

COMPANY Name:
MS Document Number:
Start Date:
End Date:

<<TAGNAME::COMPANY NAME>>
<<TAGNAME::AGREEMENTNUMBER>>
<<TAGNAME::Agr Eff Date>>
July 31, 2002

MICROSOFT BUSINESS TERMS DOCUMENT FOR OEM CUSTOMERS
(Version 4.0)

This Business Terms Document ("BTD") sets forth general business terms and conditions the parties contemplate will apply to any License Agreement(s) (as hereinafter defined) for original equipment manufacturer ("OEM") products that Microsoft Licensing, Inc. ("MS") and the company specified above ("COMPANY") may enter into between the Start Date and the End Date set forth above. This BTD does not grant any license rights to any MS products and shall have no force or effect except if and as incorporated into a License Agreement by agreement of the parties. This BTD includes:

This Signature Page;
Address Schedule; and
Terms and Conditions.

By signing below, each party acknowledges that it has read and understood all of the terms set forth in the attached documents.

MICROSOFT LICENSING, INC.	<<TAGNAME::COMPANY NAME>>
A company organized under the laws of: State of Nevada, U.S.A.	A company organized under the laws of: <<TAGNAME::INCORP>>
By: _____ (signature)	By: _____ (signature)
Name: _____ (printed)	Name: _____ (printed)
Title: _____ (printed)	Title: _____ (printed)
Date: _____ (printed)	Date: _____ (printed)

COMPANY's seal or "chop"

12/14/01 56579v1 Microsoft Business Terms Document For OEM Customers (Version 4.0)

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DEFENDANT'S
EXHIBIT
140

MS01 0122905
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MS01 5001088

Plaintiff's Exhibit
9244
Comes V. Microsoft

MS-CCPMDL 000000331305

ADDRESS SCHEDULE

COMPANY's technical support phone number: <<TAGNAME::Support Phone>>

COMPANY's VAT Number: <<TAGNAME:: VAT Reg Number>>

Reporting and Payment

Send Reports via Email to:

Microsoft Licensing, Inc.
OEM Accounting Services
Email: MSLIDN@MICROSOFT.COM
Fax: (1) 775-826-0531
Fax (alternative): (1) 775-826-0506

Send Payments via Wire Transfer Only to:

Microsoft Licensing, Inc.
c/o Bank of America
1401 Elm Street
Dallas, TX
USA
ABA# 111000012
SWIFT Code:BOFAUS3N
Account # 3750891058

Or to such other address or account as MS may specify in writing from time to time.

Notices

Any written notices related to this LTD or License Agreement(s) must be addressed to the contact and locations outlined below, or such other addresses as either party may hereafter specify in writing.

COMPANY Information

COMPANY Name
Street Address / post office box
City and State / Province
Country and Postal Code
Contact Name:
Phone Number:
Fax Number:
Email Address (required):

MS Information

Microsoft Licensing, Inc.
6100 Nell Road
Reno, NV 89511-1132
USA
Attention: General Manager
Phone Number: (1) 775-823-5600
Fax Number: (1) 775-826-0531

With a copy to:

COMPANY Name
Street Address / post office box
City and State / Province
Country and Postal Code
Contact Name:
Phone Number:
Fax Number:
Email Address (required):

With a copy to:

Microsoft Corporation
One Microsoft Way
Redmond, Washington USA 98052
Attention: Law and Corporate Affairs
Re: Microsoft Licensing, Inc. - OEM Sales

With an additional copy to:

Microsoft Corporation
One Microsoft Way
Redmond, Washington USA 98052
Attention: Sr. Vice President - OEM Sales

COMPANY Subsidiary List

The notice specified in Section 1(d)(ii)(B) of the Terms and Conditions is not required for the following COMPANY Subsidiaries.

COMPANY Subsidiary Name Street Address / Post Office Box City and State / Province Country and Postal Code Contact Name: Phone Number: Fax Number: Email Address (required):	COMPANY Subsidiary Name Street Address / Post Office Box City and State / Province Country and Postal Code Contact Name: Phone Number: Fax Number: Email Address (required):
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COMPANY Designation of MSLI OEM Online Company Administrator

COMPANY designates as its COMPANY Administrator(s) the following individual(s).

COMPANY Administrator (Primary) Name: Phone Number: Fax Number: Email Address (required):	COMPANY Administrator (Secondary) Name: Phone Number: Fax Number: Email Address (required):
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TERMS AND CONDITIONS

1. DEFINITIONS.

(a) "Associated Product Materials" or "APM" means materials as MS shall designate from time to time, such as the end user manual, recovery media, and external media. MS will make reasonable efforts to ensure that changes made to the APM, if any, will not affect the overall size of the APM packaging.

(b) "Authorized Reseller" or "AR" means an MS-authorized supplier of APM. A listing of ARs may be posted at MSLI OEM Online, and such listing may be updated by MS from time to time.

(c) "COA" means the Certificate of Authenticity as designated by MS.

(d) "COMPANY Subsidiary" means an entity meeting the following criteria:

(i) on a class by class basis, more than fifty percent (50%) of the stock or other ownership interest entitled to (A) vote for the election of directors or managing authority, or (B) control or otherwise direct decisions for such entity, is directly or indirectly owned by COMPANY, but only so long as such ownership exists;

(ii)(A) is listed on the Address Schedule, or (B) COMPANY has submitted, and MS has approved in writing, a notice to add a COMPANY Subsidiary in the form provided in the OEM Resource Guide; and

(iii) a COMPANY Subsidiary Agreement in the form provided in the OEM Resource Guide has been submitted to MS.

(e) "Customer System" means COMPANY's computer system product(s) described in the Customer System table for each Product.

(f) "EULA" means the end user license agreement delivered by MS with each Product.

(g) "License Agreement" means the separate License Agreement(s) between MS and COMPANY that set forth the license grants and terms for specific Product(s), and incorporates this BTD by reference.

(h) "MSCORP" means Microsoft Corporation, the parent company of MS.

(i) "MSLI OEM Online" or the "Site" means the Internet site known as <http://www.microsoftOEM.com> accessed and used by COMPANY in connection with certain aspects of its performance under a License Agreement.

(j) "OEM Resource Guide" means the resource guide provided by MS in connection with the first License Agreement entered into between December 15, 2001 and July 31, 2002, and annual replacements thereof provided by MS on or before May 1 of each year thereafter, which includes the current language versions key, report and payment instructions, record keeping guidelines, and other information.

(k) "OEK" means the OEM installation utilities and/or Product software delivered to COMPANY by MS for installing the Product on the Customer System.

(l) "Product" means the MS product(s), including, where applicable, Product software in object code form, COA, and APM licensed in a License Agreement.

(m) "Supplement" means a release of a supplement to, or replacement of, any portion of Product as MS may provide to COMPANY from time to time. Any additional license rights and related limitations will be described in a Supplement letter, including whether the Supplement is optional.

2. LICENSE GRANT LIMITATIONS.

License grants for the Product(s) are set forth in the appropriate License Agreement, but in each case are subject to the following limitations:

(a) COMPANY shall not advertise, provide a separate price for, or otherwise market the Product(s) as separate items from the Customer System; except to the extent necessary to advertise, price, or otherwise market those Products that COMPANY is authorized by MS to license as an upgrade or "upsell" to another Product.

(b) COMPANY shall not remove or obscure any copyright, trademark or patent notices that appear on the Product as delivered to COMPANY.

(c) Any COMPANY use or display of any MS or MSCORP logo (including any stylized representation of the Microsoft name used by MS or MSCORP) shall be limited to the terms of a separate logo license if and as available from MSCORP. The OEM Resource Guide contains further information on MSCORP logo and trademarks.

(d) COMPANY shall contractually obligate (e.g., by contract, invoice, or other written instrument that is reasonably intended to establish such obligation upon distribution of a Customer System) its distribution channels to deliver the COA and APM together with each Customer System, in the COMPANY's Customer System packaging, and not to quote a separate price for the Product. COMPANY shall promptly discontinue distribution of Product to any member of its distribution channel that does not comply with this requirement and provide reasonable assistance to MS should MS choose to investigate such incident.

(e) COMPANY shall not reverse engineer, decompile, or disassemble the Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. For purposes of this subsection 2(e), COMPANY acknowledges that information on interoperability of the Product with other products is readily available.

(f) Except as otherwise provided in this Section 2(f), COMPANY shall acquire all components of a particular APM unit and its related COA from a single AR. COMPANY may acquire components of a particular APM unit and its related COA from separate ARs for Product(s) that: (i) are billed under Type 1 billing; and (ii) use a COA provided in label format (e.g. as used for desktop operating system Product(s)). These requirements do not preclude COMPANY from acquiring separate APM units and their related COAs from multiple ARs.

(g) All orders to MS or its ARs shall be made only by COMPANY or COMPANY Subsidiaries. COMPANY and COMPANY Subsidiaries shall request delivery of these shipments only to locations owned/leased and controlled by COMPANY, COMPANY Subsidiaries, or third party installers approved by MS. Product software may only be installed on Customer Systems at such locations. Before a third party installer may be approved, the following steps must be completed:

(i) COMPANY and its third party installer(s) complete the application process set forth in the OEM Resource Guide; and

(ii) COMPANY, its third party installer(s) and MS execute an "OEM Third Party Installer Agreement."

COMPANY hereby indemnifies MS and MSCORP against any loss resulting from its third party installer's breach of the terms of the OEM Third Party Installer Agreement or unauthorized reproduction and/or distribution of all or any portion of the Product. COMPANY shall pay MS, as liquidated damages, an amount equal to the Default Charge, as specified in the applicable License Agreement for the Product, for each Product distributed by its third party installer(s) separate from the Customer System.

(h) COMPANY shall not distribute for revenue any Customer System containing, nor advertise or promote, a release and language version of any Product prior to the respective the official OEM ship

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date and advertising date for such release and language version, as communicated to COMPANY by MS.

(i) COMPANY shall distribute the most current licensed release of the Product(s), including Supplements, on all Customer Systems shipped beginning no later than the ninetieth (90th) day following MS' shipment of the corresponding OPK or Supplement for such release; provided however, if MS ships the OPK of the Product between September 1 and October 31 of a given calendar year, COMPANY shall begin shipment of the most current licensed release of the Product(s), including Supplements, no later than February 1 of the following year. In the event that MS provides COMPANY a Supplement to a Product and the Supplement is designated as a required Supplement by MS in the corresponding Supplement letter, COMPANY may elect to not license the required Supplement by so notifying MS in writing within sixty (60) days after MS' shipment, and prior to COMPANY's distribution, of the required Supplement. Provided COMPANY has duly provided the foregoing notice, the License Agreement under which the Product supplemented by the required Supplement is licensed shall terminate under the terms of such License Agreement solely with respect to such Product on the ninetieth (90th) day following MS' shipment of the required Supplement. Notwithstanding the other provisions of this subsection 2(i), COMPANY may continue to ship Customer Systems with earlier versions of the Product for which COMPANY is licensed to COMPANY's large account customers upon written, signed request of such customer(s). MS may designate, in writing, some Supplements as optional.

(j) Except as otherwise provided in this Section 2(j), each Customer System case and packaging shall be branded to indicate to end users that COMPANY and/or COMPANY Subsidiaries are the manufacturer of the Customer System (i.e., no private labeling, co-branding or 3rd party branding).

(i) **Private Labeling.** COMPANY may, pursuant to a customer's request, license or distribute Customer System(s) under the brand name(s) or trademark(s) (collectively "Marks") of such customer (whether in combination with, or in lieu of, COMPANY's Marks) provided that: (A) such Customer System(s) are only distributed to such customer; (B) COMPANY warrants to MS that such customer owns all necessary intellectual property rights in and to the use of the non-COMPANY Marks in connection with the marketing, licensing, or distribution of such Customer System(s); and (C) the Customer System(s) are for internal deployment and use by such customer and are not intended for commercial redistribution.

(ii) **Co-Branding.** COMPANY may market, license, or distribute Customer System(s) under the Marks of both COMPANY and a third party provided that: (A) the third party whose Marks are used in connection with the marketing, licensing, or distribution of such Customer System(s) is not engaged in the business of (1) the design, manufacture or assembly of personal computers; or (2) unless MS has otherwise consented in writing, the financing of personal computers; (B) COMPANY warrants to MS that COMPANY has acquired and shall maintain all necessary intellectual property rights in and to the use of the third party Marks used in connection with the marketing, licensing, or distribution of such Customer System(s); and (C) COMPANY's name and Marks are situated on the case of each Customer System no less prominently than such third party's Marks.

(iii) **3rd Party Branding.** COMPANY may market, license, or distribute Customer Systems under the Marks of an affiliated party, as defined below, provided that: (A) COMPANY warrants to MS that COMPANY has acquired and shall maintain all necessary intellectual property rights in and to the use of the affiliated party Marks used in connection with the marketing, licensing, or distribution of such Customer System(s); and (B) COMPANY's name shall be situated on the case of each Customer System adjacent to, and no less prominently as, such affiliated party Marks. For purposes of this subsection 2(j), an "affiliated party" shall include a COMPANY

Subsidiary, as defined in this LTD, or an entity directly or indirectly: (A) controlling COMPANY, (B) controlled by COMPANY, or (C) under common control with COMPANY, where control is defined as direct or indirect majority ownership.

(iv) Certain Products may not be marketed or distributed under any third party brand names or trademarks due to circumstances beyond MS' control. Such Products, if any, are indicated in the applicable License Agreement(s), and notwithstanding the provisions of Sections 2(j)(i), 2(j)(ii) and 2(j)(iii) above, COMPANY shall not distribute such Products under any third party brand name or trademark.

(v) The branding and/or labeling of Customer Systems as provided under this Section 2(j) shall not modify COMPANY's obligations to warrant and provide support for Product(s) licensed for such Customer Systems.

(k) If the License Agreement grants to COMPANY the right to sublicense to COMPANY Subsidiaries, COMPANY hereby irrevocably and unconditionally guarantees each COMPANY Subsidiary's performance of its obligations under the License Agreement(s). COMPANY agrees that it shall be jointly and severally liable with each COMPANY Subsidiary for any breach of the terms and conditions of the License Agreement by a COMPANY Subsidiary. Except as expressly set forth in a License Agreement, in this LTD, or in writing signed by MS, no other sublicense rights are granted.

(l) In the event COMPANY is organized under the laws of Korea, Product shall not be delivered to COMPANY nor shall COMPANY distribute any Product before the date of approval of, or if applicable, registration of the License Agreement(s) by the Korean government or its designee.

(m) All distribution and use of the Product is by license only. MS does not authorize all or any portion of the Product to be "issued to the public", "put into circulation", or subject to a "first sale" as the copyright laws may use those (or similar) terms.

(n) MS reserves all other rights not expressly granted in the License Agreement(s) including, without limitation, modification rights, translation rights, rental and leasing rights, and rights to source code. MS expressly reserves its exclusive right under applicable copyright, patent, and trademark laws to distribute copies of Product by any means. COMPANY acknowledges that MS shall retain all copyright, patent, moral, trademark, title and other proprietary and intellectual property in the Product software and OPKs.

3. REPORTS AND PAYMENTS.

(a) (i) If the Product billing type is identified as "Shipment" or "Type I" in the License Agreement, royalties shall be based on (A) shipments of Product, COAs, or APM as specified in the applicable License Agreement to or on behalf of COMPANY by MS or the AR and (B) COMPANY reports described below, for Products licensed on a per system basis. If COMPANY identifies any discrepancies in the amount invoiced, COMPANY shall report such discrepancies to MS within twenty (20) days in accordance with Section 3(h)(ii). For Products licensed on a per system basis, within twenty (20) days after the end of any calendar month in which COMPANY has shipped Customer Systems covered by a per system license without a COA, COMPANY shall complete and electronically submit to MS, in accordance with MS' guidelines for reporting provided in the OEM Resource Guide, a consolidated royalty report on behalf of COMPANY and any COMPANY Subsidiaries.

(ii) If the Product billing type is identified as "OEM Report" or "Type II" in the License Agreement, within twenty (20) days after the end of each calendar month, and twenty (20) days after the termination, cancellation or expiration date of the applicable License Agreement for the final full or partial month, COMPANY shall complete and electronically submit to MS, in accordance with MS'

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guidelines for reporting provided in the OEM Resource Guide, a consolidated royalty report on behalf of COMPANY and any COMPANY Subsidiaries. For any calendar month COMPANY fails to report in a timely manner, MS may invoice COMPANY for royalties based on shipments of Product, COAs, or APM to or on behalf of COMPANY by MS or the AR.

(b) For each calendar month, MS shall invoice for royalties due and COMPANY shall remit consolidated payment(s) (on behalf of COMPANY and any COMPANY Subsidiaries) to MS as specified in the Payment and Reporting section of the Address Schedule within forty-five (45) days after the end of each calendar month. COMPANY shall include the MS number for the applicable License Agreement and the MS invoice number(s) on all payments. Subject to applicable law, a three percent (3%) late charge and a one and one half percent (1.5%) monthly charge may be assessed on all amounts that are past due. Such late charges shall apply irrespective of the issuance or date of an MS invoice.

(e) Notwithstanding anything to the contrary in this Section 3, upon COMPANY'S prior written request and as an accommodation to COMPANY, a single COMPANY Subsidiary may provide on behalf of COMPANY the royalty reporting and royalty payments due pursuant to the terms and conditions of each License Agreement, provided (A) such arrangement creates no additional withholding or other tax consequences for MS; (B) COMPANY agrees to be primarily liable to MS for full payment and performance by COMPANY and each COMPANY Subsidiary for performance of all terms and conditions of such License Agreement; and (C) MS shall invoice any such COMPANY Subsidiary at the address set forth in the Address Schedule directly for all payments due under such License Agreement.

(d) In the event COMPANY places orders for Product in quantities, which in MS' reasonable opinion are greater than COMPANY will be able to distribute or make timely payment for in compliance with the terms of the License Agreement, MS may require ARs to limit such orders to quantities consistent with COMPANY'S historical order quantities, adjusted for seasonal variances.

(e) Royalties are separate from, and in addition to, any charges by the AR for COA/APM ordered by COMPANY. Royalties also exclude any taxes, duties, fees, excises or tariffs imposed on any of COMPANY'S activities in connection with the applicable License Agreement. Such charges, taxes, duties, fees, excises or tariffs, if any, shall be paid by COMPANY.

(f) COMPANY shall pay MS, as liquidated damages, an amount equal to the Default Charge, as specified in the applicable License Agreement for the Product, for each Product distributed separate from the Customer System.

(g) If COMPANY is required by any non-U.S.A. government to withhold income taxes on payments to MS, then COMPANY may deduct such taxes from the amount owed MS and shall pay them to the appropriate tax authority, provided that within sixty (60) days of payment, COMPANY delivers to MS an official receipt for any such taxes withheld or other documents necessary to enable MS to claim a U.S.A. Foreign Tax Credit. If COMPANY is located in a jurisdiction that utilizes the Value Added Tax or sales tax numbers ("VAT Number") for tax identification purpose, COMPANY'S VAT Number shall be provided in the Address Schedule.

(h) COMPANY shall manage all COAs and APM in accordance with the COA Reconciliation and Adjustment Procedures of the OEM Resource Guide and as otherwise set forth below.

(i) COMPANY shall maintain accurate and complete shipping records of COAs and APM distributed by or for COMPANY.

(ii) For COAs and APM received from an AR in error (e.g., damaged, quantity does not match shipment record, or Product does not match AR shipment documentation), COMPANY shall:

(A) alert the AR to the discrepancy; and

(B) if a return material authorization ("RMA") is issued by the AR, promptly return the COAs and APM received in error.

Provided the COAs and APM are returned and validated by the AR, the AR will adjust the number of COAs applied to COMPANY'S account and the MS shipment tracking database will accurately reflect the number of COAs received. Excess quantities of COAs ordered by COMPANY shall be returned to the MSLI COA Return Center specified by MS.

(iii) For COAs damaged irreparably during the ordinary course of COMPANY'S business, or for COAs in connection with Product that is no longer available for distribution or for which an OEM'S right to distribute has expired, COMPANY shall:

(A) submit a complete COA RMA request via MSLI OEM Online;

(B) if the COA is physically attached to the APM, destroy the remainder of the APM unit (e.g., manual, disks, CD); and

(C) if an RMA is issued by MS, promptly send the COAs for Type I (Shipment) billing type Product to the MSLI COA Return Center specified by MS.

Provided MS determines that an RMA is accurate and complete, the returned COAs have been returned and reconciled with the RMA, and all other requirements have been satisfied, COMPANY shall receive a royalty credit. Credits in connection with an RMA received after the fifteenth (15th) of any given month, shall be applied in the following month. A credit will be issued only if COAs are in a reasonable condition to be counted, verified and reconciled.

(iv) On a quarterly basis, COMPANY will account for and reconcile all COAs in inventory and in transit. The reconciliation will account for beginning and ending COA inventory, COA acquisitions from ARs, COA distribution with Customer Systems, and Product that cannot be distributed for any reason. COMPANY will make this reconciliation available to MS upon request. COMPANY shall pay MS, as liquidated damages, the Default Charge, as specified in the applicable License Agreement for the applicable Product, for those COAs representing the difference between the number of Products distributed by COMPANY properly with Customer Systems and the number of COAs acquired from ARs, less the number of COAs that can be shown to the reasonable satisfaction of MS to be in COMPANY'S possession or properly returned to MS or the AR.

(v) Without limiting any of the provisions of this subsection 3(h), no credit shall be issued for a COA, whether on account of destruction or return, following distribution thereof in connection with the distribution of a Customer System for revenue.

4. AUDIT.

During the term of the applicable License Agreement and for three (3) years thereafter, and within (30) days of MS' written request, COMPANY shall make available at a single, readily accessible location all records (including complete financial statements) relating to the reconciliation of COAs, acquisition, reproduction, installation, distribution, other disposition and inventory level of each copy of each Product and/or Customer System distributed or otherwise disposed of by or for COMPANY and/or COMPANY Subsidiaries. To verify compliance with the terms of the License Agreement(s), MS may cause an audit or inspection to be performed by its designated independent and internationally recognized certified public accountants during regular business hours at COMPANY'S facilities and/or COMPANY'S Subsidiaries' facilities upon not less than fourteen (14) days written notice. In the event of such audit and/or inspection, COMPANY agrees to provide any MS-designated audit or inspection team with access to all COMPANY'S and/or COMPANY'S Subsidiaries relevant records and facilities, provided

that such access shall be limited to those areas related to the installation of Product(s), storage of COAs and APM, and to those records COMPANY is obligated to provide under this Section 4. MS designated auditors may be escorted by COMPANY personnel when on COMPANY premises, and shall not unreasonably interfere with COMPANY's normal course of business. If the audit reveals discrepancies exceeding the lesser of one million dollars (US\$1,000,000) or one percent (1%) of royalties paid to MS by COMPANY during the term of the applicable License Agreement, or an intentional breach of any COMPANY obligation (each, a "Material Discrepancy"), COMPANY shall pay MS, in addition to any unpaid amounts due, the costs of the audit. Provided that a Material Discrepancy is not disclosed in an immediately preceding audit, audits under this Section 4 shall not be performed more frequently than on an annual basis. Upon written request of COMPANY, and only after the conclusion of an audit, MS shall provide COMPANY with a summary of the findings and conclusions of such audit.

5. WARRANTY AND WARRANTY DISCLAIMERS.

(a) (i) MS warrants that Product software substantially conforms to the end user documentation supplied by MS for the Product. If Product software fails to meet such warranty, COMPANY shall have sixty (60) days from delivery thereof to COMPANY in which to reject, in writing, the Product software or report, in writing, substantial deviations from end user documentation ("Deviations"); provided however, if COMPANY distributes the Product software, or fails to reject the Product software or report any Deviations to MS within the applicable sixty (60) day period described above, COMPANY shall be deemed to have accepted the Product and waived any claim for breach of warranty.

(ii) In the event COMPANY rejects the Product software or reports any Deviations within sixty (60) days following initial delivery thereof to COMPANY, MS may replace such Product software, correct such Deviations or refund the royalties paid, if any, for such Product ("Refund") within sixty (60) days following COMPANY's written notice of rejection or report of Deviations. Upon delivery of replaced or corrected Product software to COMPANY, COMPANY shall have thirty (30) days in which to reject, in writing, the Product software for failure to conform substantially to the Product end user documentation supplied by MS for the Product. If COMPANY distributes the replaced or corrected Product software or fails to reject, in writing, the same within the applicable thirty (30) day period described above, COMPANY shall be deemed to have accepted the Product and waived any claim for breach of warranty.

(iii) If MS fails to replace the Product software, correct the Deviations or provide the Refund within sixty (60) days following COMPANY's written notice of rejection or report of Deviations then COMPANY may, as COMPANY's sole remedy, terminate its license for the Product and demand the Refund.

(b) MS makes no warranty with respect to defects in replication, media or other materials acquired from AR(s). Warranties for such replication, media and materials may be provided to COMPANY by such ARs. The limited warranty made by MS under this Section 5 is made only to COMPANY and there are no third party beneficiaries of the warranty.

(c) THIS SECTION CONTAINS THE ONLY WARRANTY MADE BY MS, AND NO WARRANTIES ARE MADE BY ITS SUPPLIERS, INCLUDING WITHOUT LIMITATION MSCORP. EXCEPT FOR SUCH WARRANTY, THE PRODUCT IS PROVIDED AS IS AND WITH ALL FAULTS, AND THE ENTIRE RISK REGARDING SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH COMPANY. ANY AND ALL OTHER WARRANTIES, CONDITIONS AND DUTIES OF ANY KIND WHATSOEVER,

INCLUDING WITHOUT LIMITATION ANY FOR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT AND/OR LACK OF NEGLIGENCE ARE EXPRESSLY EXCLUDED. ALSO, MS MAKES NO WARRANTY OF TITLE, OR AGAINST INTERFERENCE WITH COMPANY'S ENJOYMENT OF THE PRODUCT OR AGAINST INFRINGEMENT.

6. PRODUCT SUPPORT.

(a) COMPANY shall provide end user support for the Product(s) under terms and conditions at least as favorable to the end user as the terms under which COMPANY provides support for COMPANY's Customer Systems generally, but in no event less than commercially reasonable end user telephone support. COMPANY shall prominently display its in-region customer support telephone number for assistance in or on Customer System documentation and as required by the OPK. COMPANY may, at its option, offer Internet support as its primary means of support, provided telephone support is offered as a secondary means of support. In such event, COMPANY shall also provide its web location or URL with the Customer System.

(b) Technical assistance from MS may be available to COMPANY pursuant to a separate agreement.

7. INTELLECTUAL PROPERTY INFRINGEMENT.

(a) MS agrees to defend COMPANY in a lawsuit or other judicial action, and pay the amount of any adverse final judgment (or settlement to which MS consents) from such lawsuit or judicial action, for any third party claim(s) that the Product(s) infringe (i) any copyright or trademark rights enforceable in any Included Jurisdictions (defined in Section 7(d) below), or (ii) any patent(s) issued and enforceable in the Included Jurisdictions as of the Effective Date of this Agreement (separately and collectively, "Claim"). With regard to any Claim, MS' obligations are subject to the following conditions:

(i) COMPANY must promptly notify MS in writing of the Claim;

(ii) MS shall have sole control over defense and/or settlement of the Claim;

(iii) COMPANY shall provide MS with reasonable assistance in the defense of the Claim;

(iv) MS' obligations to defend and pay a patent Claim shall be limited to patent Claims wherein the Product alone, without combination or modification, constitutes direct or contributory infringement of such patent Claim; and

(v) MS' liability for any adverse final judgment resulting from a patent Claim shall be limited to the payment of reasonable royalty damages that are based solely on the software functionality provided by the accused feature of the Product.

(b) In the event that MS is required to defend a lawsuit or other judicial action pursuant to Section 7(a) above and such lawsuit or other judicial action includes allegations (other than a Claim) with respect to non-MS products, then COMPANY shall retain, at its sole expense, separate counsel to defend against such allegations, and agree to reimburse MS for any and all attorney's fees and costs incurred by MS with respect to defending against such allegations. Moreover, MS and its suppliers shall have no liability for any intellectual property infringement claim (including a Claim) based on COMPANY's manufacture, use, sale, offer for sale, importation or other disposition or promotion of the Product or trademark more than ten (10) days after MS' written notice of recommendation that COMPANY should cease manufacture, use, sale, offer for sale, importation or other disposition or promotion of such Product or trademark due to such claim. COMPANY shall indemnify and defend MS and its suppliers from and against all damages, costs, and

expenses (including reasonable attorney's fees) incurred due to COMPANY's continued distribution of the allegedly infringing Product or trademark after such ten (10) day notice period.

(c) In addition to the obligations set forth in Section 7(a) above, if MS receives information concerning a Claim, MS may, at its expense, but without obligation to do so, undertake further actions such as:

(i) procuring for COMPANY such copyright, trademark or patent right(s) or license(s) as may be necessary to address the Claim, or

(ii) replacing or modifying the Product or trademark to make it non-infringing.

(d) Neither MS nor its suppliers shall have any obligation to COMPANY for (i) any copyright or trademark Claims that arise outside the boundaries of Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, the European Union member nations, Guatemala, Hungary, Iceland, India, Israel, Japan, Mexico, New Zealand, Panama, Peru, Poland, South Africa, South Korea, Switzerland, Taiwan, Turkey, the United States, Uruguay and Venezuela, and (ii) any patent Claims which arise outside the boundaries of Australia, Canada, the European Union member nations, Japan, Norway, Switzerland, and the United States (subsections (d)(i) and (d)(ii) collectively defined as the "Included Jurisdictions").

8. LIMITATION OF LIABILITY.

(a) (i) Total cumulative liability of MS and MSCORP to COMPANY under the applicable License Agreement, and COMPANY's exclusive remedy for any such liability, shall be limited to COMPANY's direct damages incurred in reasonable reliance upon MS in an amount not to exceed one hundred percent (100%) of the amount having actually been paid by COMPANY to MS during the original term of the applicable License Agreement. Total cumulative liability of COMPANY to MS during the applicable License Agreement, excluding liability for unauthorized use of MS or MSCORP intellectual property (including without limitation violation of any provision of the License Grant section of a License Agreement or Section 2 of this LTD), shall be limited to one hundred percent (100%) of the amount having actually been paid and any amounts owed by COMPANY to MS during the original term of the applicable License Agreement.

(ii) Subject to the ultimate limitation set forth in subsection 8(a)(i) above, the cumulative liability of MS and MSCORP to COMPANY under the applicable License Agreement for any and all Claims under Section 7 above arising in a given Included Jurisdiction shall be limited to one hundred percent (100%) of the amount having actually been paid by COMPANY to MS for the infringing Products licensed under the License Agreement that COMPANY distributed in that Included Jurisdiction during the original term of the applicable License Agreement.

(b) COMPANY releases MS and MSCORP, and MS releases COMPANY, from all liability in excess of the limitation above, including without limitation any claim for indemnification or contribution from MS or MSCORP whether arising under statutory or common law or otherwise.

(c) COMPANY AGREES MS AND MSCORP SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, LOST PROFITS OR PUNITIVE DAMAGES EVEN IF MS AND/OR MSCORP HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IN THE EVENT OF FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT OR PRODUCT LIABILITY. COMPANY ACKNOWLEDGES THAT ALL DAMAGES EXCLUSIONS AND ALL LIMITATIONS OF LIABILITY SHALL

APPLY EVEN IF ANY REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

(d) (i) The following definitions apply with regard to this Section 8(d) only:

(A) "Affiliates" means persons or entities directly or indirectly (i) controlling COMPANY or MS, (ii) controlled by COMPANY or MS, or (iii) under common control with COMPANY or MS, where control is defined as direct or indirect majority ownership.

(B) "COMPANY Patents" means only those patents throughout the world that (i) are infringed on account of the manufacture, use, sale, offer for sale, importation or other disposition or promotion of the Covered Product, and (ii) COMPANY or its Affiliates now owns or later acquires or controls, or that COMPANY or its Affiliates now has, or hereafter obtains, the ability or right to grant licenses or covenants without the requirement of a bona fide payment to an unaffiliated third party.

(C) "Covered Product" means the Product(s) (as defined in Section 1(i)) licensed by MS to COMPANY, the OPK(s), and any Supplement(s) distributed by COMPANY. To the extent that the features and functionality presently contained in the Covered Product licensed to COMPANY under the License Agreement(s) are also contained in future, replacement, or successor product(s) to the Covered Product, such specific features and functionality in such future, replacement, or successor product(s) shall also be considered part of the Covered Product only for the purposes of this Section 8(d).

(D) "MS Licensee" means any third party that is directly or indirectly licensed by MS or MSCORP to exercise any legal rights with respect to the Covered Product, including (without limitation) OEM customers, all other authorized distributors of the Covered Product, and end-users of the Covered Product.

(ii) As partial, material consideration for the rights granted to COMPANY under the License Agreement(s), COMPANY and its Affiliates covenant not to assert COMPANY Patents against MS, MS Affiliates, and MS Licensees for infringement of COMPANY Patents on account of the making, use, sale, offer for sale, importation or other disposition or promotion of the Covered Product.

(iii) With respect to infringement claims based on a third party product in combination with the Covered Product, the covenant in this Section 8(d) does not extend to such combinations unless, for any given claim of a COMPANY Patent, the manufacture, use, sale, offer for sale, importation, or other disposition or promotion of the Covered Product constitutes direct or contributory infringement of such patent claim.

(iv) COMPANY's and its Affiliates' Section 8(d) covenant as to MS, MS Affiliates, and MS Licensees shall terminate as to all infringements occurring more than three (3) years after COMPANY or its Affiliates stop distributing the Covered Product, except that such covenant shall survive for end-user activities licensed under an applicable end-user license agreement.

(v) If COMPANY or its Affiliates are first sued for patent infringement by a third party on account of COMPANY's or its Affiliates' manufacture, use, sale, offer for sale, importation or other disposition or promotion of the Product, then COMPANY's Section 8(d) covenant may, at COMPANY's discretion, be temporarily suspended as to that third party. Any such temporary suspension shall only be applicable against such third party and for the sole purpose of COMPANY's defense in such patent infringement action.

(vi) In the event COMPANY or its Affiliates assign COMPANY Patents or rights to enforce COMPANY Patents, COMPANY or its Affiliates, as the case may be, shall require as a

condition of any such assignment that the assignee agree to be bound by the provisions of this Section 8(d) as to such COMPANY Patents.

9. NONDISCLOSURE.

The terms and conditions of this LTD, the License Agreement(s) and all information provided in connection therewith shall be treated as confidential information under that certain Microsoft Corporation Non-Disclosure Agreement (OEM Standard Reciprocal Version 4.0) between COMPANY and MSCORP (the "NDA").

10. ASSIGNMENT.

(a) No License Agreement shall be assigned by COMPANY in whole or in part (by contract, merger, operation of law, or otherwise). Any assignment in violation of this provision shall be void and of no effect.

(b) MS may assign the License Agreement(s), and any of the rights and obligations thereunder, to MSCORP or the wholly-owned subsidiaries of MSCORP or MS. Subject to the foregoing, MS shall not assign any License Agreement(s), or any of the rights or obligations thereunder, to third parties without the consent of COMPANY, such consent not to be unreasonably withheld. Any assignment in violation of this provision shall be void and of no effect.

11. TERMINATION.

(a) (i) MS may terminate the License Agreement if: A) COMPANY breaches any provision thereof; B) COMPANY purchases Product or APM other than from MS, an MS authorized distributor and/or an AR; or C) COMPANY becomes insolvent, enters bankruptcy, or similar proceedings under applicable law; or admits in writing its inability to pay its debts, or makes or attempts to make an assignment for the benefit of creditors.

(ii) Termination shall be effective (A) thirty (30) days after written notice of default and proposed termination (such notice to provide the reasons for the proposed termination), provided the default(s) have not been cured within such period; or (B) upon notice by MS if COMPANY has received two (2) or more previous notices of default and proposed termination during the term of the License Agreement (whether or not such previous defaults have been cured).

(b) Within ten (10) days after termination or expiration of the applicable License Agreement, COMPANY shall, at COMPANY's expense, return the OPK(s) and all remaining Product. Termination of a License Agreement as a result of COMPANY's default shall result in acceleration of COMPANY's payment obligations under such License Agreement, including any minimum commitment payments.

(c) Sections 3(g), 4, 5, 7, 8, 9, 11(b), 13, 15, and 16 of this LTD shall survive cancellation or expiration of the License Agreement(s).

12. NOTICES.

All notices, authorizations, and requests in connection with this LTD and License Agreements shall be addressed as stated in the Address Schedule and shall be deemed received three (3) business days after they are (i) deposited in the U.S.A. mails, postage prepaid, certified or registered, return receipt requested, provided COMPANY's address for notices is located in the U.S.A.; (ii) sent by air express courier, charges prepaid; or (iii) sent via Internet mail (solely regarding updates or changes by MS to information, instructions, or forms).

13. CHOICE OF LAW; JURISDICTION AND VENUE; ATTORNEYS FEES.

(a) This LTD, the License Agreements, and all related matters shall be interpreted under and controlled by the laws of the State of Washington. Venue over all disputes arising under or relating to this LTD and the License Agreements shall be in the state and federal

courts within the State of Washington or the federal courts within the State of New York, but in either case Washington law shall apply.

Process may be served on either party as authorized by applicable law or court rule.

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

14. GOVERNMENT REGULATIONS.

(a) COMPANY acknowledges the Products and their corresponding OPKs are subject to U.S. export jurisdiction, and that releases or versions of certain Products and their corresponding OPKs not localized for a specific country or territory may be prohibited or subject to particular restrictions under applicable laws and regulations of that country or territory. COMPANY shall comply with all applicable international and national laws and regulations that apply to the Products, including without limitation the U.S. Export Administration Regulations, as well as importation, manufacturing, end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information on exporting Products from the U.S., see <http://www.microsoft.com/exporting/>.

(b) COMPANY is responsible at its own expense for any local government approvals required.

15. GENERAL.

(a) Neither this LTD nor any License Agreement presented to COMPANY constitutes an offer by MS and neither shall be effective unless signed by both COMPANY and MS. Upon execution by both COMPANY and MS, the License Agreement(s) together with this LTD, shall constitute the entire agreement between COMPANY and MS, merging all prior and contemporaneous communications. Except as otherwise expressly provided herein, this LTD and the License Agreement(s) shall not be modified except by a written amendment signed on behalf of COMPANY and MS by their respective duly authorized representatives. Neither the existence nor the terms of this LTD and License Agreement(s) shall be construed as creating a partnership, joint venture or agency relationship or as granting a franchise.

(b) No waiver of any breach of any provision of the applicable License Agreement shall constitute a waiver of any prior, concurrent or subsequent breach, and no waiver of any provision or any breach thereof shall be effective unless made in writing and signed by an authorized representative of the waiving party.

(c) MS may also provide COMPANY with amendments to add Product, reduce prices, extend the term or otherwise provide additional or optional uniform terms by electronic record and/or written notice. In the case of adding Product, Product shall be deemed licensed for a Customer System when MS has notified COMPANY of License Agreement amendment and COMPANY distributes a Customer System with such Product. Both parties agree to be bound by the terms of any such License Agreements or amendments.

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

(e) As used in this LTD, "writing" or "written" means a non-electronic record or a facsimile.

16. USE OF MSLI OEM ONLINE. If COMPANY has previously entered into an MSLI OEM Online Site Agreement, such agreement shall not apply to COMPANY's use of the Site in connection with any License Agreement(s). With respect to any License Agreement(s), COMPANY agrees to the following terms and conditions, and shall cause its COMPANY Administrator(s) and

Users to use the Site in compliance with this Section 16 and the terms of use or other conditions or instructions posted on the Site:

(a) As used in this Section 16, the term "User" means an officer, employee, consultant or other person or agent of COMPANY who has, or who creates the appearance of having, been duly authorized by COMPANY to use the Site on behalf of COMPANY. The term "COMPANY Administrator(s)" means the User(s) designated by COMPANY in the Address Schedule of this BTD until such time as MS has received not less than forty-eight (48) hours notice from COMPANY through the MOOHelp@Microsoft.com email alias that COMPANY has made a change to any authority previously established by COMPANY in connection with such designation.

(b) COMPANY Administrator(s) shall, and shall cause and instruct Users to: (i) protect their Password Information as confidential information and not disclose any part of it to any person or entity outside of COMPANY or to any person inside of COMPANY without a need to know; (ii) save their respective Password Information in an appropriate manner and place that will prevent unauthorized use; and (iii) only take actions at the Site that the User is authorized by COMPANY to take.

(c) COMPANY Administrator(s) shall be solely responsible for establishing, maintaining and terminating the access and authorities set for Users. MS reserves the right to suspend or terminate authorities, or to suspend or block access to all or any part of the Site or information, upon electronic notice to the Company Administrator (Primary) email address; provided, however, that no notice shall be required if MS has determined that there is possible harm or threat of harm to MS, the Site or others.

(d) COMPANY agrees that the Site's level of security is commercially reasonable and that neither MS nor any of its agents shall have any liability for any failure to provide a greater level of security. The Site uses HTTPS (Secure Hypertext Transfer Protocol) with a 128-bit key size. COMPANY and its Users shall not cause any harm to the Site.

(e) COMPANY expressly acknowledges and agrees that (1) THE SITE IS PROVIDED AS IS, AND THAT THE WARRANTY DISCLAIMERS, DAMAGE EXCLUSIONS AND LIMITATIONS OF REMEDIES IN THIS BTD ALL APPLY TO THE SITE AND ITS INFORMATION, FUNCTIONALITY, SERVICES AND AVAILABILITY OR LACK THEREOF; and (2) COMPANY will not rely on or treat Site information as an express warranty.

(f) MS reserves the right to change or discontinue all or any portion of the Site at any time. Users may make a copy of Site information to document COMPANY transactions and contracts or to retain information MS is required to provide. MS has no duty to retain or make available records for COMPANY's later access.

(g) The Site is not open to the public and its functionality and all information on it shall be treated as confidential information under the NDA referenced in Section 9 of this BTD. Subject to any restrictions in this BTD (including without limitation the NDA), MS shall own all Site data, including any data that COMPANY provides on or through the Site.

(h) COMPANY agrees to access and use the Site for all transactions and purposes contemplated by the Site until the date that is the earliest of the date that: (i) MS ceases to provide the Site to similarly situated OEMs, or (ii) the date COMPANY has satisfied all of its obligations under all License Agreements.

(i) Subject to applicable law, all actions taken by the COMPANY Administrator(s) or any other User at or in relation to the Site shall be attributed to and legally bind COMPANY if (i) COMPANY Administrator(s) or any other User(s) has supplied on the Site or otherwise in relation to that session, any password, private encryption key or other identifiers utilized in connection with Site security ("Password Information"), or (ii) COMPANY has otherwise approved, allowed or accepted benefits or use of the Site by a person purporting to be its agent.