

PLAINTIFF'S
EXHIBIT
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Comes v. Microsoft

SIGNED
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DEPOSITION
EXHIBIT
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Williams 5/10/91

MICROSOFT LICENSE AGREEMENT FOR OFFICE PRODUCTS
2811 - 9030 (SAP 500002155) dated March 1, 1998
with DELL COMPUTER CORPORATION, a corporation of Delaware, U.S.A.
(European Distribution)

This License Agreement ("License Agreement") is made and entered into as of the date first set forth above ("License Effective Date"), by and between MICROSOFT LICENSING, INC., a Nevada, U.S.A. Corporation, ("MS"), and the company specified above ("COMPANY").

I. INCORPORATION OF BUSINESS TERMS DOCUMENT

This License Agreement hereby incorporates by reference all of the terms of the Microsoft General OEM Business Terms Document dated March 1, 1998, Number #5115100001, as may be amended from time to time during the term of this License Agreement by agreement of the parties ("Business Terms Document" or "Document"). In the event of any inconsistencies between this License Agreement and the Business Terms Document, the terms of this License Agreement shall control.

II. LICENSE GRANT

(a) Subject to limitations in, and COMPANY's compliance with, this License Agreement, including the Business Terms Document incorporated herein and the attached Exhibits, MS grants to COMPANY a non-exclusive, limited license to:

- (i) install and distribute one (1) copy of Preinstalled Product software only with those Customer System(s) described on Exhibit(s) C; and
- (ii) distribute the APM and, at COMPANY's discretion, the following materials, all of which (the APM and such materials) shall be inside the package(s) for such Customer Systems, except as otherwise provided in the Document:
 - (A) one (1) copy of Product software on external media (i.e., diskette or CD-ROM) as acquired from Authorized Replicator; and
 - (B) one (1) copy of Product end user documentation as acquired from Authorized Replicator.

(b) COMPANY's license shall extend to new Supplements, Update Releases, and Version Releases following the releases listed in Exhibit C. COMPANY's license shall not extend to Product Releases. MS acknowledges that Section 4(h) of the Business Terms Document applies to MS products and Product releases, including without limitation new Product Releases.

(c) Unless otherwise indicated in this subsection or the applicable Exhibit C, COMPANY may distribute

Product(s) only within the geographical boundaries of the member countries of the European Union and the European Free Trade Association and to Poland, the Czech Republic and South Africa ("Territory"). Customer Systems distributed outside the Territory are not licensed for Product and shall bear no royalty of any type hereunder.

(d) (i) COMPANY shall comply with: (A) the additional provisions, if any, provided in Exhibit(s) C with respect to Product(s); and (B) marketing or advertising guidelines provided with the Product Deliverables or otherwise provided in writing by MS; provided further, however, that such guidelines do not conflict with the terms of this License Agreement or the Business Terms Document.

(ii) COMPANY shall not modify or delete any part of the Product software in any matter, except as expressly permitted in the applicable Exhibit C.

(e) 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. COMPANY's license to distribute the Product is limited to distribution of the Product for use pursuant to the EULA.

(f) MS reserves all rights to Product not expressly granted in this License Agreement (which includes the Business Terms Document) including, without limitation, modification rights, translation rights, rental rights (except for twelve month leasing rights by DFS, an affiliate of COMPANY), and rights to source code. Provided that MS shall not have the right or authority under the following reservation to in any manner restrict or impair COMPANY's rights hereunder, MS expressly reserves its exclusive right under applicable copyright, patent and trademark laws to distribute copies of Product by any means. MS shall not undertake any marketing or promotional activities targeted exclusively at a Customer System(s) regarding any of the Licensed Products within the Territory. To the extent stated in the EULA and herein, and as allowable by law, COMPANY acknowledges that MS (and/or its suppliers, if applicable) shall retain all copyright, patent, trademark, title and other proprietary and intellectual

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property in the Product software, Product Deliverables and components thereof, in whole or in part in any form.

(g) MS grants to Dell Financial Services L.P. ("DFS"), COMPANY's affiliated lease financing company, the right to lease Product(s) which are licensed under this License Agreement and preinstalled on COMPANY's Customer Systems. COMPANY shall cause DFS to comply with the provisions of the License Agreement and the following additional provisions, which provisions shall override the terms of any inconsistent License Agreement terms:

(i) DFS shall enter into lease agreements for the Customer System and Product for terms of no less than twelve (12) months ("Lease"). Upon termination of such Lease, if the customer is required to return the Customer System, the customer shall be required to return the Customer System with all copies of the Product to DFS. With the exception of (a) COMPANY's then current Total Satisfaction Return Policy and (b) DFS reclaiming the Customer System in the event a lease customer defaults on its obligations, the license granted by MS to lease the particular Product shall expire upon return of the Customer System to DFS.

(ii) COMPANY's guarantees and Liabilities under Section 2(f) of the Document shall apply to DFS.

III. ADDITIONAL PAYMENT TERMS.

(a) COMPANY hereby agrees to pay MS the amounts specified in Exhibits B and C in accordance with Section 3 of the Business Terms Document. In accordance with Section 3(f) of the Business Terms Document, payments will include (A) the minimum commitment amounts for each COMPANY fiscal

Period as set forth in Exhibit B; and (B) the amount by which cumulative royalties for a COMPANY fiscal Period exceed minimum amounts for that Period. Payment obligations shall survive termination of this Agreement for a period of three (3) months.

IV. LICENSE TERM.

The term of this License Agreement shall run from the License Effective Date through February 28, 1999. The parties agree to negotiate in good faith a new license agreement relating to the Products or the extension of this License Agreement prior to the expiration of the term hereof.

V. ENTIRE AGREEMENT.

This License 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 License Agreement together with the Business Terms Document as incorporated herein shall constitute the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications.

VI. EXHIBITS.

The following Exhibits are part of this License Agreement:

Exhibit B	Minimum Commitment Payments
Exhibit(s) C	Products
Exhibit N2	Additional Addresses

The terms of the Exhibit(s) shall supersede any inconsistent terms contained in this License Agreement.

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IN WITNESS WHEREOF, the parties have executed this license Agreement by their duly authorized representatives as of the date set forth above. All signed copies of this License Agreement shall be deemed originals. Each individual signing below hereby represents and warrants that he or she has full authority to sign this License Agreement and bind his or her corporation for which the signature is made to perform all duties and obligations contemplated by this License Agreement.

MICROSOFT LICENSING, INC.

A.B.K.
By (Signature)

Denis Kibby
Name (Printed)

Asst. Treasurer, MSLI

Title

February 5, 1999
Date

BELL COMPUTER CORPORATION

[Signature]
By (Signature)

Wolmut
Name (Printed)

V. aw Provent
Title

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Date

NOTICE:

This is an OEM distribution license. Product can only be distributed with a Customer System, as specified in the License Grant Section hereof.

[Handwritten initials]

EXHIBIT B
MINIMUM COMMITMENT PAYMENTS

<u>Date</u>	<u>Payment Amount</u> <u>(US\$)</u>	<u>Cumulative Amount</u> <u>of Payments for</u> <u>Period(US\$)</u>
Due on signing	\$3,750,000.00	\$3,750,000.00
September 15, 1998	\$3,750,000.00	\$7,500,000.00
December 15, 1998	\$3,750,000.00	\$11,250,000.00
February 15, 1999	\$3,750,000.00	\$15,000,000.00
Total Minimum Commitment	<u>\$15,000,000.00</u>	<u>\$15,000,000.00</u>

The Minimum Commitments above shall be suspended effective upon the release by MS or MSCORP to end users (i.e., public launch date or street date) of a new Product Release for which MS has yet to license to COMPANY pursuant to Section 4(h) of the Business Terms Document.

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EXHIBIT C1

PRODUCT TABLE(S)

Product Name And Version**	Language Version**	Applicable Additional Provisions	Royalty***	Basis (e.g. per copy or per system)	Estimated Monthly Volume	Billing Type****
Microsoft © Office 97 Small Business Edition Or Microsoft © Office 97 Small Business Edition Version 2.0	XZ, NL	(01),(02),(04), (12), (67), (99), (101),(102), (103), (104)	US\$150.00	Per System pursuant to Additional Provision (99)		Type I
Microsoft © Office 97 Small Business Edition Or Microsoft © Office 97 Small Business Edition Version 2.0	IT	(01),(02),(04), (12), (67), (99), (101),(102), (103), (104)	US\$165.00	Per System pursuant to Additional Provision (99)		Type I
Microsoft © Office 97 Small Business Edition Or Microsoft © Office 97 Small Business Edition Version 2.0	FR, DE, SV, DA, NO, FI, CS, ES, PL, PT	(01),(02),(04), (12), (67), (99), (101),(102), (103), (104)	US\$185.00	Per System pursuant to Additional Provision (99)		Type I
Microsoft © Home Essentials 97 Or Works Suite 99	FR, DE, NL, DA, SV, FI, NO, EN, ES, IT, XZ	(01),(02), (04),(12), (67),(99), (103), (104)	US\$30.00	Per System pursuant to Additional Provision (99)		Type II
Microsoft © Home Essentials 98 Or Works Suite 99	XZ,FR,DE, NL, EN, IT	(01),(02), (04),(12), (67),(99), (103), (104)	US\$30.00	Per System pursuant to Additional Provision (99)		Type II

- ** Language Version Key: Please refer to the Language Version Key in Exhibit L of the Business Terms Document for explanation of Language Version codes. Localized versions are licensed on an K and as available basis.
- *** A Product is not licensed hereunder unless royalty rate(s) are indicated in the Product table of this Exhibit C.
- **** Billing Type: Type I-based on third party AR reports, Type II-based on COMPANY royalty reports, as specifically set forth in Section 3(e) of the Business Terms Document.

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ADDITIONAL PROVISIONS KEY

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

- (01) The following provisions shall apply to Products listed in this Exhibit C:
- (a) The royalty rate(s) specified above require pre-installation of the Product. COMPANY shall preinstall the Product software solely in accordance with the installation instructions set forth in the "Preinstallation Guide", which is included in the preinstallation kit portion ("Preinstallation Kit") of the Product Deliverables. COMPANY may use the information, tools, and materials contained in the Preinstallation Kit solely to preinstall the Product software in accordance with the Preinstallation Guide and for no other purpose. Other than as specified in the Preinstallation Guide, COMPANY shall not modify the Product software, nor delete or remove any features or functionality without the prior written approval of MS in each instance. This paragraph (a) is subject and subordinate to Section 2(a) of the Document.
 - (b) Notwithstanding anything to the contrary contained in Section II of the License Agreement or Section 2 of the Business Terms Document, COMPANY must distribute Product APM with each Customer System distributed with Product software. A COA must be affixed to or accompany each copy of Product APM. Company must distribute only one (1) copy of Product APM with each Product version distributed.
 - (c) COMPANY shall have a right to distribute all available language versions of the Products listed in this Exhibit C, and Microsoft shall promptly add by amendment to the above Product Table, at COMPANY's request, any language versions needed by COMPANY which are not then listed under the Language Version column of such Table.
 - (d) The royalty rate(s) specified above for Product(s) are based on COMPANY's agreement as follows:
 - (i) With respect to advertising that includes those Customer Systems distributed with Product(s), if COMPANY in its discretion refers to the relevant Product names and/or places reproductions or depictions of the Product's front packaging in point of purchase materials, print advertising, packaging, and/or marketing collateral, such references, reproductions and depictions referenced by COMPANY shall be accurate.
- (02) The individual software programs which comprise the Product shall be distributed together with one Customer System and may not be distributed separately or licensed for use by more than one end-user. Information on licensing any of the components separately may be obtained from the Account Manager assigned to COMPANY.
- (04) In addition to the required Customer System components specified in the Customer System definition in Section 1(d) of the Business Terms Document, Customer Systems distributed with this Product must include a CD-ROM or DVD drive.
- (12) Except as set forth in Exhibit D to the Business Terms Document, COMPANY may distribute Product(s) only with Customer Systems which are marketed and distributed exclusively under COMPANY's or COMPANY Subsidiaries "brand names", trade names and trademarks. Except as set forth in Exhibit D to the Business Terms Document, the Product(s) may not be distributed with Customer Systems which are marketed or distributed under any name which includes any third party brand names, trade names or trademarks. Nothing in this paragraph precludes COMPANY, at a customer's request, from installing customer specific labeling for identification purposes, as long as COMPANY's brand name, trade name or trademark appears on the Customer System.
- (67) (a) Except for accurate informational references to and descriptions of the Product(s), accurate reproductions or depictions of the Product(s) front packaging and except as permitted in Additional Provision (01)(c) above, MS expressly prohibits any use of the Product(s) contents (e.g., photographs, video, audio, screen shots, etc.) or extracts of images contained on the associated packaging in connection with COMPANY's distribution of the Product(s), including, without limitation, advertising use.
- (b) If COMPANY is provided a Marketing Materials Kit for Product under this License Agreement, then COMPANY is authorized to use materials contained in Marketing Materials Kit for promotional purposes provided that:
- (i) Use is in compliance with the guidelines provided in Marketing Materials Kit;
 - (ii) COMPANY's promotion of Product(s) shall be restricted to the guidelines provided in Marketing Materials Kit and subsection (a) above;
 - (iii) Use is confined to the advertising and promotion of Customer Systems licensed for and distributed with Product; and
 - (iv) COMPANY agrees to cease use of the Marketing Materials Kit, and cease any promotion for Product(s), upon expiration or termination of COMPANY's license for this Product.

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(99) (a) COMPANY is licensed to distribute, at its discretion, on COMPANY's Dimension and Inspiron Customer Systems either (A) Works and/or Money pursuant to the terms of a separate OEM License Agreement between MS and COMPANY; or (B) Office 97 Small Business Edition or Home Essentials or Works Suite 99 pursuant to the terms of this License Agreement, and each such Customer System shall bear the royalty for the Product actually distributed with each such Customer System. If COMPANY distributes a Dimension Customer System (or, in lieu thereof, a redefined subset of Dimension Customer System(s) pursuant to subsection (b)(2) immediately below) without any Product identified in the first sentence of this Additional Provision (99), then COMPANY shall pay the royalty specified in this License Agreement for Office 97 Small Business Edition (except as set forth in subsection (b) below) for such Customer System. If COMPANY distributes an Inspiron Customer System (or, in lieu thereof, a redefined subset of Inspiron Customer System(s) pursuant to subsection (b)(2) immediately below) without any Product identified in the first sentence of this Additional Provision (99), then COMPANY shall pay the royalty for Works and/or Money for such Customer System as specified in the separate OEM License Agreement and subject to subsection 99(b) immediately below.

(b) (1) Customer Systems under this License Agreement shall exclude, for royalty and all other purposes, those Customer System models distributed with non-OEM versions of Office 97 Professional or Standard products acquired by COMPANY (A) under a separate MSCORP academic license program, if any, or (B) for end users resident in Sweden pursuant to the Swedish Employee Purchase program or "FC Privat" program. Customer Systems covered by subsection (B) above, however, shall be licensed for Works and/or Money and incur the applicable royalty as specified in the "Royalty" column of the Product Table in the separate OEM License Agreement, but COMPANY shall have no obligation to preinstall or ship Works and/or Money software or to ship any APM with any such Customer Systems. MS agrees to negotiate promptly and in good faith regarding the inclusion of similar purchase programs under the exception provided in subsection (B) above.

(2) Effective upon the release by MS or MSCORP to end users (i.e., public launch date or street date) of a new Product Release for which MS has yet to license to COMPANY pursuant to Section 4(h) of the Document, COMPANY at its discretion may change and redefine the Customer System(s) on which it distributes any of the Products referenced in Additional Provision 99(a) above.

(101) For Customer System models defined in (1) of following Customer System Table, prior to distribution at point of sale, COMPANY may "upsell" directly to end users Office 97 Small Business Edition in lieu of Home Essentials 97 or 98/Works Suite 99 Product; in such cases the royalty due is the royalty indicated above for appropriate language version of Office 97 Small Business Edition. Home Essentials/Works Suite Product will not be shipped with such Customer Systems in these instances.

(102) For Dimension and Inspiron Customer Systems, COMPANY may advertise Office 97 Small Business Edition as an optional available "upsell" item noted as Office 97 Small Business Edition in lieu of Home Essentials/Works Suite. Except for exposing on COMPANY websites a specified additional upsell price, COMPANY will not otherwise expose or publicize any separate Product price on the COMPANY website or in COMPANY's print or electronic advertising, including, without limitation, as follows.

- (1) On COMPANY websites, except for upsell prices as authorized in the preceding paragraph, COMPANY will not itemize a separate Product price.
- (2) In COMPANY print or electronic advertising, except for upsell prices as authorized in the second preceding paragraph the Product(s) price will not be itemized. COMPANY may publicize the availability of the "upsell" and request that (potential) end user customers seek further information from COMPANY.

(103) The minimum commitment schedule contained in Exhibit B applies to the Products in Exhibit C1 only. COMPANY's minimum commitment payments and any pre-paid balance under Exhibit B, shall not be recoupable by royalties due for any other Product.

(104) MS represents that as of the execution date of this License Agreement by COMPANY, no MS OEM customer other than COMPANY and one other OEM customer has a most-favored-nation right with respect to royalties for any Product licensed for OEM distribution hereunder. In the case of the other OEM customer, MS represents that the right does not apply to Office and terminates on December 31, 1998. If, after the execution date of this License Agreement by COMPANY, MS grants a most-favored-nation right to any OEM customer or renews or extends the most-favored-nation right for the other OEM referenced above for any Product licensed hereunder, MS agrees to promptly notify COMPANY of such fact and to negotiate with COMPANY in good faith for an equally favorable most-favored-nation right for COMPANY.

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CUSTOMER SYSTEMS

COMPANY's Customer Systems are described in the table below. For each Product which COMPANY chooses to license for distribution with the listed Customer System, the letter "S" or "C" in the relevant box indicates whether COMPANY is licensing the Product on a "per system" or "per copy" basis, respectively. New models may be added by agreement of the parties.

At COMPANY's option, for purposes of administrative convenience, COMPANY may designate models by "all models" or by "model line" or "series", (e.g. "Jaguar model line", "Jaguar Pro series", Jaguar Pro 750 model line, "Jaguar Pro 950 series", etc.). Customer Systems defined by "all models" shall include all current and future models that meet the description specified in the table (e.g. "All models which include a CD-ROM drive, 500 Mb or larger hard disk drive, sound card.") and utilize the listed microprocessor(s). Customer Systems defined by model line or series shall include all current and future models which include the designated model line or series name, (e.g. "Jaguar pro model line" includes Jaguar Pro, Jaguar Pro 950, Jaguar Pro S, etc.; "Jaguar series" includes Jaguar, Jaguar Pro, Jaguar Pro 950, Jaguar S400, etc.; "Jaguar Pro 950 series" includes Jaguar Pro 950, Jaguar Pro 955, etc.).

Product Number Key:

Item #	Legal Name
1701 or 12237	Microsoft © Office 97 Small Business Edition or Microsoft © Office 97 Small Business Edition Version 2.0
11924	Microsoft © Home Essentials 97
11925	Microsoft © Home Essentials 98
12561	Microsoft © Works Suite 99

Royalty Basis Key: C = per copy, S = per system; if Product box is blank, such Product is not licensed for distribution with the listed Customer System.

CUSTOMER SYSTEM TABLE

Model Name/Model Number	1701 or 12237	11924	11925	12561	
(1) Dimension model lines (pursuant to additional provision (99)(a) above and excluding models distributed pursuant to additional provision (99)(b) above)	S	S	S	S	
(2) Inspiron model line (pursuant to additional provision (99)(a) above and excluding models distributed pursuant to additional provision (99)(b) above)	S	S	S	S	

The Per System designation(s) in the above chart are subject to additional provision (99) above. COMPANY hereby represents and warrants that the names and numbers indicated in the Model Name or Model Number column in the table above substantially accurately denote the actual designation used by COMPANY to identify the listed models (by some method of identification on the Customer System case and in COMPANY's internal books and records).

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EXHIBIT N2
ADDITIONAL ADDRESSES

COMPANY:

BILL TO:
DELL COMPUTER CORPORATION
c/o DELL PRODUCTS (EUROPE) B.V.
Raheen Industrial Estate
Limerick, Ireland
Attn: Accounts Payable
Telephone: 353-61-304091
Fax: 353-61-304090

SHIP TO:
DELL COMPUTER CORPORATION
c/o DELL PRODUCTS (EUROPE) B.V.
Raheen Industrial Estate
Limerick, Ireland
Attn: Central Engineering Manager
Telephone: 353-61-304091
Fax: 353-61-304090

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