of end user agreement to the terms of the EULA, 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 or responding to a user-sign-on screen displayed on the Customer System; (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 on-line or in paper format before taking such action.

(e) Technical support for the Product(s) shall be available from MS or an MS subsidiary pursuant to mutually acceptable terms and conditions set forth in a separate agreement.

(f) Provided MS provides COMPANY with commercially reasonable access to Product technical assistance under 6(c) above, COMPANY shall provide to its end user customers commercially reasonable access to Product technical assistance and shall prominently display its customer support telephone number for such assistance in Customer System documentation.

## 7. INTELLECTUAL PROPERTY NOTICES.

(a) COMPANY will not remove any copyright, trademark or patent notices that appear on the Product as delivered to COMPANY, and COMPANY shall have and hereby is granted a right and license to use, reproduce and distribute such notices with the Product as they appear on the Product delivered to COMPANY.

(b) COMPANY shall market the Product only under the Product name(s) and version number for such Product provided to COMPANY. COMPANY agrees to use the appropriate trademark, product descriptor and trademark symbol (either "TM" or "®"), and clearly indicate MS' or applicable third parties' ownership of such trademark(s) provided to COMPANY whenever the Product name is first mentioned in any advertisement, brochure or in any other manner in connection with the Product, provided COMPANY has been timely and appropriately provided with and notified of such marks by MS. COMPANY shall not, at any time, use any name or trademark confusingly similar to an MS or MS-licensed third party trademark, trade name and/or product name, and COMPANY shall undertake no action that will interfere with or diminish MS' right, title and/or interest in MS' or MS-licensed third party's trademark(s), trade name(s), or Product name(s); provided that COMPANY is timely and adequately notified of such marks or names and MS' rights therein. COMPANY shall, upon request for reasonable cause shown, provide MS samples of specifically requested COMPANY marketing literature which uses Product name(s) in a manner contrary to that authorized herein. Nothing in this Agreement grants MS any right to use any COMPANY trademark, trade name and/or product name at any time or in any manner.

(c) COMPANY 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 required herein or as provided by separate written agreement with MS. Any such separate written agreement shall not include any royalty or terms for monetary consideration to MS, shall be limited solely to terms for the stylistic representation and use of the logo (which terms shall not be inconsistent with or contradictory to any of the terms set forth in this Agreement), and shall not include any terms with respect to the use, adaptation, distribution, payment, scope or other terms related to license rights for the Product(s).

**8. PROHIBITION AGAINST ASSIGNMENT AND  
SUBLICENSE.**

(a) This Agreement and any rights or obligations hereunder, shall not be assigned or sublicensed by COMPANY by contract, merger, operation of law, or otherwise (except to COMPANY Subsidiaries or except as otherwise provided or allowed by the rights granted herein) without the prior written approval of MS, which shall not be unreasonably withheld.

(b) Notwithstanding the foregoing Section 8(a), COMPANY may assign this Agreement to any successor to all or substantially all of the COMPANY's Computer System products business.

**9. TERM OF AGREEMENT.**

The Term of this Agreement shall run from the Effective Date through February 28, 1998.

**10. DEFAULT AND TERMINATION.**

(a) This Agreement may terminate if any of the following events of default occur: (i) either party materially fails to perform or comply with any material provision of this Agreement; (ii) COMPANY manufactures or distributes any MS product which is not properly licensed under this Agreement or another valid agreement with MS or an MS licensee; or (iii) COMPANY 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.

(b) Termination due to the first sentence of Section 6(c), by attempted assignment by COMPANY pursuant to Section 8(a) without first providing notice to MS and seeking MS' written approval, or Section 10(a)(iii) 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 material breach of any material 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 for the same cause 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 written notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period. Any termination of this Agreement, other than as specified solely in the first sentence of this Section 10 (b), shall not occur until the following procedures of this Section 10(b) have first been satisfied.

(i) A designated representative of MS and a designated representative of COMPANY will meet as reasonably requested by either party to review the performance of either party under this Agreement. In the event of any dispute or disagreement between the designated parties either with respect to the interpretation of any provision of this Agreement or with respect to the performance by either party hereunder, either party may give to the other party a written notice of such dispute. Upon receipt of such notice, an officer of MS and an officer of COMPANY shall

designate in a letter a representative of each party whose task it will be to meet for the purpose of endeavoring to resolve such dispute. Such representatives will discuss the problem and/or negotiate in good faith in an effort to resolve the dispute or negotiate an interpretation or revision of the applicable Section or provision, mutually agreeable to both parties, without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information that is not confidential will be honored in order that each of the parties may be fully advised in the premises.

(ii) Termination of this Agreement, other than pursuant to the first sentence of Section 10(b), may occur only after the designated representatives mutually agree in good faith that resolution through continued negotiation of the matter in issue is not likely; provided that the time period for negotiation and resolution under this Section 10(b) shall not extend longer than ninety (90) calendar days after the date such written notice of dispute (as referenced above) is received.

(c) In the event of a material default hereunder and subject to compliance with the foregoing provisions of this Section 10, MS or COMPANY, as the case may be, 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.

**11. OBLIGATIONS UPON TERMINATION.**

(a) Within ten (10) days after termination or expiration of this Agreement, provided it has not been replaced by a new Agreement, COMPANY shall return to MS all units of Product for which a royalty has not been paid and all related Product Deliverables. COMPANY and each COMPANY Subsidiary may, however, retain sufficient units of each Product and related Product Deliverables for purposes of Section 3(i) (i) and for support purposes only, including Section 3(i) (ii).

(b) Upon termination or expiration of this Agreement, provided it has not been replaced by a new Agreement, COMPANY shall cease distribution of Product and all license rights herein shall cease. Sections 1, 2(h), 4(b), 5, 11, 12, 13, 14, 15, 16 and 17 of this Agreement and Section 51(d) of Exhibit(s) S, if applicable, shall survive termination or expiration of this Agreement.

**12. LIMITATION OF LIABILITY AND REMEDY.**

(a) Each party's liability to the other under the terms of this Agreement shall be limited, at the time of the payment of such liability, to the greater of (i) an amount equal to (x) in the case of liability payable by MS, one hundred percent (100%), and (y) in the case of liability payable by COMPANY, fifty percent (50%), of the amount having actually then been paid by COMPANY to MS under Section 3(a); or (ii) an amount equal to Seventy-Five Million Dollars (\$75,000,000.00); provided, however, that the terms of this paragraph and the limitation of liability stated in this paragraph shall not apply to any liability of

other party that arises under the terms of Section 5 of this Agreement.

(b) The rights and remedies granted to COMPANY under Sections 4, 5 and 6(c) constitute COMPANY's sole and exclusive remedy against MS, its officers, agents and employees for negligence, inexcusable delay, breach of warranty, express or implied, or for any default whatsoever relating to the condition of the Product or MS' duties to correct any defects in Product performance or deviations from specifications.

(c) SECTIONS 4 AND 5 CONTAIN THE ONLY WARRANTIES MADE BY MS. ANY AND ALL OTHER WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING THOSE FOR NON-INFRINGEMENT, 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); PROVIDED THAT THIS SENTENCE DOES NOT REDUCE OR MODIFY THE MS WARRANTIES IN SECTIONS 4 AND 5. EXCEPT FOR DAMAGES DESCRIBED OR REFERENCED IN SECTION 5, EACH PARTY AGREES THAT THE OTHER PARTY SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, ECONOMIC OR PUNITIVE DAMAGES EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(d) COMPANY agrees not to sue MS for infringement of COMPANY patents in accordance with, as set forth in more detail in the terms of MS Contract #2811-5179 entered into between COMPANY and MS with an effective date of July 1, 1995.

#### 13. NONDISCLOSURE AGREEMENT.

COMPANY and MS shall keep confidential the Product Deliverables, the terms and conditions of this Agreement, and other non-public information and know-how disclosed hereunder. However, COMPANY 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 COMPANY's business.

#### 14. AUDITS AND INSPECTIONS.

(a) During the term of this Agreement, COMPANY agrees, in compliance with its normal and accepted business practices as in effect from time to time during the term of this Agreement, to keep all usual and proper records and books of account and all usual and proper entries relating to each licensed Product sufficient to substantiate the number of copies of Product and the number of Customer Systems distributed by or for COMPANY. COMPANY shall maintain such records for itself and for each COMPANY Subsidiary which exercises rights under this Agreement.

(b) In order to verify compliance with the terms of this Agreement, MS may cause (i) an audit to be made of COMPANY's or COMPANY's Subsidiaries' books and records and/or (ii) an inspection to be made of COMPANY's or COMPANY's Subsidiaries' facilities and

procedures. Any audit and/or inspection shall be conducted during regular business hours at COMPANY's or COMPANY's Subsidiaries' facilities, with 60 days advance written notice, provided no such notice shall be issued prior to August 1, 1997. Any audit shall be conducted (i) expeditiously by an independent certified public accountant of national stature selected by MS (other than on a contingent fee basis) and reasonably acceptable to COMPANY and (ii) in such a manner as not to interfere with COMPANY's or COMPANY's Subsidiaries' normal business activities.

(c) COMPANY agrees to provide MS' designated audit or inspection team reasonable access to relevant COMPANY's or COMPANY's Subsidiaries' records and facilities. The results of any audit or inspection will be maintained as confidential information by the auditor and by MS and COMPANY.

(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 the MS unless material discrepancies are disclosed and specifically substantiated. "Material" shall mean US\$1,000,000.00 (One Million Dollars) in any consecutive six (6) month period. In no event shall audits be made more frequently than annually, and the period(s) audited cannot extend more than 12 months prior to the commencement date of the audit.

#### 15. CONTROLLING LAW; ATTORNEYS' FEES.

(a) This Agreement and all matters relating to this Agreement shall be construed and controlled (i) in accordance with the laws of the State of Washington applicable to agreements made and performed entirely in that state by persons domiciled therein, if an action or proceeding is brought by COMPANY to enforce this Agreement and (ii) in accordance with the laws of the State of Texas applicable to agreements made and performed entirely in that state by persons domiciled therein, if an action or proceeding is brought by MS to enforce this Agreement. Each party consents to jurisdiction and venue in the state and federal courts sitting in the county and state where the other party's United States headquarters is located. 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 COMPANY 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 on the third business day that immediately follows the day they are (i) deposited in the U.S.A. mails, postage prepaid, certified or registered, return receipt requested; or (ii) sent by air express courier, charges prepaid; provided that the notices, authorizations and/or requests are 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) Any Product which COMPANY 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, pursuant to written notification from MS, as set forth in the particular department or agency regulations or rules, or particular contract which provide MS equivalent or greater protection as specifically delineated by MS in such notice.
- (b) COMPANY agrees that it will not export or re-export, in violation of applicable law or regulations, Product to any country, person, entity or end user which is 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), Iran, Iraq, Libya, North Korea, and Syria. COMPANY warrants and represents that neither the U.S.A. Bureau of Export Administration nor any other federal agency has suspended, revoked or denied COMPANY's export privileges.
- (c) This Agreement does not constitute an offer by MS 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 COMPANY and MS by their respective duly authorized representatives. Any statement appearing as a restrictive endorsement or notice 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.
- (d) 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.

(e) 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 licenses for remaining Products, as applicable, shall remain in full force and effect.

(f) 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.

(g) Each party shall, at its own expense, promptly obtain and arrange for the maintenance of all non-U.S.A. government approvals, if any, as may be necessary for such party's performance under this Agreement.

(h) Neither party may enter into any agreement the execution or performance of which would violate the terms of or interfere with the performance of this Agreement.

## 18. EXHIBITS.

The following Exhibits are part of this Agreement:

- Exhibit A Sample End User License Agreement
  - Exhibit B Minimum Commitment Payments
  - 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 N Addresses
  - Exhibit R Royalty Report
  - Exhibit T (if executed) Shipments to Third-Party MS Licensees
  - Exhibit X (if attached) COMPANY Subsidiaries
  - Exhibit Z (if executed) Additional Country/Region Provisions
- The terms of the Exhibit(s) shall supersede any inconsistent terms contained in this Agreement.

FL AG 0000085  
CONFIDENTIAL

Page 9 of 26

MICROSOFT CONFIDENTIAL

MICROSOFT OEM LICENSE AGREEMENT #2811-7060 dated March 1, 1997 with DELL COMPUTER CORPORATION

HIGHLY  
CONFIDENTIAL

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 below hereby represents and warrants that he or she has full authority to sign this Agreement and bind his or her respective organization to perform all duties and obligations contemplated by this Agreement. If COMPANY 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, COMPANY's seal or "chop" should be entered below COMPANY's signature block.

MICROSOFT CORPORATION

By (Signature)

Name (Print)

Title

Date

BENGT KERLIND

DIRECTOR

3/20/97

DELL COMPUTER CORPORATION

By (Signature)

Name (Print)

Title

Date

Pat Nathan

Director, Procurement

3/25/97

COMPANY'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.

02/21/97

EXHIBIT A - SAMPLE END USER LICENSE AGREEMENT - Standard Words for this

**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.
- **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.
- **Language Version Selection.** PC 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 SOFTWARE PRODUCT you will be given a one-time option to select a language version. Upon selection, the language version 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.

**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 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.

EXHIBIT A

(Continued)

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.
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.

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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.

EXHIBIT B  
MINIMUM COMMITMENT PAYMENTS

<u>Date</u>	<u>Payment Amount (US\$)</u>	<u>Cumulative Amount of Payments for Period (US\$)</u>
April 30, 1997	\$2,000,000.00	\$2,000,000.00
July 31, 1997	\$11,000,000.00	\$13,000,000.00
October 31, 1997	\$11,000,000.00	\$24,000,000.00
January 31, 1998	\$11,000,000.00	\$35,000,000.00
Total Minimum Commitment	<u>\$35,000,000.00</u>	<u>\$35,000,000.00</u>



**EXHIBIT C1  
APPLICATION PRODUCTS**

**PRODUCT TABLE**

Product Number	Product Name and Version	Licensed Language Version(s)**	Applicable Additional Provisions	Per System Royalty *	Per Copy Royalty *	Billing Type***
1.	Office 97 Small Business Edition	EN	(a), (b), (c), (d), (e), (f), (g), (h), (i), (j)	US\$70.00	US\$ _____	
2.	Office 97 Professional "upsell"	EN	(a), (b), (c), (d), (e), (f), (g), (i), (j)	US\$ _____	US\$170.00	
3.	Office 97 Small Business Edition	XZ, XA, XV, XD, FR, DE, IT, ES, PT, NL, DA, SV, FL, NO	(a), (b), (c), (d), (e), (f), (g), (i), (j)	US\$85.00	US\$ _____	
4.	Office 97 Professional "upsell"	XZ, XA, XV, XD, FR, DE, IT, ES, PT, NL, DA, SV, FL, NO	(a), (b), (c), (d), (e), (f), (g), (i), (j)	US\$ _____	US\$240.00	
5.	Encarta 97 or Bookshelf 97	EN	(a), (c), (d), (i), (j)	US\$5.00	US\$ _____	
6.	Office Professional version 7.0 for Windows® 95	EN	(a), (b), (c), (d), (g), (k)	US\$ _____	US\$240.00	
7.	Office Professional version 7.0 for Windows® 95	All available languages	(a), (b), (c), (d), (g), (k)	US\$ _____	US\$325.00	
8.	Office Professional version 4.3 for Windows®	EN	(a), (b), (c), (d), (g), (k)	US\$ _____	US\$240.00	
9.	Office Professional version 4.3 for Windows®	All available languages	(a), (b), (c), (d), (g), (k)	US\$ _____	US\$325.00	

\* 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 Systems in the Customer System table of this Exhibit C.

\*\* Language Version Key: Please refer to the Language Version Key in Exhibit L for explanation of Language Version codes. Localized versions are licensed on an if and as available basis.

\*\*\* Billing Type: based on DELL royalty reports, as specifically set forth in Section 3 of the Agreement

**ADDITIONAL PROVISIONS KEY**

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

(a) The following provisions shall apply to all Products listed in this Exhibit C:

(1) The royalty rate(s) specified above require pre-installation of the Product, provided MS provides DELL adequately in advance with a Preinstallation Guide and Preinstallation Kit for the Product that are free of Seventy 1 errors. DELL shall preinstall the Product software solely in accordance with the installation instructions set forth in the "Preinstallation Guide" (except in instances in which the Preinstallation Guide has a requirement that conflicts with the terms of this Agreement, in which case the terms of this Agreement shall control), which is included in the preinstallation kit portion ("Preinstallation Kit") of the Product Deliverables. DELL may use the information, tools, and materials contained in the Preinstallation Kit solely to preinstall the Product software in accordance with the Preinstallation Guide and for no other purpose. Other than as specified in the Preinstallation Guide, DELL shall not modify the Product software, nor delete or remove any features or functionality without the prior written approval of MS in each instance.

(2) Notwithstanding anything to the contrary contained in Section 2, DELL must distribute Product documentation (two compulsory manuals only - for Small Business Finance and AutoMap Streets) with each Customer System distributed with Product software. A COA must be affixed to each copy of Product documentation. DELL must distribute only one (1) copy of Product documentation with each Product version distributed.

(3) Except for accurate informational references to and descriptions of the Product(s), and accurate reproductions or depictions of the Product(s) front packaging, MS expressly prohibits any use of the Product(s) contents (e.g. photographs, video, audio, screen shots, etc.) and associated packaging in connection with DELL's distribution of the Product(s), including, without limitation, advertising and promotional use.

- (4) If MS provides DELL with a marketing materials kit for Product ("Marketing Materials Kit"), then DELL is authorized to use, in DELL's discretion, materials contained in the Marketing Materials Kit in connection with DELL's promotional activities and purposes provided that:
- (A) Use is in compliance with the guidelines provided in Marketing Materials Kit.
  - (B) DELL's promotion of Product(s) with use of the Marketing Materials Kit shall be restricted to the guidelines provided in Marketing Materials Kit and subsection (a)(3) above.
  - (C) Use is confined to the advertising and promotion of Customer Systems licensed for and distributed with Product, and
  - (D) DELL agrees to cease use of the Marketing Materials Kit and cease any promotion for Product(s) upon expiration or termination of DELL's license for this Product.
  - (5) With respect to advertising that includes those Customer Systems distributed with Product(s), if the Products are referred to in the advertising, DELL shall accurately refer to the relevant Product names, and any reproductions and depictions of the Product's front packaging in point of purchase materials, print advertising, packaging, and marketing collateral shall be accurate reproductions and depictions.
- (b) The individual software programs which comprise the Product shall be distributed together with one Customer System and may not be distributed separately or licensed for use by more than one end-user. Information on licensing any of the components separately may be obtained from the MS Account Manager assigned to DELL.
- (c) Computer systems marketed or distributed through channels other than the direct channel as implemented by DELL are not licensed for the Product under this Exhibit C.
- (d) Notwithstanding anything to the contrary contained in the Agreement (including Exhibits), DELL may distribute Product(s) only with Customer Systems which are marketed and distributed exclusively under DELL's or DELL Subsidiaries' brand names, trade names and trademarks. The Product(s) may not be distributed with Customer Systems which are marketed or distributed under any name which includes any third party brand names, trade names or trademarks. If at any time, MS becomes aware of any violation of the foregoing, then without limiting its remedies, MS may charge DELL for each such Customer System an additional royalty equal to thirty percent (30%) of the highest royalty for the Product(s). DELL shall pay such additional royalty within thirty (30) days of receipt of MS' proper invoice.
- (e) (1) DELL may "upsell" end user purchasers of Office 97 SBE to Office 97 Professional Edition for the additional royalty indicated above. DELL may advertise Office 97 Professional Edition as an optional available "upsell" item.
- (2) DELL will not expose or publicize an Office 97 SBE price on the DELL website or in DELL's print or electronic advertising.
- (3) In the event of an Office 97 Professional Edition "upsell", the royalty for Product No. 5 shall not apply unless the "upsell" system is also shipped with pre-installed Encarta 97.
- (f) DELL and MS shall work cooperatively to launch Office 97 SBE in DELL's advertising and press releases, as appropriate. DELL advertising, as appropriate in DELL's discretion, shall include prominent text content featuring Office 97 SBE.
- (g) Up to June 30 1997, DELL may distribute Office Professional 95 ("O95") or Office Professional 4.3 ("O4.3") as OEM preinstalled product in all available languages, upon customer request, in lieu of Office 97 SBE; however, the royalty will equal the Office 97 Professional royalty (US\$240 for US English; US\$325 for non-US English) unless MS fails to timely deliver to DELL Office 97 SBE Pre-installation Guides and Pre-installation Kits in the above prescribed languages, in which case DELL may continue to distribute O95 and/or O4.3 (in lieu of Office 97 SBE) in the nondelivered languages at the royalty rates specified in Amendment No. 14 to Contract No. 2811-2160 between MS and DELL until 30 calendar days after DELL's receipt of the Guide and Kit in the specified language. DELL may distribute Office 95 or Office 4.3 Professional or Standard Edition to customers identified in Exhibit C3 pursuant to contracts to supply Office 95 or Office 4.3 entered into between DELL and such customers on or before December 31, 1996, and to such extent, Amendment No. 14 referenced above is renewed and extended to allow for such licensing and distribution under Exhibit C3.
- (h) The first 50,000 units of Product 1 shall be at a royalty rate of US\$63.70; thereafter the royalty rate of Product 1 shall be as stated in the Product Table.
- (i) MS represents and warrants that in the above Product Table, the royalty specified for each Product Number represents the best royalty price offered by MS to any MS customer for such Product Number, plus (notwithstanding Section 2(i) of this Agreement) \$10.00 in the case of Product Number 1 and Product Number 3. If the best royalty price for any such Product Number is reduced to any MS customer at any time during the term of this Agreement, the royalty specified in the Product Table for such Product Number shall be reduced by the same amount that such best royalty price is reduced, and such reduction under this Agreement shall be effective on the same date that such best price reduction is made for any MS customer.
- (j) Additionally, DELL shall not be obligated to pay MS a royalty under either Exhibits C1 or C4 for up to six percent (6%) of its cumulative Customer System shipments provided that such Customer Systems are not distributed with Product. Provided further that on or before July 1, 1997 such clause as set forth in this additional provision (j) (or similar variation thereof) for Product is withdrawn and not replaced by similar type language in all and any other OEM or customer contracts of MS, this clause in this (j) is subject to withdrawal and renegotiation so as to maintain parity between DELL and any such other OEM or customer of MS.
- (k) Amendment No. 14 to the License Agreement between Microsoft Corporation and DELL Products, L.P. dated April 1, 1992, Contract No. 2811-2160, hereby is amended with respect to license, distribution and other rights under such Amendment for all orders for Product(s)

under such Amendment which are received and entered by DELL from its customers on or before midnight on February 28, 1997. All such orders may be fulfilled and shipped by DELL on or before March 31, 1997.

CUSTOMER SYSTEMS

DELL's Customer Systems shall be the assembled computer systems described in the table below which (i) are configured for use only by a single user, and (ii) include at least a CPU, a motherboard, a power supply, and a case. For each Product which DELL chooses to license for distribution with the listed Customer System, the letter "S" or "C" in the relevant box indicates whether DELL is licensing the Product on a "per system" or "per copy" basis, respectively. New models may be added by agreement of the parties.

At DELL's option, for purposes of administrative convenience, DELL may designate models by "all models" or 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 "all models" shall include all current and future models that meet the description specified in the table (e.g. "All models which include a CD-ROM drive, 500 Mb or larger hard disk drive, and sound card.") and utilize the listed microprocessor(s). Customer Systems defined by model line or series shall include all current and future 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.).

Product Number Key: Please refer to the Product Number in the Product Table above.

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.

CUSTOMER SYSTEM TABLE

Model Name, Model Number, Model Line, or Model Description	Processor Type	Product Number												
		1	2	3	4	5	6	7	8	9	10			
1. At least 65% of all Dimension models after excluding (a) models subject to clause (j) above and (b) models that are sold pursuant to an MS academic license for Office97 Professional or Standard Edition.		S					S	C		C				
2. All Models described in 1. above in the instance of an upsell to Product Number 2			C											
3. All Latitude Expresso models with a CD-ROM drive and an Intel MMX microprocessor which are sold with a US English language version of Windows 95 operating system.		S						C		C				
4. All Models described in 3. above in the instance of an upsell to Product Number 2			C											
5. All Dimension XPS models which are sold with a localized version of a 32-bit Windows operating system for which there is a corresponding localized language version of such Product after excluding models that are sold pursuant to an MS academic license for Office97 Professional or Standard Edition.				S					C			C		
6. All Models described in 5. above in the instance of an upsell to Product Number 4					C									
7. All Latitude Expresso models with a CD-ROM drive and an Intel MMX microprocessor, which are sold with a Windows 95 operating systems language version for which there is a corresponding localized language version of such Product				S					C			C		
8. All Models described in 7. above in the instance of an upsell to Product Number 4					C									

DELL hereby represents and warrants that the names and numbers indicated in the Model Name or Model Number column in the table above substantially denote the actual designation used by DELL to identify the listed models (on the Customer System case and in DELL's internal books and records).



ATTACHMENT I TO EXHIBIT C1

Outline of engagement program between DELL Field Sales and MS Field Sales

The parties acknowledge the ongoing commitments and obligations as detailed in the letter dated February 4, 1997 signed by Kelley Guest on behalf of Dell and by Bengt Akerlund and Andrew Berman on behalf of Microsoft and as further augmented, if any, by written mutual agreement of the parties. Additionally the following 2 provisions shall be operative:

1. MS and MS Canada will work with DELL in good faith to promptly establish LAR status for DELL in Canada.
2. MS and MS Latin America will work with DELL in good faith to promptly establish LAR status for DELL in Latin America.



**EXHIBIT C2**  
**OFFICE PRODUCTS TECHNICAL GUARANTEE UPGRADE**  
 (Per Copy)

Product Name and Version	Licensed Language Version(s) **	Applicable Additional Provisions	Per Copy Royalty *	Prior Product	Distribution Territory	Billing Type ***
Office 97 Small Business Edition Upgrade	EN, XV, XD	(a), (b), (c), (d), (e), (f), (g), (h)	US\$20.00	Office Professional version 7.0 for Windows® 95	USA and Canada	
Office 97 Professional Upgrade	EN, XV, XD	(a), (b), (c), (d), (e), (f), (g), (h)	US\$40.00	Office Professional version 7.0 for Windows® 95	USA and Canada	
Office 97 Small Business Edition Upgrade	XZ, FR, DE	(a), (b), (c), (d), (e), (f), (g), (h)	US\$20.00	Office Professional version 7.0 for Windows® 95	Europe	
Office 97 Professional Upgrade	XZ, FR, DE	(a), (b), (c), (d), (e), (f), (g), (h)	US\$40.00	Office Professional version 7.0 for Windows® 95	Europe	

\* If Royalty and Language Version(s) are not specified for a particular Product in the table above, then such Product is not licensed under this Agreement.

\*\* Language Version Key: Please refer to the Language Version Key in Exhibit L for explanation of Language Version codes. Localized versions are licensed on an if and as available basis.

\*\*\* Billing Type: based on DELL royalty reports, as specifically set forth in Section 3 of the Agreement

**PRODUCT UPGRADE PROGRAM SCHEDULE**

The current Product Upgrade Program Schedule is set forth in the table below for each language version of the Product. MS may, in its sole discretion, extend the Product Upgrade Program Schedule for one or more of the language versions of Product on written notice to DELL.

Product	Office 97 Small Business Edition Upgrade (US English & French Version(s)) for US & Canada	Office 97 Professional Upgrade (US-English & French Version(s)) for US & Canada	Office 97 Small Business Edition Upgrade (UK English & Non-English Version(s)) for Europe	Office 97 Professional Upgrade (UK English & Non-English Version(s)) for Europe
Qualifying Customer System Purchase Period	November 1, 1996 to February 28, 1997	December 1, 1996 To February 28, 1997	January 21, 1997 to April 30, 1997	January 21, 1997 To April 30, 1997
Product Distribution Expiration Date	March 31, 1997	March 31, 1997	May 31, 1997	May 31, 1997

1 Upgrade coupons are valid for redemption if postmarked by 3/31/97. DELL may fulfill these Product Upgrades until 5/31/97.

**ADDITIONAL PROVISIONS KEY**

(a) Notwithstanding anything to the contrary contained in Sections 2 and 6 of the Agreement, Product shall only be distributed in the form/packaging available from an Authorized Fulfillment Center ("AFC"). DELL may request the Authorized Replicator to include DELL-developed, MS-approved materials in the form/packaging, including without limitation tech sheets, drivers or other third party materials.

(b) For purposes of this Exhibit C2 "Customer System" shall mean DELL computer systems which DELL can conclusively establish: (i) were distributed with a specific language version of the Prior Product within the Qualifying Customer System Purchase Period specified for such language version in the Product Upgrade Program Schedule above in compliance with a valid OEM license agreement between DELL and MS; and (ii) were marketed and distributed under DELL's or DELL Subsidiaries' (and not any third party's) brandnames and trademarks.

(c) Notwithstanding anything to the contrary contained in Sections 2 and 6 of the Agreement, the Product shall be distributed only as an "upgrade" to an existing authorized end-user of the Prior Product on a Customer System directly through an MS Authorized Fulfillment Center in accordance with MS' then-current specifications for fulfillment of upgrades. MS shall provide DELL with a list of MS Authorized Fulfillment Centers. DELL's license to distribute each language version of the Product under this Exhibit C2 shall expire on the Product Distribution Expiration Date specified for such language version in the Product Upgrade Program Schedule above.

(d) (1) All marketing or promotion of the Product shall be targeted exclusively to end users of Customer Systems, as defined in this Exhibit C.



(2) Except for accurate informational references to and descriptions of the Product(s), and accurate reproductions or depictions of the Product(s) (front packaging, MS expressly prohibits any use of the Product(s) contents (e.g., photographs, video, audio, screen shots, etc.) and associated packaging in connection with DELL's distribution of the Product(s), including, without limitation, advertising and promotional use.

(e) DELL may distribute Product(s) only within the geographical boundaries of the country(ies) listed in the Distribution Territory column of the Product table above.

(f) MS shall reduce DELL's Upgrade royalty (in the form of a credit available to DELL against royalties then due or coming due to MS for other Product(s) for Product delivered under this Exhibit (by \$10.00 for MS Office 97 SBE and \$10.00 for MS Office 97 Pro) for each redeemed coupon that is fulfilled by DELL's AFC to qualified end users of DELL Customer Systems, provided that in North America, DELL performs the following:

(1) Implements an Office 97 SBE promotional program for a focused segment of its North American installed base customers. MS shall have the right to pre-approve the design, messaging, logistics, and timing of such promotions. DELL shall have sole control of pricing offered to its customers. Such implementation efforts shall include:

(A) A cover promotion, accompanying inside story and pricing offers for Office 97 SBE in the next mutually agreed upon edition of the DELL Publication or another mutually agreed upon, written, promotion by DELL to address their installed base of users.

(B) Three direct mail offers during 1997 to DELL end users that have purchased Office Professional with a DELL Customer System. Such offers will include Office 97 SBE. DELL and MS will work together to make such offers to such end users up to three (3) times during 1997.

(2) If MS and DELL enter into an agreement for the MS IntelliMouse, then DELL shall promote and advertise the MS IntelliMouse with all DELL Customer Systems that are shipped with Office 97 SBE during 1997 if DELL refers to peripheral pointing devices for such Systems in the relevant advertising.

(3) DELL shall provide a link on DELL's support and marketing web site(s) to the web page for the Product at MS website (<http://www.microsoft.com>).

(4) DELL shall prominently feature Office 97 SBE on the home page of the DELL website (<http://www.DELL.com>) for the first three (3) months after introducing the Product and thereafter, shall prominently display on its inside pages during the term of this Agreement.

(g) By December 31, 1997, MS and DELL will mutually determine in good faith if the objectives described in the preceding Additional Provision (f) have been satisfactorily accomplished. If the result of the determination is that any elements have not been reasonably satisfactorily accomplished, then DELL shall not receive the Upgrade royalty reducing credits described above.

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EXHIBIT C

Existing Contractual Arrangements with Office 95

*Here is a list of DELL customers that DELL has a pre-existing (ie prior to 12/13/96) contract, but not extensions of any of same which are made after the Effective Date, with to supply Office 95.*

- Customer 1: North Carolina Department of Corrections contract through December 1997
- Customer 2: PWAC Telos contract through September 1997
- Customer 3: ICPT contract through December 1997
- Customer 4: Naval Medical Hospital through June 1997
- Customer 5: GTSI:NTH contract through September 1997

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**EXHIBIT C4**  
**Consumer Products**  
**PRODUCT TABLE**

Product Number	Product Name and Version	Licensed Language Version(s)**	Applicable Additional Provisions	Per System Royalty *	Per Copy Royalty *	Billing Type***
1.	Home Essentials 97 And Best of Entertainment Pack	EN	(a), (b), (c), (d), (e)	US\$25.00	US\$ _____	

- \* 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 Systems in the Customer System table of this Exhibit C.
- \*\* Language Version Key: Please refer to the Language Version Key in Exhibit L for explanation of Language Version codes. Localized versions are licensed on an if and as available basis.
- \*\*\* Billing Type: Based on DELL royalty reports, as specifically set forth in Section 3 of the Agreement

**ADDITIONAL PROVISIONS KEY**

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

- (a) The following provisions shall apply to all Products listed in this Exhibit C:
- (1) The royalty rate(s) specified above require pre-installation of the Product, provided MS provides DELL adequately in advance with a Preinstallation Guide and Preinstallation Kit for the Product that are free of Seventy 1 errors. DELL shall preinstall the Product software solely in accordance with the installation instructions set forth in the "Preinstallation Guide" (except in instances in which the Preinstallation Guide may conflict with the terms of this Agreement, in which case the terms of this Agreement shall control), which is included in the preinstallation kit portion ("Preinstallation Kit") of the Product Deliverables. DELL may use the information, tools, and materials contained in the Preinstallation Kit solely to preinstall the Product software in accordance with the Preinstallation Guide and for no other purpose. Other than as specified in the Preinstallation Guide, DELL shall not modify the Product software, nor delete or remove any features or functionality without the prior written approval of MS in each instance.
  - (2) Notwithstanding anything to the contrary contained in Section 2, DELL must distribute Product documentation with each Customer System distributed with Product software. A COA must be affixed to each copy of Product documentation. DELL must distribute only one (1) copy of Product documentation with each Product version distributed.
  - (3) Except for accurate informational references to and descriptions of the Product(s), and accurate reproductions or depictions of the Product(s) front packaging, MS expressly prohibits any use of the Product(s) contents (e.g. photographs, video, audio, screen shots, etc.) and associated packaging in connection with DELL's distribution of the Product(s), including, without limitation, advertising and promotional use.
  - (4) If MS provides DELL with a marketing materials kit for Product ("Marketing Materials Kit"), then DELL is authorized to use, in DELL's discretion, materials contained in the Marketing Materials Kit in connection with DELL's promotional activities and purposes provided that:
    - (A) Use is in compliance with the guidelines provided in Marketing Materials Kit
    - (B) DELL's promotion of Product(s) with use of the Marketing Materials Kit shall be restricted to the guidelines provided in Marketing Materials Kit and subsection (a)(3) above;
    - (C) Use is confined to the advertising and promotion of Customer Systems licensed for and distributed with Product; and
    - (D) DELL agrees to cease use of the Marketing Materials Kit and cease any promotion for Product(s) upon expiration or termination of DELL's license for this Product.
  - (5) With respect to advertising that includes those Customer Systems distributed with Product(s), if the Products are referred to in the advertising, DELL shall accurately refer to the relevant Product names, and any reproductions and depictions of the Product's front packaging in point of purchase materials, print advertising, packaging, and marketing collateral shall be accurate reproductions and depictions.
  - (6) DELL will not expose or publicize a Home Essentials Product price on the DELL website or in DELL's print or electronic advertising.
- (b) The individual software programs which comprise the Product shall be distributed together with one Customer System and may not be distributed separately or licensed for use by more than one end-user. Information on licensing any of the components separately may be obtained from the MS Account Manager assigned to DELL.
- (c) Computer systems marketed or distributed through channels other than the direct channel as implemented by DELL are not licensed for the Product under this Exhibit C.



(d) Notwithstanding anything to the contrary contained in the Agreement (including Exhibits), DELL may distribute Product(s) only with Customer Systems which are marketed and distributed exclusively under DELL's or DELL Subsidiaries' brand names, trade names and trademarks. The Product(s) may not be distributed with Customer Systems which are marketed or distributed under any name which includes any third party brand names, trade names or trademarks. If, at any time, MS becomes aware of any violation of the foregoing, then without limiting its remedies, MS may charge DELL for each such Customer System an additional royalty equal to thirty percent (30%) of the highest royalty for the Product(s). DELL shall pay such additional royalty within thirty (30) days of receipt of MS' proper invoice.

(e) MS and DELL will work in good faith to define a mutually acceptable Consumer Bundle strategy for European regional markets.

**CUSTOMER SYSTEMS**

DELL's Customer Systems shall be the assembled computer systems described in the table below which (i) are configured for use only by a single user, and (ii) include at least a CPU, a motherboard, a power supply, and a case. For each Product which DELL chooses to license for distribution with the listed Customer System, the letter "S" or "C" in the relevant box indicates whether DELL is licensing the Product on a "per system" or "per copy" basis, respectively. New models may be added by agreement of the parties.

At DELL's option, for purposes of administrative convenience, DELL may designate models by "all models" or 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 "all models" shall include all current and future models that meet the description specified in the table (e.g. "All models which include a CD-ROM drive, 500 Mb or larger hard disk drive, and sound card.") and utilize the listed microprocessor(s). Customer Systems defined by model line or series shall include all current and future 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.).

**Product Number Key:** Please refer to the Product Number in the Product Table above.

**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.

**CUSTOMER SYSTEM TABLE**

Model Name, Model Number, Model Line, or Model Description	Processor Type	Product Number												
		1	2	3	4	5	6	7	8	9	10			
Those Dimension models which are sold in the USA and Canada with U.S. English Windows 95 operating system, after excluding (a) models subject to clause (j) in Exhibit C1 and (b) models which do not include pre-installed Product identified in Exhibit C1 or are sold pursuant to an MS academic license for Office 97 Professional or Standard Edition.		S												

DELL hereby represents and warrants that the names and numbers indicated in the Model Name or Model Number column in the table above substantially denote the actual designation used by DELL to identify the listed models (on the Customer System case and in DELL's internal books and records).

*[Handwritten signature]*

EXHIBIT L

LANGUAGE VERSIONS KEY

Language Version	Code
Afrikaans	AF
Arabic	AR
Arabic, French	YD
Bahasa	BN
Basque	EU
Bulgarian	BG
Catalan	CA
Chinese - Simplified	XT
Chinese - Traditional	ZH
Croatian	YX
Czech	CS
Danish	DA
Dutch	NL
Eastern European (English)	YL
English (USA)	EN
English (UK)	XZ
English (Australian)	XA
English (Canadian)	XV
Estonian	ET
Farsi	FA
Finnish	FI
French	FR
French (Canadian)	XD
Galician	GL
German	DE

Language Version	Code
Greek	EL
Hebrew	IW
Hungarian	HU
Italian	IT
Japanese	JA
Korean	KO
Latvian	LV
Lithuanian	LT
Norwegian	NO
Polish	PL
Portuguese	PT
Portuguese (Brazilian)	XC
Romanian	RO
Russian	RU
Serbian	SR
Singhalese	SI
Slovak	SK
Slovenian	SL
Spanish	ES
Spanish (Latin American)	XX
Swedish	SV
Thai	TH
Turkish	TR
Vietnamese	VI

EXHIBIT D  
BRAND NAMES AND TRADEMARKS

DELL AND DELL SUBSIDIARIES BRAND NAMES AND TRADEMARKS

If DELL Customer Systems are marketed, licensed, or distributed under DELL's or DELL Subsidiaries' brand names and trademarks which do not include DELL's name, those brand names and trademarks must be listed below:

Brand Names & Trademarks

- 1.
- 2.

THIRD PARTY BRAND NAMES AND TRADEMARKS

If DELL Customer Systems are marketed, licensed, or distributed by a third party under brand names and trademarks which do not include DELL's name, those brand names, trademarks and model names used for the Customer Systems by a third party must be listed below. Certain Products may not be marketed or distributed under any third party brand names or trademarks. Such Products are indicated in the applicable Exhibit(s) C.

Brand Names & Trademarks

Customer System

Model Name Used by Third Party

- 1.
- 2.

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EXHIBIT F  
SUPPLEMENT RIGHTS

The purpose of this Exhibit is to set forth additional license rights and related restrictions which may apply to Supplement(s) as may be provided by MS from time to time. The actual additional license rights and related restrictions for each Supplement shall be identified in the "Supplement Addendum" for each such Supplement. The license rights shall be royalty-free and, except as specified in the applicable Supplement Addendum, shall be subject to the terms and conditions of the Agreement. DELL's license rights to Supplement(s) shall expire the earlier of: (i) termination or expiration of DELL's license rights to the Product to which the Supplement corresponds, or (ii) termination or expiration of the Agreement.

1. "Reproduction Rights", if granted, shall mean:

(a) Reproduce, in accordance with specifications provided by MS, the Supplement software in object code form on external media (i.e., diskette or CD-ROM) and end user documentation for the Supplement, if any.

(b) Reproduce Product names and Product trademarks on packaging, labels, and end user documentation for the Supplement subject to the following restrictions:

(i) DELL's labeling and packaging for the Supplement shall clearly indicate that the Supplement is a supplement to and/or replacement of the Product provided by DELL for use on DELL's Computer Systems;

(ii) DELL will cause to appear on the container and labels of Supplement the copyright, trademark and patent notice(s), as they appear on the applicable release of Product Deliverables; and

(iii) DELL's name and/or trademarks shall not be displayed in relation to Product name in a manner which suggests that DELL's name and/or trademarks are part of the Product name. DELL's name and/or trademarks shall be displayed on the packaging and disk labels more prominently than the name "Microsoft".

2. "Distribution on External Media with Customer Systems Rights", if granted, shall mean:

(a) Distribute one (1) copy of the Supplement software, reproduced in accordance with the reproduction rights granted for such Supplement, with each of DELL's licensed Customer Systems to be distributed with Product, subject to the following conditions:

(i) DELL shall include with each copy of the Supplement a EULA addendum which shall be substantially similar to the sample addendum attached hereto as Attachment I, except that it shall be adapted as may be required by the laws of any non-U.S.A. jurisdiction in which DELL distributes the Supplement.

3. "Distribution to Existing End Users Rights", if granted, shall mean:

(a) Distribute one (1) copy of the Supplement software, as acquired from an Authorized Replicator if available, or reproduced in accordance with the reproduction rights, if any, granted for such Supplement, to licensed end users of DELL's Customer Systems originally distributed with the Product, subject to the following conditions:

(i) The Supplement shall be distributed directly from DELL or an MS-authorized fulfillment source;

(ii) DELL shall include with each copy of the Supplement a EULA addendum which shall be substantially similar to the

sample addendum attached hereto as Attachment I, except that it shall be adapted as may be required by the laws of any non-U.S.A. jurisdiction in which DELL distributes the Supplement; and

(iii) DELL shall offer the Supplement at no charge except that DELL may charge its reasonable cost of materials and shipping and handling costs.

4. "Distribution via Bulletin Boards Rights", if granted, shall mean:

(a) Post and maintain the object code version of the Supplement on DELL's point to point communication link by modem (not Internet) bulletin board connect(s) ("BBS") for distribution to end users of DELL's Customer Systems originally distributed with Product, subject to the following conditions:

(i) DELL shall ensure that each copy of the Supplement includes a EULA addendum which is substantially similar to the sample addendum attached hereto as Attachment I, except that it shall be adapted as may be required by the laws of any non-U.S.A. jurisdiction in which DELL distributes the Supplement; and

(ii) DELL shall offer the Supplement at no charge to end users.

5. "Distribution via Internet Link Rights", if granted, shall mean:

(a) Create and maintain a link on DELL's Internet home page(s) to MS' copy of the Supplement on MS' Internet home page(s), at the Universe Resource Locator(s) listed in the Supplement Addendum.

6. "Distribution via Internet Page Rights", if granted, shall mean:

(a) Post and maintain the object code version of the Supplement on DELL's home page(s) on the Internet for distribution to end users of DELL's Customer Systems originally distributed with Product, subject to the following conditions:

(i) DELL shall include with each copy of the Supplement a EULA addendum which is substantially similar to the sample addendum attached hereto as Attachment I, except that it shall be adapted as may be required by the laws of any non-U.S.A. jurisdiction in which the Supplement is distributed; and

(ii) DELL shall offer the Supplement at no charge to end users.

7. "Other Rights", if granted, and restrictions shall be as set forth in the applicable Supplement Addendum. Additionally, the parties agree that the license and distribution rights granted to DELL under or pursuant of the implementation of the terms of this Exhibit F shall be at least as favorable as the rights granted under such same or similar Exhibit to any other customer of MS.

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ATTACHMENT I TO EXHIBIT F

ADDENDUM TO THE MICROSOFT SOFTWARE LICENSE AGREEMENT  
FOR \_\_\_\_\_

**IMPORTANT READ THIS FIRST.** By using the software files (the "Software") provided with this Addendum, you are agreeing to be bound by the following terms. If you do not agree to be bound by these terms, you may not use the Software.

The Software is provided for the sole purpose of replacing or supplementing certain portions of a licensed copy of the above listed Microsoft software product ("ORIGINAL PRODUCT"). Upon installation, the Software files become a part of the ORIGINAL PRODUCT and are subject to the same warranty and license terms and conditions as the ORIGINAL PRODUCT. If you do not have a valid license to use the ORIGINAL PRODUCT, you may not use the Software. Any other use of the Software is prohibited.

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MICROSOFT CONFIDENTIAL

MICROSOFT OEM LICENSE AGREEMENT #2811-7060 dated March 1, 1997 with DELL COMPUTER CORPORATION

