

PLAINTIFF'S  
EXHIBIT  
4024  
Comes v. Microsoft

From: OEM Document Routing Admin  
Sent: Wednesday, December 16, 1998 6:02 PM  
To: Richard Fade; Dale Watanabe; Nancy McCauley (LCA)  
Cc: MSLI OEM Software Accounting (MS License)  
Subject: FW: OEMDOC Approval Request "IBM" (5113450014-R0- )

Sensitivity: Confidential

**This approval request is for a Non-Wizard document. To review please follow these steps:**  
Double click on the attachment in this email and review the information and documents on the first two tabs of the form.  
The attached documents should not be altered in any way.  
On the third tab entitled **Reviewer**, you can choose a status (Green, Yellow, or Red) and write any comments that clarify your choice.  
When you are finished, choose **Save** from the **File** menu.  
Then **Close** the form.  
Click the **Forward** button on the main toolbar for this message.  
Enter **OEMDOC** in the **To** line. (If you have chosen **Red** or **Yellow**, in the **Cc** line enter the account manager and all other reviewers)  
Click the **Send** button on the forwarded message.

**Please Respond within 3 Business Days**

OEMDOC Approval  
Request "IBM"...

MS-PCA 2599240

**HIGHLY  
CONFIDENTIAL**

**From:** Stephane Boulez  
**Sent:** Monday, December 14, 1998 7:20 PM  
**To:** OEM Document Routing Admin  
**Subject:** OEMDOC Approval Request \*\*IBM\*\* (5113450014-R0-)

**Sensitivity:** Confidential

**AgreementType:** Office Products  
**AM:** stephane  
**AMComments:** This license is for the North America region.  
**Calc:** richardf ; ; dalewat ;nancyv  
**CompanyCountry:** USA  
**CustomerName:** IBM  
**DocDescription:** Office Products  
**DocTypeWizard:** 0  
**GroupManagerAlias:** dalewat  
**LegalAlias:** nancyv  
**NonStdFin:** 0  
**NonStdFinPGL:** 0  
**OEMDOCComments:** Sent to richardf;dalewat;nancyv;mslisoft 12-16-98.  
**OEMDOCrev:** R0  
**oemdocWIZ:** 5113450014  
**SideLetterDate:** None  
**Subject2:** OEMDOC Approval Request \*\*IBM\*\* (-)  
**Subject3:** OEMDOC Approval Request \*\*IBM\*\* (5113450014-R0- )  
**VPGMAlias:** richardf

  
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RE: Office SBE license  
for IBM...

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**HIGHLY  
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North America - DRAFT SUBJECT TO MICROSOFT  
MICROSOFT LICENSE AGREEMENT FOR OFFICE PRODUCTS

# \_\_\_\_\_ dated December 1, 1998

with INTERNATIONAL BUSINESS MACHINES CORPORATION, a corporation of New York

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 January 1, 1998, Number 5000020615 executed by MS and COMPANY (or by Microsoft Corporation and COMPANY before January 1, 1998), as may be amended from time to time during the term of this License Agreement by agreement of the parties ("Business Terms Document"). In the event the above-referenced Business Terms Document has not been executed by the parties as of the date of MS' execution of this License Agreement, this License Agreement shall be considered void. 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) MS grants to COMPANY the non-exclusive, worldwide license rights to:

(i) adapt the Product Software to enable it to execute on Customer Systems as permitted by either the Product OEM Preinstallation Kit ("OPK") or the Product OEM Distribution Kit;

(ii) acquire the Product from an Authorized Replicator;

(iii) install no more than one (1) copy of Product Software on each Customer System hard disk ("Preinstalled Product Software");

(iv) distribute directly or indirectly (e.g. through resellers and distributors) and license (in object code form) to end users to use, execute, display and reproduce for operational and archival purposes under the terms of the Product EULA(s) with each Customer System no more than one (1) copy each of (A) Preinstalled Product Software and (B) Product Software on external media as acquired from an Authorized Replicator and (C) Product end user documentation as acquired from an Authorized Replicator. Notwithstanding the foregoing, COMPANY may distribute Product Software independent of a Customer System for the purposes in Section 3(f)(ii) of the Business Terms Document.

(v) reproduce the Product Software solely for the purposes in: (A) Section II(a)(iii) above; (B) Sections 3(f)(ii)(A), (B) (for reload or downgrade), (D), (F), and (G) of the Business Terms Document; (C) Exhibit F of the Business Terms Document as permitted in Exhibit F; and (D) as otherwise permitted in the Business Terms Document or License Agreement.

(vi) modify the Product Software by applying any fixes to bugs or errors which were provided by MS to COMPANY in accordance with Section 4 of the Business Terms Document.

(vii) include this Product Software on a Product Recovery CD as defined in Attachment I to Exhibit C License Agreement #5000020616.

(b) COMPANY's license shall extend to Supplements, Update Releases, and Version Releases for the Products in Exhibit(s) C. COMPANY's license shall not extend to Product Releases; provided, however, that in the event MS makes a future Product Release available to OEMs generally, it shall offer COMPANY the opportunity to license such Product Release on MS' then current standard terms and conditions.

(c) Except as otherwise provided in the applicable Exhibit C, COMPANY's license rights shall be worldwide. Unless otherwise indicated in this subsection or the applicable Exhibit C, COMPANY may distribute Product(s) only within the geographical boundaries of IBM defined market areas of North America (e.g. USA, Canada and Caribbean countries).

(d) COMPANY may grant to COMPANY Subsidiaries the limited rights granted to COMPANY in this License Agreement as well as any rights MS may grant to COMPANY for Products licensed herein under a Supplement Addendum during the term hereof, subject to all the terms and conditions set forth in this License Agreement.

(e) (i) COMPANY shall distribute Product(s) only with Customer System(s) and only inside the Customer System Package, except as provided elsewhere within this License Agreement and Business Terms Document.

(ii) COMPANY shall comply with: (A) the additional provisions, if any, provided in Exhibit(s) C with respect to Product(s); and (B) trademark usage guidelines provided with the Product Deliverables, or otherwise provided in writing by MS; provided that MS shall provide COMPANY with adequate period of time to review such guidelines and discuss such guidelines with MS. In the event that any of such guidelines conflict with this License Agreement, the License Agreement shall control.

(iii) COMPANY shall not modify or delete any part of the Product Software except as otherwise provided in the Business Terms Document or License Agreement.

(iv) COMPANY may supplement but shall not modify or translate Product end user documentation. COMPANY shall not remove or modify the package contents of the APM, except that if the APM includes any marketing or sales material ("Marketing Material"), COMPANY has the right to elect not to distribute such Marketing Material and, at COMPANY's expense, to remove the Marketing Material from the APM. MS agrees to use reasonable efforts to provide COMPANY prior written notice if it intends to include Marketing Material in the APM. MS agrees to assist COMPANY in removing Marketing Material from the APM by instructing the Authorized Replicator that COMPANY has the right to remove Marketing Material from the APM. If, in COMPANY's judgment, the cost and/or disruption associated with removing the Marketing Material from the APM is unacceptable, COMPANY shall not be obligated to include the APM other than the COA, EULA, MS registration card and other materials directly related to the protection of the Product Software and/or intellectual property generally.

**CONFIDENTIAL**

Microsoft License Agreement for Office Products, # \_\_\_\_\_ dated December 1, 1998, between MICROSOFT LICENSING, INC. and INTERNATIONAL BUSINESS MACHINES CORPORATION

MS-PCA 2599242

**HIGHLY  
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North America - DRAFT SUBJECT TO APPROVAL

(N) COMPANY shall include APM with each copy of Product Software distributed by COMPANY except that COMPANY shall not include APM with only one (1) APM where the Customer System is distributed with Preinstalled Product Software or Product Software on external media as acquired from an Authorized Replicator.

(g) 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. Except as otherwise permitted in this License Agreement, COMPANY's license to distribute the Product is limited to distribution of the Product by COMPANY to end users for use pursuant to the EULA, as provided by MS or an IBM EULA that has been approved by MS.

(h) MS reserves all rights not expressly granted in the License Agreement(s) or in a separate written agreement including, without limitation, modification rights, translation rights, rental 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. Without limitation, except as expressly granted in the Business Terms Document or this License Agreement, MS does not authorize COMPANY, and MS reserves its exclusive right, to distribute the Product separately from Customer Systems; any such unauthorized distribution by COMPANY shall constitute a violation of the License Agreement and MS' distribution right under applicable law. Unless as otherwise authorized in a separate written agreement, COMPANY acknowledges that MS (and/or its Suppliers, if applicable) shall retain all copyright, patent, moral, trademark, title and other proprietary and intellectual property in the Product Software, Product Deliverables and components thereof, in whole or in part in any form.

### III. ADDITIONAL PAYMENT TERMS.

(a) COMPANY hereby agrees to pay MS for each Period in accordance with Section 3 of the Business Terms Document: (A) the minimum commitment amounts for the Period as set forth in Exhibit B; and (B) the amount by which cumulative royalties during a Period exceed minimum commitment amounts for that Period.

### IV. LICENSE TERM.

The term of this License Agreement shall run from the License Effective Date until one (1) year from the end of the calendar month in which the License Effective Date occurs.

### 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.

## CONFIDENTIAL

Microsoft License Agreement for Office Products, # \_\_\_\_\_ dated December 1, 1998, between MICROSOFT LICENSING, INC. and INTERNATIONAL BUSINESS MACHINES CORPORATION

MS-PCA 2599243

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North America - DRAFT SUBJECT TO APPROVAL  
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 on behalf of COMPANY below hereby represents and warrants that he or she has full authority to sign this License Agreement and bind COMPANY to perform all duties and obligations contemplated by this License Agreement. If COMPANY is located in a jurisdiction in which a corporate seal or "chop" is commonly used as an instrument of agreement execution, in addition to the individual signature provided below, COMPANY's seal or "chop" should be entered below COMPANY's signature block.

MICROSOFT LICENSING, INC.

\_\_\_\_\_  
By (Signature)  
\_\_\_\_\_  
Name (Print)  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

INTERNATIONAL BUSINESS MACHINES CORP.

\_\_\_\_\_  
By (Signature)  
\_\_\_\_\_  
Name (Print)  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

COMPANY's seal or "chop"  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**CONFIDENTIAL**

Microsoft License Agreement for Office Products, # \_\_\_\_\_ dated December 1, 1998, between MICROSOFT LICENSING, INC. and INTERNATIONAL BUSINESS MACHINES CORPORATION

**MS-PCA 2599244**

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**EXHIBIT B**  
**MINIMUM COMMITMENT PAYMENTS**

<u>Date</u>	<u>Payment Amount (US\$)</u>	<u>Cumulative Amount of Payments for Period (US\$)</u>
Signing of this License Agreement (payment due upon signing)	50	\$0
End of the calendar quarter during which the first of the following occurs: the date of first COMPANY shipment of any Product to a customer for revenue, or six (6) months after the Effective Date of this Agreement. ("FIRST PAYMENT DATE")	\$1,000,000	\$1,000,000
3 months after the FIRST PAYMENT DATE	\$2,000,000	\$3,000,000
6 months after the FIRST PAYMENT DATE	\$3,000,000	\$6,000,000
9 months after the FIRST PAYMENT DATE	<u>\$4,000,000</u>	<u>\$10,000,000</u>
Total First Period Minimum Commitment	<u>\$10,000,000</u>	<u>\$10,000,000</u>

**CONFIDENTIAL**

Microsoft License Agreement for Office Products, # \_\_\_\_\_ dated December 1, 1998, between MICROSOFT LICENSING, INC. and INTERNATIONAL BUSINESS MACHINES CORPORATION

**MS-PCA 2599245**

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**EXHIBIT C1  
OFFICE PRODUCTS**

**PRODUCT TABLE(S)**

Product #	Product Name And Version	Language Versions**	Applicable Additional Provisions	Royalty***	Basis (e.g. per copy or per system)	Billing Type****
12237	Product A Microsoft® Office 97 Small Business Edition, v. 2.0	EN, FR	(01), (02), (03), (09), (20), (37), (67), (69)	US\$110.00	Per System	Type I

- \*\* 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 if and as available basis.
- \*\*\* A Product is not licensed hereunder unless royalty rate(s) are indicated in the Product table and the Product is licensed for one or more Customer System(s) described in the Customer System section of this Exhibit C.
- \*\*\*\* Billing Type: Type I - based on third party reports, Type II - based on COMPANY royalty reports, as specifically set forth in Section 3(e) of the Business Terms Document.

**ADDITIONAL PROVISIONS KEY**

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

(01) The following provisions shall apply to all 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.

(b) With exception of the exemptions in BTD 2(c)(ii), 2(c)(iv) and 3(f)(ii), notwithstanding anything to the contrary contained in Section 11 of the License Agreement or Section 2 of the Business Terms Document, COMPANY must distribute Product documentation with each Customer System distributed with Product software. A COA must be affixed to or accompany each copy of Product documentation. Company must distribute only one (1) copy of Product documentation with each Product version distributed.

(c) 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), COMPANY shall, when referring to the relevant Product names, use the proper trademark attribution.

(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.

(03) The royalty rate(s) specified above for Product(s) are additionally based on COMPANY's agreement as follows:

(a) COMPANY shall provide a link on COMPANY's support and marketing web site(s) to the web page for the Product at the website (<http://microsoft.com>) or as otherwise identified by MS from time to time.

(09) This Product may not be distributed to India.

(20) Notwithstanding anything to the contrary contained in the License Agreement (including without limitation the Business Terms Document and Exhibits as incorporated therein), 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. 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.

(37) 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 fax modem or modem sharing software.

(67) Except for accurate informational references to and descriptions of the Product(s), accurate reproductions or depictions of the Product(s) packaging, and as otherwise expressly approved in writing by MS, MS expressly prohibits any use of the Product(s) contents (e.g., photographs, video, audio, screen shots, etc.) and associated packaging in connection with COMPANY's distribution of the Product(s), including, without limitation, point of purchase materials, marketing collateral, advertising, packaging, and promotional use.

(69) COMPANY shall designate as licensed Customer Systems for this Product only those Customer Systems which are marketed or distributed by COMPANY in COMPANY offerings targeted by COMPANY specifically to small business and/or home/consumer customers. For purposes of this Exhibit C, a small business shall be a business entity employing 100 or fewer employees. Annually at MS request, COMPANY shall provide MS with COMPANY's marketing plan for such Product focused on such end users. Computer systems marketed or distributed by COMPANY other than as described above are not licensed for the Product under this Exhibit C.

**CONFIDENTIAL**

Microsoft License Agreement for Office Products, # \_\_\_\_\_ dated December 1, 1998, between MICROSOFT LICENSING, INC. and INTERNATIONAL BUSINESS MACHINES CORPORATION

MS-PCA 2599246

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(a) Designated Customer Systems (as defined in Section 1(d) of the Business Terms Document) are those Customer Systems which are licensed for the Products under this Exhibit on a Per System basis. COMPANY shall designate particular Customer Systems as Designated Customer Systems by including them in a database maintained by COMPANY, accessible online by MS, which contains a current listing of all Designated Customer Systems. COMPANY shall use reasonable efforts to add new Designated Customer Systems to such data base prior to COMPANY's initial shipment of the Customer System for revenue, and in any event within one month after such first shipment of the Customer System by COMPANY. If COMPANY inadvertently fails to designate a Customer System, COMPANY may retroactively designate such Customer System as "per system" by taking reasonable and timely corrective action after discovering such error.

(b) Each Designated Customer System shall be identified by family name (i.e. Aptiva, Commercial Desktop, ThinkPad and successor/replacement families), or by a unique model name or model or serial number which COMPANY uses both internally (in COMPANY's books and records) and externally (on the Customer System case and packaging). At COMPANY's option, for purposes of administrative convenience, COMPANY may designate models by model line or series (e.g., "Jaguar model line", "Jaguar Pro series", "Jaguar Pro 750 model line", "Jaguar Pro 950 Series", etc.). Designated Customer Systems defined by model line or series shall include all present models which include the designated model line or series name. (e.g., "Jaguar Pro model line" includes Jaguar Pro, Jaguar Pro 950, Jaguar Pro S, etc.; "Jaguar series" includes Jaguar, Jaguar Pro, Jaguar Pro 950, Jaguar S400, etc.; "Jaguar Pro 950 Series" includes Jaguar Pro 950, Jaguar Pro 955, etc.)

(c) Except where COMPANY expressly designates particular Designated Customer Systems for a particular Product or Product combination, Designated Customer Systems are deemed to be designated for all of the Products included in this Exhibit C. The royalty applicable to each individual Designated Customer System is the royalty specified for the particular Product or Product combination that COMPANY actually distributes with the Customer System, provided that COMPANY distributes only one such Product or Product combination with such Customer System.

**CONFIDENTIAL**

Microsoft License Agreement for Office Products, # \_\_\_\_\_ dated December 1, 1998, between MICROSOFT LICENSING, INC. and INTERNATIONAL BUSINESS MACHINES CORPORATION

MS-PCA 2599247

**HIGHLY  
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**EXHIBIT N2**

**ADDITIONAL ADDRESSES**

**COMPANY:**

**BILL TO:**

IBM Corporation  
P.O. Box 8098  
Endicott, NY 13761

Attn.: Accounts Payable  
Internal Zip: Dept. G6LE/Bldg. 014-4  
Telephone: (607) 755-4848

**SHIP TO:**

IBM Corporation  
3039 Cornwallis Road  
R.T.P. NC 27709

Attn.: Mr. Gary Dingess  
Internal Zip: ENEA/002-3  
Telephone: (919) 543-6125  
Fax: (919) 543-0391

**CONFIDENTIAL**

Microsoft License Agreement for Office Products, # \_\_\_\_\_ dated December 1, 1998, between MICROSOFT LICENSING, INC. and  
INTERNATIONAL BUSINESS MACHINES CORPORATION

**MS-PCA 2599248**

**HIGHLY  
CONFIDENTIAL**

North America - DRAFT COPY - FOR INTERNAL USE ONLY  
**MICROSOFT LICENSE AGREEMENT FOR OFFICE PRODUCTS**

# \_\_\_\_\_ dated ~~May~~ December 1, 1998

with **INTERNATIONAL BUSINESS MACHINES CORPORATION**, a corporation of New York

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.**

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**II. LICENSE GRANT.**

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

(i) adapt the Product Software to enable it to execute on Customer Systems as permitted by either the Product OEM Preinstallation Kit ("OPK") or the Product OEM Distribution Kit;

(ii) acquire the Product from an Authorized Replicator;

(iii) install no more than one (1) copy of Product Software on each Customer System hard disk ("Preinstalled Product Software");

(iv) distribute directly or indirectly (e.g. through resellers and distributors) and license (in object code form) to end users to use, execute, display and reproduce for operational and archival purposes under the terms of the Product EULA(s) with each Customer System no more than one (1) copy each of (A) Preinstalled Product Software and (B) Product Software on external media as acquired from an Authorized Replicator and (C) Product end user documentation as acquired from an Authorized Replicator. Notwithstanding the foregoing, COMPANY may distribute Product Software independent of a Customer System for the purposes in Section 3(f)(ii) of the Business Terms Document.

(v) reproduce the Product Software solely for the purposes in: (A) Section II(a)(iii) above; (B) Sections 3(f)(ii)(A), (B)(for reload or downgrade), (D), (F), and (G) of the Business Terms Document; (C) Exhibit F of the Business Terms Document as permitted in Exhibit F; and (D) as otherwise permitted in the Business Terms Document or License Agreement.

(vi) modify the Product Software by applying any fixes to bugs or errors which were provided by MS to COMPANY in accordance with Section 4 of the Business Terms Document.

(vii) include this Product Software on a Product Recovery CD as defined in Attachment 1 to Exhibit C1 License Agreement #5000020616.

(b) COMPANY's license shall extend to Supplements, Update Releases, and Version Releases for the Products in Exhibit(s) C. COMPANY's license shall not extend to Product Releases; provided, however, that in the event MS makes a future Product Release available to OEMs generally, it shall offer COMPANY the opportunity to license such Product Release on MS' then current standard terms and conditions.

(c) Except as otherwise provided in the applicable Exhibit C, COMPANY's license rights shall be worldwide. Unless otherwise indicated in this subsection or the applicable Exhibit C, COMPANY may distribute Product(s) only within the geographical boundaries of IBM defined market areas of EMEA (Europe, Middle East and Africa) North America (e.g. USA, Canada and Caribbean countries).

(d) COMPANY may grant to COMPANY Subsidiaries the limited rights granted to COMPANY in this License Agreement as well as any rights MS may grant to COMPANY for Products licensed herein under a Supplement Addendum during the term hereof, subject to all the terms and conditions set forth in this License Agreement.

(e) (i) COMPANY shall distribute Product(s) only with Customer System(s) and only inside the Customer System Package, except as provided elsewhere within this License Agreement and Business Terms Document.

(ii) COMPANY shall comply with: (A) the additional provisions, if any, provided in Exhibit(s) C with respect to Product(s); and (B) trademark usage guidelines provided with the Product Deliverables, or otherwise provided in writing by MS; provided that MS shall provide COMPANY with adequate period of time to review such guidelines and discuss such guidelines with MS. In the event that any of such guidelines conflict with this License Agreement, the License Agreement shall control.

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↓  
**CONFIDENTIAL**

Microsoft License Agreement for Office Products, # \_\_\_\_\_ dated December 1, 1998, between MICROSOFT LICENSING, INC. and  
**INTERNATIONAL BUSINESS MACHINES CORPORATION**

12/24/98 - License Agreement (Micro-Commit Office Products)

Form 2.0.0

**CONFIDENTIAL**

**MS-PCA 2599249**

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North America - UKAF | SUBJECT TO MICROSOFT AND IBM EULAs  
(f) COMPANY shall include APM with each copy of Product Software distributed by COMPANY except that COMPANY shall distribute only one (1) APM where the Customer System is distributed with Preinstalled Product Software or Product Software on external media as acquired from an Authorized Replicator.

(g) 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. Except as otherwise permitted in this License Agreement, COMPANY's license to distribute the Product is limited to distribution of the Product by COMPANY to end users for use pursuant to the EULA, as provided by MS or an IBM EULA that has been approved by MS.

(h) MS reserves all rights not expressly granted in the License Agreement(s) or in a separate written agreement including, without limitation, modification rights, translation rights, rental 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. Without limitation, except as expressly granted in the Business Terms Document or this License Agreement, MS does not authorize COMPANY, and MS reserves its exclusive right, to distribute the Product separately from Customer Systems; any such unauthorized distribution by COMPANY shall constitute a violation of the License Agreement and MS' distribution right under applicable law. Unless as otherwise authorized in a separate written agreement, COMPANY acknowledges that MS (and/or its Suppliers, if applicable) shall retain all copyright, patent, moral, trademark, title and other proprietary and intellectual property in the Product Software, Product Deliverables and components thereof, in whole or in part in any form.

### III. ADDITIONAL PAYMENT TERMS.

(a) COMPANY hereby agrees to pay MS for each Period in accordance with Section 3 of the Business Terms Document: (A) the minimum commitment amounts for the Period as set forth in Exhibit B; and (B) the amount by which cumulative royalties during a Period exceed minimum commitment amounts for that Period.

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Exhibit N2	Additional Addresses

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**CONFIDENTIAL**

Microsoft License Agreement for Office Products, # dated December 1, 1998, between MICROSOFT LICENSING, INC. and  
INTERNATIONAL BUSINESS MACHINES CORPORATION Form 3.00  
1-26-98 License Agreement (Min Commit Office Products)

**CONFIDENTIAL**

MS-PCA 2599250

**HIGHLY  
CONFIDENTIAL**

North America - DRAFT SUBJECT TO MICROSOFT AND IBM AGREEMENT  
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 on behalf of COMPANY below hereby represents and warrants that he or she has full authority to sign this License Agreement and bind COMPANY to perform all duties and obligations contemplated by this License Agreement. If COMPANY is located in a jurisdiction in which a corporate seal or "chop" is commonly used as an instrument of agreement execution, in addition to the individual signature provided below, COMPANY's seal or "chop" should be entered below COMPANY's signature block.

MICROSOFT LICENSING, INC.

INTERNATIONAL BUSINESS MACHINES CORP

\_\_\_\_\_  
By (Signature)  
\_\_\_\_\_  
Name (Print)  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

\_\_\_\_\_  
By (Signature)  
\_\_\_\_\_  
Name (Print)  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

COMPANY's seal or "chop"

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

↓  
**CONFIDENTIAL**

Microsoft License Agreement for Office Products, # \_\_\_\_\_ dated December 1, 1998, between MICROSOFT LICENSING, INC. and  
**INTERNATIONAL BUSINESS MACHINES CORPORATION**  
Form 1.0.0  
12/98 License Agreement (Misc-Comm) Office Products

**CONFIDENTIAL**

**MS-PCA 2599251**

**HIGHLY  
CONFIDENTIAL**

North America - DRAFT SUBJECT TO MICROSOFT AND INTERNATIONAL BUSINESS MACHINES  
**EXHIBIT B**  
**MINIMUM COMMITMENT PAYMENTS**

<u>Date</u>	<u>Payment Amount (US\$)</u>	<u>Cumulative Amount of Payments for Period (US\$)</u>
Signing of this License Agreement (payment due upon signing)	\$0	\$0
End of the calendar quarter during which the first of the following occurs: the date of first COMPANY shipment of any Product to a customer for revenue, or six (6) months after the Effective Date of this Agreement. End of the calendar quarter in which the License Effective Date occurs ("FIRST PAYMENT DATE")	\$01,000,000	\$01,000,000
3 months after the FIRST PAYMENT DATE	\$1,000,0002,000,000	\$1,000,0003,000,000
6 months after the FIRST PAYMENT DATE	\$1,000,0003,000,000	\$2,000,0006,000,000
9 months after the FIRST PAYMENT DATE	\$1,200,0004,000,000	\$3,200,00010,000,000
Total First Period Minimum Commitment	\$3,200,00010,000,000	\$3,200,00010,000,000

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Microsoft License Agreement for Office Products, # \_\_\_\_\_ dated December 1, 1998, between MICROSOFT LICENSING, INC. and INTERNATIONAL BUSINESS MACHINES CORPORATION

1/26/98 License Agreement (41st Commit) Office Products

Form 2.0.9

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**EXHIBIT C1  
OFFICE PRODUCTS**

**PRODUCT TABLE(S)**

Product #	Product Name And Version	Language Versions**	Applicable Additional Provisions	Royalty***	Basis (e.g. per copy or per system)	Billing Type****
12237	Product A Microsoft Office 97 Small Business Edition, v 2.0	EN, FR	(01), (02), (03), (09), (1220), (37), (67), (69), (99)	US\$110.00	Per System	Type I

- \*\* 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 if and as available basis.
- \*\*\* A Product is not licensed hereunder unless royalty rate(s) are indicated in the Product table and the Product is licensed for one or more Customer System(s) described in the Customer System section of this Exhibit C.
- \*\*\*\* Billing Type: Type I - based on third party reports, Type II - based on COMPANY royalty reports, as specifically set forth in Section 3(e) of the Business Terms Document.

**ADDITIONAL PROVISIONS KEY**

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

(01) The following provisions shall apply to all 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. ~~Notwithstanding the foregoing, drop-in-box is permitted until such time as Windows 98 is provided in localized language in accordance with BTD 6(d).~~

(b) With exception of the exemptions in BTD 2(c)(ii), 2(c)(iv) and 3(f)(ii), notwithstanding anything to the contrary contained in Section 11 of the License Agreement or Section 2 of the Business Terms Document, COMPANY must distribute Product documentation with each Customer System distributed with Product software. A COA must be affixed to or accompany each copy of Product documentation. Company must distribute only one (1) copy of Product documentation with each Product version distributed.

(c) 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), COMPANY shall, when referring to the relevant Product names, use the proper trademark attribution.

(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.

(03) The royalty rate(s) specified above for Product(s) are additionally based on COMPANY's agreement as follows:

(a) COMPANY shall provide a link on COMPANY's support and marketing web site(s) to the web page for the Product at the website (<http://microsoft.com>) or as otherwise identified by MS from time to time.

(09) This Product may not be distributed to India.

(1220) Notwithstanding anything to the contrary contained in the License Agreement (including without limitation the Business Terms Document and Exhibits as incorporated therein), 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. 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.

(37) 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 fax modem, LAN, Internet or dial-up access or modem sharing software.

(67) Except for accurate informational references to and descriptions of the Product(s), accurate reproductions or depictions of the Product(s) packaging, and as otherwise expressly approved in writing by MS, MS expressly prohibits any use of the Product(s) contents (e.g., photographs, video, audio, screen shots, etc.) and associated packaging in connection with COMPANY's distribution of the Product(s), including, without limitation, point of purchase materials, marketing collateral, advertising, packaging, and promotional use.

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North America - UKAFI SUBJECT TO MICROSOFT AND IBM AGREEMENTS  
(69) COMPANY shall designate as licensed Customer Systems for this Product only those Customer Systems which are marketed or distributed by COMPANY in COMPANY offerings targeted by COMPANY specifically to small business and/or home/consumer customers. For purposes of this Exhibit C, a small business shall be a business entity employing 100 or fewer employees. Annually at MS request, COMPANY shall provide MS with COMPANY's marketing plan for such Product focused on such end users. Computer systems marketed or distributed by COMPANY other than as described above are not licensed for the Product under this Exhibit C.  
(99) <intentionally left blank.>

#### CUSTOMER SYSTEMS

(a) Designated Customer Systems (as defined in Section 1(d) of the Business Terms Document) are those Customer Systems which are licensed for the Products under this Exhibit on a Per System basis. COMPANY shall designate particular Customer Systems as Designated Customer Systems by including them in a database maintained by COMPANY, accessible online by MS, which contains a current listing of all Designated Customer Systems. COMPANY shall use reasonable efforts to add new Designated Customer Systems to such data base prior to COMPANY's initial shipment of the Customer System for revenue, and in any event within one month after such first shipment of the Customer System by COMPANY. If COMPANY inadvertently fails to designate a Customer System, COMPANY may retroactively designate such Customer System as "per system" by taking reasonable and timely corrective action after discovering such error.

(b) Each Designated Customer System shall be identified by family name (i.e. Aptiva, Commercial Desktop, ThinkPad and successor/replacement families), or by a unique model name or model or serial number which COMPANY uses both internally (in COMPANY's books and records) and externally (on the Customer System case and packaging). At COMPANY's option, for purposes of administrative convenience, COMPANY may designate models by model line or series (e.g., "Jaguar model line", "Jaguar Pro series", "Jaguar Pro 750 model line", "Jaguar Pro 950 Series", etc.). Designated Customer Systems defined by model line or series shall include all present models which include the designated model line or series name. (e.g., "Jaguar Pro model line" includes Jaguar Pro, Jaguar Pro 950, Jaguar Pro S, etc.; "Jaguar series" includes Jaguar, Jaguar Pro, Jaguar Pro 950, Jaguar S400, etc.; "Jaguar Pro 950 Series" includes Jaguar Pro 950, Jaguar Pro 955, etc.)

(c) Except where COMPANY expressly designates particular Designated Customer Systems for a particular Product or Product combination, Designated Customer Systems are deemed to be designated for all of the Products included in this Exhibit C. The royalty applicable to each individual Designated Customer System is the royalty specified for the particular Product or Product combination that COMPANY actually distributes with the Customer System, provided that COMPANY distributes only one such Product or Product combination with such Customer System.

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Microsoft License Agreement for Office Products, # \_\_\_\_\_ dated December 1, 1998, between MICROSOFT LICENSING, INC. and  
INTERNATIONAL BUSINESS MACHINES CORPORATION Form 1000  
10498 - License Agreement (Misc. Commod. Office Products)

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**EXHIBIT D**  
**BRAND NAMES AND TRADEMARKS**

**COMPANY AND COMPANY SUBSIDIARIES BRAND NAMES AND TRADEMARKS**

If COMPANY Customer Systems are marketed, licensed, or distributed under COMPANY's or COMPANY Subsidiaries' brand names and trademarks which do not include COMPANY's name at any location on the Customer System, those brand names and trademarks must be listed below:

Brand Names & Trademarks

1. \_\_\_\_\_
2. \_\_\_\_\_

**THIRD PARTY BRAND NAMES AND TRADEMARKS**

If COMPANY Customer Systems are marketed, licensed, or distributed by a third party under brand names and trademarks which do not include COMPANY's name, those brand names, trademarks and model names used for the Customer Systems by a third party must be listed below. Certain Products may not be marketed or distributed under any third party brand name or trademarks. Such Products are indicated in the applicable Exhibit(s) C.

<u>Brand Names &amp; Trademarks</u>	<u>Customer System</u>	<u>Model Name Used by Third Party</u>
-------------------------------------	------------------------	---------------------------------------

1. \_\_\_\_\_
2. \_\_\_\_\_

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12/98 License Agreement (Min. Comm. Office Product)

Form 2.0.0

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MS-PCA 2599255

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**EXHIBIT N2**  
**ADDITIONAL ADDRESSES**

**COMPANY:**

**BILL TO:**

IBM Corporation  
P.O. Box 8098  
Endicott, NY 13761

Attn.: Accounts Payable  
Internal Zip: Dept. G6LE/Bldg. 014-4  
Telephone: (607) 755-4848

**SHIP TO:**

IBM Corporation  
3039 Cornwallis Road  
R.T.P. NC 27709

Attn.: Mr. Gary Dingess/Marty Harlow  
Internal Zip: ENEA/002-3  
Telephone: (919) 543-6125/0756  
Fax: (919) 543-0391

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**INTERNATIONAL BUSINESS MACHINES CORPORATION**

1/24/98 - License Agreement (44m) Common Office Products

Form 24.0

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**MS-PCA 2599256**

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