

PLAINTIFF'S
EXHIBIT
3693
Comes v. Microsoft

MICROSOFT OEM LICENSE AGREEMENT
FOR OPERATING SYSTEMS
#2811-5180, dated July 1, 1995
with DELL COMPUTER CORPORATION

SIGNED ORIGINAL

This License Agreement ("Agreement") is made and entered into as of the date first set forth above ("Effective Date"), by and between MICROSOFT CORPORATION, a Washington, U.S.A. corporation, ("MS"), and DELL COMPUTER CORPORATION, a Delaware, U.S.A. corporation ("COMPANY"). As to the Product(s) licensed hereunder, and only as to such Product(s), this Agreement modifies and replaces MS Contract #2811-9270, and all amendments thereto, which contract was entered into between MS and an affiliate of COMPANY effective as of April 1, 1989.

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 (optional by Product, unless specified as mandatory under the terms of Exhibit C) that does not contain any advertising or material other than instructions for operation of the Product, a 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. 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, and the cost and justification for any such changes. Upon written request by COMPANY, any dispute between the parties as to the reasonableness of the cost or the adequacy of the justification will be resolved in good faith between MS and COMPANY within fourteen (14) days after MS' receipt of COMPANY'S request. If COMPANY proposes an APM change that is beneficial to OEMs in general, MS will entertain such proposal in good faith and negotiate with COMPANY in good faith for possible implementation of same. COMPANY shall acquire each Product APM from an Authorized Replicator. 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 language Product release dates in all available languages specified in Exhibit C for the Product to which the APM relates. 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) 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). COMPANY'S Computer Systems shall include, at a minimum, an assembled power supply circuitry, 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) "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.

(f) "Product Documentation" shall mean the end user Product guide where included by MS in the APM.

(g) "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], and shall include Windows 95 and any subsequent releases of Windows which may be designated by a change in the calendar year (e.g., Windows 96, 97, 98, etc.).

(h) "Subsidiary" shall mean a corporation, company or entity in which fifty percent (50%) or more 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.

(i) "Update Release" shall mean a release of Product which adds functionality to the Product or provides error corrections for the Product and which MS may, but need not necessarily, designate as a change in the digit(s) to the right of the tenths digit in the Product version number [x.x(x)], or a change or addition of an alpha, numeric or alphanumeric character or characters to the right of any calendar year Product designation (as in Windows 95, for example).

(j) "Version Release" shall mean a release of Product which adds functionality to the Product or provides error corrections for the Product and which MS may, but need not necessarily, designate as a change in the tenths digit in the Product version number [x.(x)x], or a change or addition of an alpha, numeric or alphanumeric character or characters to the right of any

6/28/95

GOVERNMENT
EXHIBIT
761

MSV 000726
CONFIDENTIAL

MS-PCA 1103365

calendar year Product designation (as in Windows 95, for example).

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(f) (i), (ii), (iv) and (vi) below; (ii) use and reproduce Product-related documentation pursuant to Section 3(f) (i), (ii), (iv) and (vi) below; (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; and (v) adapt Product(s) for use on Customer Systems as permitted by the Product OPK. Except as necessary 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.

(b) 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 the Windows 95 Product with Customer Systems that are marketed or distributed under any brand name or trademark not owned by COMPANY or COMPANY Subsidiaries.

(c) 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.

(d) 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 Windows 95 Product and such other Product(s), if any, as specified under the terms of Exhibit C. If COMPANY elects not to distribute optional Product Documentation for other Product(s) with any Customer Systems which are distributed with Product software, it is mandatory that COMPANY make such Product Documentation commercially available to end users for a reasonable fee as a mail order fulfillment item directly from COMPANY or a MS designated fulfillment source. Product Documentation shall not be available through any other COMPANY distribution channel.

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

(f) MS will make available to COMPANY other MS operating system 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; provided, however, that the requirements of this sentence shall not apply to MS Contract No. 1107-3053 dated October 1, 1992 (excluding any renewals or extensions or modifications thereof made on or after the Effective Date of this Agreement). 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.

(g) The terms and conditions granted to COMPANY hereunder shall be as favorable, or shall be modified to be as favorable, as those granted to any other OEM customer(s) (including price and discount levels), provided COMPANY agrees to substantially similar terms, conditions, and shipment volumes

as are applicable under the agreement(s) between MS and such other OEM customer(s); provided, however, that the requirements of this sentence shall not apply to MS Contract No. 1107-3053 dated October 1, 1992 (excluding any renewals or extensions or modifications thereof made on or after the Effective Date of this Agreement). COMPANY may request review, pursuant to Section 10(b)(i) below and without the necessity of any termination notice procedures, of MS' performance under Sections 2(f) and 2(g).

(h) 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.

(i) MS reserves all rights not expressly granted including, without limitation, modification rights, translation rights, rental rights, and rights to source code. MS shall retain title to Product software and Product Deliverables.

3. PAYMENT AND REPORTING.

(a) 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 by MS 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 for any such 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.

(b) 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.

(c) COMPANY agrees to make consolidated (i.e., on behalf of COMPANY and COMPANY Subsidiaries), estimated and nonbinding monthly 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.

(d) 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, and after termination or expiration for the final full or partial quarter.

(i) 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.

(ii) 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.

(e) COMPANY agrees to make consolidated (i.e., on behalf of COMPANY and COMPANY Subsidiaries) payments by check 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. A one percent (1%) monthly finance charge will be assessed on all amounts that are past due.

(f) 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 reinstalled 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) and (iv); (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"; (v) returned to COMPANY in compliance with COMPANY's Total Satisfaction Policy (i.e. money-back guarantee); or (vi) for general business use internal to COMPANY.

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

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 bug. For purposes of this

MSV 0000728
CONFIDENTIAL

MS-PCA 1103367

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.

(i) 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 (i) delivers to COMPANY Product Deliverables as defined in Section 1(e)(i)-(iii) 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 reasonable 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 any 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 Claim(s)") to the effect that: (i) the Product(s) violate any law or regulation or infringe any 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 any 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 Infringing 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 by a court or agency or agreed between the parties 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); or (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 (ii) 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, (1) awarded by a court or governmental agency of competent jurisdiction for which payment must be made, (2) included in a settlement to which COMPANY consents, and (3) reasonable attorneys fees (if any) incurred by MS in connection with opposing an application for a restraining order, provided COMPANY is notified promptly in writing of 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. LICENSE 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 customer transaction for which a Product license was included in the original 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 (except Product Documentation) 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) 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) (such as DLL interaction problems, and support for PnP, DMI and other such enhancements), COMPANY shall request assistance of MS and MS shall respond to COMPANY's request within seventy-two (72) hours. In the event that MS (i) declines to provide such assistance, or (ii) fails to respond to COMPANY's request or (iii) fails to perform and complete such assistance work within fourteen (14) days after COMPANY's request, then, if desired by COMPANY and subject to third party restrictions to which MS is bound, MS shall provide COMPANY sufficient information or access to source code as necessary to enable COMPANY to perform such work.

(c) 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 the end user's 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.

(d) Provided MS provides COMPANY with commercially reasonable access to Product technical assistance under Section 2(h), 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 in or 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(s) 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 with respect to any third party trademarks. 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 allowed or 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 initial term of this Agreement shall run from the Effective Date until one (1) year from the end of the calendar quarter in which the Effective Date occurs, provided that COMPANY at its option may extend the Agreement for an additional one-year term hereunder on the same terms and conditions as set forth herein by giving written notice of renewal to MS between 120 and 90 days prior to the expiration of such initial term.

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(b), 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 (each of which was subject to a 30-day cure period) 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 all of 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(f)(vi) and for support purposes only, including Section 3(f)(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 of COMPANY's 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 S1(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 either 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(b) constitute COMPANY's sole and exclusive remedy against MS, its officers, agents and employees for negligence, inexcusable delay, breach of warranty, express or implied, 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, and subject to compliance with 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 COMPANY's compliance with the terms of this Agreement, MS may cause (i) an audit to be made of COMPANY's or COMPANY Subsidiaries' books and records and/or (ii) an inspection to be made of COMPANY's or COMPANY Subsidiaries' facilities and procedures. Any audit and/or inspection shall be conducted during regular business hours at COMPANY's or COMPANY Subsidiaries' facilities, with reasonable advance written notice. Any audit or inspection 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 Subsidiaries' normal business activities.

(c) COMPANY agrees to provide MS' designated audit or inspection team reasonable access to relevant COMPANY or COMPANY 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 MS unless material discrepancies are disclosed and specifically substantiated. "Material" shall mean \$1 million 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 18 months prior to the date the audit is commenced.

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 on the subject matter hereof. 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(s) C	Product and Customer Systems
Exhibit N	Addresses
Exhibit R	Royalty Report
Exhibit(s) S (if executed)	Source Code
Exhibit X	Subsidiaries

MS-PCA 1103372

MSV 0000733
CONFIDENTIAL

NOTICE:

For Product(s), if any, specified in Exhibit C as licensed under the "per system" royalty calculation provisions, please note the following:

This is a Microsoft Per System License. As a Customer, you may create a "New System" at any time that does not require the payment of a royalty to Microsoft unless the Customer and Microsoft agree to add it to the License Agreement.

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

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

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

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

MICROSOFT CORPORATION

DELL COMPUTER CORPORATION

J Kempin
By (Signature)
Joachim Kempin
Name (Print)
Sr. Vice President
Title
July 19, 1995
Date

Thomas M. Colby
By (Signature)
Thomas M. Colby
Name (Print)
Director, Software Procurement
Title
06/28/95
Date

NOTICE:
This is an OEM distribution license. Product can only be distributed in connection with a Customer System, as specified in Section 6(a).
6/28/95

MS-PCA 1103373

MSV 0000734
CONFIDENTIAL

J Kempin

EXHIBIT A - SAMPLE END USER LICENSE AGREEMENT

IMPORTANT- READ CAREFULLY BEFORE OPENING SOFTWARE PACKET(S) AND/OR USING THE SOFTWARE. By opening the sealed packet(s) containing the software and/or using the software, you indicate your acceptance of the following Software License Agreement.

SOFTWARE LICENSE AGREEMENT
(Single User Products)

This software license agreement, including the Warranty and Special Provisions set forth in the appendix or separate booklet included in this package, is a legal agreement between you (either an individual or an entity) and the manufacturer ("PC Manufacturer") of the computer system purchased with this software product. By opening the sealed software packet(s) and/or using the software, you are agreeing to be bound by the terms of this agreement. If you do not agree to the terms of this agreement, promptly return the unopened software packet(s) and the accompanying items (including any Microsoft hardware, written materials, and binders or other containers) to the place from which you obtained them.

1. **GRANT OF LICENSE.** This License Agreement permits you to use one copy of the Microsoft software program(s) included in this package (the "SOFTWARE") on a single computer. The SOFTWARE is in "use" on a computer when it is loaded into temporary memory (i.e., RAM) or installed into permanent memory (e.g., hard disk, CD-ROM, or other storage device) of that computer. However, installation on a network server for the sole purpose of internal distribution shall not constitute "use" for which a separate license is required, provided you have a separate license for each computer to which the SOFTWARE is distributed.

2. **ADDITIONAL GRANT OF LICENSE (LANGUAGE SOFTWARE).** If the SOFTWARE includes a Microsoft language program, then you have a royalty-free right to reproduce and distribute executable files created using the SOFTWARE. If the language program is a BASIC or COBOL compiler product, then PC Manufacturer grants to you a royalty-free right to reproduce and distribute the runtime modules of the SOFTWARE provided that you: (a) distribute the runtime modules only in conjunction with and as a part of your software product; (b) do not use PC Manufacturer's or its suppliers' names, logos, or trademarks to market your software product; (c) include a valid copyright notice on your product label and as part of the sign-on message for your software product; and (d) agree to indemnify, hold harmless, and defend PC Manufacturer and its suppliers from and against any claims or lawsuits, including attorneys' fees, that arise or result from the use or distribution of your software product. The "runtime modules" are those files in the SOFTWARE that are identified in the accompanying user documentation as required during execution of your software program. The runtime modules are limited to runtime files, install files, and ISAM and REBUILD files.

3. **COPYRIGHT.** The SOFTWARE (including any images, "applets", photographs, animations, video, audio, music and text incorporated into the SOFTWARE) is owned by Microsoft Corporation or its suppliers and is protected by United States copyright laws and international treaty provisions and all other applicable national laws. Therefore, you must treat the SOFTWARE like any other copyrighted material (e.g., a book or musical recording) except that if the SOFTWARE is not copy protected you may either (a) make one copy of the SOFTWARE solely for backup or archival purposes, or (b) transfer the SOFTWARE to a single hard disk provided you keep the original solely for backup or archival purposes. You may not copy the user documentation accompanying the SOFTWARE.

4. **SOFTWARE MEDIA.** You may receive the SOFTWARE in disk media or on a CD-ROM or installed on the hard disk drive or ROM of your computer, or in multiple forms of media. Regardless of the number or type(s) of media you receive, you may use only the media appropriate for your single computer. You may not use the other media on another computer or loan, rent, lease, or transfer them to another user except as part of the permanent transfer (as provided below) of all SOFTWARE and user documentation.

5. **OTHER RESTRICTIONS.** You may not rent or lease the SOFTWARE, but you may transfer the SOFTWARE and any accompanying Microsoft hardware, user documentation on a permanent basis provided you retain no copies and the recipient agrees to the terms of this Agreement. If the SOFTWARE is an update or has been updated, any transfer must include the most recent update and all prior versions. You may not reverse engineer, decompile, or disassemble the SOFTWARE, unless otherwise provided in the Warranty and Special Provisions for your country.

6. **U.S. GOVERNMENT RESTRICTED RIGHTS.** The SOFTWARE 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)(G) 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.

Please see the Warranty and Special Provisions for information concerning governing law.

Product support for the SOFTWARE is not provided by Microsoft Corporation or its subsidiaries. For product support, please refer to PC Manufacturer's support number provided in the documentation for the SOFTWARE or for your computer. Should you have any questions concerning this Agreement, or if you desire to contact PC Manufacturer for any other reason, please refer to the address provided in the documentation for your computer.

FOR THE LIMITED WARRANTY AND SPECIAL PROVISIONS PERTAINING TO YOUR COUNTRY, PLEASE REFER TO APPENDIX ____ OF THE SOFTWARE DOCUMENTATION OR THE WARRANTY AND SPECIAL PROVISIONS BOOKLET INCLUDED IN THIS PACKAGE.

APPENDIX
WARRANTY AND SPECIAL PROVISIONS FOR (INSERT NAMES OF COUNTRIES)

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, direct 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

This Software License Agreement and Warranty are governed by the laws of the State of Washington, U.S.A.

MS-PCA 1103374

EXHIBIT C
WINDOWS 95 / DESKTOP OPERATING SYSTEMS PRODUCTS
(For MDA Accounts)

Product Number Name and Version	Language Versions **	Applicable Additional Provisions	Per Copy Royalty*	Per System Royalty*	Non-English Additional Royalty	Added by Amendment Number								
1. Windows® 95 operating system	ALL	(a), (b), (d)	<p>Windows 95 shipments as Percentage of shipments of Windows Products (as defined in Additional Provision (b))</p> <table border="0"> <tr> <td></td> <td align="right"><u>Royalty#</u></td> </tr> <tr> <td><40%</td> <td align="right">US\$ 49.25</td> </tr> <tr> <td>>40% and <75%</td> <td align="right">US\$ 43.50</td> </tr> <tr> <td>>75%</td> <td align="right">US\$ 43.00</td> </tr> </table> <p>Estimated quarterly volume for Windows Products: 375,000</p>		<u>Royalty#</u>	<40%	US\$ 49.25	>40% and <75%	US\$ 43.50	>75%	US\$ 43.00	<u>Royalty</u> N/A	US\$ 6.00	
	<u>Royalty#</u>													
<40%	US\$ 49.25													
>40% and <75%	US\$ 43.50													
>75%	US\$ 43.00													

The above per copy royalty rates for Windows 95 reflect the \$20.00 maximum allowable discount which COMPANY may earn under its Windows 95-Based PC Market Development Agreement (the "MDA"); provided that the parties hereby agree that MS waives the requirement of Paragraph 5 of the MDA and COMPANY shall be entitled as of the Effective Date to the full \$3.00 MDA discount specified in connection with such Paragraph 5. The lowest per copy royalty rate of US\$43.00 specified above shall apply for the first twelve (12) months after the date of first distribution for revenue of Windows 95 by COMPANY, regardless of the achieved percentage of shipment of Windows Products during such twelve-month period, provided that for such twelve-month period COMPANY will advertise and offer to end users Windows 95 as the default pre-installed operating system on one hundred (100%) of its Dimension Customer Systems; provided, further, that any election or choice by any of COMPANY's customers not to have such default operating system preinstalled on any one or more Dimension Customer Systems shall not affect COMPANY's right to such \$43.00 royalty rate for such twelve-month period. The royalty rates specified above shall not be adjusted for MDA purposes until the end of the month in which MS notifies COMPANY of its final MDA results and actual MDA discounts; provided that such notice by MS must be issued on or before December 31, 1995, otherwise COMPANY shall be entitled to the \$20.00 maximum allowable MDA discount for all purposes under this Agreement. Effective the beginning of the next month, following receipt of such timely MDA notice, COMPANY shall pay royalty rates equal to the above rates plus unearned MDA discounts, if any are unearned, as validly and ultimately determined under the MDA and set forth in such timely MS notice.

2. Windows® for Workgroups operating system Version 3.11	ALL	(b), (c), (d)	<u>Royalty</u> US\$ 18.25	<u>Royalty</u> N/A	US\$2.10	
3. Windows® operating system Version 3.1x	ALL	(b), (d)	<u>Royalty</u> US\$ 14.00	<u>Royalty</u> N/A	US\$2.10	
4. MS-DOS® operating system Version 6.22	ALL	(d), (e)	<u>Royalty</u> US\$ 15.00	<u>Royalty</u> N/A	US\$2.50	
5. Enhanced Tools for MS-DOS® 6.22 Version 1.02	ALL	(d), (e)	<u>Royalty</u> Included in item number 4.	<u>Royalty</u> N/A	N/A	

MS-PCA 1103375

6. MS-DOS® operating system Version 6.2/V	J	(d)	Royalty US \$ 17.75	Royalty N/A	N/A	
7. Enhanced Tools for MS-DOS® 6.2/V Version 1.0/V	J	(d)	Royalty Included in item 6.	Royalty N/A	N/A	
8. Windows® operating system Version 3.2 (PRC Chinese Version)	PRC	(b), (d), (e)	Royalty N/A	Royalty N/A	N/A	

* A Product is not licensed hereunder unless royalty rate(s) are indicated in the Product table.

** Language Key: A = Arabic, BP = Portuguese (Brazil), CE = Cyrillic Enabled, CH = Traditional Chinese, CZ = Czech, D = German, DA = Danish, DU = Dutch, E = Spanish, EE = Eastern and Central European, EN = English, F = French, FF = France's French, FI = Finnish, HAN = Hangeul, HB = Hebrew, HUN = Hungarian, I = Italian, J = Japanese, N = Norwegian, P = Portuguese, POL = Polish, PRC = PRC Simplified Chinese, RU = Russian, SW = Swedish, TH = Thai, TR = Turkish, ALL = All languages and translations available from MS from time to time during the term of the Agreement. In addition to the language versions specified in the Product table above, COMPANY may receive Product Deliverables for the licensed Product in available language versions listed in the Language Key (except CH, HAN, J, and PRC which may only be added by amendment) by sending a written request to the attention of OEM Accounting Services at the address listed in Exhibit N for royalty reports.

"PER SYSTEM" ROYALTY CALCULATION

For Product(s) which specify "per system" in the Royalty Basis column in the Customer System table below:

1. Subject to Section 3(f), COMPANY agrees to pay MS the royalty set forth above for each Customer System distributed or placed in use by or for COMPANY.
2. In addition, subject to Section 3(f), COMPANY agrees to pay MS the Non-English Additional Royalty specified above for each unit of non-English versions of Product distributed or placed in use by COMPANY.
3. COMPANY may distribute only one copy of Product software in addition to one copy of Preinstalled Product Software in one language and Release for use on each such Customer System. COMPANY shall pay MS the royalty applicable to the Release and language version shipped.
4. 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.

"PER COPY" ROYALTY CALCULATION

For Product(s) which specify "per copy" in the Royalty Basis column in the Customer System table below:

1. Subject to Section 3(f), COMPANY agrees to pay MS the applicable royalty rates set forth above for each Customer System that is shipped with a Product licensed by COMPANY.
2. In addition, subject to Section 3(f), COMPANY agrees to pay MS the applicable Non-English Additional Royalty specified above for each Customer System that is shipped with a non-English version of Product licensed by COMPANY.
3. COMPANY may distribute only one copy of Product software in addition to one copy of Preinstalled Product Software for use on each such Customer System.

MS-PCA 1103376

EXHIBIT C
(Continued)

4. Notwithstanding anything to the contrary contained in Section 3 of the Agreement, for purposes of establishing the royalty for the Windows 95 Product only, if in any two consecutive quarterly reporting periods, COMPANY's reported shipments in each quarter of Windows Products are twenty percent or more below COMPANY's estimated quarterly volume specified for Windows Products in the Product table above, COMPANY and MS shall negotiate an increase in the per copy royalty rate(s) to reflect COMPANY's lower shipment volumes. Such increased royalty rate(s) shall be in effect for the remainder of the term of the Agreement commencing with the quarterly reporting period following such second low-volume quarter; provided, however, that if COMPANY's reported quarterly volume for Windows Products returns to or exceeds the original estimated quarterly volume for any quarter thereafter, COMPANY's per copy royalty rate(s) shall be restored to the rate(s) specified in the Product table above commencing with the quarterly reporting period following such quarter in which the volume returns to or exceeds the original estimate.

ADDITIONAL PROVISIONS - WINDOWS 95 ONLY

(a) (1) Product deliverables include an OEM Pre-installation Kit ("OPK"). The royalty rate(s) specified above require pre-installation of Windows 95 as the "default" operating system on each Customer System distributed with Windows 95 (i.e., Windows 95 will set up and execute unless the user configures the Customer System otherwise). COMPANY shall preinstall the Product software solely in accordance with the installation instructions set forth in the "OPK User's Guide" included in the OPK. Product software may not be distributed in encrypted form except as expressly provided in the OPK User's Guide. COMPANY may use the information, tools and materials contained in the OPK solely to preinstall the Product software in accordance with the OPK User's Guide and for no other purpose.

(2) Other than as specified in the OPK User's Guide, COMPANY shall not modify the Product software, nor delete or remove any features or functionality without the written approval of MS in each instance. If COMPANY wishes to include its name and/or logo on the Product software "start-up" screen, COMPANY will do so only in the location and manner as defined by MS in writing for the Windows 95 Product. COMPANY shall not alter the content or sequence of the Product software "start-up", initialization or other screens; provided, however, that COMPANY may launch application programs, including COMPANY-originated programs (such as the Dell Assistant or Dell Inspector) on the startup screen, as a "load equal" or as a short cut on the desktop screen.

(3) If COMPANY enters registration information on behalf of end users in the boxes provided for the on-screen end user registration process for the Product software, COMPANY shall not enter its own name or make any other false or fictional registrations. COMPANY may not relieve end users of their obligations to enter Certificate of Authenticity ("COA") registration numbers in the on-screen end user registration process.

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

(5) COMPANY agrees that it will not release or distribute Windows 95 to end users until MS advises its first OEM customer to receive such advice (which shall include COMPANY) that Windows 95 may be released or distributed to end users.

(6) Any EULA for the Product distributed by COMPANY must be identical to the on screen EULA presented to the end user during Product setup. The on-screen EULA will be modified by MS to conform to the EULA mutually agreed upon between MS and COMPANY pursuant to the negotiations contemplated by the terms of this Agreement.

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

(8) For purposes of the Royalty Calculation provisions of this Exhibit C, preinstallation of multiple language versions of Windows 95 performed in accordance with the instructions for multiple language installation provided in the OPK shall constitute "one language" version. In such event, COMPANY shall pay the highest royalty applicable to the language versions distributed.

ADDITIONAL PROVISIONS - WINDOWS 95, WINDOWS, WINDOWS FOR WORKGROUPS, AND MS-DOS

(b) (1) "Windows Product(s)" shall mean Windows, Windows for Workgroups, and/or Windows 95.

(2) Except for the MS upgrade program and MS products purchased or obtained through retail or wholesale distribution channels, COMPANY may not distribute both Windows 95 and the non-Windows 95 Product(s) licensed hereunder with the same Customer System.



EXHIBIT C
(Continued)

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

(d) COMPANY shall not advertise a separate price for the Product(s) licensed hereunder.

(e) (1) The PRC language version of Product(s) is available with only simplified Chinese character fonts licensed from a third party. COMPANY acknowledges that such fonts may differ in quality and characteristics to Chinese character fonts available in other Microsoft Products.

(2) The PRC language version of Product(s) is available only through selected Authorized Replicators as specified in MS. From time to time, MS shall provide an updated list of Authorized Replicators through which the PRC language version of Product(s) is available.

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

CUSTOMER SYSTEMS

For each Product which COMPANY chooses to license for distribution with the listed Customer System in the chart below, the letter "s" or "c" in the relevant box below indicates whether COMPANY is licensing the Product for such Customer System on a "per system" or "per copy" basis, respectively. COMPANY may designate one or more new model lines or series for inclusion under the terms of this Agreement and to be licensed for Product(s) upon delivery of written notice to MS; such designation shall be effective fifteen (15) days after delivery of such notice to MS.

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

In the event that COMPANY designates models by model line or series in this Exhibit C, then COMPANY may elect to include as Customer System(s) new models within such model line or series by including any such new model(s) on its royalty report for the reporting period in which each such new model is first distributed with the Product. Unless otherwise agreed to by the parties prior to COMPANY's first distribution of a new model with the Product, each such new model designated on a royalty report shall be licensed for the remainder of the term of the Agreement on the same basis (i.e., per system or per copy) as the other models in the model line or series and shall bear the applicable royalty set forth in this Exhibit C.

MS-PCA 1103378

MSV 0000739
CONFIDENTIAL



EXHIBIT C
(Continued)

Product Number Key: 1 = Windows 95; 2 = Windows for Workgroups 3.11; 3 = Windows 3.11; 4 = MS-DOS 6.2; 5 = Enhanced Tools for MS-DOS 6.2; 6 = MS-DOS 6.2/V; 7 = Enhanced Tools for MS-DOS 6.2/V; 8 = Windows, PRC Version 3.2

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.

	Model Name or Model Number	Processor Type	Product Number							
			1	2	3	4	5	6	7	8
1.	PowerEdge model line		c	c	c	c	c	c	c	c
2.	Latitude model line		c	c	c	c	c	c	c	c
3.	OptiPlex model line		c	c	c	c	c	c	c	c
4.	Dimension model line		c	c	c	c	c	c	c	c
5.										
6.										
7.										
8.										
9.										
10.										
11.										
12.										
13.										
14.										
15.										
16.										
17.										
18.										
19.										
20.										

MS-PCA 1103379

**EXHIBIT C-1
WINDOWS 95 OEM UPGRADE**

* If a royalty rate is not specified for a particular Product, then such Product is not licensed under this Agreement.

** Language Key: BP = Portuguese (Brazil), D = German, DU = Dutch, E = Spanish, EN = English, F = French, I = Italian, SW = Swedish

Product Name and Version	Language Version(s)	Applicable Additional Provisions	Royalty/Basis *	Non-English Additional Royalty	Maximum Number of Units of Product *	Added by Amendment Number
Windows® 95 OEM Upgrade	ALL AVAILABLE	(a), (b), (c), (d), (e), (g), (h)	US\$35.00 per copy	US\$6.00	N/A	

"PER COPY" ROYALTY CALCULATION

For Product(s) which specify "per copy" in the Royalty/Basis column in the Customer System table above:

1. COMPANY agrees to pay MS the royalty rates set forth above for each unit of Product ordered by COMPANY.
2. In addition, COMPANY agrees to pay MS the Non-English Additional Royalty specified above for each unit of non-English versions of Product ordered by COMPANY. Non-English versions are provided on an if and when available basis.

ORDER AND PAYMENT

Notwithstanding anything to the contrary contained in Section 3 of the Agreement, COMPANY shall prepay for each unit of Product in advance of each order placed with the Authorized Replicator by wire transfer to MS to the account specified in Exhibit N. COMPANY shall identify the quantity of each language version of Product to be ordered when making payment. Each payment must be for a minimum of two hundred fifty (250) units of Product.

ADDITIONAL PROVISIONS KEY

- (a) COMPANY agrees that it will not release or distribute Product until MS advises or allows the first of its OEM customers to release Customer Systems with Windows 95 to end users.
- (b) Notwithstanding anything to the contrary contained in Sections 2 and 6 of the Agreement, COMPANY shall distribute the Product only in the form/packaging available from the Authorized Replicator.
- (c) For purposes of this Exhibit C-1 only, "Customer System" shall mean Customer Systems which COMPANY can conclusively establish: were distributed with the Prior Product (as specified in the chart below in Additional Provision (d) of this Exhibit) during the period beginning July 1, 1995 and ending October 1, 1995 in compliance with a valid OEM license agreement between COMPANY and MS.
- (d) Notwithstanding anything to the contrary contained in Sections 2 and 6 of the Agreement, COMPANY may distribute the Product only as an "upgrade" provided by COMPANY separate from a Customer System directly to an existing, authorized end-user of a Prior Product on a Customer System.

Prior Product

Windows 3.xx
Windows for Workgroups 3.11

Product

Windows 95 Upgrade
Windows 95 Upgrade

- (e) COMPANY may only distribute the Product either (i) directly (with or without use of dealers or other intermediaries) to end users, or (ii) as a mail order fulfillment item directly (with or without use of dealers or other intermediaries) to end users from COMPANY or an MS designated fulfillment source.
- (f) The packaging for the Product shall indicate that it is intended as an "Upgrade" only (or similar wording) and not for use by a new customer.
- (g) COMPANY's license to distribute this upgrade Product shall expire November 30, 1995.
- (h) The Product is available only through selected Authorized Replicators as specified by MS.

MS-PCA 1103380

MSV 0000741
CONFIDENTIAL

EXHIBIT N
ADDRESSES

COMPANY:

NOTICES:

Dell Computer Corporation
2214 W. Braker Lane, Suite D
Austin, TX 78758-4063

Attn.: Thomas M. Colby, Director
Telephone: 512-728-0037
Fax: 512-728-4033

BILL TO:

Dell Computer Corporation
2214 W. Braker Lane, Suite D
Austin, TX, 78758-4063

Attn.: Joel Reed, Asst. Corporate Controller

SHIP TO:

Dell Computer Corporation
2214 W. Braker Lane, Suite D
Austin, TX 78758-4063

Attn.: Dennis Burleson

COMPANY Support

telephone no.: 1-800-456-3355

MS:

NOTICES:

MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
U.S.A.

Attn.: Vice President, OEM Group

With copy to:

MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
U.S.A.

Attn.: Law & Corporate Affairs
Fax: +1-206-936-7329

Other Correspondence:

OEM Sales
MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
U.S.A.

Reports and Payments:

If COMPANY is a U.S.A. based company, payments and royalty reports shall be made to:

If sent by U.S.A. Mail:
MICROSOFT CORPORATION
Attention: OEM Finance
P.O. Box 84808
Seattle, WA 98124-6108

If sent by private courier:
MICROSOFT CORPORATION
Attention: OEM Finance
Remittance Processing
Wholesale Lockbox
6801 South 180th
Tukwila, WA 98188

Fax copies of royalty reports to:
OEM Finance Fax: (206) 936-5298

If COMPANY is based outside the U.S.A., COMPANY agrees to make such payments and royalty reports as follows:

Payment by wire transfer to:
Citibank N.A.
399 Park Avenue
New York, NY 10043
U.S.A.
ABA 021000089

Royalty reports to:
MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
U.S.A.
Attention: OEM Finance

Regarding:
Microsoft International OEM Collections
Account #38468231

Fax copies of royalty reports to:
OEM Finance Fax: +1-206-936-5298

or to such other address or account as MS may specify from time to time. COMPANY agrees to specify the MS License Agreement number and the MS invoice number, if any, with respect to which payment is made.

**EXHIBIT B
ROYALTY REPORT**

Royalty Report for _____ [COMPANY]
Reporting Period: _____, 19__ to _____, 19__

Microsoft License # _____

PER-SYSTEM PRODUCT (if applicable)

Product, Version Number, and Language Version: _____

	A	B	C (= A x B)
	Royalty	Number of	Royalty
	Rate	Systems	Due
System 1: _____	\$ _____	_____	\$ _____
System 2: _____	\$ _____	_____	\$ _____
			Total Reported: \$ _____
			PRODUCT TOTAL \$ _____

PER-COPY PRODUCT

Product, Version Number, and Language Version: _____

	A	B	C (= A x B)
	Royalty	Units	Royalty
	Rate	Shipped	Due
Per Copy _____	\$ _____	_____	\$ _____
			PRODUCT TOTAL \$ _____

Total Royalty Reported: \$ _____

Total Payment Enclosed: \$ _____

If this is your initial royalty report, please indicate date of first Product shipment for revenue: _____

The undersigned hereby certifies that he/she is an officer or director of COMPANY and that this report is complete and correct.

_____ (Signature)

_____ (Print)

_____ (Title)

_____ (Date)

Telephone Number: () _____

MS-PCA 1103382

**MSV 000743
CONFIDENTIAL**

EXHIBIT X
SUBSIDIARIES

I Name: _____
Address: _____

Telephone: _____
Fax: _____

II Name: _____
Address: _____

Telephone: _____
Fax: _____

TO BE SUPPLIED BY PARTIES AT LATER DATE

MS-PCA 1103383

MSV 0000744
CONFIDENTIAL

