

MICROSOFT GENERAL OEM BUSINESS TERMS

#5110250001 dated November 1, 1997

with Gateway 2000, a corporation of South Dakota, USA

**OVERVIEW.**

This General OEM Business Terms document ("Business Terms Document") sets forth general business terms and conditions that the parties contemplate will apply to any License Agreement(s) (as hereinafter defined) that Microsoft Corporation, a Washington, U.S.A. corporation ("MS") and the company specified above ("COMPANY") may enter into between the date first set forth above and November 30, 2000. Microsoft Corporation anticipates that it will transfer its OEM licensing operations to its wholly owned subsidiary, Microsoft Licensing, Inc., a Nevada, U.S.A. corporation, on or about December 31, 1997. From and after such transfer, all references to "MS" contained in this Business Terms Document and any License Agreement(s) (as defined below) shall refer to Microsoft Licensing, Inc. Microsoft Corporation will notify COMPANY of the assignment of the License Agreement(s) to Microsoft Licensing, Inc. For shipments of Product(s) after the date of assignment, COMPANY will report to and make royalty payments to Microsoft Licensing, Inc., at the address provided by Microsoft Corporation or Microsoft Licensing, Inc. This Business Terms Document does not grant any license rights to any MS products. This Business Terms Document shall have no force or effect except if and as incorporated into a License Agreement by agreement of the parties.

**1. DEFINITIONS.**

- (a) "Associated Product Materials" or "APM" shall mean a certificate of authenticity, an end user license agreement, a product registration card, and/or other materials designated by MS from time to time which COMPANY may acquire from an Authorized Replicator.
- (b) "Authorized Replicator" shall mean a third party approved by MS from which COMPANY may acquire Product(s) reproduced in accordance with MS specifications. MS shall provide COMPANY with a list of Authorized Replicators and shall notify COMPANY from time to time of changes to the list.
- (c) "COMPANY Subsidiary" shall mean a company listed in Exhibit X, 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 directly owned by COMPANY, but only so long as such ownership exists.
- (d) "Customer System" shall mean COMPANY's computer system product(s) described in the Exhibit(s) C to the License Agreement for the Product. Unless otherwise expressly specified in the applicable Exhibit C, a Customer System shall be an assembled computer system which (i) is configured for use only by a single user, (ii) is designed to use a video display and keyboard, and (iii) includes at least a CPU, a motherboard, a hard disk drive, a power supply, and a case. Unless otherwise provided in applicable Exhibits C or D to the License Agreement, Customer Systems shall be marketed and distributed only under a brand name which includes COMPANY's name.
- (e) "EULA" shall mean the end user license agreement for the Product which shall consist of the applicable license and warranty terms for the specific Product as determined by MS. The EULA shall be available from the Authorized Replicator.

(f) "Initial Term" shall mean the term of the License Agreement as set forth in the Term section of this License Agreement as of the License Effective Date. The Initial Term shall not include any extension to the term of this License Agreement unless expressly agreed in writing by the parties.

(g) "License Effective Date" shall mean date specified as such in the License Agreement.

(h) "License Agreement(s)" shall mean the separate License Agreement(s) between MS and COMPANY, which set forth the specific license and terms for specific Product(s), and which reference this Business Terms Document.

(i) "MSCORP" shall mean Microsoft Corporation, a Washington, U.S.A. corporation.

(j) "Period" shall mean a period described in Exhibit B to the License Agreement, if any, such as the "First Period."

(k) "Preinstalled Product Software" shall mean the Product software installed in ROM or on a hard disk in accordance with the terms and conditions of the License Agreement and the instructions contained in the Product Deliverables.

(l) "Product" shall mean the copyrighted and/or patented MS product(s) (including, where applicable, Product software in object code form, Product end user documentation, APM, and Product hardware) identified in the Exhibit(s) C to the License Agreement(s). Only those Product(s) for which Customer Systems and royalty rate(s) or, in the case of Product hardware, price(s) are specified in the applicable Exhibit C to the License Agreement are licensed under the License Agreement.

(m) "Product Deliverables" shall mean (i) Product software in object code form, if applicable; (ii) installation utilities and related documentation, if applicable; (iii) a single copy of Product end user documentation; (iv) one or more units of Product hardware, if applicable; and (v) any other deliverables identified in Exhibit C to the License Agreement or otherwise identified by MS as Product Deliverables.

(n) "Product Release" shall mean a release of Product which MS designates as a change in the digit(s) to the left of the decimal point in the Product version number [(x).xx] or a change in the annual identifier (e.g., 96 or 1996). Any Product for which no version designation is listed in the applicable Exhibit C to the License Agreement shall be deemed to be version "1.0."

(o) "Reporting Period" shall mean the interval described in the Royalty Reports and Payments Section of the License Agreement for which COMPANY shall submit its royalty reports and payments.

(p) "Supplement" shall mean a release of a supplement to, or replacement of, any portion of Product as MS may provide to COMPANY from time to time.

(q) "Suppliers" shall mean any and all entities (e.g., MSCORP) which license or otherwise supply MS with Products or portions thereof for redistribution and sublicense by MS.

(r) "Update Release" shall mean a release of Product which MS designates as an increase in the digit(s) to the right of the tenths digit in the Product version number [x.x(x)].

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Plaintiff's Exhibit  
9115  
Comes V. Microsoft

MS-CC-Sun 00000859545  
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(s) "Version Release" shall mean a release of Product which MS designates as an increase in the tenths digit in the Product version number [x.(x)x].

## 2. PRODUCT TERMS.

(a) Nothing in this Section shall be construed to be a grant of license with respect to any Product. Any such rights will be granted only if and as specified in the License Agreement.

(b) With respect to Supplements, MS may grant to COMPANY one or more non-exclusive, limited additional rights, including without limitation, those set forth in Exhibit F hereto, in a "Supplement Addendum" for such Supplement. If COMPANY decides to exercise any such additional rights granted for a particular Supplement, COMPANY shall fully comply with all of the terms and conditions of the applicable Supplement Addendum, regardless of whether the particular terms of the Supplement Addendum are described in Exhibit F.

(c) (i) COMPANY shall distribute Product end user documentation as set forth in the License Agreement. In the event that MS designates some portion of the Product end user documentation as optional, COMPANY shall make one (1) copy of such optional documentation to the licensed end user of the Product software either: (A) inside the Customer System package with the Product software, hardware and required Product documentation, as applicable; or (B) directly through an MS authorized fulfillment source in accordance with MS' then current specifications for fulfillment of Product end user documentation. Product end user documentation shall not be available through any other COMPANY distribution channel.

(ii) COMPANY may provide Product software on external media (i.e., diskette or CD-ROM) to licensed end users of the Product software to replace a copy of Product software originally distributed by COMPANY in accordance with the License Agreement which is defective in media or reproduction directly through an MS authorized fulfillment source in accordance with MS' then current specifications for fulfillment of Product software replacement media. Product software replacement media shall not be available through any other COMPANY distribution channel.

(iii) MS shall provide COMPANY from time to time with a list of fulfillment sources authorized by MS.

(d) If COMPANY distributes the Product software (other than as Preinstalled Product Software), COMPANY shall distribute the Product software on separate media (e.g., separate diskettes, CD-ROM disc, etc.) from other products.

(e) COMPANY shall place Product packages inside Customer System packages and install Product software on the hard disk drive or ROM of a Customer System solely on COMPANY premises by COMPANY employees.

(f) COMPANY shall not reverse engineer, decompile or disassemble any Product except as permitted by applicable law without the possibility of contractual waiver. COMPANY acknowledges that information on interoperability of the Product with other products is readily available. Except as necessary to install Preinstalled Product Software, COMPANY may not reproduce Product or any part of Product Deliverables. COMPANY shall make no use of Product Deliverables except as described in the License Grant Section of the License Agreement.

(g) COMPANY shall adapt the EULA as may be required by the laws of any non-U.S.A. jurisdiction in which COMPANY

distributes the Product. COMPANY may use its name in place of references to "PC Manufacturer" and/or "Manufacturer" in the EULA. Any printed EULA for the Product distributed by COMPANY must be identical to the on screen EULA presented to the end user during Product setup, if any.

(h) COMPANY agrees that it shall not distribute Product software or documentation in encrypted form, except as otherwise specifically provided in the License Agreement.

(i) COMPANY acknowledges that MS may refuse to fill COMPANY's orders for Product, and/or require the Authorized Replicator to refuse to fill orders for Product, in quantities beyond those which, in MS' opinion, COMPANY will be able to distribute, or make timely payment for, in compliance with the terms of the License Agreement. COMPANY further acknowledges that MS may suspend COMPANY's license rights under the License Agreement, refuse to fill COMPANY's orders for Product, and/or require Authorized Replicator to refuse to fill COMPANY's orders if (i) COMPANY or any COMPANY Subsidiary fails to comply with any provision of the License Agreement or any other agreement between COMPANY or any COMPANY Subsidiary and MS; or if (ii) Product licensed to COMPANY is available other than inside Customer System package.

(j) If the License Agreement grants to COMPANY the right to grant license rights to COMPANY Subsidiaries, COMPANY hereby irrevocably and unconditionally guarantees each COMPANY Subsidiary's compliance with the terms and conditions of the License Agreement(s). COMPANY agrees that it shall be jointly and severally liable with each COMPANY Subsidiary for any breach of the terms and conditions of the License Agreement by a COMPANY Subsidiary. At least thirty (30) days prior to exercising any license rights or receiving any confidential information under any License Agreement, each COMPANY Subsidiary shall execute and deliver to MS the COMPANY Subsidiary Agreement in the form indicated in Exhibit X. Subsidiaries of COMPANY (or any other entities) which distribute Customer Systems received fully assembled and packaged with Product in accordance with the License Agreement from COMPANY or COMPANY Subsidiaries need not be listed on Exhibit X as COMPANY Subsidiaries.

## 3. PAYMENT AND REPORTING.

(a) COMPANY shall pay and report to MS in accordance with the terms of the License Agreement, subject to the following basic payment and reporting terms.

(b) COMPANY shall pay MS the initial payment amount(s) ("Initial Payment Amount(s)"), if any, specified in Exhibit(s) C of each License Agreement upon signing of such License Agreement. Provided COMPANY has complied with all material terms and conditions of the License Agreement(s), such Initial Payment Amount(s), after deduction, by set off or otherwise, of any outstanding amounts or obligations due to MS, will be refunded to COMPANY within forty-five (45) days of COMPANY's final royalty report and payment under the License Agreement. COMPANY may not recoup the Initial Payment Amount(s) against royalties due to MS or payments made to any Authorized Replicator.

(c) (i) Royalties and prices exclude any charges by Authorized Replicator for units of Product or APM ordered by COMPANY. Royalties and prices also exclude any taxes, duties, fees, excises or tariffs imposed on any of COMPANY's or COMPANY's Subsidiaries' activities in connection with the License Agreement.

Product, COMPANY shall submit a report indicating the number of such units in inventory within thirty (30) days of the License Effective Date of such License Agreement. In the event that MS and COMPANY agree that COMPANY may distribute such units under such License Agreement, MS shall invoice COMPANY at the royalty rate in such License Agreement for such Product(s). COMPANY shall pay such royalties within thirty (30) days of the date of MS' invoice. COMPANY shall thereafter be deemed licensed to distribute such Product(s) under the terms of the License Agreement.

(ii) Type II Product(s): For each Product identified as Type II in Exhibit(s) C to the License Agreement, COMPANY agrees that the following additional payment provisions shall apply:

(A) COMPANY shall make royalty reports to MS within fifteen (15) days after the end of each calendar month during the term of the License Agreement, and fifteen (15) days after termination or expiration for the final full or partial month thereof. MS shall invoice COMPANY for Product royalties. COMPANY shall make consolidated (i.e., on behalf of COMPANY and COMPANY Subsidiaries) payments to MS as specified in the attached Exhibit N1 within thirty (30) days of the date of MS' invoice.

(B) In the event that COMPANY's report is not received by MS within the above-specified period, COMPANY authorizes MS to bill COMPANY, and COMPANY shall pay MS, based on reports submitted to MS by the MS authorized third party service provider(s) for the subject reporting period and, at MS' option, for all subsequent reporting periods during the term of the License Agreement. MS' billing of COMPANY based on reports submitted by third party service provider(s) shall not relieve COMPANY of any reporting or payment obligations under the License Agreement.

(C) COMPANY's royalty reports shall be in the royalty report format in Exhibit R or other format as MS may provide from time to time and shall specify royalties for each Product and language version described in Exhibit(s) C to the License Agreement.

(D) If, upon termination or expiration of the License Agreement, COMPANY has inventory of any licensed Product(s), COMPANY shall submit a report detailing Product(s) in inventory including the number of units, names, version number(s), and other information as MS may request.

(iii) Type III Product(s): For each Product identified as Type III in Exhibit(s) C to the License Agreement, COMPANY agrees that the following additional payment provisions shall apply:

(A) COMPANY shall order units of Product from MS. COMPANY's orders must be in writing and each order must be for the minimum number of units of Product and in the increments specified in the applicable Exhibit(s) C to the License Agreement for Product orders. Orders may be submitted only by COMPANY and/or COMPANY Subsidiaries. COMPANY's order shall clearly indicate the quantity, version number, and part number, if applicable, of Product being ordered. Unless otherwise specified by MS in writing, COMPANY's order shall be accompanied by payment at the unit price identified in Exhibit(s) C to the License Agreement. COMPANY's order payment shall be:

- (1) made payable to the order of MS;
- (2) in the amount of all monies due for such order; and
- (3) submitted by wire transfer as specified in Exhibit N1.

Orders received without the required payment will not be processed. MS, in its sole discretion and upon written notice to COMPANY, may instead require COMPANY to remit payment to an intermediary at the time of delivery of the order to COMPANY.

(B) COMPANY's orders shall be sent at least thirty (30) days prior to the requested delivery date to the address listed for Product orders in the License Agreement. MS may, with prior notice to COMPANY, elect to specify a different address to which COMPANY shall send its Product orders. COMPANY shall not submit purchase orders via electronic mail until COMPANY has completed and returned to MS a Purchase Order by Electronic Mail Authorization Form in the form available from MS.

(C) If MS does not require payment at time the order is submitted, (i) COMPANY hereby grants MS a purchase money security interest in the Product and shall, upon request of MS, execute any and all documents to protect and perfect MS' security interest as MS may request, and (ii) payment shall be due in accordance with the terms set forth by MS when credit is granted.

(D) MS or its Suppliers may, without prior notice to COMPANY, elect to cancel the production of Product. In such instances, any monies paid by COMPANY to MS for unfilled orders of Product will be returned to COMPANY. MS shall make reasonable efforts to notify COMPANY in advance of any such cancellation.

(iv) Any Product(s) for which a billing Type is not specified in Exhibit(s) C to the License Agreement shall be deemed to be a Type II Product, unless otherwise specified in the License Agreement.

(f) (i) No additional royalty or price shall accrue for multiple copies of a given release of Product software distributed with a Customer System as permitted under the License Grant Section of the License Agreement (e.g., (1) one copy of Preinstalled Product Software and one (1) copy of Product software on external media).

(ii) No royalty shall accrue to MS for a commercially reasonable number of units of Product software (A) used by COMPANY solely for testing systems, or (B) shipped to replace copies defective in media or reproduction, provided that such replacement copies are distributed in accordance with Section 2(c)(ii) at no charge to the end user, except for COMPANY's reasonable cost of materials and shipping and handling costs.

(iii) If in any calendar month COMPANY assigns any units of Product software for COMPANY's internal testing as provided in subsection (f)(ii) above, COMPANY shall make a report to MS within fifteen (15) days after the end of such month, and fifteen (15) days after termination or expiration for the final full or partial month. Such report shall be in the format specified by MS from time to time and shall designate the number of such Product software units assigned to testing along with, for any Authorized Replicator Product units used for testing, the corresponding certificate of authenticity number for each such unit. MS will issue a credit to COMPANY's account for any royalties paid for such units after MS' review and verification of COMPANY's report.

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(g) If the License Agreement includes Minimum Commitment Payments, the following shall apply to such License Agreement:

(i) Minimum commitment and royalty payments made in one Period may not be applied to minimum commitment payment obligations in another Period. Minimum commitment and royalty payments made under one License Agreement may not be applied to or recouped by minimum commitment payment obligations under any other License Agreement.

(ii) The amount by which cumulative royalties during a Period exceed minimum commitment amounts then payable for the same Period under a License Agreement shall be calculated as of the end of each Reporting Period and the excess amount shall be referred to as "Excess Royalties". Excess Royalties shall be paid to MS in accordance with Subsection 3(e) above. Excess Royalties shall be applied under a License Agreement to reduce future minimum commitment payment(s) payable during the Period in which such Excess Royalties accrue.

(iii) To the extent that cumulative minimum commitment payments during a Period exceed cumulative royalties for such Period under a License Agreement, such excess shall be known as "prepaid royalties" and shall be recoupable against future royalties under a License Agreement only during the Initial Term of the License Agreement and only for the Product(s) licensed therein. Prepaid royalties are not recoupable against payments made to Authorized Replicator.

(iv) Once COMPANY has accepted any release of Product pursuant to Section 4 above, minimum commitment payments are not refundable.

(v) Any amounts credited to COMPANY in accordance with Section 3(e)(i)(D) above, shall be limited to those royalties for which COMPANY's payments constituted Excess Royalties under the terms of the License Agreement.

(vi) Each minimum commitment amount shall be payable on the date specified in Exhibit B to the License Agreement.

(h) If the License Agreement does not include Minimum Commitment Payments, the following shall apply to such License Agreement. If in any three monthly reporting periods during the term of the License Agreement (whether or not consecutive), COMPANY's reported shipments of the applicable Customer Systems (for Product licensed on a per system basis) or Product (for Product licensed on a per copy basis), respectively, are twenty percent (20%) or more below COMPANY's estimated monthly volume specified in the Product table in the applicable Exhibit C, COMPANY and MS shall negotiate an increase in the royalty rate(s) to reflect COMPANY's lower shipment volumes. If, for any reason, MS and COMPANY are unable to agree upon new royalty rate(s) within thirty (30) days after the date COMPANY's royalty report is due for the third such low-volume month, COMPANY's royalty rate(s) for each Product included in the volume estimate accompanying the royalty rate shall increase by twenty percent (20%). Such increased royalty rate(s) shall be in effect for the remainder of the term of the License Agreement commencing with the monthly reporting period following the third low-volume month. Provided, however, that if COMPANY's reported monthly volume returns to or exceeds the original estimated monthly volume for any three (3) consecutive months thereafter, COMPANY's royalty rate(s) shall be restored to the rate(s) specified in the Product table in the applicable Exhibit C commencing with the monthly reporting period following such three (3) consecutive months.

(i) (i) All reports submitted by COMPANY under this Section 3 shall be (A) consolidated (i.e., on behalf of COMPANY and COMPANY Subsidiaries); (B) sent as specified in the attached Exhibit N1; and (C) certified as complete and correct and signed by a duly authorized officer or director of COMPANY.

(ii) A copy of COMPANY's reports shall be sent to MS electronically or via facsimile in addition to the original copy sent in accordance with Exhibit N1.

(iii) In the event that COMPANY's report is not received by MS within the applicable time specified above, a five percent (5.00%) late reporting charge shall be added to COMPANY's invoice.

(j) (i) All payments made by COMPANY under this Section 3 shall be: (A) consolidated (i.e. on behalf of COMPANY and COMPANY subsidiaries); and (B) sent as specified in the attached Exhibit N1.

(ii) A ten percent (10.00%) late charge and a one percent (1.00%) monthly finance charge will be assessed on all amounts that are past due, including receipts for foreign taxes withheld.

(k) COMPANY shall provide MS with a copy of its U.S.A. state resale exempt certificate, if applicable, with the initial License Agreement which references this Business Terms Document when it is returned for signature by MS. If COMPANY is located in a jurisdiction which utilizes Value Added Tax or sales tax numbers ("VAT Number") for tax identification purpose, COMPANY's VAT Number shall be provided in the attached Exhibit N1.

(l) Upon request by MS, COMPANY will provide MS with COMPANY's current audited financial statements.

#### 4. DELIVERY AND LIMITED WARRANTY.

(a) For each Product licensed under a License Agreement referencing this Business Terms Document, MS shall deliver, or cause to be delivered, Product Deliverables to COMPANY.

(b) MS or its Suppliers shall have no liability for failure to deliver Product Deliverables by any particular date. COMPANY shall not distribute for revenue any release of any language version of a Product until MS delivers Product Deliverables to COMPANY identified by MS as final Product Deliverables and MS advises its OEM customers generally that Customer Systems may be distributed with such release of language version of Product.

(c) Product Software. (i) MS warrants that Product software conforms substantially to the Product end user documentation.

(ii) If Product software fails to conform substantially to the Product end user documentation, then within thirty (30) days after MS' delivery to COMPANY of Product Deliverables for each release of Product licensed hereunder, COMPANY may report such deviations from end user documentation ("Deviations") to MS in writing. If COMPANY reports any Deviations prior to acceptance, then MS shall have sixty (60) days to correct such Deviations. Upon delivery of a corrected release of Product to COMPANY, COMPANY shall have thirty (30) days in which to reject the Product software for failure to conform substantially to the Product end user documentation.

(iii) If COMPANY does not report Deviations within the applicable period described in Section 4(c)(ii) above, or if COMPANY distributes the Product to a customer for revenue, COMPANY shall be deemed to have accepted the Product. If MS fails to correct Deviations prior to acceptance, then as

COMPANY's sole remedy COMPANY may terminate the License Agreement with respect to such release of Product.

(d) Product Hardware. (i) MS warrants to COMPANY that each unit of Product hardware furnished under the License Agreement will, at the time of shipment, be free from defects in materials and will conform to the Product end user documentation. COMPANY shall be deemed to have accepted the Product hardware unless COMPANY provides written notice of non-conformance as provided below.

(ii) COMPANY's remedy and MS' obligation under this limited warranty shall be limited to, at MS' election, (1) return of the Product hardware for credit to COMPANY's account; or (2) repair or replacement of any defective Product hardware.

(iii) This limited hardware warranty applies only if:

(A) written notice of non-conformance and request for return authorization is received by MS at the address specified for return authorization requests in the License Agreement within thirty (30) days after shipment to COMPANY;

(B) after MS' authorization, the Product hardware is returned to MS or its designee; and

(C) after examination, MS determines to its satisfaction that the Product hardware is non-conforming.

(iv) Any repair or replacement shall not extend the original warranty period. This limited warranty shall not apply to Product hardware which MS determines has been subject to misuse, neglect, improper installation, repair, alteration, or damage either by COMPANY or another.

(v) COMPANY may return, in accordance with and subject to 4(d) (i) above, an entire shipment of Product hardware which fails to meet an Acceptable Quality Level of .65 under a Level II, Normal, Single sampling plan as described in the then current US Military Standard Sampling Procedures (MIL-STD-105E).

(vi) Additionally, if, within thirteen (13) months after shipment of the Product hardware to COMPANY, Product hardware is found to be defective by COMPANY's end user customer when used with the COMPANY Customer System with which Product hardware was shipped, COMPANY may return the Product hardware to MS for repair or replacement pursuant to the terms and conditions of the warranty section of the EULA provided that:

(A) COMPANY confirms that the Product hardware failure occurs while in use with the original COMPANY Customer System with which Product hardware was shipped;

(B) COMPANY confirms that the Product hardware failure is not related to a failure of COMPANY's Customer System;

(C) COMPANY makes reasonable efforts to verify the Product hardware failure is not related to an end user's failure to clean or maintain the Product hardware with reasonable care;

(D) written notice of non-conformance and request for return authorization is received by MS at the address specified for return authorization requests in the License Agreement within thirteen (13) months after shipment of such Product hardware by MS to COMPANY;

(E) after MS' authorization, the non-conforming Product hardware is returned to MS or its designee;

(F) after examination, MS determines to its satisfaction that the Product hardware is non-conforming; and

(G) any repair or replacement shall not extend the original warranty period. This limited warranty shall not apply to Product hardware which MS determines has been subject to misuse, neglect, improper installation, repair, alteration, or damage either by COMPANY or another.

(e) Product may be returned for (at MS' option) credit, repair, or replacement only in the event of a breach of the above limited warranties. No returns will be allowed for any other reason. COMPANY shall be responsible for all freight and other charges in connection with delivery of repaired or replaced Product to COMPANY and COMPANY's end user customers.

(f) MS makes no warranty with respect to defects in replication, media or other materials acquired from Authorized Replicator(s); any warranty for such materials shall be provided by the Authorized Replicator(s).

## 5. DEFENSE OF INFRINGEMENT CLAIM.

(a) MS shall defend COMPANY against, and pay the amount of any adverse final judgment (or settlement to which MS consents) resulting from, third party claim(s) (hereinafter "Indemnified Claims") that: (i) the Product(s) infringe any copyright enforceable in any Included Jurisdictions (defined in Section 5(d), below); or (ii) the Product name(s) or trademark(s) ("Mark(s)") infringe any trademark rights enforceable in the Included Jurisdictions; provided MS is notified promptly in writing of the Indemnified Claim and has sole control over its defense or settlement, and COMPANY provides reasonable assistance in the defense of the same.

(b) In the event MS receives information concerning an intellectual property infringement claim (including an Indemnified Claim) related to the Product(s) or Mark(s), MS may at its expense, without obligation to do so, either (i) procure for COMPANY the right to continue to distribute the alleged infringing Product or Mark; or (ii) replace or modify the Product or Mark to make it non-infringing, and in which case, COMPANY shall thereupon cease distribution of the alleged infringing Product or Mark.

(c) MS and its Suppliers shall have no liability for any intellectual property infringement claim (including an Indemnified Claim) based on COMPANY's (i) manufacture, distribution, or use of any Product or Mark after MS' notice that COMPANY should cease manufacture, distribution, or use of such Product or Mark due to such a claim; or (ii) combination of a Product with any other product, program or data; or (iii) adaptation or modification of any Product. For all claims described in this Section 5(c), COMPANY shall indemnify and defend MS and its Suppliers from and against all damages, costs and expenses, including reasonable attorneys' fees.

(d) MS and its Suppliers shall have no obligation to COMPANY for any Indemnified Claims which arise outside the geographical boundaries of the United States, Canada, Australia, Japan, the European Union, and Norway ("Included Jurisdictions").

## 6. ADDITIONAL TERMS.

(a) COMPANY shall: (i) contractually obligate (e.g., by contract, invoice or other written instrument) all distributors, dealers and others in its entire distribution channels to comply with the License Grant Section of the License Agreement; (ii) deliver copies of such contracts (or relevant portions thereof) to MS upon request; (iii) promptly discontinue distribution of Product to any such distributor, dealer or other in its distribution channel which does not comply with the License Grant Section; and

(iv) cooperate with MS in investigating instances of distribution of Product which does not comply with the License Grant Section.

(b) (i) COMPANY shall acquire all components of each unit of Product software and documentation to be distributed with a Customer System (i.e., APM, Product end user documentation, and Product software on external media, as applicable) from a single Authorized Replicator and in a single package or stock keeping unit. Provided, however, this shall not preclude COMPANY from acquiring separate units of Product from multiple Authorized Replicators.

(ii) All orders placed with MS or Authorized Replicators, and payments to the Authorized Replicators, shall be made by COMPANY or COMPANY Subsidiaries. Shipments made by or for MS and Authorized Replicators may be delivered only to locations owned or controlled by COMPANY, COMPANY Subsidiaries or, if applicable, Third-Party Installers, as defined in any attached Exhibit I. COMPANY hereby certifies that all addresses to which COMPANY or COMPANY Subsidiaries request Product delivered shall comply with the forgoing requirement.

(c) (i) Where COMPANY distributes Preinstalled Product Software, COMPANY shall place a notice over either the Customer System power switch in the "off" position or the power inlet connector which informs the end user that turning on the Customer System indicates acceptance of the terms of the EULA. COMPANY may use an alternative procedure, subject to MS review and approval, provided that (i) the end user is required to take some affirmative action to use or install the Product software, such as breaking a seal; (ii) the end user is advised that taking such action indicates acceptance of the terms and conditions of the EULA; and (iii) the end user has the opportunity to read the EULA and the applicable warranty in its entirety before taking such action.

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

(d) (i) The License Agreement does not include technical support by MS to COMPANY, its distributors, dealers or end users. Technical support may be available from MS, MSCORP or their subsidiaries pursuant to a separate agreement.

(ii) COMPANY shall provide end user support for the Product(s) under terms and conditions at least as favorable to the end user as the terms under which COMPANY provides support for COMPANY's Customer Systems to end users generally, but which in no event shall be less than commercially reasonable end user support. COMPANY further shall provide end users with telephone customer support and to prominently display its customer support telephone number for such assistance in or on Customer System documentation.

(e) COMPANY shall not advertise or otherwise market the Product(s) as separate items, but shall clearly indicate in all marketing materials relating to the Product(s) and Customer System(s) that the Product(s) are available only as part of a

Customer System. COMPANY shall not publish or otherwise mark a separate price for the Product(s).

(f) COMPANY agrees that it will reinstall and begin shipment of the most current licensed release of Product (i.e., Product Release, Version Release, Update Release or Supplement) on all licensed Customer System models which are distributed on or after the sixtieth (60th) day (or an earlier date, at COMPANY's option) following MS' shipment of the corresponding Product Deliverables for such release. Provided, however, if shipment of the Product Deliverables from MS occurs between September 1st and October 31st of a given calendar year, COMPANY agrees that it will begin shipment of most current licensed release of Product no later than February 1st of the following year.

## 7. INTELLECTUAL PROPERTY NOTICES.

(a) COMPANY will not remove, modify, or obscure any copyright, trademark, patent, or mask work notices that appear on the Product as delivered to COMPANY. COMPANY recognizes that MS or its Suppliers may seek patent registration for the Product.

(b) COMPANY shall market the Product only under the Product name(s) and version number for such Product provided to COMPANY. COMPANY shall use the appropriate trademark, product descriptor and trademark symbol (either "TM" or "®"), and clearly indicate MS' or its Suppliers' 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. COMPANY shall not, at any time, use any name or trademark confusingly similar to an MS or its Suppliers' trademark, trade name and/or product name. COMPANY shall undertake no action that will interfere with or diminish MS' or its Suppliers' right, title and/or interest in MS' or its Suppliers' trademark(s), trade name(s) or Product name(s). COMPANY shall, upon request, provide MS samples of all COMPANY marketing literature which uses Product name(s) or otherwise describes the Product.

(c) COMPANY shall not use or display any MS or Supplier logo (i.e., including without limitation any stylized representation of the Microsoft name used by MS or MSCORP) in its materials or packaging, except as provided by separate written agreement with MS or its Supplier.

## 8. PROHIBITION AGAINST ASSIGNMENT AND SUBLICENSE OF LICENSE AGREEMENT(S).

The License Agreement(s), and any rights or obligations thereunder, shall not be assigned or sublicensed by COMPANY (by contract, merger, operation of law, or otherwise) except to COMPANY Subsidiaries if and as provided in the License Agreement(s).

## 9. TERM OF LICENSE AGREEMENT(S).

Each License Agreement shall have its own term as defined therein.

## 10. DEFAULT AND TERMINATION.

(a) The non-defaulting party may terminate the License Agreement if any of the following events of default occur: (i) if either party materially fails to perform or comply with any provision of the License Agreement; (ii) if COMPANY manufactures or distributes any MS or MSCORP product which is not properly licensed under the License Agreement or another valid agreement with MS, MSCORP, or an MS or MSCORP

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licensee; (iii) if Product is available other than inside the COMPANY's Customer System package; (iv) if COMPANY becomes insolvent, enters bankruptcy, reorganization, composition or other similar proceedings under applicable laws, whether voluntary or involuntary, or admits in writing its inability to pay its debts, or makes or attempts to make an assignment for the benefit of creditors; or (v) upon default or continuing default by COMPANY under any License Agreement or other agreement between COMPANY and MS or MSCORP.

(b) Termination due to breach of Sections 2, 6(e), 8, 13, 14(a), 14(c) of this Business Terms Document (if and to the extent incorporated into the License Agreement) or of the License Grant Section, or (if applicable) Exhibit S of the License Agreement shall be effective upon notice to the defaulting party. Termination due to Section 10(a)(iv) shall be effective upon notice or as soon thereafter as is permitted by applicable law. At the option of the non-defaulting party, termination due to a breach of any provision of the License Agreement may be effective upon notice to the defaulting party if such party has received two (2) or more previous notices of default during the term of the License Agreement (whether or not such previous defaults have been cured). In all other cases, termination shall be effective fifteen (15) days after notice of default to the defaulting party if the defaults have not been cured within such period.

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

#### 11. OBLIGATIONS UPON TERMINATION.

(a) Within ten (10) days after the earlier of termination or expiration of the License Agreement, COMPANY shall: (i) at MS' direction, either (A) deliver to MS, (B) deliver to a third party authorized by MS for destruction at COMPANY's expense, or (C) destroy, at COMPANY's expense, all units of Product and all Product Deliverables; and (ii) provide written notice to MS signed by an officer or director certifying that COMPANY has fulfilled the applicable 11(a)(i) requirement. COMPANY and each COMPANY Subsidiary may, however, retain one (1) unit of each Product for support purposes only. Except as expressly provided in Section 3(e), there shall be no refund, credit, or adjustment for amounts paid for Product(s) returned to MS in accordance with this Section 11(a).

(b) Termination of the License Agreement as a result of COMPANY's default shall result in acceleration of COMPANY's obligation to pay all sums COMPANY contracted to pay under the License Agreement, (including minimum commitment payments described in Exhibit B to the License Agreement, if such License Agreement includes minimum commitment payments.)

(c) Upon termination or expiration of the License Agreement, all of COMPANY's license rights therein shall cease and COMPANY shall cease all distribution of Product. Sections 5, 12, 13, 14, 15 and 16 of this Business Terms Document and Section S1(d) of Exhibit(s) S to the License Agreement(s), if applicable, shall survive termination or expiration of the License Agreement.

#### 12. LIMITATION OF LIABILITY AND REMEDY.

(a) Total liability of MS and its Suppliers to COMPANY under the License Agreement, including Sections 4 and 5 above, shall be limited to one hundred percent (100.00%) of the amount having actually been paid by COMPANY to MS under the License Agreement. COMPANY releases MS and its Suppliers from all obligations, liability, claims or demands in excess of the limitation.

(b) The rights and remedies granted to COMPANY under Sections 4 and 5 constitute COMPANY's sole and exclusive remedy against MS, its Suppliers, and their officers, agents and employees for any and all claims arising in connection with the Product(s) or the Product Deliverables, including but not limited to claims regarding MS' duties to correct any Deviations, MS' delivery of Product(s) or Product Deliverables, or indemnification or contribution from MS with respect to any infringement of the rights of a third party, whether arising under statutory or common law or otherwise.

**(c) SECTION 4 CONTAINS THE ONLY WARRANTIES MADE BY MS OR ITS SUPPLIERS. ANY AND ALL OTHER WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING THOSE FOR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY, MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. NEITHER MS NOR ITS SUPPLIERS MAKES ANY WARRANTY THAT THE PRODUCT WILL OPERATE PROPERLY ON ANY CUSTOMER SYSTEM(S). COMPANY AGREES MS AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, ECONOMIC OR PUNITIVE DAMAGES EVEN IF MS AND/OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

(d) (i) As partial consideration for the rights granted to COMPANY under the License Agreement(s), COMPANY agrees not to (A) sue, or (B) bring, prosecute, assist or participate in any judicial, administrative or other proceedings of any kind against MS, its Suppliers, their subsidiaries, or their licensees (including without limitation OEM customers and end users) for infringement of COMPANY Patents (as defined below) which occurs during the Immunity Period (as defined below) on account of the manufacture, use, sale or distribution of:

1) Any releases of the Product(s) licensed to COMPANY under the License Agreement, except as otherwise provided in subsection (iii), below; or

2) Future releases of the Product(s), or replacement or successor product(s) to the Product, to the extent such future releases or replacement or successor product(s) use or embody inventions used or embodied in a version of such Product(s) licensed to COMPANY under the License Agreement.

(ii) "COMPANY 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 COMPANY for inventions made prior to termination or expiration of the License Agreement, or for which COMPANY has or acquires rights prior to the termination or expiration of the License Agreement. The "Immunity Period" shall commence upon the first to issue and shall terminate upon the last to expire, of any of the COMPANY Patents (in any jurisdiction).

(iii) In the event that MS provides COMPANY a new release of a Product under the License Agreement, and COMPANY determines that such new release uses or embodies inventions not used or embodied in a prior release of the Product licensed to COMPANY thereunder, COMPANY may elect to not license such new release by so notifying MS in writing within sixty (60) days after its receipt and prior to COMPANY's shipment of such new release. COMPANY's election under this paragraph shall not affect COMPANY's obligations above with respect to any prior release(s) of the Product licensed under the License Agreement.

(iv) In the event COMPANY assigns COMPANY Patents or rights to enforce COMPANY Patents, COMPANY shall require as a condition of any such assignment that the assignee agree to be bound by the provisions of this Section 12(d).

### 13. NONDISCLOSURE AGREEMENT.

COMPANY shall keep confidential: the Product Deliverables; the terms and conditions of any License Agreement (including this Business Terms Document as incorporated in a License Agreement), and any other non-public information (including, without limitation, any and all MS and MSCORP product pricing information, the terms and conditions of any proposed (or actual) license agreement or other agreement concerning MS and MSCORP products, license negotiations, as well as any information or correspondence relating to released or unreleased MS and MSCORP software or hardware products, the marketing or promotion of any MS and MSCORP product, and MS' and MSCORP's business policies or practices) and know-how disclosed to COMPANY by MS or MSCORP or any of their subsidiaries. However, COMPANY may disclose the terms and conditions of the License Agreement, the Business Terms Document and any other agreements or proposed agreements in confidence to its immediate legal and financial consultants as required in the ordinary course of COMPANY's business.

### 14. AUDITS AND INSPECTIONS.

(a) During the term of the License Agreement and for three (3) years thereafter, COMPANY shall keep all usual and proper records and books of account, and all usual and proper entries relating to each Product licensed sufficient to substantiate the number of copies of Product acquired, distributed or otherwise disposed of by or for COMPANY, and the number of Customer Systems distributed by or for COMPANY. COMPANY shall maintain on COMPANY premises such records for itself and for each COMPANY Subsidiary which exercises or has exercised rights under the License Agreement.

(b) In order to verify statements issued by COMPANY and COMPANY's compliance with the terms of the License Agreement, MS may cause (i) an audit to be made of COMPANY's and/or COMPANY's Subsidiaries' books and records; and/or (ii) an inspection to be made of COMPANY's and/or COMPANY's Subsidiaries' facilities and procedures. Any audit and/or inspection shall be conducted during regular business hours at COMPANY's and/or COMPANY's Subsidiaries' facilities, with or without notice. Any audit shall be conducted by an independent certified public accountant selected by MS (other than on a contingent fee basis).

(c) COMPANY shall provide MS' designated audit or inspection team access to the relevant COMPANY's and/or COMPANY's Subsidiaries' records and facilities.

(d) Prompt adjustment shall be made to compensate for any errors or omissions disclosed by such audit. Any such audit shall be paid for by MS unless material discrepancies are disclosed. "Material" shall mean: (i) a breach of the License Grants section of the License Agreement; or (ii) for reporting or payment discrepancies, the lesser of Ten Thousand Dollars (US\$10,000.00) or five percent (5%) of the amount that was reported under the License Agreement. If material discrepancies are disclosed, COMPANY shall pay MS for the costs associated with the audit. Further, COMPANY shall pay MS an additional royalty of twenty-five percent (25%) of the applicable royalty on Exhibit(s) C to the License Agreement for each unit COMPANY failed to report that is in excess of five percent (5%) of the number of units actually reported by COMPANY under the License Agreement. In no event shall audits be made more frequently than semi-annually unless the immediately preceding audit disclosed a material discrepancy.

### 15. CONTROLLING LAW; ATTORNEYS' FEES.

(a) The License Agreement, including this Business Terms Document if and to the extent incorporated therein, and all matters relating thereto shall be construed and controlled by the laws of the State of Washington, and COMPANY consents to jurisdiction and venue in the state and federal courts sitting in the State of Washington. Process may be served on either party in the manner set forth in Section 16 for the delivery of notices or by such other method as is authorized by applicable law or court rule.

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

### 16. NOTICES.

All notices, authorizations, and requests in connection with the License Agreement(s) shall be addressed as stated in attached Exhibit N1 (or to such other address as the party to receive the notice or request so designates by written notice to the other) and shall be deemed given on the day they are (i) deposited in the U.S.A. mails, postage prepaid, certified or registered, return receipt requested; or (ii) sent by air express courier, charges prepaid.

### 17. GENERAL.

(a) COMPANY agrees that it will not export or re-export Product to any country, person, entity or end user subject to U.S.A. export restrictions. COMPANY specifically agrees not to export or re-export Product (i) to any country to which the U.S.A. embargoes or restricts the export of goods or services, which as of December 31, 1996 includes, but is not necessarily limited to: Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria, or to any national of any such country who COMPANY knows intends to transmit or transport the product(s) back to such country; (ii) to any end-user who COMPANY knows will utilize Product in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any end-user who has been prohibited from participating in U.S.A. export transactions by any federal agency of the U.S.A. government.

(b) Neither this Business Terms Document nor any License Agreement subsequently presented to COMPANY shall constitute an offer by MS; any License Agreement(s) shall not be effective until signed by both parties. Upon execution by both parties, the License Agreement (including this Business Terms

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**EXHIBIT F**  
**SUPPLEMENT RIGHTS**

The purpose of this Exhibit is to set forth additional license rights and related restrictions which may apply to Supplement(s) as may be provided by MS from time to time. **The actual additional license rights and related restrictions for each Supplement shall be identified in the "Supplement Addendum" for each such Supplement.** The license rights shall be royalty-free and, except as specified in the applicable Supplement Addendum, shall be subject to the terms and conditions of the License Agreement. COMPANY's license rights to Supplement(s) shall expire the earlier of: (i) termination or expiration of COMPANY's license rights to the Product to which the Supplement corresponds, or (ii) termination or expiration of the License Agreement.

1. **"Reproduction Rights"**, if granted, shall mean:

(a) Reproduce, in accordance with specifications provided by MS, the Supplement software in object code form on external media (i.e., diskette or CD-ROM) and end user documentation for the Supplement, if any.

(b) Reproduce Product names and Product trademarks on packaging, labels, and end user documentation for the Supplement subject to the following restrictions:

(i) COMPANY's labeling and packaging for the Supplement shall clearly indicate that the Supplement is a supplement to and/or replacement of the Product provided by COMPANY for use on COMPANY's Computer Systems;

(ii) COMPANY will cause to appear on the container and labels of Supplement the copyright, trademark and patent notice(s), as they appear on the applicable release of Product Deliverables; and

(iii) COMPANY's name and/or trademarks shall not be displayed in relation to Product name in a manner which suggests that COMPANY's name and/or trademarks are part of the Product name. COMPANY's name and/or trademarks shall be displayed on the packaging and disk labels more prominently than the name "Microsoft".

2. **"Distribution on External Media with Customer Systems Rights"**, if granted, shall mean:

(a) Distribute one (1) copy of the Supplement software, reproduced in accordance with the reproduction rights granted for such Supplement, with each of COMPANY's licensed Customer Systems to be distributed with Product, subject to the following conditions:

(i) COMPANY shall include with each copy of the Supplement a EULA addendum which shall be substantially similar to the EULA addendum included with the Supplement as delivered by MS, except that it shall be adapted as may be required by the laws of any non-U.S.A. jurisdiction in which COMPANY distributes the Supplement.

3. **"Distribution to Existing End Users Rights"**, if granted, shall mean:

(a) Distribute one (1) copy of the Supplement software, as acquired from an Authorized Replicator if available, or reproduced in accordance with the reproduction rights, if any, granted for such Supplement, to licensed end users of COMPANY's Customer Systems originally distributed with the Product, subject to the following conditions:

(i) The Supplement shall be distributed directly from COMPANY or an MS-authorized fulfillment source;

(ii) COMPANY shall include with each copy of the Supplement a EULA addendum which shall be substantially similar to the EULA addendum included with the Supplement as delivered by

MS, except that it shall be adapted as may be required by the laws of any non-U.S.A. jurisdiction in which COMPANY distributes the Supplement; and

(iii) COMPANY shall offer the Supplement at no charge except that COMPANY may charge its reasonable cost of materials and shipping and handling costs.

4. **"Distribution via Bulletin Boards Rights"**, if granted, shall mean:

(a) Post and maintain the object code version of the Supplement on COMPANY's point to point communication link by modem (not Internet) bulletin board corner(s) ("BBS") for distribution to end users of COMPANY's Customer Systems originally distributed with Product, subject to the following conditions:

(i) COMPANY shall ensure that each copy of the Supplement includes a EULA addendum which is substantially similar to the EULA addendum included with the Supplement as delivered by MS, except that it shall be adapted as may be required by the laws of any non-U.S.A. jurisdiction in which COMPANY distributes the Supplement; and

(ii) COMPANY shall offer the Supplement at no charge to end users.

5. **"Distribution via Internet Link Rights"**, if granted, shall mean:

(a) Create and maintain a link on COMPANY's Internet home page(s) to MS' copy of the Supplement on MS' Internet home page(s), at the Universal Resource Locator(s) listed in the Supplement Addendum.

6. **"Distribution via Internet Page Rights"**, if granted, shall mean:

(a) Post and maintain the object code version of the Supplement on COMPANY's home page(s) on the Internet for distribution to end users of COMPANY's Customer Systems originally distributed with Product, subject to the following conditions:

(i) COMPANY shall include with each copy of the Supplement a EULA addendum which is substantially similar to the EULA addendum included with the Supplement as delivered by MS, except that it shall be adapted as may be required by the laws of any non-U.S.A. jurisdiction in which the Supplement is distributed; and

(ii) COMPANY shall offer the Supplement at no charge to end users.

7. **"Other Rights"**, if granted, and restrictions shall be as set forth in the applicable Supplement Addendum.

**EXHIBIT I**

**COMPANY USE OF THIRD PARTY INSTALLERS**

Except as expressly provided in this Exhibit I, COMPANY shall not reproduce, duplicate, copy or otherwise permit the installation of Product software or placement of the Product packages inside Customer System packages except on COMPANY premises by COMPANY employees. COMPANY may engage a third party installer specifically approved in writing by MS ("Third Party Installer") to install the Preinstalled Product Software for COMPANY on the Customer System hard disk or ROM pursuant to Section 2(a)(i) and/or place the Product packages inside the Customer System packaging in accordance with Section 2(c) provided that all of the conditions listed below are and remain satisfied.

(a) COMPANY shall provide MS with the name, address, and business profile in the English language (including years in business, ownership profile, tradenames used, nature of principal business activities, and summary of any prior experience with installation or replication of MS products) of any Third Party Installer COMPANY intends to engage for installation of the Product(s) at least sixty (60) days before COMPANY intends to have the Third Party Installer begin work for COMPANY. The Third Party Installer must be approved in writing by MS prior to beginning work.

(b) COMPANY shall enter into a written agreement with the Third Party Installer (hereinafter "Installation Agreement") that expressly provides that MS is a third party intended beneficiary of the Installation Agreement with rights to enforce such agreement, and that requires the Third Party Installer:

(1) to comply with obligations identical to those imposed on COMPANY by Sections 2(a), 2(b), 2(c), 2(f), 2(i), 6(c), 7(a), 11, 13, 14 and 17(a) of the Agreement;

(2) to consent to venue and jurisdiction in the state and federal courts sitting in the State of Washington with respect to any action brought by MS to enforce its rights under the Installation Agreement;

(3) to provide access to Third Party Installer premises to audit or inspection team(s) sent on behalf of MS or COMPANY, with or without notice, in order that such team may perform an audit of the Third Party Installer's books and records and/or an inspection of the Third Party Installer's procedures to determine compliance with the terms of the Installation Agreement and the Agreement;

(4) to halt reproduction of the Product upon notice from COMPANY or MS of the suspension, termination, or expiration of this Agreement;

(5) to distribute the Customer Systems with Preinstalled Product Software only to COMPANY, COMPANY Subsidiaries, and/or COMPANY resellers and distributors on behalf of COMPANY;

(6) to pay MS' or COMPANY's attorneys' fees if COMPANY or MS employs attorneys to enforce any rights arising out of the Installation Agreement;

(7) to report to MS, in the form provided by MS, information concerning Products installed including, without limitation, the number of units of each Product installed and/or the number of packages inserted, corresponding COMPANY model name(s), and shipment destination and the number of units of Product packages in inventory; and

(8) to maintain the inventory of Product packages received from COMPANY or the Authorized Replicator on behalf of COMPANY, if any, separate from inventory of Product packages, if any, in the Third Party Installer's possession for other MS OEMs (including the Third Party Installer, if the Third Party Installer is an MS OEM).

(c) In order to distinguish each Product package from Product packages of other MS OEMs, prior to delivery of any Product to any Third Party installer, COMPANY shall require the Authorized Replicator to place COMPANY's name on a conspicuous location on each Product package delivered to the Third Party Installer by or on behalf of COMPANY.

(d) COMPANY shall report to MS within fifteen (15) days of the end of each calendar month, the number of units of each Product which the Third Party Installer shipped (1) to COMPANY or COMPANY's Subsidiaries, or (2) on behalf of COMPANY, to COMPANY's resellers and distributors during such month.

(e) COMPANY hereby agrees to cease use of any Third Party Installer upon receipt of written notice from MS.

(f) COMPANY hereby unconditionally and irrevocably guarantees the Third Party Installer's fulfillment of the applicable obligations imposed by this Agreement and/or the Installation Agreement.

(g) COMPANY hereby indemnifies MS for all damages (including attorneys' fees) of any kind in connection with the Third Party Installer's activities for COMPANY, including, without limitation, damages resulting from: (1) a breach of the terms of this Agreement and/or the Installation Agreement, or (2) any and all unauthorized reproduction and/or distribution of any portion of the Product by the Third Party Installer.

(h) Within thirty (30) days of COMPANY's execution of the Installation Agreement with each Third Party Installer, COMPANY shall provide a copy of such agreement to MS at the address for notices specified in Exhibit N of the Agreement. If the Installation Agreement is not completed in the English language, COMPANY shall also provide an accurate and complete English translation thereof.

(i) COMPANY shall promptly notify MS of the termination, expiration or significant modification of the terms of the Installation Agreement.

(j) Sections (f), (g), and (h) of this Exhibit I shall survive any termination or expiration of this Exhibit I.

**EXHIBIT L**  
**LANGUAGE VERSIONS KEY**

The codes listed in the table below are used to describe the corresponding language version for licensed language version(s) in Exhibit C to the License Agreement (s), unless an alternate language key is provided in the Exhibit C. MS may provide COMPANY notice of a revised Language Version Key reflecting additional language version(s) and corresponding code(s) from time to time.

Code	Language Version
AF	Afrikaans
AR	Arabic
BG	Bulgarian
CA	Catalan
CS	Czech
DA	Danish
DE	German
EL	Greek
EN	English (USA)
ES	Spanish
ET	Estonian
EU	Basque
FA	Farsi
FI	Finnish
FR	French
GL	Galician
HU	Hungarian
IN	Bahasa
IT	Italian
IW	Hebrew
JA	Japanese
KO	Korean
LT	Lithuanian
LV	Latvian
NL	Dutch
NO	Norwegian
PA	Punjabi

PL	Polish
PT	Portuguese
RO	Romanian
RU	Russian
SI	Singhalese
SK	Slovak
SL	Slovenian
SR	Serbian
SV	Swedish
TH	Thai
TR	Turkish
UK	Ukrainian
VI	Vietnamese
XA	English (Australian)
XC	Portuguese (Brazilian)
XD	French (Canadian)
XT	Chinese - Simplified
XV	English (Canadian)
XX	Spanish (Latin American)
XZ	English (UK)
YD	Arabic, French
YL	Eastern European (English)
YX	Croatian
ZH	Chinese - Traditional
ZY	Pan European (English)

**EXHIBIT N1**

**ADDRESSES**

**COMPANY:**

**NOTICES:**

Mr. William Elliott  
GATEWAY 2000  
610 Gateway Drive  
PO Box 2000  
North Sioux City, SD 57049  
USA

Telephone: (605) 232-2000  
Fax: 605-232-2145

**COMPANY Support  
telephone no :**

**COMPANY VAT Number:**

**MS:**

**NOTICES:**

MICROSOFT CORPORATION  
One Microsoft Way  
Redmond, WA 98052-6399  
U.S.A.  
Attn.: Vice President, OEM Group

**With copy to:**

MICROSOFT CORPORATION  
One Microsoft Way  
Redmond, WA 98052-6399  
U.S.A.  
Attn.: Law & Corporate Affairs  
Fax: +1-425-936-7329

**Other Correspondence:**

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

**Reports:**

Royalty reports shall be made to:

**Microsoft Corporation**  
One Microsoft Way  
Redmond, WA 98052-6399  
U.S.A.  
Attention: OEM Finance  
Fax: +1-425-936-5298

or to such other address as MS may specify from time to time.

**Payments:**

**If COMPANY is a U.S.A. or Canada based company,  
payments shall be made by wire transfer to:**

**Microsoft Corporation**  
c/o NationsBank of Texas, N.A.  
1401 Elm Street  
Dallas, TX  
U.S.A.  
ABA #11100001-2  
SWIFT Code: NBKUS44DAL  
Account # **3750771783**

Regarding:  
Microsoft OEM #844500 Collections

**If COMPANY is based outside the U.S.A. and Canada,  
payments shall be made by wire transfer to:**

**Microsoft Corporation**  
c/o Citibank N.A.  
399 Park Avenue  
New York, NY 10043  
U.S.A.  
ABA 021000089  
SWIFT Code: CITIUS33  
Account # **38468231**

Regarding:  
Microsoft International OEM Collections

or to such other address or account as MS may specify from time to time. COMPANY shall ensure that the regarding line stated above, the MS license number for the License Agreement, and the MS invoice number, if any, are specified on each wire transfer payment made pursuant to the License Agreement(s).



**EXHIBIT R**

**(Continued)**

**Dollar Recap**

<b>Product 1</b>				<b>"Per System" Activity</b>				<b>"Per Copy" Activity</b>			
Units		Royalty	Quantity	Amount Due	Units		Royalty	Quantity	Amount Due		
1 to	0	\$0.00	0	\$0.00	1 to	0	\$0.00	0	\$0.00		
		\$0.00					\$0.00				
	+	\$0.00				+	\$0.00				
			0					0			
<b>Localized Version Activity</b>											
		Royalty	Quantity	Amount Due							
		\$0.00	0	\$0.00							
							<b>Product Total</b>			\$0.00	

  

<b>Product 2</b>				<b>"Per System" Activity</b>				<b>"Per Copy" Activity</b>			
Units		Royalty	Quantity	Amount Due	Units		Royalty	Quantity	Amount Due		
1 to	0	\$0.00	0	\$0.00	1 to	0	\$0.00	0	\$0.00		
		\$0.00					\$0.00				
	+	\$0.00				+	\$0.00				
			0					0			
<b>Localized Version Activity</b>											
		Royalty	Quantity	Amount Due							
		\$0.00	0	\$0.00							
							<b>Product Total</b>			\$0.00	

<b>Please send report to:</b>							
Microsoft Corporation							
OEM Accounting Services							
FAX: (1) 425-936-5298							
				<b>Total Reported</b>		<b>\$0.00</b>	

The undersigned hereby certifies that he/she is duly authorized by COMPANY to complete this report, that the title listed below is his/her true and correct title, and that this report is complete and correct.

<b>Report completed by:</b>							
				Signature		Date	
				Print name and title		Telephone Number	

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Microsoft General OEM Business Terms Document #5110250001-4 dated November 1, 1997 between MICROSOFT CORPORATION and GATEWAY 2000

**EXHIBIT X**  
**COMPANY SUBSIDIARIES**

COMPANY Subsidiaries authorized to exercise rights under the License Agreement are:

OEM Contracts  
GATEWAY 2000  
Clonshugh Industrial Estate  
DUBLIN

IRELAND

Telephone: 353-1-797-2000  
Fax: 353-1-797-2067

COMPANY shall provide MS at least thirty (30) days prior written notice of the name and address of each additional COMPANY Subsidiary that COMPANY wishes to add to Exhibit X. Additional COMPANY Subsidiaries may not exercise any rights under the License Agreement(s) until MS approves such request in writing. Each COMPANY Subsidiary, whether listed above or subsequently approved by MS, shall execute and submit to MS a COMPANY Subsidiary Agreement in the form provided below prior to exercising any rights under the License Agreement(s).

[SAMPLE FORM: To be printed on COMPANY Subsidiary's letterhead.] COMPANY SUBSIDIARY AGREEMENT	
For good and valuable consideration, _____ a corporation of _____ ("COMPANY Subsidiary") hereby covenants and agrees with Microsoft Corporation, a Washington U.S.A. corporation ("MS") that COMPANY Subsidiary will comply with all obligations of Gateway 2000, a corporation of South Dakota, USA ("COMPANY") pursuant to all License Agreements between COMPANY and MS that incorporate by reference that certain General OEM Business Terms Document #5110250001 between MS and COMPANY dated November 1, 1997 (the "Business Terms Document").	
COMPANY Subsidiary acknowledges that its agreement herein is a condition for COMPANY Subsidiary to exercise any of the rights sub-licensed by COMPANY to COMPANY Subsidiary pursuant to the terms of the License Agreement(s). COMPANY Subsidiary shall be jointly and severally liable to MS for all obligations related to COMPANY Subsidiary's exercise of license rights or receipt of confidential information under the License Agreement(s), including but not limited to the payment of royalties for Product.	
Microsoft Corporation anticipates that it will transfer its OEM licensing operations to its wholly owned subsidiary, Microsoft Licensing, Inc., a Nevada, U.S.A. corporation, on or about December 31, 1997. From and after such transfer, all references to "MS" contained in this agreement, the Business Terms Document and the License Agreement(s) that incorporate the Business Terms Document shall refer to Microsoft Licensing, Inc.	
Capitalized terms used herein and not otherwise defined shall have the same meaning as in the License Agreement(s).	
IN WITNESS WHEREOF, COMPANY Subsidiary has executed this agreement as of the date set forth below. All signed copies of this agreement shall be deemed originals.	
_____ (COMPANY Subsidiary)	
Signature _____	Title _____
Name (Print) _____	Date _____