

PLAINTIFF'S
EXHIBIT
1594
Comes v. Microsoft

MICRON

Scarnato
EXHIBIT NO. 1
79-02 PF

MS-PCA 1202950
HIGHLY CONFIDENTIAL

LICENSE AGREEMENT

This License Agreement ("Agreement") is made and entered into this 1st day of April, 1993 ("Effective Date"), by and between MICROSOFT CORPORATION, a Delaware, USA corporation, ("MS"), and MICRON COMPUTER, INC., an Idaho corporation ("MICRON").

The parties agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

- (a) "MICRON Subsidiary" shall mean a company in which, on a class by class basis, more than fifty percent (50%) of the stock entitled to vote for the election of directors is owned or controlled by MICRON, but only so long as such ownership or control exists. MICRON hereby guarantees each of its MICRON Subsidiaries' performance under this Agreement. MICRON shall provide MS written notice of the name and address of each MICRON Subsidiary before the MICRON Subsidiary exercises any rights under this Agreement.
- (b) "Customer System" shall mean the single user computer system product(s) described in the Exhibit(s) M.
- (c) "TAP" shall mean MS' then standard technical assistance procedures offered to OEMs, consisting of confidential technical know-how and including, if available where MICRON is located, the then standard product support service offered to OEMs ("OnLine").
- (d) "Product" or "Products" shall mean the copyrighted and/or patented MS software products described in the attached Exhibit(s) C (including MED Product and Product acquired for Authorized Replicator), including where applicable the specified user documentation. "Product software" or "Product documentation" shall mean the software or documentation components of the Product.
- (e) "MED Product" shall mean Product in "Easy Distribution Package" form available for purchase from an Authorized Distributor.
- (f) "Product Release" shall mean a release of Product which is designated by MS in its sole discretion as a change in the digit(s) to the left of the decimal point in the Product version number [(x).xx].
- (g) "Version Release" shall mean a release of Product which is designated by MS in its sole discretion as a change in the tenths digit in the Product version number [x.(x)x].
- (h) "Update Release" shall mean a release of Product which is designated by MS in its sole discretion as a change in the digit(s) to the right of the tenths digit(s) in the Product version number [x.x(x)].
- (i) "Authorized Replicator" shall mean a third party approved by MS which may reproduce and manufacture Product for MICRON. MS shall provide MICRON with a list of Authorized Replicators and shall notify MICRON at least thirty (30) days in advance of any additions or deletions from this list.
- (j) "Authorized Distributor" shall mean a third party approved by MS from which MICRON may purchase MED Product. MS shall provide MICRON with a list of Authorized Distributors and shall notify MICRON at least thirty (30) days in advance of any additions or deletions from this list.

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2. LICENSE GRANT AND CONDITIONS

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

(i) to reproduce and install no more than one (1) copy of Product software on each Customer System hard disk or Read Only Memory ("ROM");

(ii) to distribute directly or indirectly and license copies of the Product (reproduced as per Section 2(a)(i) and/or acquired from Authorized Replicator or Authorized Distributor) in object code form to end users; and

(iii) to grant to MICRON Subsidiaries all rights granted to MICRON herein (except that MICRON Subsidiaries may not further grant rights to third parties).

Such license rights are subject to the restrictions and conditions in this Agreement, and in particular in Section 6.

(b) Except as necessary to install Product software, as permitted under Section 2(a)(i), MICRON may not reproduce Product. Product software (in diskette form) and Product documentation (in hard copy form) shall be available to MICRON only from an Authorized Distributor and/or Authorized Replicator.

(c) MICRON acknowledges that MS may require Authorized Distributor and/or Authorized Replicator to refuse to fill MICRON's orders if MICRON fails to comply with any provision of this Agreement.

(d) MICRON shall not modify or substitute Product documentation without MS' prior written permission. However, MICRON, at its option, may distribute supplemental Product documentation in conjunction with the Product, provided that MICRON's supplemental documentation is consistent with Product documentation provided by MS.

(e) MICRON's license shall extend to, and each Product shall be deemed to include, any Update Releases and Version Releases that MICRON accepts under Section 4 and elects to distribute under this Agreement. Royalties for new Version Releases may be increased in accordance with the applicable Exhibit C. MICRON's license hereunder shall not extend to Product Releases.

(f) MICRON's rights hereunder shall not extend to Product source code unless Exhibit S1 is attached and executed.

(g) All rights not expressly granted, including without limitation translation rights, are reserved by MS.

(h) MS agrees to negotiate in good faith with MICRON to license Product Releases and other products not available to MICRON under this Agreement at MS' then applicable price(s), terms and conditions.

3. PRICE AND PAYMENT

(a) MICRON agrees to pay MS the amount(s) and within the times stated in this Section 3, Exhibit B and Exhibit(s) C. MICRON's obligation to pay such amounts is unconditional except as is otherwise expressly stated to the contrary herein. In the event, despite best efforts, MICRON is unable to ship six thousand two hundred fifty (6,250) Customer Systems in any two (2) consecutive quarters, then MS agrees to renegotiate in good faith MICRON's minimum commitments and royalties in accordance with MS' current standard terms.

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(b) Prices stated are exclusive of any federal, state, municipal or other governmental taxes (including foreign tax withholding except as provided in Section 3(c), duties, licenses, fees, excises or tariffs now or hereafter imposed on MICRON's or MICRON Subsidiaries' production, storage, licensing, sale, transportation, import, export or use of a Product or on any intercompany charges between MICRON and MICRON Subsidiaries. Such charges shall be paid by MICRON, or in lieu thereof, MICRON shall provide a resale or exemption certificate acceptable to MS and the applicable domestic state and local authorities. MS, however, shall be responsible for all taxes based upon its personal property ownership and gross or net income.

(c) In the event MICRON is based outside the US and income taxes are required to be withheld by any foreign government on payments required hereunder, on such withholding taxes as will enable MS to claim and receive a U.S. Foreign Tax Credit, MICRON may deduct such taxes from the amount owed MS and pay them to the appropriate tax authority; provided, however, that MICRON shall promptly secure and deliver to MS an official receipt for any such taxes withheld or other documents necessary to enable MS to claim a U.S. Foreign Tax Credit. MICRON will make certain that any taxes withheld are minimized to the extent possible under applicable law.

(d) Except where otherwise provided, MICRON agrees to make consolidated (i.e. on behalf of MICRON and MICRON Subsidiaries which exercise rights under this Agreement) quarterly reports and payments to MS within thirty (30) days after the end of each calendar quarter, and thirty (30) days after termination or expiration for the final full or partial quarter. MICRON's quarterly report shall provide the information described in the applicable Exhibit C for each Product licensed hereunder, and shall be signed by a duly authorized representative of MICRON. MICRON shall submit quarterly reports even if no royalties or other amounts are due for such quarter. MICRON shall use the royalty reporting form attached as Exhibit R or other form as MS may provide from time to time. A finance charge of one and one-half percent (1-1/2%) per month will be assessed on all amounts that are past due, including receipts for foreign taxes withheld.

(e) No royalty shall accrue to MS for copies of a Product (i) used by MICRON solely for testing systems; (ii) shipped as replacement copies for copies found to be defective in materials, manufacture, or reproduction; (iii) used for demonstrations to prospective customers, such demonstration copies not to exceed one hundred (100) copies; or (iv) provided as back-up copies to end users by MICRON under Section 6(d).

(f) MICRON shall provide MS with a copy of its US state resale exempt certificate, if applicable, with this Agreement when it is returned for signature by MS.

(g) If MICRON is a US based company, payments and royalty reports shall be made to:

MICROSOFT CORPORATION
P.O. Box 84808
Seattle, WA 98124-6108

If MICRON is based outside the US, MICRON 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
USA

ABA 021000089

Royalty reports to:

MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
USA

ATTN: OEM Finance

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Regarding:
Microsoft International OEM Collections
Account #38468231

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

4. ACCEPTANCE AND LIMITED WARRANTY

(a) With respect to Product Deliverables defined on the applicable Exhibit C provided to MICRON by MS:

(i) Within thirty (30) days after the later of MICRON's execution of this Agreement or MS' delivery to MICRON of each Product licensed hereunder, MICRON shall either accept such Product or report deviations from specifications in writing. MICRON is not required to accept or reject test versions of a Product (e.g., Alpha or Beta test versions). Conformance to specifications as referenced in the applicable Exhibit C shall solely determine acceptability. If MICRON does not report deviations from Product specifications within the thirty (30) day period, or if MICRON ships the Product to a customer for revenue, MICRON shall be deemed to have accepted the Product.

(ii) If MICRON reports any deviations from Product specifications prior to acceptance, then MS shall have sixty (60) days to correct such deviations. Upon delivery of a corrected release of Product to MICRON, MICRON shall have thirty (30) days in which to re-evaluate the corrected release for conformance to specifications as provided in Section 4(a). If any deviations from specifications reported before acceptance are not eliminated in the sixty (60) day correction period, then as MICRON's sole remedy (A) the Product may be retained at an equitable adjustment in price as may be agreed by the parties, or (B) the correction period may be extended as may be agreed by the parties, or (C) failing any agreement, MICRON may reject the Product, and provided that MICRON has rejected the first version of each released Product licensed under this Agreement, then MICRON shall be entitled to a refund of one hundred percent (100%) of the payment due on signing as specified in Exhibit B and this Agreement shall immediately terminate. MICRON shall not have the right to a refund of prepaid royalties, or to terminate this Agreement, if it has accepted any release of any Product under this Agreement.

(iii) MS represents that each Product meets the specifications referenced in the applicable Exhibit C. If MICRON reports any deviations from specifications in a Product following acceptance and during the term of this Agreement, then as MICRON's sole remedy MS agrees to use reasonable efforts to correct such deviations. MICRON's notice of any deviations from Product specifications shall be made using the OnLine system or the notice provisions of Section 15. MS' obligations under this Section (iii) as to a particular release of a Product shall cease ninety (90) days after delivery to MICRON of any subsequent release of Product which conforms to specifications as provided in Section 4(a).

(b) Authorized Distributor and/or Authorized Replicator, as applicable, shall provide warranty(ies), if any, for copies of Product provided to MICRON by such Authorized Distributor and/or Authorized Replicator.

(c) If any Product licensed hereunder has not yet been released by MS, MS shall have no liability for failure to deliver such Product by any particular date or within the term of this Agreement. MICRON shall not distribute for revenue any release of a Product until MS gives its written approval of such distribution by its OEMs generally.

(d) Except as expressly provided, this Agreement does not include technical support to MICRON. Such support may be available pursuant to a separate agreement.

5. INDEMNIFICATION FOR INFRINGEMENT

(a) MS represents and warrants that:

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(i) the Products do not infringe any copyright enforceable under the laws of any country listed in Section 5(d); and

(ii) the Products do not violate the trade secret rights of a third party.

MS agrees to indemnify, hold harmless, and defend MICRON from and against any and all damages, costs, and expenses, including reasonable attorneys' fees, incurred in connection with a claim which, if true, would constitute a breach of the foregoing warranties (hereinafter "Infringement Claims"); provided MS is notified promptly in writing of an Infringement Claim and has sole control over its defense or settlement, and MICRON provides reasonable assistance in the defense of the same.

(b) Following notice of an Infringement Claim, MS may at its expense, without obligation to do so, procure for MICRON the right to continue to market, use and have others use, the alleged infringing Product or, without obligation to do so, may replace or modify the Product to make it non-infringing. If MS elects to replace or modify the Product, such replacement shall meet substantially the specifications as provided or referenced in the applicable Exhibit C and shall be subject to the acceptance provisions of Section 4.

(c) MS shall have no liability for any Infringement Claim based on MICRON's (i) use or distribution of any Product after MS' notice that MICRON should cease use or distribution of such Product due to an Infringement Claim, or (ii) combination of a Product with a non-MS product, program or data, if such Infringement Claim would have been avoided by the exclusive use of the Product. For all Infringement Claims arising under this Section 5(c), MICRON agrees to indemnify and defend MS from and against all damages, costs and expenses, including reasonable attorneys' fees.

(d) MS shall have no obligation to MICRON for any Infringement Claims made against MICRON which arise from the use or distribution of a Product outside the geographical boundaries of the United States, Canada, Australia, Japan, the European Community, Sweden, Norway, and Finland, and MICRON hereby releases and discharges MS from any and all Infringement Claims resulting from such use.

6. LICENSE RESTRICTIONS

(a) MICRON shall market, distribute and license Product(s) only with those Customer System(s) listed on Exhibit C for the particular Product(s) and only inside the Customer System package. In addition to Product software installed on a Customer System, MICRON may distribute only one copy of Product with each such Customer System. MICRON shall also comply with the additional provisions, if any, provided in Exhibit(s) C with respect to Product distribution. MICRON shall contractually obligate (e.g. by contract, invoice or other written instrument) its distributors, dealers and others in its distribution channels to comply with the foregoing. MICRON agrees that it will discontinue distribution of Product to any such distributor, dealer or other in its distribution channel which does not comply with the foregoing.

(b) MICRON shall not reverse engineer, decompile or disassemble any Product, except that in the European Economic Community, MICRON shall have the limited right to decompile the Product solely to the extent permitted by the terms and conditions of Article 6 of the European Community's Directive for the Legal Protection of Computer Programs, OJL 122/42 (17 May 1991).

(c) MICRON shall distribute and license the use of Product to end users only pursuant to its end user license agreement ("EULA"). MICRON's EULA may be a "break-the-seal" end user license agreement or a signed end user license agreement. MICRON's EULA shall conform substantially to the Sample License Agreement attached as Exhibit A, except that it shall be adapted as commercially reasonable for any foreign jurisdiction in which MICRON markets or distributes the Product.

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(d) Where Product software is installed on the Customer System's hard disk or ROM, MICRON shall:

(i) package the Product so that a notice placed over either the Customer System power switch in the "off" position or the power inlet connector informs the end user that turning on the Customer System indicates acceptance of the terms of the EULA; and

(ii) either (A) provide, in accordance with Section 6(a) above, a single copy of Product documentation with each Customer System; or (B) make the Product documentation available directly to MICRON's end user purchasers as a mail order fulfillment item. Such Product documentation shall not be available through any other MICRON distribution channel.

(e) MICRON shall market each release of Product only under the version number assigned by MS to such release.

(f) MICRON shall provide to its end user customers commercially reasonable access to Product technical assistance and shall prominently display its customer support telephone number in Customer System documentation and on each copy of Product package.

(g) MICRON agrees to include an MS Product registration card in MICRON's Customer System package for those MICRON Customer Systems on which MICRON installs Product on the hard drive or in ROM. MS agrees to negotiate in good faith with MICRON a mechanism by which MICRON can receive a listing of MICRON's end users who have registered with MS. MICRON must obtain the appropriate registration card from Authorized Replicator.

7. INTELLECTUAL PROPERTY NOTICES

(a) MICRON will not remove any copyright, trademark or patent notices that appear on the Product as delivered to MICRON. MICRON shall cause to appear on the title page of each volume of its supplemental documentation, if any, and at any other location where any copyright, patent or trademark notice appears, the MS and third party copyright, patent or trademark notices that appear in the release of the corresponding Product documentation provided by MS.

(b) MICRON shall market the Product only under the Product name(s) for such Product as appears on/in the applicable release of the Product as provided to MICRON. MICRON agrees to use the appropriate trademark, product descriptor and trademark symbol (either "TM" or "®" in a superscript), and clearly indicate MS' or applicable third parties' ownership of its trademark(s) whenever the Product name is first mentioned in any advertisement, brochure or in any other manner in connection with the Product. MICRON shall not, at any time, use any name or trademark confusingly similar to an MS or licensed third party trademark, trade name and/or product name and agrees that its use of such trademark(s), trade name(s) and/or product name(s) shall not directly or indirectly create in or for MICRON any right, title or interest therein. MICRON shall undertake no action that will interfere with or diminish MS' right, title and/or interest in MS' or licensed third party's trademark(s), trade name(s) or Product name(s). Prior to distribution of Product, MICRON shall inform MS of all trademarks and trade names MICRON uses in connection with the Product.

(c) MICRON 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 otherwise provided in Exhibit(s) C or by separate agreement.

(d) MICRON shall, upon request, provide MS samples of all MICRON literature which uses Product name(s).

(e) MS, at its own expense, will settle or defend and pay any damages, costs, and expenses, including reasonable attorneys' fees, resulting from any claim made against MICRON by a third party

for infringement or alleged infringement of the trademark, trade name or product name rights of such third party, or for unfair competition resulting from MICRON's use of MS' trademarks, trade names or product names, in the countries listed in Section 5(d); provided, that MICRON promptly notifies MS of any such claim. In meeting its obligations hereunder, MS may, without obligation to do so, procure for MICRON the right to continue to use the trademark, trade name, or product name on the Product.

8. PROHIBITION AGAINST ASSIGNMENT AND SUBLICENSE

This Agreement, and any rights or obligations hereunder, shall not be assigned or sublicensed by MICRON, except as provided in Section 2(a)(iii).

9. TERM OF AGREEMENT

Provided this Agreement has been properly executed by MICRON and by MS, the initial term of this Agreement ("Initial Term") shall run from the Effective Date until three (3) years from the end of the calendar quarter in which the Effective Date occurs.

10. DEFAULT AND TERMINATION

(a) This Agreement may terminate if any of the following events of default occur: (i) if either party materially fails to perform or comply with any provision of this Agreement; (ii) MICRON 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) upon termination of any other agreement between MICRON and MS due to default by MICRON.

(b) Termination due to a breach of Sections 6, 13, 14(b) or (if applicable) S1 shall be effective upon notice. In all other cases termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period. The rights and remedies of the parties provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

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

11. OBLIGATIONS UPON TERMINATION

(a) Within ten (10) days after termination or expiration of this Agreement, MICRON shall return to MS (i) all full or partial copies of each Product including OEM Adaptation Kit(s) and OEM Distribution Kit(s) in MICRON's possession or under its control for which a royalty has not been paid and (ii) all copies of the Product in source code form. MICRON and each MICRON Subsidiary may, however, retain one copy of each Product in object code form and one copy of the Product documentation to be used solely for support purposes.

(b) From and after termination or expiration, MICRON shall not use internally nor employ any Product as part or portion of any product that MICRON may use, sell, assign, lease, license, or transfer to third parties. MICRON shall cease and desist from all use of any Product name(s) and associated trademark(s) and, upon request, deliver to MS or its authorized representatives or destroy all material upon which the Product name(s) and the associated trademarks appear.

(c) Termination of this Agreement as a result of MICRON's default shall result in acceleration of MICRON's obligation to pay all sums MICRON contracted to pay under this Agreement, including all minimum commitment payments as described in Exhibit B.

(d) End user licenses properly granted pursuant to this Agreement and prior to termination of this Agreement shall not be diminished or abridged by termination or expiration of this Agreement.

(e) Sections 5, 12, 13, 14, 15(a), 16, 17, 18(a), and 18(b) shall survive termination or expiration of this Agreement.

12. LIMITATION OF LIABILITY AND REMEDY

(a) MS' liability to MICRON under any provision of this Agreement, including Section 5, or any transaction contemplated by this Agreement shall be limited to one hundred percent (100%) of the amount having then actually been paid by MICRON to MS under Section 3. MS' limitation of liability is cumulative with all MS' expenditures being aggregated to determine satisfaction of the limit. The existence of claims or suits against more than one Product licensed under this Agreement will not enlarge or extend the limit. MICRON releases MS from all obligations, liability, claims or demands in excess of the limitation. The parties acknowledge that other parts of this Agreement rely upon the inclusion of this Section 12.

(b) The rights and remedies granted to MICRON under Sections 4 and 5 constitute MICRON's sole and exclusive remedy against MS, its officers, agents and employees for negligence, inexcusable delay, breach of warranty, express or implied, or for any default whatsoever relating to the condition of the Product or MS' duties to correct any 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 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). MICRON AGREES MS SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, ECONOMIC OR PUNITIVE DAMAGES EVEN IF MS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(d) (i) As partial consideration for the rights granted to MICRON hereunder, MICRON agrees not to sue MS or its licensees (including without limitation OEM customers and end users) for infringement of MICRON Patents (as defined below) on account of the manufacture, use, sale or distribution, during the Immunity Period (as defined below), of:

- A) Any versions of the Product(s) licensed to MICRON hereunder, except as otherwise provided in (ii), below; or
- B) Future versions of the Product(s), or replacement or successor products to the Product, to the extent such future versions or replacement or successor product(s) use or embody inventions used or embodied in a version of such Product(s) licensed to MICRON hereunder.

"MICRON Patents" as used in this subsection 12(d) means all patents throughout the world, other than design patents or the equivalent, owned or acquired by MICRON for inventions made prior to termination or expiration of this Agreement, or for which MICRON has or acquires rights prior to the termination or expiration of this Agreement. The "Immunity Period" shall commence upon the first to issue and shall terminate upon the last to expire, of any of the MICRON Patents (in any jurisdiction) of the MICRON Patent(s).

(ii) In the event that MS provides MICRON a new version of a Product under this Agreement, and MICRON determines that such new version uses or embodies inventions not used or embodied in a prior version of the Product licensed to MICRON hereunder, MICRON may elect to not license such new version by so notifying MS in writing within sixty (60) days after its receipt of such new version and prior to shipment of such new version to a customer for revenue. MICRON's election under this paragraph shall not affect MICRON's agreement not to sue with respect to, or MICRON's license to, any prior version(s) of the Product licensed hereunder.

13. NONDISCLOSURE AGREEMENT

MICRON expressly undertakes to retain in confidence and to require its distributors to retain in confidence all TAP information and all other information transmitted to MICRON by MS that MS has identified as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential, and will make no use of such information and know-how except under the terms and during the existence of this Agreement. However, MICRON shall have no obligation to maintain the confidentiality of information that (i) it received rightfully from another party prior to its receipt from MS (ii) has become generally available to the public through no action or fault of MICRON, or (iii) is independently developed by MICRON. Further, MICRON may disclose confidential information as required by governmental or judicial order, provided MICRON gives MS prompt notice of such order and complies with any protective order (or equivalent) imposed on such disclosure. MICRON shall treat all Product adaptation materials (including source code) as confidential information and shall not disclose, disseminate or distribute such materials to any third party without MS' prior written permission. MICRON shall treat the terms and conditions of this Agreement as confidential; however, MICRON may disclose such information in confidence to its immediate legal and financial consultants as required in the ordinary course of MICRON's business. MICRON's obligation under this Section 13 shall extend to the earlier of such time as the information protected hereby is in the public domain through no fault of MICRON or five (5) years following termination or expiration of this Agreement.

14. AUDITS

(a) During the term of this Agreement, MICRON agrees to keep all usual and proper records and books of account and all usual and proper entries relating to each Product licensed.

(b) MS may cause an audit and/or inspection to be made of the applicable MICRON records and facilities in order to verify statements issued by MICRON and MICRON's compliance with the terms of this Agreement. Prompt adjustment shall be made to compensate for any errors or omissions disclosed by such audit. Any such audit shall be conducted by an independent certified public accountant selected by MS (other than on a contingent fee basis). Any audit and/or inspection shall be conducted during regular business hours at MICRON's facilities, with or without notice. MICRON agrees to provide MS' designated audit or inspection team access to the relevant MICRON records and facilities. Any such audit shall be paid for by MS unless material discrepancies are disclosed. "Material" shall mean the lesser of Ten Thousand Dollars (US\$10,000.00) or five percent (5%) of the amount that was reported. If material discrepancies are disclosed, MICRON agrees to pay MS for the costs associated with the audit. Further, MICRON shall pay MS an additional royalty of twenty-five percent (25%) of the applicable royalty on Exhibit(s) C for each unit MICRON failed to report that is in excess of five percent (5%) of the number of units actually reported by MICRON as is disclosed in such audit. In no event shall audits be made more frequently than semi-annually unless the immediately preceding audit disclosed a material discrepancy.

mutually 

(c) Neither the right to examine and audit nor the right to receive an adjustment shall be affected by any statement to the contrary, appearing on checks or otherwise, unless expressly agreed to in writing by the party having such right.



(d) ~~In the event that MS makes any claim with respect to an audit, upon MICRON's written request MS will make available to MICRON the records and reports pertaining to such audit prepared by MS' independent auditor.~~

15. CONTROLLING LAW: NO FRANCHISE

(a) This Agreement shall be construed and controlled by the laws of the State of Washington, and MICRON consents to jurisdiction and venue in the state and federal courts sitting in the State of

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Washington. Process may be served on either party in the manner set forth in Section 17 for the delivery of notices or by such other method as is authorized by applicable law or court rule.

(b) 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 as defined in the Washington Franchise Investment Protection Act, RCW 19.100, as amended, or 16 CFR Section 436.2(a). The price and payment described in Section 3 of this Agreement shall be construed as a royalty fee for the rights granted in Section 2 of this Agreement, and not as a franchise fee.

16. ATTORNEYS' FEES

If either MS or MICRON 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.

17. NOTICES AND REQUESTS

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

MICRON:

NOTICES:
MICRON COMPUTER, INC.
915 East Karcher
Nampa, ID 83687
Attn: Pete Scamando
Telephone: (208) 465-3434
Fax: (208) 465-3424

With copy to:
MICRON COMPUTER, INC.
915 East Karcher
Nampa, ID 83687
Attn: Chase Mart, President
Fax: (208) 465-3424

BILL TO:
MICRON COMPUTER, INC.
915 East Karcher
Nampa, ID 83687
Attn: Shelly Whiting, Accounts Payable

*Pete's
12/20/01*

SHIP TO:
MICRO COMPUTER, INC.
915 East Karcher
Nampa, ID 83687
Attn: ~~Lisa Grover~~ Pete Scamando

MICRON Support
telephone no.: (208) 465-3434

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MS:

NOTICES:
MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
Attn: Vice President, OEM Group

Other Correspondence:
OEM Sales
MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399

With copy to:
MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
Attn: Law & Corporate Affairs
Fax: 206-936-7329

18. GENERAL

(a) Any Product which MICRON distributes or licenses to or on behalf of the United States of America, its agencies and/or instrumentalities (the "Government"), are provided to MICRON with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restriction as set forth in subparagraph (c)(1)(ii) of the rights in Technical Data and Computer Software clause at DFAR 252.227-7013, or as set forth in the particular department or agency regulations or rules which provide MS protection equivalent to or greater than the above-cited clause. MICRON shall comply with any requirements of the Government to obtain such RESTRICTED RIGHTS protection, including without limitation, the placement of any restrictive legends on the Product software, Product documentation, and any license agreement used in connection with the distribution of the Product. Manufacturer is Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052-6399. Under no circumstances shall MS be obligated to comply with any Governmental requirements regarding the submission of or the request for exemption from submission of cost or pricing data or cost accounting requirements. For any distribution or license of the Product that would require compliance by MS with Governmental requirements relating to cost or pricing data or cost accounting requirements, MICRON must obtain an appropriate waiver or exemption from such requirements for the benefit of MS from the appropriate Governmental authority before the distribution and/or license of the Product to the Government.

(b) MICRON agrees that neither it nor its customers intends to or will, directly or indirectly, export or transmit (i) any Product or related documentation and technical data or (ii) any product (or any part thereof), process, or service that is the direct product of a Product, to any country to which such export or transmission is restricted by any applicable U.S. regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the U.S. Department of Commerce, or such other governmental entity as may have jurisdiction over such export or transmission.

(c) This Agreement does not constitute an offer by MS and it shall not be effective until signed by both parties. Upon execution by both parties, this Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. It shall not be modified except by a written agreement signed on behalf of MICRON and MS by their respective duly authorized representatives. Unless agreed to in a separate writing signed by both parties, any statement appearing as a restrictive endorsement on a check or other document which purports to modify a right, obligation or liability of either party shall be of no force and effect.

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

jurisdiction to be invalid, illegal or unenforceable or if this Agreement is terminated as to particular Product(s), this Agreement shall remain in full force and effect as to the remaining Product(s).

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

(f) The Section headings used in this Agreement and the attached Exhibits are intended for convenience only and shall not be deemed to supersede or modify any provisions.

19. OTHER AGREEMENTS

This Agreement shall supersede and terminate License Agreement number 5717-2283 for MS-DOS 5.0 (Prepaid) and Windows 3.1 (Prepaid) provided this Agreement has been properly executed on behalf of MICRON by its duly authorized representative and accepted by MS at its Redmond, Washington office prior to March 1, 1993.

20. MICRON'S GOVERNMENTAL APPROVAL OBLIGATIONS

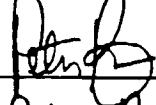
MICRON shall, at its own expense, obtain and arrange for the maintenance in full force and effect of all governmental approvals, consents, licenses, authorizations, declarations, filings, and registrations as may be necessary or advisable for the performance of all of the terms and conditions of the Agreement including, but not limited to, foreign exchange approvals, import and offer agent licenses, fair trade approvals and all approvals which may be required to realize the purposes of the Agreement. MICRON warrants and represents that the Product(s) is importable into the country identified in the "Ship To" address for MICRON listed in Section 17.

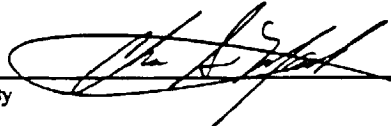
If any necessary approvals are not or cannot be obtained within a reasonable time in form and substance satisfactory to MS, MS may immediately terminate this Agreement, and upon receipt of such notice by the MICRON, this Agreement shall be null, void and of no effect.

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

MICRON COMPUTER, INC.

By 
Name (Print) Peter Braman
Title OSM Group Manager
Date 4/9/93
Date of Issue: _____

By 
Name (Print) Mr. Chase S. Mart
Title President
Date April 6, 1993

12/03/92 LE923050.002

03/26/93 LE930290.003

MS-PCA 1202942
HIGHLY CONFIDENTIAL

EXHIBIT A - SAMPLE LICENSE AGREEMENT

MICRON LICENSE AGREEMENT

This is a legal agreement between you, the end user, and MICRON. BY OPENING THIS SEALED DISK PACKAGE, 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 DISK PACKAGE AND THE ACCOMPANYING ITEMS (including written materials and binders or other containers) TO THE PLACE YOU OBTAINED THEM FOR A FULL REFUND.

MICRON SOFTWARE LICENSE

1. **GRANT OF LICENSE.** MICRON grants to you the right to use one copy of the enclosed Microsoft software program (the "SOFTWARE") on a single terminal connected to a single computer (i.e. with a single CPU). You may not network the SOFTWARE or otherwise use it on more than one computer or computer terminal at the same time.
2. **COPYRIGHT.** The SOFTWARE is owned by Microsoft or its suppliers and is protected by United States copyright laws and international treaty provisions. Therefore, you must treat the SOFTWARE like any other copyrighted material (e.g. a book or musical recording) except that 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 written materials accompanying the SOFTWARE.
3. **OTHER RESTRICTIONS.** You may not rent or lease the SOFTWARE, but you may transfer the SOFTWARE and accompanying written materials on a permanent basis provided you retain no copies and the recipient agrees to the terms of this Agreement. You may not reverse engineer, decompile or disassemble the SOFTWARE. Any transfer of the SOFTWARE must include the most recent update and all prior versions.
4. **DUAL MEDIA SOFTWARE.** If the SOFTWARE package contains both 3-1/2" and 5-1/4" disks, then you may use only the disks appropriate for your single-user computer. You may not use the other disks on another computer or loan, rent, lease, or transfer them to another user except as part of the permanent transfer (as provided above) of all SOFTWARE and written materials.
5. **YOU MAY NOT USE, COPY, MODIFY, OR TRANSFER THE SOFTWARE OR ANY COPY IN WHOLE OR IN PART, EXCEPT AS EXPRESSLY PROVIDED IN THIS LICENSE. ALL RIGHTS NOT EXPRESSLY GRANTED ARE RESERVED BY MICRON OR ITS SUPPLIERS.**

LIMITED WARRANTY

LIMITED WARRANTY. MICRON 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 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 hardware are limited to ninety (90) days and one (1) year, respectively. Some states do not allow limitations on duration of an implied warranty, so the above limitation may not apply to you.

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EXHIBIT A
(Continued)

CUSTOMER REMEDIES. MICRON's entire liability and your exclusive remedy shall be, at MICRON's option, either (a) return of the price paid or (b) repair or replacement of the SOFTWARE or hardware that does not meet MICRON's Limited Warranty and which is returned to MICRON 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 will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

NO OTHER WARRANTIES. MICRON 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 RESPECT 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. IN NO EVENT SHALL MICRON OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THIS PRODUCT, EVEN IF MICRON OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. 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.

U.S. GOVERNMENT RESTRICTED RIGHTS

The SOFTWARE and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or in 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. Contractor is MICRON COMPUTER, INC. (Address) 915 E. Karcher Rd., Nampa, ID 83687-3045

This Agreement is governed by the laws of the State of ~~Washington~~ Idaho 

Should you have any questions concerning this Agreement, or if you desire to contact MICRON for any reason, please write: MICRON Customer Sales and Service/ 915 E. Karcher (Address) Rd., Nampa, ID 83687-3045

Exhibit to the License Agreement dated April 1, 1993, between MICROSOFT CORPORATION and MICRON COMPUTER, INC.

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MSC 5020453
Highly Confidential

EXHIBIT B
PAYMENT SCHEDULES

MINIMUM COMMITMENT

First Period of This Agreement

MICRON agrees to pay a minimum of Six Hundred Twenty Five Thousand Dollars (US\$625,000.00) for Product(s) licensed under this Agreement within the first period of this Agreement as described below. The Minimum Commitment Schedule listed below sets forth the minimum cumulative amounts of payments which MICRON shall make to MS during the first period of this Agreement. To the extent that actual earned royalties exceed the cumulative minimum commitment payments, MICRON shall pay MS for actual earned royalties. To the extent that cumulative minimum commitment payments exceed actual earned royalties, such excess shall be known as prepaid royalties and shall be recoupable against future earned royalties only during the Initial Term of this Agreement and only for the Product(s) licensed herein. Prepaid royalties are not recoupable against payments made to the Authorized Distributor and/or Authorized Replicator for copies of Product ordered by MICRON. The minimum commitment amount payable upon signing of this Agreement as set forth below is refundable pursuant to Section 4(a) of this Agreement. All other minimum commitment payments are not refundable.

MINIMUM COMMITMENT SCHEDULE
(FIRST PERIOD)

<u>Date</u>	<u>Payment Amount</u> <u>(US\$)</u>	<u>Cumulative Amount</u> <u>of Payments for</u> <u>Period (US\$)</u>
Signing of this Agreement (payment due upon signing)	\$50,000.00	\$50,000.00
Three (3) months after the end of the calendar quarter in which the Effective Date occurs ("FIRST PAYMENT DATE")	\$143,750.00	\$193,750.00
3 months after the FIRST PAYMENT DATE	\$143,750.00	\$337,500.00
6 months after the FIRST PAYMENT DATE	\$143,750.00	\$481,250.00
9 months after the FIRST PAYMENT DATE	<u>\$143,750.00</u>	<u>\$625,000.00</u>
Total First Period Minimum Commitment	<u>\$625,000.00</u>	<u>\$625,000.00</u>

Except for the amount due on signing, the date of payment for the above calendar quarter amounts shall be as provided in Section 3.

MS-PCA 1202945
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EXHIBIT B
(Continued)

MINIMUM COMMITMENT

Second Period of This Agreement

MICRON agrees to pay a minimum of One Million Four Hundred Fifty Thousand Dollars (US\$1,450,000.00) for Product(s) licensed under this Agreement within the second period of this Agreement as described below. The Minimum Commitment Schedule listed below sets forth the minimum cumulative amounts of payments which MICRON shall make to MS during the second period of this Agreement. Payments made during the first period of this Agreement shall not be credited towards the minimum commitment requirement in the second period. To the extent that actual earned royalties exceed the cumulative minimum commitment payments, MICRON shall pay MS for actual earned royalties. To the extent that cumulative minimum commitment payments exceed actual earned royalties, such excess shall be known as prepaid royalties and shall be recoupable against future earned royalties only during the Initial Term of this Agreement and only for the Product(s) licensed herein. Minimum commitment payments are not refundable. Prepaid royalties are not recoupable against payments made to the Authorized Distributor and/or Authorized Replicator for copies of Product ordered by MICRON.

MINIMUM COMMITMENT SCHEDULE
(SECOND PERIOD)

<u>Date</u>	<u>Payment Amount</u> <u>(US\$)</u>	<u>Cumulative Amount</u> <u>of Payments for</u> <u>Period (US\$)</u>
12 months after the FIRST PAYMENT DATE	\$362,500.00	\$362,500.00
15 months after the FIRST PAYMENT DATE	\$362,500.00	\$725,000.00
18 months after the FIRST PAYMENT DATE	\$362,500.00	\$1,087,500.00
21 months after the FIRST PAYMENT DATE	<u>\$362,500.00</u>	<u>\$1,450,000.00</u>
Total Second Period Minimum Commitment	<u>\$1,450,000.00</u>	<u>\$1,450,000.00</u>

The date of payment for the above calendar quarter amounts shall be as provided in Section 3.

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MSC 5020455
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EXHIBIT B
(Continued)

MINIMUM COMMITMENT

Third Period of This Agreement

MICRON agrees to pay a minimum of One Million Four Hundred Fifty Thousand Dollars (US\$1,450,000.00) for Product(s) licensed under this Agreement within the third period of this Agreement as described below. The Minimum Commitment Schedule listed below sets forth the minimum cumulative amounts of payments which MICRON shall make to MS during the third period of this Agreement. Payments made during the first and second periods of this Agreement shall not be credited towards the minimum commitment requirement in the third period. To the extent that actual earned royalties exceed the cumulative minimum commitment payments, MICRON shall pay MS for actual earned royalties. To the extent that cumulative minimum commitment payments exceed actual earned royalties, such excess shall be known as prepaid royalties and shall be recoupable against future earned royalties only during the Initial Term of this Agreement and only for the Product(s) licensed herein. Minimum commitment payments are not refundable. Prepaid royalties are not recoupable against payments made to the Authorized Distributor and/or Authorized Replicator for copies of Product ordered by MICRON.

MINIMUM COMMITMENT SCHEDULE
(THIRD PERIOD)

<u>Date</u>	<u>Payment Amount</u> <u>(US\$)</u>	<u>Cumulative Amount</u> <u>of Payments for</u> <u>Period (US\$)</u>
24 months after the FIRST PAYMENT DATE	\$362,500.00	\$362,500.00
27 months after the FIRST PAYMENT DATE	\$362,500.00	\$725,000.00
30 months after the FIRST PAYMENT DATE	\$362,500.00	\$1,087,500.00
33 months after the FIRST PAYMENT DATE	<u>\$362,500.00</u>	<u>\$1,450,000.00</u>
Total Third Period Minimum Commitment	<u>\$1,450,000.00</u>	<u>\$1,450,000.00</u>

The date of payment for the above calendar quarter amounts shall be as provided in Section 3.

Exhibit to the License Agreement dated April 1, 1993, between MICROSOFT CORPORATION and MICRON COMPUTER, INC.

MS-PCA 1202947
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EXHIBIT C1 (SYSTEM COMMITMENT)

PRODUCT: Microsoft® MS-DOS®

VERSION NO: 6.0

PRODUCT DELIVERABLE:

OEM Distribution Kit consisting of Product in object code form and installation utilities.
Single copy of Product documentation for support purposes only.

PRODUCT SPECIFICATIONS:

The Product will have features as specified in the Product documentation.

Handwritten signature/initials

ROYALTY PAYMENTS AND REPORTING REQUIREMENTS:

(a) MICRON agrees to pay MS a royalty, at the applicable rate set forth below, multiplied by the number of full or partial Customer System(s) shipped or placed in use by or for MICRON during the term of this Agreement.

<u>Customer System</u>	<u>Royalty Rate (US\$)</u>
Exhibit M1	\$24.00

NOTE: The above royalty is exclusive of any charges by the Authorized Distributor or Authorized Replicator, as applicable, for copies of Product ordered by MICRON.

(b) If MICRON licenses or distributes a non-US English language version of the Product, then, in addition to the royalty payable in Section (a) above, MICRON agrees to pay MS a royalty of (US\$2.00) multiplied by the number of full or partial copies of such translated version of the Product licensed or distributed by or for MICRON during the term of this Agreement.

(c) MICRON's report shall specify the number of Customer System(s) shipped or placed in use by or for MICRON during that calendar quarter and the number of copies of Product for each language version licensed or distributed by or for MICRON during that calendar quarter. MICRON shall furnish this statement for each Customer System identified in Exhibit M1 and shall report for each Customer System separately and by language version of Product. In the event that no Customer System(s) are shipped or placed in use by or for MICRON during a calendar quarter and no copies of Product are licensed or distributed by or for MICRON during such calendar quarter, MICRON shall indicate this on the royalty report.

ADDITIONAL PROVISIONS:

For Customer Systems which are shipped with MS-DOS 6.0, MICRON agrees to pre-install the Product on the hard disk of such Customer Systems.

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EXHIBIT C1 (SYSTEM COMMITMENT)
(Continued)

ROYALTIES FOR NEW VERSION RELEASES:

MS may elect to increase the per system royalty applicable to new Version Releases, which royalty shall apply to succeeding releases until changed hereunder or by agreement of the parties. The maximum per system royalty for a new Version Release shall be determined as follows:

$$\text{Maximum royalty} = R + (R * N * 1.5\%),$$

where R is the initial per system royalty described above and N is the number of months (rounded to the nearest whole number) that have elapsed from the Effective Date until MS delivers the new Version Release.

PRODUCT NAME AND ASSOCIATED TRADEMARKS: Microsoft® MS-DOS® 6.0

Exhibit to the License Agreement dated April 1, 1993, between MICROSOFT CORPORATION and MICRON COMPUTER, INC.

EXHIBIT C2 (SYSTEM COMMITMENT)

PRODUCT: Enhanced Tools for MS-DOS® 6

VERSION NO: 1.0

PRODUCT DELIVERABLE:

OEM Distribution Kit consisting of Product in object code form and installation utilities.
Single copy of Product documentation for support purposes only.

PRODUCT SPECIFICATIONS:

The Product will have features as specified in the Product documentation.

ROYALTY PAYMENTS AND REPORTING REQUIREMENTS:

(a) MICRON agrees to pay MS a royalty, at the applicable rate set forth below, multiplied by the number of full or partial Customer System(s) shipped or placed in use by or for MICRON during the term of this Agreement.

<u>Customer System</u>	<u>Royalty Rate (USD)</u>
Exhibit M1	\$2.00

NOTE: The above royalty is exclusive of any charges by the Authorized Distributor or Authorized Replicator, as applicable, for copies of Product ordered by MICRON.

(b) If MICRON licenses or distributes a non-US English language version of the Product, then, in addition to the royalty payable in Section (a) above, MICRON agrees to pay MS a royalty of (US\$0.50) multiplied by the number of full or partial copies of such translated version of the Product licensed or distributed by or for MICRON during the term of this Agreement.

(c) MICRON's report shall specify the number of Customer System(s) shipped or placed in use by or for MICRON during that calendar quarter and the number of copies of Product for each language version licensed or distributed by or for MICRON during that calendar quarter. MICRON shall furnish this statement for each Customer System identified in Exhibit M1 and shall report for each Customer System separately and by language version of Product. In the event that no Customer System(s) are shipped or placed in use by or for MICRON during a calendar quarter and no copies of Product are licensed or distributed by or for MICRON during such calendar quarter, MICRON shall indicate this on the royalty report.

ADDITIONAL PROVISIONS:

For Customer Systems which are shipped with Enhanced Tools for MS-DOS 6, MICRON agrees to pre-install the Product on the hard disk of such Customer Systems.

MS-PCA 1202950
HIGHLY CONFIDENTIAL

MSC 5020459
Highly Confidential

EXHIBIT C2 (SYSTEM COMMITMENT)
(Continued)

ROYALTIES FOR NEW VERSION RELEASES:

MS may elect to increase the per system royalty applicable to new Version Releases, which royalty shall apply to succeeding releases until changed hereunder or by agreement of the parties. The maximum per system royalty for a new Version Release shall be determined as follows:

$$\text{Maximum royalty} = R + (R * N * 1.5\%),$$

where R is the initial per system royalty described above and N is the number of months (rounded to the nearest whole number) that have elapsed from the Effective Date until MS delivers the new Version Release.

PRODUCT NAME AND ASSOCIATED TRADEMARKS: Enhanced Tools for MS-DOS® 6

Exhibit to the License Agreement dated April 1, 1993, between MICROSOFT CORPORATION and MICRON COMPUTER, INC.

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EXHIBIT C3 (SYSTEM COMMITMENT)

PRODUCT: Microsoft® Windows™

VERSION NO: 3.1

FOREIGN LANGUAGE: (Do not fill in if Domestic USA Version)

PRODUCT DELIVERABLE:

OEM Distribution Kit consisting of Product in object code form and installation utilities.
Single copy of Product documentation for support purposes only.

PRODUCT SPECIFICATIONS:

The Product will have features as specified in the Product documentation.

ROYALTY PAYMENTS AND REPORTING REQUIREMENTS:

(a) MICRON agrees to pay MS a royalty, at the applicable rate set forth below, multiplied by the number of full or partial Customer System(s) shipped or placed in use by or for MICRON during the term of this Agreement.

<u>Customer System</u>	<u>Royalty Rate (US\$)</u>
Exhibit M2	\$32.00

NOTE: The above royalty is exclusive of any charges by the Authorized Distributor or Authorized Replicator, as applicable, for copies of Product ordered by MICRON.

(b) If MICRON licenses or distributes a non-US English language version of the Product, then, in addition to the royalty payable in Section (a) above, MICRON agrees to pay MS a royalty of (US\$4.00) multiplied by the number of full or partial copies of such translated version of the Product licensed or distributed by or for MICRON during the term of this Agreement.

(c) MICRON's report shall specify the number of Customer System(s) shipped or placed in use by or for MICRON during that calendar quarter and the number of copies of Product for each language version licensed or distributed by or for MICRON during that calendar quarter. MICRON shall furnish this statement for each Customer System identified in Exhibit M2 and shall report for each Customer System separately and by language version of Product. In the event that no Customer System(s) are shipped or placed in use by or for MICRON during a calendar quarter and no copies of Product are licensed or distributed by or for MICRON during such calendar quarter, MICRON shall indicate this on the royalty report.

ADDITIONAL PROVISIONS:

For Customer Systems which are shipped with Windows, MICRON agrees to pre-install the Product on the hard disk of such Customer Systems.

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MSC 5020461
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EXHIBIT C3 (SYSTEM COMMITMENT)
(Continued)

ROYALTIES FOR NEW VERSION RELEASES:

MS may elect to increase the per system royalty applicable to new Version Releases, which royalty shall apply to succeeding releases until changed hereunder or by agreement of the parties. The maximum per system royalty for a new Version Release shall be determined as follows:

$$\text{Maximum royalty} = R + (R \cdot N \cdot 1.5\%),$$

where R is the initial per system royalty described above and N is the number of months (rounded to the nearest whole number) that have elapsed from the Effective Date until MS delivers the new Version Release.

PRODUCT NAME AND ASSOCIATED TRADEMARKS: Microsoft® Windows™

Exhibit to the License Agreement dated April 1, 1993, between MICROSOFT CORPORATION and MICRON COMPUTER, INC.

MS-PCA 1202953
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MSC 5020462
Highly Confidential

EXHIBIT M1

MICRON'S CUSTOMER SYSTEMS

For purposes of this Agreement, MICRON's Customer Systems shall be defined to be all MICRON's current and future single user computer systems that utilize a single one of the Intel microprocessors listed below, or non-Intel microprocessors that execute the same instruction sets.

Processor

80286 All versions

80386 All versions

80486 All versions

Exhibit to the License Agreement dated April 1, 1993, between MICROSOFT CORPORATION and MICRON COMPUTER, INC.

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EXHIBIT M2

MICRON'S CUSTOMER SYSTEMS

For purposes of this Agreement, MICRON's Customer Systems shall be defined to be all MICRON's current and future single user computer systems that utilize a single one of the Intel microprocessors listed below, or non-Intel microprocessors that execute the same instruction sets, and include a hard drive.

, as to Microsoft Windows 3.1, shall

Processor

80386 All versions

80486 All versions

Exhibit to the License Agreement dated April 1, 1993, between MICROSOFT CORPORATION and MICRON COMPUTER, INC.

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EXHIBIT R

Royalty Report for MICRON COMPUTER, INC.

Reporting Period: _____, 19__ to _____, 19__

Microsoft Contract # _____

PER-SYSTEM PRODUCT		A	B	C (= A x B)
Product Name and Version			Number of	
Product ID	CPU	Royalty	Systems	Royalty
Language	Type	Rate		Due
System 1: _____	_____	\$ _____	_____	\$ _____
System 2: _____	_____	\$ _____	_____	\$ _____
System 3: _____	_____	\$ _____	_____	\$ _____
System 4: _____	_____	\$ _____	_____	\$ _____
System 5: _____	_____	\$ _____	_____	\$ _____
System 6: _____	_____	\$ _____	_____	\$ _____
			Total Reported:	\$ _____

PER-COPY PRODUCT		A	B	C (= A x B)
Product Name and Version				
Product ID		Per Copy	Copies	Royalty
Language		Royalty	Shipped	Due
		\$ _____	_____	\$ _____

Other				
(Describe)		Per Copy	Copies	Royalty
		Royalty	Shipped	Due
		\$ _____	_____	\$ _____

Total Royalty Reported: \$ _____

Total Payment Enclosed: \$ _____

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

Report Completed by: _____ (Signature)

_____ (Print)

_____ (Date)

Telephone Number: () _____

Exhibit to the License Agreement dated April 1, 1993, between MICROSOFT CORPORATION and MICRON COMPUTER, INC.

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