

**PLAINTIFF'S EXHIBIT**  
2869  
Comes v. Microsoft

**CONFIDENTIAL**

**Cooperative Market Development and Support Agreement for Microsoft® Windows® Desktop Operating System Products**

This Market Development and Support Agreement ("Agreement") is made and entered into this 1st day of April, 1998 ("Effective Date") by and between MICROSOFT LICENSING, INC., a Corporation of Nevada, U.S.A. ("Microsoft") and COMPAQ COMPUTER CORPORATION, a Corporation of Delaware, U.S.A. ("COMPAQ").

Definitions

For purposes of this Agreement:

"Windows Products" shall mean products licensed as part of the Windows Desktop Family in COMPANY's OEM Agreement with Microsoft.

"OEM Agreement" shall mean the then current OEM license agreement between Microsoft and COMPAQ for Windows Products. (The OEM Agreement may also include other Microsoft products).

"Customer Systems" shall mean personal computers licensed for distribution with Windows Products under the OEM Agreement.

"MSCORP" shall mean Microsoft Corporation.

Overview

This Agreement defines a cooperative framework between Microsoft and COMPAQ to expand the market for COMPAQ's Customer Systems and to mutually enhance the potential for increased market share through investments in Windows related platform development, promotions and improved customer support.

With respect to COMPAQ's Customer Systems, it is Microsoft's and COMPAQ's mutual intent to:

- Expand the Existing Market
- Broaden the market for New Opportunities
- Encourage Repeat and Replacement sales
- Improve respective competitiveness
- Improve the End User Experience

by working to cooperatively:

- Advance the Windows PC Platform
- Improve product quality
- Endorse or promote market standards

Following are a set of Milestone Activities designed to achieve the objectives listed above. In consideration of COMPAQ's successful accomplishment of the Milestone Activities described below, Microsoft is willing to offer COMPAQ incentive discounts in the amounts stated below against royalties for Windows Products which are licensed under the OEM Agreement as more specifically described under the General Terms and Conditions below.

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**Milestone Activities**

**Incentive Discounts**

1. Expand the market for COMPAQ's Customer Systems by developing new Customer Systems with advanced ease-of-use features based on Windows technologies. \$7.50
  - All new COMPAQ Customer System models released after April 1, 1998 that ship with Windows 9x or Windows NT Workstation shall meet the then current respective "Designed for Windows" Logo requirements outlined in the PC9x Hardware Design Guide.

All Such systems above (as configured for sale to end-users) shall pass validation testing at Microsoft's Windows Hardware Quality Labs (WHQL). Further, such systems (as configured for sale to end-users) shall be substantially similar to units of such systems as configured for advertisements and for review by trade publications.

  - In addition, COMPANY shall license (pursuant to the Windows Logo license) and display on all COMPANY's Customer Systems licensed for Windows 9x or Windows NT Workstation the appropriate "Designed For Microsoft Windows" Logo or successor logos. Such logo shall be in color and based upon a metallic design as specified by MS and shall be affixed to the front chassis of all new COMPAQ Customer System models
  
2. Ensure that customers of COMPAQ's Customer Systems receive the benefits of having Windows pre-installed with the most up-to-date versions of Windows Products. \$1.00
  - COMPAQ shall pre-install and begin shipment of the most recent licensed Windows Products Product Releases, Version Releases, Update Releases, and Supplements as defined in the OEM Agreement, on all Customer Systems that are licensed for shipment with such Windows Products within 60 days of Microsoft's shipment (or upon written notice of web posting by MS) of the corresponding OEM Preinstallation Kit ("OPK") and/or OPK supplement for such Release or Supplement, except when/if shipment of the OPK and/or OPK supplement from Microsoft occurs between September 1st and November 30th, in which case COMPAQ shall begin shipment of the Release or Supplement no later than February 1st of the following year.
  
3. Expand the market for COMPAQ's Customer Systems in developing countries, and ensure that users in such countries receive localized Windows Product that matches their native dialect. \$1.00
  - COMPAQ shall pre-install the licensed localized Windows Products (if available) on all Customer Systems that are shipped to China, Israel, Greece, Turkey, Thailand, Eastern Europe, and the Middle East within sixty (60) days of Microsoft's shipment of the applicable localized version OPK to COMPAQ.
  
4. Improve usability of Customer Systems that COMPAQ delivers with Windows. \$1.00
  - COMPAQ shall include external media as part of the APM with all Customer Systems. COMPAQ may exclude media on Customer Systems delivered to those corporate or government organization customers that request in writing to COMPAQ that media be excluded.
  
5. Encourage repeat and replacement sales of COMPAQ's Customer Systems by increasing end user satisfaction levels through improvements in the quality of COMPAQ's end user support. \$1.50
  - COMPAQ shall employ on or before April 1, 1998 at least three active full-time Microsoft Certified Professional (Product Specialist or higher) for Windows 9x and/or Windows NT Workstation in the role of support engineer in its support organization and an additional engineer for every 35,000 units of annualized Windows Products shipped by COMPAQ.
  - The percentage of Microsoft Certified Professionals who are certified as Product Specialists or higher for Windows NT Workstation shall at least match COMPAQ's shipments of Windows NT Workstation as a percentage of COMPAQ's total Windows Product shipments.

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Milestone Activities (Continued)

Incentive Discounts

6. Improve COMPAQ's competitive advantage against OEMs that ship pirated operating system product and promote COMPAQ's legitimate operating system offerings through end user awareness programs. \$2.00
- COMPAQ shall commence the following on or before April 1, 1998:
    - a) Ensure that all of COMPAQ's computer systems (as configured for sale to end users) are advertised as including an operating system as a standard component in all advertising either fully or partially funded by COMPAQ.  
AND
    - b) Ensure that all of COMPAQ's computer systems (as configured for sale to end users) ship with operating system software or a license for operating system software.
7. Enhance COMPAQ brand equity and reduce COMPAQ's overall operating expenses by increasing end user satisfaction levels through improvements in the quality of COMPAQ's and Microsoft's end user support. \$.50
- COMPAQ shall provide a representative random sample from 2 quarters of support incidents coded to MS-supplied incident tracking tree. The size of the random sample shall be 5,000 incidents for the 2 quarter period. MS will supply the incident tracking tree and training that describes the tracking, reviewing, and quality assurance process. Microsoft will also provide a database structure that COMPAQ will use to provide the sample of incidents with coding category, problem description, resolution description, and labor expenditure for each of the sample incidents that meets the quality assurance guidelines. COMPAQ shall also provide the total number of incidents and total labor expenditure for the tracking period.
  - COMPANY shall develop and offer the ability to collect and use Windows Reporting tool-created .cab files as part of an Internet-based support system by 12/98. *Note: The Windows Reporting tool ships as part of Windows 98 and is used to create a compressed file containing detailed system information for expediting resolution of a support incident. COMPANY's Internet-based support system will allow online users of Windows 98-based Customer Systems to initiate a support incident and attach the Windows Reporting tool generated .cab file to the incident. It will also allow COMPANY's support professionals to access the .cab file (using the Microsoft System Information Utility included in Windows 98) to resolve the incident.*
8. Improve COMPAQ's competitive advantage in enterprise accounts and drive down the cost of administering standard Windows-based systems by providing corporate customers with Enterprise System Management software supporting industry standard applications programming interfaces. \$.50
- COMPAQ must successfully develop and demonstrate WBEM-enabled management features in all enterprise Management Applications. Management Applications shall be defined as those applications COMPAQ currently markets and sells to centrally control and monitor hardware devices and software within a computer network. WBEM-enabled management features consist of a public demonstration of using WBEM APIs for instrumenting and managing all devices normally controlled through the Management Application.
9. Improve COMPAQ's competitive advantage in the consumer market by providing leading technology innovation. \$1.00
- COMPAQ shall ship a TV tuner add-in card or component level equivalent in 25% of its Presario branded desktop Customer Systems (by volume) shipping into North America by July 1, 1998.

General Terms and Conditions

1. Confidentiality

COMPAQ shall keep confidential all terms and conditions of this Agreement and all communications between COMPAQ and Microsoft regarding the terms and conditions of this Agreement. However, COMPAQ 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 COMPAQ's business. To the extent of any inconsistency between this Section and other non-disclosure agreements between Microsoft and COMPAQ, this Section shall control with respect to the terms and conditions of this Agreement and all communications between COMPAQ and Microsoft regarding the terms and conditions of this Agreement.

2. MDA Pre-requisites for Milestone Activities

2.1 COMPAQ agrees to complete the following MDA Pre-requisites for Milestone Activities

- a) Attend the annual Windows Hardware Engineering Conference, and the Microsoft hosted OPK training course (if course is available).

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- b) Provide Microsoft with detailed written feedback and System Compatibility Test results on Customer Systems and Windows Products, including Beta versions of Windows Products and corresponding OPKs, no later than 45 days after MS release of the same.
- c) Participate in Microsoft-developed "Train the Trainer" Windows NT Workstation support program and institute a Microsoft-approved written plan for training COMPAQ's support personnel by July 30, 1998.

2.2 Additionally, COMPAQ shall develop, publish (upon COMPAQ's execution of this Agreement), and maintain a COMPAQ-specific home page on the World Wide Web that links Microsoft's web resources and incorporates the following:

- a) Universal Resource Locator ("URL") to Microsoft's website for support, information, and file download purposes as supplied by Microsoft.
- b) COMPAQ's support information in each geography as related to Windows Products including end user access information (e.g. phone numbers, support policies, and other support related information (e.g., publication of COMPAQ's "Top-10" Windows related questions and answers, etc.), updated on a quarterly basis.
- c) The "Microsoft Internet Explorer" Logo on COMPAQ's main web page which features its Customer Systems.
- d) Include in the Windows Product(s) "Favorites" folder, URLs and shortcuts to support information as described in (a) and (b) above. Such URLs and shortcuts shall be as specified by MS.

3. Applicability of Incentive Discounts for Milestone Activities

- a) Any incentive discounts earned under this Agreement shall apply to Microsoft's Windows Products which are licensed under the OEM Agreement on the Exhibit C entitled "Windows Desktop Family" and shipped between April 1, 1998 and termination of this Agreement pursuant to Section 5 below.
- b) Except for the incentive discounts set forth in this Agreement, COMPAQ shall not be entitled to any discounts or other consideration in exchange for its participation in the above Milestone Activities.

4. Monitoring of Milestone Activities

COMPAQ shall cooperate with Microsoft OEM Sales to monitor the status of Milestone Activities. This cooperation will include providing Microsoft with status reports and supporting information as may be requested by Microsoft from time to time. This includes no fewer than three written progress reports to Microsoft to be received July 1, 1998, October 1, 1998, and January 1, 1999 stating the Milestone Activities accomplished and including supporting materials. Microsoft shall determine whether COMPAQ has satisfactorily completed each Milestone Activity after the January 1, 1999 report. In the event that Microsoft and COMPAQ disagree as to whether COMPAQ has satisfactorily completed any Milestone Activity, the parties shall each appoint a senior level executive to meet and attempt to resolve any such disagreement. Failing mutual resolution, Microsoft shall make a final binding determination as to whether COMPAQ has satisfactorily completed any Milestone Activity. COMPAQ agrees to keep records relating to completion of each Milestone Activity and will make such records available to MS upon request.

Upon request by MS, COMPAQ agrees to provide MS with up to two Customer Systems per year from the Compaq Consumer Products Group and Compaq PC Products Group, which MS shall use for testing and evaluation purposes. MS shall return the Customer Systems to COMPAQ within thirty (30) days of completion of testing and evaluation.

In order to verify statements issued by COMPAQ and COMPAQ's compliance with the terms of this Agreement, MS may cause an audit to be made of COMPAQ's and/or COMPAQ's Subsidiaries' facilities and procedures relating to this Agreement. Any audit and/or inspection shall be conducted during regular business hours at COMPAQ's and/or COMPAQ's Subsidiaries' facilities, with a minimum 48 hours notice. COMPAQ agrees to provide MS' designated audit or inspection team access to the relevant COMPAQ's and/or COMPAQ's Subsidiaries' records and facilities.

5. Continuation of Milestone Activities

Except in those cases where the applicable Milestone Activity set forth above specifically requires the accomplishment of a single event (e.g. attending an event), all Milestone Activities are ongoing, and continuous performance is required for successful accomplishment of all Milestone Activities. If COMPAQ discontinues performance on any individual Milestone Activity the associated incentive discounts will be discontinued effective as of the date that performance has been discontinued.

Term and Termination

This Agreement shall commence on the Effective Date and shall continue until the earlier of (A) termination of this Agreement in accordance with its terms or (B) termination or expiration of the OEM Agreement.

In the event of any COMPAQ default(s) under the General Terms and Conditions of this Agreement, MS may terminate this Agreement immediately upon written notice to COMPAQ, whether or not COMPAQ cures such default within the applicable cure period for such default, if any, and whether or not MS elects to terminate the OEM Agreement. In the event that MS elects to terminate this Agreement, COMPAQ shall not be entitled to any discounts or other consideration in exchange for its participation in the above described Milestone Activities, whether or not such Milestone Activities have been completed at the time of such termination.

6. No License Agreement Implied or Created

This Agreement does not create and is not intended to create a license for any Microsoft Products. Further, the incentive discounts described above shall be applicable only in the event Microsoft and COMPAQ enter into a license agreement for Windows Products which includes an Exhibit C entitled "Windows Desktop Family." Such incentive discounts shall not be applied to any other products currently licensed or which may be licensed in the future from Microsoft, nor shall COMPAQ be entitled to any other compensation or other consideration in exchange for its participation in the above described Milestone Activities.

7. Controlling Law and Attorneys' Fees

- a) This Agreement and all matters relating to this Agreement shall be construed and controlled by the laws as specified in the OEM Agreement, and COMPAQ consents to jurisdiction and venue in the state and federal courts as specified in the OEM Agreement. Process may be served on either party in the manner set forth in the OEM Agreement.
- b) If either Microsoft or COMPAQ 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, to the extent provided, if any, in the OEM Agreement.

8. Notices

All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the time and in the manner specified in the OEM Agreement.

9. Miscellaneous

- a) This Agreement, and any rights or obligations hereunder, shall not be assigned by COMPAQ except to the extent, if any, assignment of the OEM Agreement is permitted under the terms of the OEM Agreement.
- b) This Agreement does not constitute an offer by Microsoft 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 COMPAQ and Microsoft by their respective duly authorized representatives.
- c) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- d) 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above. All signed copies of this Agreement shall be deemed originals.

<sup>Licensing</sup>  
MICROSOFT CORPORATION

Karen Hurlbut  
By (Signature)

Karen Hurlbut  
Name (Print)

General Mgr., OEM Operations  
Title

March 26, 1998  
Date

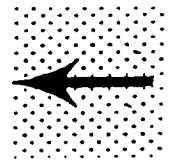
COMPAQ COMPUTER CORPORATION

Greg E. Petsch  
By (Signature)

Greg E. Petsch  
Name (Print)

Senior V.P./General Manager  
Title

Manufacturing & Quality  
Title  
MARCH 24, 1998  
Date



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