

PLAINTIFF'S
EXHIBIT
2679
Comes v. Microsoft

**SIGNED
ORIGINAL**

LICENSE AGREEMENT

for

MICROSOFT® APPLICATIONS PRODUCTS

Between

MICROSOFT CORPORATION,
a Washington Corporation,

and

COMPAQ COMPUTER CORPORATION,
a Delaware Corporation

Microsoft Contract #

FL AG 0001074
CONFIDENTIAL

MICROSOFT LICENSE NO.
5000020313

HIGHLY CONFIDENTIAL

LICENSE AGREEMENT

This License Agreement ("Agreement") is made and entered into this 1st day of April, 1997 ("Effective Date"), by and between MICROSOFT CORPORATION, a Washington, U.S.A. corporation, ("MS") and COMPAQ COMPUTER CORPORATION, a Delaware corporation ("COMPAQ").

The parties agree as follows:

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

(a) "COMPAQ Subsidiary" shall mean a company in which, on a class by class basis, more than fifty percent (50%) of the stock entitled to vote for the election of directors is owned or controlled by COMPAQ, but only so long as such ownership or control exists. COMPAQ hereby guarantees each of its COMPAQ Subsidiaries' performance under this Agreement. Upon request, COMPAQ shall provide MS with the name and address of its COMPAQ Subsidiaries.

(b) "Customer System" shall mean the computer system product(s) described in the Exhibit(s) C manufactured and/or distributed by COMPAQ.

(c) "Product Support Services" ("PSS") shall mean MS' then standard product support service(s) offered to OEMs.

(d) "Product" or "Products" shall mean the MS software products described in the attached Exhibit(s) C and successor/replacement products, including where applicable the specified user documentation. "Product software" or "Product documentation" shall mean the software or documentation components of the Product.

(e) "Product Release" shall mean a release of Product which is designated by MS in its sole discretion as a change in the digit(s) to the left of the decimal point in the Product version number [(x).xx] or a change in the annual identifier (e.g. 97 or 1997)..

(f) "Version Release" shall mean a release of Product which is designated by MS in its sole discretion as a change in the tenths digit in the Product version number [x.(x)x].

(g) "Update Release" shall mean a release of Product which is designated by MS in its sole discretion as a change in the digit(s) to the right of the tenths digit(s) in the Product version number [x.x(x)(x)].

(h) "Upgrade" shall mean a full or partial replacement copy of the Product provided to an existing end user of the Product on a Customer System. COMPAQ shall establish a reasonable procedure to assure the return or destruction of any replaced Product. The packaging for Upgrade Product shall indicate that it is intended as an "upgrade" only (or similar wording) and not for use by a new customer. Copies of Product not strictly in conformance herewith shall not be considered Upgrade Product.

(i) "Authorized Replicator" shall mean a third party approved by MS from which COMPAQ shall acquire Product software, APM and Product end user documentation reproduced in accordance with MS specifications. MS shall provide COMPAQ with a list of Authorized Replicators and shall notify COMPAQ from time to time of changes to this list. MS agrees to promptly designate additional Authorized Replicators proposed by COMPAQ provided that such replicators enter into MS' standard Authorized Replicator Agreement.

(j) "Associated Product Materials" or "APM" shall mean a certificate of authenticity, an end user license agreement, a MS product registration card, and/or other materials designated by MS which COMPAQ shall acquire from an Authorized Replicator.

2. LICENSE GRANT

(a) MS grants to COMPAQ the following nonexclusive, worldwide license rights:

(i) to adapt the Products software as necessary to enable Product software to execute on COMPAQ's Customer System(s);

(ii) to reproduce and install no more than one (1) copy of each release of Product software in object code form on each Customer System solely on COMPAQ premises by COMPAQ employees or, if applicable, by Third-Party Installers, as defined in Exhibit I.; and

(iii) to grant to COMPAQ Subsidiaries all rights granted to COMPAQ herein (except that COMPAQ Subsidiaries may not further grant rights to third parties); and

(iv) to distribute directly or indirectly and license the Product software in object code form to end users, under the terms of COMPAQ's end user license agreement provided that when Product software is preinstalled on Customer System, COMPAQ may distribute only one back-up copy of Product software with each Customer System at no additional royalty. Unless specifically noted otherwise in the applicable Exhibit(s) C, Product shall be distributed by COMPAQ preinstalled on Customer Systems as per Section 2(a)(ii). If COMPAQ chooses to distribute back-up media, such media shall be in diskette, CD-ROM or other media form as acquired from Authorized Replicator.

(b) unless specifically noted otherwise in the applicable Exhibit(s) C, COMPAQ's license shall extend to, and each Product shall be deemed to include any Update Releases and any Version Releases that COMPAQ accepts under Section 4 and elects to distribute under this Agreement.

(c) MS grants COMPAQ the right to distribute Product documentation to end users of Customer Systems. COMPAQ shall obtain Product documentation only from Authorized Replicators. COMPAQ may distribute supplemental Product documentation to end users of Customer Systems provided that any such supplemental documentation shall be consistent with Product documentation. COMPAQ may adapt Product documentation as necessary for distribution in media other than hard copy media. Upon written request, MS shall provide COMPAQ with Product documentation in electronic form for use solely to perform such adaptations. Upon written request, COMPAQ may translate the Product documentation but only into languages other than those for which MS either currently has translations or intends to create translations within nine (9) months of COMPAQ's request. COMPAQ shall submit any translated Product documentation to MS for approval prior to distribution. MS shall respond to any such request within thirty (30) days.

(d) COMPAQ's rights hereunder shall not extend to Product source code unless an Exhibit S is attached and executed.

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

(f) Upon COMPAQ's request, MS agrees to negotiate in good faith with COMPAQ to license other MS products not available to COMPAQ under this Agreement at MS' then applicable price(s), terms and conditions.

(g) COMPAQ shall include APM with Product software distributed by COMPAQ.

3. PRICE AND PAYMENT

(a) COMPAQ agrees to pay MS the amount(s) and within the times stated in this Section 3, Exhibit(s) B, and Exhibit(s) C. COMPAQ's obligation to pay such amounts is unconditional except as is otherwise expressly stated to the contrary herein.

(b) Prices stated are exclusive of any federal, state, municipal or other governmental taxes, duties, licenses, fees, excises or tariffs now or hereafter imposed on COMPAQ's production, storage, licensing, sale, transportation, import, export or use of a Product. Such charges shall be paid by COMPAQ, or in lieu thereof, COMPAQ shall provide an exemption certificate acceptable to MS and the applicable authority. MS, however, shall be responsible for all taxes based upon its personal property ownership and gross or net income. A finance charge of one and one-half percent (1-1/2%) per month will be assessed on all amounts that are past due.

(c) Except where otherwise provided, COMPAQ agrees to make consolidated (i.e. on behalf of COMPAQ and COMPAQ subsidiaries) quarterly reports and payments to MS within forty-five (45) days after the end of each calendar quarter, and forty-five (45) days after termination or expiration for the final full or partial quarter. COMPAQ's quarterly report shall provide the information described in the applicable Exhibit C for each Product licensed hereunder, and shall be signed by a duly authorized representative of COMPAQ. COMPAQ shall submit quarterly reports even if no royalties or other amounts are due for such quarter. COMPAQ shall use the royalty reporting form attached as Exhibit R or other form as the parties may agree to from time to time.

(d) No royalty shall accrue to MS for copies of a Product (including Product documentation) (i) used solely for testing systems; (ii) shipped as replacement copies for copies found to be defective in materials, manufacture, or reproduction; (iii) used for demonstrations to prospective customers not to exceed five hundred copies (500) per each Product, provided diskettes and documentation for such copies are marked "For Demonstration Only" or the like; or (iv) provided as back-up copies to end users.

(e) MS shall provide all new releases of Product (including OPK/ODK) licensed under this Agreement to COMPAQ no later than the date such new releases are provided to other MS customers.

4. ACCEPTANCE AND WARRANTY

(a) Within sixty (60) days after the later of COMPAQ's execution of this Agreement or MS' delivery to COMPAQ of each Product licensed hereunder, COMPAQ shall either accept such Product or report deviations from specifications in writing. COMPAQ is not required to accept or reject test versions of a Product (e.g., Alpha or Beta test versions). Conformance to specifications as referenced in the applicable Exhibit C shall solely determine acceptability. If COMPAQ does not report deviations from Product specifications within the sixty (60) day period, or if COMPAQ ships the Product to a customer for revenue, COMPAQ shall be deemed to have accepted the Product.

(b) If COMPAQ reports any deviations from Product specifications prior to acceptance then MS shall have sixty (60) days to correct such deviations. Upon delivery of a corrected release of Product to COMPAQ, COMPAQ shall have sixty (60) days in which to re-evaluate the corrected release for conformance to specifications as provided in Section 4(a). If any deviations from specifications reported before acceptance are not eliminated in the sixty (60) day correction period, then as COMPAQ's sole remedy (i) the Product may be retained at an equitable adjustment in price as may be agreed by the parties, or (ii) the correction period may be extended as may be agreed by the parties, or (iii) failing any agreement, COMPAQ may reject the Product, and provided that COMPAQ has rejected the first version of each released Product licensed under this Agreement, COMPAQ may terminate this Agreement.

(c) MS represents that each Product meets the specifications referenced in the applicable Exhibit C, except for deviations from specifications attributable to Authorized Replicators' manufacturing

of Product. If COMPAQ reports any deviations from specifications in a Product following acceptance and during the term of this Agreement, then as COMPAQ's sole remedy MS agrees to use reasonable efforts to correct such deviations. COMPAQ's notice of any deviations from Product specifications shall be made using the OnLine system, the notice provisions of Section 15 or COMPAQ's designated MS support engineer. MS' obligations under this Section 4(c) as to a particular release of a Product shall cease at such time that MS discontinues support for such release of Product.

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

(e) Except as expressly provided, this Agreement does not include technical support. Such support is available separately as an option pursuant to Microsoft's standard PSS Agreement(s) at MS' then standard rates.

5. INDEMNIFICATION FOR INFRINGEMENT

(a) MS represents and warrants that:

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

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

(iii) MS has the right to grant the rights it has granted under this Agreement (except as to copyrights or patents enforceable under the laws of any countries not listed in Section 5(d)).

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

(b) Following notice of an Infringement Claim, MS may at its expense, but without obligation to do so, procure for COMPAQ the right to continue to market, use and have others use, the alleged infringing Product or, without obligation to do so, may replace or modify the Product to make it non-infringing ("Non-Infringing Product"). If MS elects to replace or modify the Product, such replacement shall meet substantially the specifications as provided or referenced in the applicable Exhibit C and shall be subject to the acceptance provisions of this Agreement. Microsoft agrees to reimburse COMPAQ for its reasonable and identifiable out-of-pocket expenses incurred in removing, reworking, or replacing (except as to royalties/fees for Non-Infringing Products or Non-Infringing non-MS products) Affected product including copies on Customer Systems, channel inventory, and COMPAQ's inventory (including work-in-progress and finished goods). In the event MS requests or a court of competent jurisdiction orders that COMPAQ recall or take any other action with respect to Affected Product (on account of an Infringement Claim), then MS shall reimburse COMPAQ for its reasonable and identifiable out-of-pocket expenses incurred in connection with such recall or other action. MS payments for the above described out-of-pocket expenses shall be no greater than Product royalties which are due and/or have been paid by COMPAQ for Products after the effective date of this Section 5(b). For purposes of this Section 5 (b) "out-of-pocket" expenses shall include direct labor and materials, transportation, mailing costs, media costs, rework fees and the like, but shall exclude overhead. The term "Affected Product" shall mean any product that breaches any of the warranties set forth in Section 5(a)(i), 5(a)(ii), and/or 5(a)(iii) as a result of a decision rendered by a court of competent jurisdiction of any Product designated as such by

MS. Should a court of competent jurisdiction order or MS request that Affected Product be removed from a Customer Systems, then (1) where MS provides Non-Infringing Product, royalties for such removed Affected Products shall not be refunded and shall be due, as applicable, and such royalties shall be included in the above out-of-pocket expense limit and (2) where MS does not provide Non-Infringing Product, royalties previously paid for such removed Affected Products shall be refunded or shall not be due, as applicable, and such royalties shall not be included in the above out-of-pocket expense limit. COMPAQ shall cooperate with MS so as to minimize any such out-of-pocket expenses.

(c) MS shall have no liability for any Infringement Claim based on COMPAQ's (i) use or distribution of any Product commencing the earlier of sixty (60) days after MS' notice that COMPAQ should cease use of distribution of such Product due to an Infringement Claim, or sixty (60) days after MS provides COMPAQ with complete Non-Infringing Product which passes COMPAQ's standard acceptance tests, or (ii) combination of a Product with a non-MS program or data (other than mere distribution of Product with Customer Systems), if such Infringement Claim would have been avoided by the exclusive use of the Product or combination of Products when used for their intended purposes. For all Infringement Claims arising under this section 5(c), COMPAQ agrees to indemnify and defend MS from and against all damages, costs and expenses, including reasonable attorney's fees. Following COMPAQ's cessation of distribution of an alleged infringing Product due to an Infringement Claim, COMPAQ shall: (1) continue to pay the "per system" royalty (or "per copy", if applicable) Products which are not infringing and (2) be entitled to a pro-rata reduction of the royalty for those Customer Systems for which COMPAQ pays a royalty for a combination of the alleged infringing Product and other Product(s) based on the relative individual royalties for such Products, as applicable. (For example, if the royalty for Product A is \$5.00 and the royalty for Product B is \$5.00, but the royalty for the combination of Product A and Product B is \$9.00, and the alleged infringing Product is Product A, then COMPAQ shall be entitled to a royalty reduction of \$5.00 for those Customer Systems for which COMPAQ pays a royalty only for Product A and a royalty reduction of \$4.50 for those Customer Systems for which COMPAQ pays a royalty for the combination of Product A and Product B.) In the event MS fails to provide COMPAQ with NON-Infringing Product within sixty (60) days of the date of MS' notice of an Infringement Claim, then COMPAQ may terminate this Agreement with respect to such Product. In no event shall Compaq be required to pay a "per system" royalty on a Product that has been withdrawn from marketing according to this Section.

(d) MS shall have no obligation to COMPAQ for any Infringement Claims made against COMPAQ which arise from the use or distribution of a Product outside the geographical boundaries of those countries in which MS distributes Products (including Upgrades) and COMPAQ hereby releases and discharges MS from any and all Infringement Claims resulting from use or distribution. COMPAQ shall have no obligation to notify MS of Infringement Claims in such countries and COMPAQ may respond to such Infringement Claims as it sees fit.

6. LICENSE RESTRICTIONS

(a) Unless specifically mentioned otherwise in the applicable Exhibit(s) C, COMPAQ shall market and distribute each Product only (directly or indirectly) to end user purchasers of COMPAQ's Customer System(s). Except for Upgrades, COMPAQ shall distribute and license Product(s) only with those Customer Systems listed on Exhibits C for the particular Product(s). Products shall be distributed only inside the Customer System Package and preinstalled on the Customer System. COMPAQ's Product packaging shall clearly indicate that the Product is intended for use only on such Customer System(s). COMPAQ shall make reasonable best efforts to require its distributors, dealers and others in its distribution channels to comply with the foregoing.

(b) COMPAQ shall not reverse engineer, decompile or disassemble any Product.

(c) (i) COMPAQ shall distribute and license the use of Product to end users only pursuant to its end user license agreement ("EULA"). COMPAQ's EULA may be a "break-the-seal" end user license

agreement or in electronic form appearing on the sign-on screen of the Product which is conspicuous to the end user as agreed by the parties. COMPAQ's EULA shall conform substantially to the Sample License Agreement attached as Exhibit A, except that it shall be adapted as commercially reasonable for any foreign jurisdiction in which COMPAQ markets or distributes the Product.

(ii) The limitations of liability and remedies in COMPAQ's EULA shall inure to the benefit of MS. COMPAQ shall be the "Licensor" under its EULA.

(d) Except as provided in Section 2(a)(ii), this Agreement does not include reproduction rights. Product shall be reproduced by Authorized Replicator. MS shall provide COMPAQ with a list of other Authorized Replicators upon COMPAQ's request.

7. INTELLECTUAL PROPERTY NOTICES

(a) COMPAQ will cause to appear on the packaging and labels of each copy of Product, the copyright, trademark or patent notices for the Product that appear on the applicable release of the Product as provided to COMPAQ pursuant to Section 2 hereof. COMPAQ will not remove any copyright, trademark or patent notices that appear on the Product as delivered by MS. COMPAQ shall cause to appear on the title page of each volume of its documentation, and at any other location where any copyright, patent or trademark notice appears, the MS and third party copyright, patent or trademark notices that appear in the release of Product documentation from which COMPAQ's documentation is derived.

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

(c) COMPAQ's name and/or trademarks shall not be displayed in relation to the Product name in a manner which suggests that COMPAQ's name and/or trademarks are part of the Product name. COMPAQ agrees to maintain the high level of quality accorded products associated with and marketed by MS under MS' trademarks.

(d) Except as separately licensed by MS, COMPAQ shall not use or display any MS logo in its materials or packaging.

(e) Unless otherwise agreed to by the parties in writing, COMPAQ's Product packaging shall conform to guidelines to be provided by MS to COMPAQ and/or Authorized Replicators. MS agrees to discuss Product packaging alternatives with Compaq in good faith on a case-by-case basis provided such alternatives conform to MS' quality, brand and consistency standards. Approval for any such Product packaging alternatives shall be at MS' sole discretion.

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

(g) Unless otherwise specified in Exhibit(s) C, COMPAQ's Product documentation and/or Customer System documentation shall advise end users that Product is supported by COMPAQ and shall include COMPAQ's (or other's) telephone support number for the Product.

(h) MS, at its own expense, will settle or defend and pay any damages, costs, and expenses, including reasonable attorneys' fees, resulting from any claim made against COMPAQ by a third party for infringement or alleged infringement of the trademark, trade name or product name rights of such third party, or for unfair competition resulting from COMPAQ's use of MS' trademarks, trade names or product names, in the countries listed in Section 5(d); provided, that COMPAQ promptly notifies MS of any such claim. In meeting its obligations hereunder, MS may, without obligation to do so, procure for COMPAQ the right to continue to use the trademark, trade name, or product name on the Product.

8. PROHIBITION AGAINST ASSIGNMENT AND SUBLICENSE

This Agreement, and any rights or obligations hereunder, shall not be assigned or sublicensed (except as permitted hereunder) by COMPAQ. Notwithstanding the foregoing, COMPAQ may assign this Agreement (except for license rights to Source Code in Exhibit S) to a purchaser of substantially all of COMPAQ's assets upon thirty (30) days prior written notice to MS.

9. TERM OF AGREEMENT

Provided this Agreement has been properly executed by COMPAQ and by an officer of MS, the initial term of this Agreement ("Initial Term") shall run from April 1, 1997 until March 31, 1998.

10. DEFAULT AND TERMINATION

(a) This Agreement may be terminated by the nondefaulting party if any of the following events of default occur: (i) if either party materially fails to perform or comply with this Agreement or any provision hereof; (ii) if either party fails to strictly comply with the provisions of Section 13 or COMPAQ makes an assignment in violation of Section 8; (iii) if COMPAQ becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (iv) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by COMPAQ; or (v) if such a petition is filed by any third party, or an application for a receiver of COMPAQ is made by anyone and such petition or application is not resolved favorably to COMPAQ within sixty (60) days. Further, either party may terminate this Agreement as provided in Section 12(c)(ii).

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

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

11. OBLIGATIONS UPON TERMINATION

(a) Subject to Section 11(f), within ten (10) days after termination or expiration of this Agreement, COMPAQ shall return to MS or certify the destruction of all full or partial copies of each Product in COMPAQ's possession or under its control, including, if applicable, copies of the Product in source code form. COMPAQ and each COMPAQ Subsidiary, however, may retain an adequate number of copies of each Product in object code form and the Product documentation, and unless this Agreement has been terminated due to COMPAQ's default, an adequate number of copies Source Code (as per Exhibit S) to be used solely for support purposes.

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

(c) Termination of this Agreement as a result of COMPAQ's default shall result in acceleration of COMPAQ's obligation to pay all sums COMPAQ contracted to pay under this Agreement.

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

(e) Sections 5, 11(a), 11(b) (second sentence), 12, 12(a), 12(b), 12(c), 13, 14, 15, 16(a), 17, 18(a), and 18(b) shall survive termination or expiration of this Agreement.

(f) Notwithstanding anything to the contrary in this Section 11, except where this agreement has been terminated due to COMPAQ's default, COMPAQ may distribute existing inventory as of the date of termination of this agreement (subject to the terms of this agreement), for a period of Sixty (60) days following such termination or expiration.

12. LIMITATION OF LIABILITY AND REMEDY

(a) Except for COMPAQ's liability for consequential damages as provided in Section 12(b), either party's liability to the other party under any provision of this Agreement, or any transaction contemplated by this Agreement shall be limited to the greater of Three Million Dollars (US\$3,000,000.00) or one hundred percent (100%) of the amount having then actually been paid or owed by COMPAQ to MS under Section 3. This limitation of liability is cumulative with all of a party's expenditures being aggregated to determine satisfaction of the limit. The existence of claims or suits against more than one Product licensed under this Agreement will not enlarge or extend the limit. Each party releases the other from all obligations, liability, claims or demands in excess of the limitation. The parties acknowledge that other parts of this Agreement rely upon the inclusion of this Section 12.

(b) The rights and remedies granted to COMPAQ under Sections 4 and 5 constitute COMPAQ's sole and exclusive remedy against MS, its officers, agents and employees for negligence, inexcusable delay, breach of warranty, express or implied, or for any default whatsoever relating to the condition of the Product or MS' duties to correct any deviations from specifications.

SECTIONS 4 AND 5 CONTAIN THE ONLY WARRANTIES MADE BY MS. ANY AND ALL OTHER WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING THOSE FOR MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF SOURCE CODE IN VIOLATION OF SECTION 13, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOST PROFITS, UNLIQUIDATED INVENTORY, ETC.), INCIDENTAL, INDIRECT, ECONOMIC OR PUNITIVE DAMAGES EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) Each party hereby provides the other party an Immunity from Suit (as defined below) for the Immunity Period (as defined below) for infringement of any U.S. or foreign patent, other than a design patent or the equivalent, as to which the party has the right to assert an infringement on account of the use, manufacture, or distribution of Products and Customer Systems subject to the following.

"Immunity from Suit" shall mean:

Immunity extends to MS, and to users, licensees, purchasers and resellers of the Products for Products used, manufactured or distributed during the Immunity Period. However, the immunity shall not extend to an infringement based on the combination of the Product with a third party's product or products, where the infringement would have occurred absent the Product.

Immunity extends to COMPAQ, and to users, licensees, purchasers, and resellers of the Customer Systems for Customer Systems used, manufactured or distributed during the Immunity Period. However, the immunity shall not extend to an infringement based on the combination of the Customer System with a third party's product or products where such infringement would have occurred absent the Customer System.

"Immunity Period" shall mean:

As to MS' grant of Immunity from Suit, the Immunity Period as to a Customer System shall commence on the first date of issuance of any of the applicable MS patents and shall terminate upon the date on which such Customer System is no longer subject to this Agreement, unless earlier terminated as provided below.

As to COMPAQ's grant of Immunity from Suit, the Immunity Period as to a Product shall commence on the first date of issuance of any of the applicable COMPAQ patents and shall terminate upon termination of the Agreement as to such Product, unless earlier terminated as provided below.

(i) The Immunity Period as to a particular patent shall terminate six (6) months after a party has given a notice of termination of the Immunity from Suit with respect to a particular patent ("Specific Patent Immunity Termination Notice"). A "Specific Patent Immunity Termination Notice" means a written notice based upon a party's good faith belief after a reasonable amount of research that the other party's Product or Customer System, as applicable, infringes a patent, and which provides sufficient detail to enable a person reasonably proficient in the art to understand the invention and the nature and extent of the alleged infringement.

(ii) Either party may terminate the Immunity from Suit granted to the other party as to all of its patents ("Immunity Period Termination Notice") at any time upon ninety (90) days written notice, which shall automatically also terminate the other (non-initiating) party's Immunity from Suit as to all patents as of the same date. Further, the non-initiating party shall have the option to terminate the entire Agreement at any time after receipt of such Immunity Period Termination Notice, upon thirty (30) days' written notice (but not earlier than the end of the ninety (90) day notice period described above). If COMPAQ terminates the Agreement pursuant to this subsection 12(c)(ii), it shall pay MS all outstanding amounts owed. If MS terminates the Agreement (with respect to a Product or in its entirety) pursuant to this subsection 12(c)(ii), all outstanding amounts owed shall be due as though MS had terminated this Agreement due to COMPAQ's default (see Section 11(c)).

(iii) Neither party shall have the right to terminate the Agreement on account of the other party giving a Specific Patent Immunity Termination Notice.

(iv) The parties may, but shall not be required to, submit any Specific Patent Immunity Termination Notice or Immunity Period Termination Notice to arbitration, subject to such rules and restrictions as the parties may agree upon.

(v) Nothing in this Section 12(c) itself shall create any defense of laches or estoppel. Such defenses shall be available as they otherwise would be without reference to this Section 12(c).

(vi) Notwithstanding anything to the contrary, either party may terminate the Immunity from Suit as to a particular patent(s) immediately upon notice to the other party, solely for the purpose of asserting its patent rights defensively in response to a patent infringement lawsuit filed by a third party against such party. Any such termination of the Immunity from Suit shall be limited to its assertion in that particular suit against that particular third party.

(vii) The limitations of liability and remedy in Sections 12(a) and 12(b) shall not apply to claims of patent infringement asserted by either party against the other following termination of the applicable Immunity Period.

(viii) The parties agree to negotiate in good faith a patent cross license.

13. NONDISCLOSURE AGREEMENT

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

(b) MS shall have the same obligations in Section 13(a) above with respect to COMPAQ's information and know-how.

14. AUDITS

(a) During the term of this Agreement, COMPAQ agrees to keep all usual and proper records and books of account and all usual and proper entries relating to each Product licensed consistent with generally accepted accounting principles.

(b) MS may cause an audit to be made of the applicable COMPAQ records and facilities in order to verify COMPAQ's compliance with the terms of this Agreement and to verify royalty reports issued by COMPAQ and prompt adjustment shall be made to compensate for any errors or omissions disclosed by such audit. Any such audit shall be conducted by an independent certified public accountant of national stature (e.g., Deloitte) selected by MS (other than on a contingent fee basis) and shall be conducted during regular business hours at COMPAQ's offices and in such a manner as not to interfere with COMPAQ's normal business activities. Any such audit shall be paid for by MS unless Material discrepancies are disclosed. "Material" shall mean the lesser of Fifty Thousand Dollars (US\$50,000.00) or five percent (5%) of the amount that should have been reported, but not less than Ten Thousand Dollars (US\$10,000.00). If Material discrepancies are disclosed, COMPAQ agrees to pay MS for the costs associated with the audit not to exceed Twenty Thousand Dollars (US\$20,000.00). In no event

shall audits be made more frequently than annually unless the immediately preceding audit disclosed a Material discrepancy.

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

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

15. NOTICES AND REQUESTS

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

COMPAQ: COMPAQ COMPUTER CORPORATION
20555 S.H. 249
Houston, Texas 77070-2698

Attention: Steve Decker, Software Procurement Manager

Telephone: (281) 514-4887
Fax: (281) 514-0032

With Copy To:

COMPAQ: COMPAQ LEGAL DEPARTMENT
20555 S.H. 249
Houston, Texas 77070-2698

Attention: General Counsel
Telephone: (281) 514-1463
Fax: (281) 518-8209

BILL TO:
COMPAQ: COMPAQ COMPUTER CORPORATION
20555 S.H. 249, Mail Stop 040801
Houston, Texas 77070-2698

Attention: Controller

SHIP TO: COMPAQ COMPUTER CORPORATION
20555 S.H. 249, Mail Stop 070805
Houston, Texas 77070-2698

Attention: Kim Whipple, Manager of Software Procurement Engineering

Phone Number: (281) 518-3593
COMPAQ Support
Phone Number: 800-345-1518

MS: MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399

Attention: Sr. Vice President, OEM Sales Division

With Copy To: MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399

Attention: Law & Corporate Affairs
Fax: (425) 936-7329

or to such other address as the party to receive the notice or request so designates by written notice to the other. For other correspondence to MS, the address is:

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

16. CONTROLLING LAW; NO FRANCHISE

(a) This Agreement shall be construed and controlled by the laws of the State of Washington. Process may be served on either party in the manner set forth in Section 15 for the delivery of notices or by such other method as is authorized by applicable law or court rule.

(b) Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture or agency relationship or as granting a franchise as defined in the Washington Franchise Investment Protection Act, RCW 19.100, as amended, or 16 CFR Section 436.2(a). The price and payment described in Section 3 of this Agreement shall be construed as a royalty fee for the rights granted in Section 2 of this Agreement, and not as a franchise fee.

17. ATTORNEYS' FEES

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

18. GENERAL

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

(b) COMPAQ agrees that it will not, and will take reasonable steps to ensure that its customers will not, directly or indirectly, export or transmit (i) any Product or related documentation and technical data or (ii) any product (or any part thereof), process, or service that is the direct product of a Product, to the People's Republic of China, Afghanistan, or any group Q, S, W, Y, or Z country specified in Supplement No. 1 of Section 770 of the Export Administration Regulations or to any other country to which such export or transmission is restricted by such regulation or statute, without the prior written consent, if required, of the Office of Export Administration of the U.S. Department of Commerce, or such other governmental entity as may have jurisdiction over such export or transmission.

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

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

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

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


19. COMPAQ'S GOVERNMENTAL APPROVAL OBLIGATIONS

COMPAQ shall, at its own expense, obtain and arrange for the maintenance in full force and effect of all governmental approvals, consents, licenses, authorizations, declarations, filings, and registrations as may be necessary or advisable for the performance of all of the terms and conditions of the Agreement including, but not limited to, foreign exchange approvals, import and offer agent licenses, fair trade approvals and all approvals which may be required to realize the purposes of the Agreement. COMPAQ warrants and represents that the Product(s) is importable into the country identified in the "Ship To" address for COMPAQ listed in Section 15.

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above. All signed copies of this Agreement shall be deemed originals.

MICROSOFT CORPORATION

By 
Bengt Akerlind

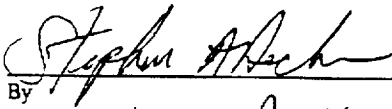
Name (Print) _____
Director Int'l OEM Sales

Title _____

Date _____
AUG 28 1997

Date of Issue: _____

COMPAQ COMPUTER CORPORATION

By 

Name (Print) _____
Stephen A Ducker

Title _____
Director, Corp. Procurement

Date _____
July 23, 1997

EXHIBIT A - SAMPLE END USER LICENSE AGREEMENT

IMPORTANT—READ CAREFULLY: This End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and the manufacturer ("PC Manufacturer" or "Manufacturer") of the computer system or computer system component ("HARDWARE") with which you acquired the Microsoft software product(s) identified above or on the Product Identification Card accompanying this EULA ("SOFTWARE PRODUCT" or "SOFTWARE"). If the SOFTWARE PRODUCT is not accompanied by a new computer system or computer system component, you may not use or copy the SOFTWARE PRODUCT. The SOFTWARE PRODUCT includes computer software, the associated media, any Microsoft hardware accompanying the computer software, any printed materials, and any "online" or electronic documentation. By installing, copying or otherwise using the SOFTWARE PRODUCT, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, Manufacturer and Microsoft Corporation ("Microsoft") are unwilling to license the SOFTWARE PRODUCT to you. In such event, you may not use or copy the SOFTWARE PRODUCT, and you should promptly contact Manufacturer for instructions on return of the product(s) for a refund.

SOFTWARE PRODUCT LICENSE

The SOFTWARE PRODUCT is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The SOFTWARE PRODUCT is licensed, not sold. The term "COMPUTER" as used herein shall mean the HARDWARE, if the HARDWARE is a computer system, or the computer system with which the HARDWARE operates, if the HARDWARE is a computer system component.

1. GRANT OF LICENSE. This EULA grants you the following rights:

Software Installation and Use. Except as otherwise expressly provided in Section 1 of this EULA, you may only install and use one copy of the SOFTWARE PRODUCT on the COMPUTER.

SQL Server, Workstation System Installation and Use. If the SOFTWARE PRODUCT is SQL Server, Workstation System, the following applies to your installation and use of the SOFTWARE PRODUCT subject to the restrictions set forth in Section 2. For each Processor Version (defined below) supplied, the SOFTWARE PRODUCT consists of "Server Software", "Client Software", and "Development Tool" components. You may install and use one copy of one Processor Version of the Server Software component only on the COMPUTER. You may install the Client Software and Development Tool components of the SOFTWARE PRODUCT, regardless of Processor Version, on any number of your computers, provided there is only one copy of each Processor Version of each such component in use at any time.

Network Services. Except as may otherwise be provided below, if the SOFTWARE PRODUCT documentation indicates that the SOFTWARE PRODUCT includes functionality that enables the COMPUTER to share resources over a network with other computers or workstations, any number of computers or workstations may access or otherwise utilize the basic network services of SOFTWARE PRODUCT on the COMPUTER. The basic network services are more fully described in the printed materials accompanying the SOFTWARE PRODUCT and include file and print services and peer Web services.

Storage/Network Use. You may also store or install a copy of the computer software portion of the SOFTWARE PRODUCT on the COMPUTER to allow your other computers to use the SOFTWARE PRODUCT over an internal network, and distribute the SOFTWARE PRODUCT to your other computers over an internal network. However, you must acquire and dedicate a license for the SOFTWARE PRODUCT for each computer on which the SOFTWARE PRODUCT is used or to which it is distributed. A license for the SOFTWARE PRODUCT may not be shared or used concurrently on different computers.

Back-up Copy. If PC Manufacturer has not included a back-up copy of the SOFTWARE PRODUCT with the COMPUTER, you may make a single back-up copy of the computer software portion of the SOFTWARE PRODUCT. You may use the back-up copy solely for archival purposes. **Back-up Utility.** If the SOFTWARE PRODUCT includes a Microsoft back-up utility you may use it to make the single back-up copy described. After the single back-up copy is made, the backup utility will be permanently disabled.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.

Speech Recognition. If the SOFTWARE PRODUCT includes a speech recognition component, it should be understood by you that speech recognition is inherently a statistical process; that recognition errors are inherent in the process of speech recognition; that it is your responsibility to provide for handling such errors and to monitor the speech recognition process and correct any errors. Neither Manufacturer or its suppliers shall be liable for any damages arising out of errors in the speech recognition process.

Application Sharing with NetMeeting Conferencing Software. The SOFTWARE PRODUCT may contain technology that enables applications to be shared between two or more computers, even if an application is installed on only one of the computers. You may use this technology with all Microsoft products only for multi-party conferences. For non-Microsoft applications, you should consult the accompanying license agreement or contact the licensor to determine whether application sharing is permitted by the licensor. You must comply with all applicable laws regarding the use of the SOFTWARE PRODUCT.

FL AG 0001089
CONFIDENTIAL

HIGHLY CONFIDENTIAL

SQL Server, Workstation System if the SOFTWARE PRODUCT is SQL Server, Workstation System the following applies to your use of the SOFTWARE PRODUCT. Open Data Services. The Open Data Services component of the Server Software is licensed only for use with SQL Server and SQL Server extended stored procedures, and for developing and testing Open Data Services-based software applications. Any other use of the Open Data Services component, such as for general operation of (i) stand-alone gateways, or (ii) custom Open Data Services-based applications, requires a separate license even if they are run on the same computer as SQL Server. Run-Time Software - You have a limited nonexclusive, royalty-free right to reproduce and distribute those DB-Library, Net-Library and ODBC files included in Microsoft SQL Server which are required for run-time execution of compiled applications ("Run-Time Files") in conjunction with and as a part of your application software product that is created using the Microsoft SQL Server Server Software ("Application"), provided that: (a) you comply with the export restrictions in Section 6; (b) you do not use Microsoft's name, logo, or trademarks to market your Application; (c) you include a valid copyright notice in your Application; (d) if your Application contains ODBC files, (i) your Application must operate in conjunction with Microsoft SQL Server, and (ii) you agree to distribute all ODBC components specified in the README file in conjunction with your Application; (e) you do not charge separately for the Run-Time Files; (f) you do not modify the Run-Time Files; and (g) you agree to indemnify, hold harmless, and defend Microsoft, Manufacturer, and their suppliers from and against any claims or lawsuits, including attorneys' fees, that arise or result from the use or distribution of your Application. You shall display any patent or proprietary notices on each copy of your Application(s) that contains Run-Time Files, if an as required in the documentation or other materials provided with the SOFTWARE PRODUCT, or subsequently provided to you by Microsoft or Manufacturer.

Note On JAVA Support. The SOFTWARE PRODUCT may contain support for programs written in JAVA. JAVA technology is not fault tolerant and is not designed, manufactured, or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of JAVA technology could lead directly to death, personal injury, or severe physical or environmental damage.

Multiple Processor Version Selection. The CD or diskette(s) on which the SOFTWARE PRODUCT resides may contain several copies of the SOFTWARE PRODUCT, each of which is compatible with a different microprocessor architecture, such as the x86 architecture or various RISC architectures ("Processor Version(s)"). You may install and use only one copy of one Processor Version of the SOFTWARE PRODUCT on the COMPUTER.

Language Version Selection. Manufacturer may have elected to provide you with a selection of language versions for one or more of the Microsoft software products licensed under this EULA. If the SOFTWARE PRODUCT is included in more than one language version, you are licensed to use only one of the language versions provided. As part of the setup process for the SOFTWARE PRODUCT you will be given a one-time option to select a language version. Upon selection, the language version selected by you will be set up on the COMPUTER, and the language version(s) not selected by you will be automatically and permanently deleted from the hard disk of the COMPUTER.

Limitations on Reverse Engineering, Decompilation and Disassembly. You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

Separation of Components. The SOFTWARE PRODUCT is licensed as a single product. Its component parts may not be separated for use on more than one computer.

Single COMPUTER. The SOFTWARE PRODUCT is licensed with the HARDWARE as a single integrated product. The SOFTWARE PRODUCT may only be used with the HARDWARE as set forth in this EULA.

Single EULA. The package for the SOFTWARE PRODUCT may contain multiple versions of this EULA, such as multiple translations and/or multiple media versions (e.g., in the user documentation and in the software). In this case, you are only licensed to use one (1) copy of the SOFTWARE PRODUCT.

Rental. You may not rent, lease, or lend the SOFTWARE PRODUCT.

Software Transfer. You may permanently transfer all of your rights under this EULA only as part of a sale or transfer of the HARDWARE, provided you retain no copies, you transfer all of the SOFTWARE PRODUCT (including all component parts, the media and printed materials, any upgrades, this EULA and, if applicable, the Certificate(s) of Authenticity), and the recipient agrees to the terms of this EULA. If the SOFTWARE PRODUCT is an upgrade, any transfer must include all prior versions of the SOFTWARE PRODUCT.

Termination. Without prejudice to any other rights, Microsoft or Manufacturer may terminate your right to use the SOFTWARE PRODUCT under this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the SOFTWARE PRODUCT and all of its component parts.

3. **UPGRADES.** If the SOFTWARE PRODUCT is labeled as an upgrade, you must be properly licensed to use a product identified by Microsoft or Manufacturer as being eligible for the upgrade in order to use the SOFTWARE PRODUCT ("Eligible Product"). For the purpose of upgrade products only, "HARDWARE" shall mean the computer system or computer system component with which you received the Eligible Product. A SOFTWARE PRODUCT labeled as an upgrade replaces and/or

supplements the Eligible Product which came with the HARDWARE. You may use the upgraded product only in accordance with the terms of this EULA and only with the HARDWARE.

- 4. COPYRIGHT.** All title and copyrights in and to the SOFTWARE PRODUCT (including but not limited to any images, photographs, animations, video, audio, music, text and "applets," incorporated into the SOFTWARE PRODUCT), the accompanying printed materials, and any copies of the SOFTWARE PRODUCT, are owned by Microsoft or its suppliers. You may not copy the printed materials accompanying the SOFTWARE PRODUCT. All rights not specifically granted under this EULA are reserved by Microsoft.
- 5. SOFTWARE MEDIA.** You may receive the SOFTWARE PRODUCT in more than one medium. Regardless of the type or size of medium you receive, you may use only one medium that is appropriate for the COMPUTER. You may not use or install the other medium on another computer. You may not loan, rent, lease, or otherwise transfer the other medium to another user, except as part of the permanent transfer (as provided above) of the SOFTWARE PRODUCT.
- 6. EXPORT RESTRICTIONS.** You agree that neither you nor your customers intend to or will, directly or indirectly, export or transmit (i) the SOFTWARE PRODUCT or related documentation and technical data, or (ii) your Application, as described above in Section 2, developed with SQL Server Server software, or process, or service that is the direct product of the SOFTWARE PRODUCT to any country to which such export or transmission is restricted by any applicable U.S. regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the U.S. Department of Commerce, or such other governmental entity as may have jurisdiction over such export or transmission.

If SOFTWARE PRODUCT is labeled "North America Only Version" above, on the Product Identification Card, or on the SOFTWARE PRODUCT packaging or other written materials, then the following applies: The SOFTWARE PRODUCT is intended for distribution only in the United States and Canada. Export of the SOFTWARE PRODUCT from the United States is regulated by the International Traffic in Arms Regulations (ITAR, 22 CFR 120-130) of the U.S. State Department, Office of Defense Trade Controls. A State Department license is required to export the SOFTWARE PRODUCT outside the United States or Canada. You agree that you will not directly or indirectly, export or re-export the SOFTWARE PRODUCT (or portions thereof) to any country, other than Canada, or to any person, entity or end user subject to U.S. export restrictions without first obtaining a State Department export license. You warrant and represent that neither the U.S. State Department Office of Defense Trade Controls nor any other U.S. federal agency has suspended, revoked or denied your export privileges.

- 7. PRODUCT SUPPORT.** Product support for the SOFTWARE PRODUCT is not provided by Microsoft or its subsidiaries. For product support, please refer to Manufacturer's support number provided in the documentation for the HARDWARE. Should you have any questions concerning this EULA, or if you desire to contact Manufacturer for any other reason, please refer to the address provided in the documentation for the HARDWARE.

FOR THE LIMITED WARRANTIES AND SPECIAL PROVISIONS PERTAINING TO YOUR PARTICULAR JURISDICTION, PLEASE REFER TO THE WARRANTIES INCLUDED BELOW OR PROVIDED WITH THE SOFTWARE PRODUCT PRINTED MATERIALS.

APPENDIX
WARRANTY AND SPECIAL PROVISIONS
FOR
THE UNITED STATES OF AMERICA AND ANY OTHER COUNTRY

LIMITED WARRANTY

LIMITED WARRANTY. PC Manufacturer warrants that (a) the SOFTWARE will perform substantially in accordance with the accompanying written materials for a period of ninety (90) days from the date of receipt, and (b) any Microsoft hardware accompanying the SOFTWARE will be free from defects in materials and workmanship under normal use and service for a period of one (1) year from the date of receipt. Any implied warranties on the SOFTWARE and Microsoft hardware are limited to ninety (90) days and one (1) year, respectively. Some states/jurisdictions do not allow limitations on duration of an implied warranty, so the above limitation may not apply to you.

CUSTOMER REMEDIES. PC Manufacturer's and its suppliers' entire liability and your exclusive remedy shall be, at PC Manufacturer's option, either (a) return of the price paid, or (b) repair or replacement of the SOFTWARE or hardware that does not meet this Limited Warranty and which is returned to PC Manufacturer with a copy of your receipt. This Limited Warranty is void if failure of the SOFTWARE or hardware has resulted from accident, abuse, or misapplication. Any replacement SOFTWARE or hardware will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

NO OTHER WARRANTIES. To the maximum extent permitted by applicable law, PC Manufacturer and its suppliers disclaim all other warranties, either express or implied, including, but not limited to implied warranties of merchantability and fitness for a particular purpose, with regard to the SOFTWARE, the accompanying written materials, and any accompanying hardware. This limited warranty gives you specific legal rights. You may have others which vary from state/jurisdiction to state/jurisdiction.

NO LIABILITY FOR CONSEQUENTIAL DAMAGES. To the maximum extent permitted by applicable law, in no event shall PC Manufacturer or its suppliers be liable for any damages whatsoever (including without limitation, special, incidental, consequential, or indirect damages for personal injury, loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the use of or inability to use this product, even if PC Manufacturer has been advised of the possibility of such damages. In any case, PC Manufacturer's and its suppliers' entire liability under any provision of this agreement shall be limited to the amount actually paid by you for the SOFTWARE and/or Microsoft hardware. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to you.

SPECIAL PROVISIONS

U.S. GOVERNMENT RESTRICTED RIGHTS. The SOFTWARE PRODUCT and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software—Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Microsoft Corporation/One Microsoft Way/Redmond, WA 98052-6399.

If you acquired the SOFTWARE in the United States of America, this Software License Agreement and Warranty are governed by the laws of the State of Washington, U.S.A. If you acquired the SOFTWARE outside the United States of America, local law may apply.

Exhibit to the License Agreement dated April 1, 1997, between MICROSOFT CORPORATION and COMPAQ COMPUTER CORPORATION.

EXHIBIT B1
MINIMUM COMMITMENT PAYMENTS

COMPAQ agrees to pay a minimum of Nine Hundred Thousand and No/100 Dollars (US\$900,000.00) for Product(s) licensed in Exhibit C2 as described below. The Minimum Commitment Schedule listed below sets forth the minimum cumulative amounts of payments which COMPAQ shall make to MS during the term of the Agreement. To the extent that actual earned royalties exceed the cumulative minimum commitment payments, COMPAQ shall pay MS for actual earned royalties. To the extent that cumulative minimum commitment payments exceed actual earned royalties, such excess shall be known as prepaid royalties and shall be recoupable against future earned royalties only during the Initial Term of this Agreement and only for the Product(s) licensed in Exhibit C2. All minimum commitment payments are not refundable. Prepaid royalties are not recoupable against payments made to an Authorized Reseller for copies of Product, or APM, etc. ordered by COMPAQ.

MINIMUM COMMITMENT SCHEDULE

<u>Date</u>	<u>Payment Amount (US\$)</u>	<u>Cumulative Amount of Payments for Period (US\$)</u>
Signing of this Agreement (payment due upon signing)	\$450,000.00	\$450,000.00
31 st July 1997 (FIRST PAYMENT DATE)	\$450,000.00	\$900,000.00
Total Minimum Commitment	<u>\$900,000.00</u>	<u>\$900,000.00</u>

Exhibit to the License Agreement dated April 1, 1997, between MICROSOFT CORPORATION and COMPAQ COMPUTER CORPORATION.

FL AG 0001093
CONFIDENTIAL

HIGHLY CONFIDENTIAL

**EXHIBIT C1
APPLICATION PRODUCTS**

MICROSOFT PRODUCT TABLE

Product Number	Product Name and Version	Licensed Language Version(s)**	Applicable Additional Provisions	Per System Royalty *	Per Copy Royalty *
1.	Works 4.0 for Windows 95 Money 97 for Windows 95 Encarta 97 Encyclopedia (MPEG) Bookshelf 96-97 Creative Writer 2.0	EN	(a), (b), (c), (e)	US\$2.75	N/A
2.	Works 4.0 for Windows 95 Money 97 for Windows 95 Encarta 97 Encyclopedia (MPEG) Bookshelf 96-97 Creative Writer 2.0	EN	(a), (b), (c), (e)	US\$4.50	N/A
3.	Works 4.0 for Windows 95 Money 97 for Windows 95 Encarta 97 World Atlas for Windows 95 Creative Writer 2.0 Soccer 1.0	EN, XT, ZH, DA, NL, XZ, XA, FI, FR, XD, DE, IT, JA, KO, NO, XC, ES, SV, TH	(a), (b), (d), (f)	US\$3.75	N/A
4.	Works 4.0 for Windows 95 Money 97 for Windows 95 Encarta 97 World Atlas for Windows 95 Creative Writer 2.0 Soccer 1.0	EN, XT, ZH, DA, NL, XZ, XA, FI, FR, XD, DE, IT, JA, KO, NO, XC, ES, SV, TH	(a), (b), (d), (f)	US\$5.00	N/A
5.	Plus! 1.0 for Windows 95	EN	(a), (b)	US\$1.00	N/A

* A Product is not licensed hereunder unless royalty rate(s) are indicated in the Product table and the Product is indicated as licensed for one or more Customer Systems in the Customer System table of this Exhibit C.

** Language Version Key: EN=English, XT=Chinese (Simplified), ZH=Chinese (Traditional), DA=Danish, NL=Dutch, XZ=International English (UK), XA=English (Australian), FI=Finnish, FR=French, XD=French (Canadian), DE=German, IT=Italian, JA=Japanese, KO=Korean (Hangul), NO=Norwegian, XC=Portuguese (Brazilian), ES=Spanish, SV=Swedish, TH=Thai.

PRODUCT DELIVERABLES:

- (a) OEM Distribution Kit consisting of Product in object code form and install utilities. MS may substitute a copy of retail Product if such OEM Distribution Kit is not available.
- (b) Single copy of Product documentation for support purposes only.
- (c) Electronic copy of Product documentation (including graphics files) for adaptation purposes only as described in Section 2(c) of the Agreement.

PRODUCT SPECIFICATIONS:

The Product will have features as specified in the above-referenced Product documentation.

ROYALTY PAYMENTS AND REPORTING REQUIREMENTS:

Except as provided for in Section 3(d) of the Agreement, COMPAQ agrees to pay MS a royalty, at one of the applicable rates set forth above, multiplied by the greater of the number of (i) Customer System(s) identified under Customer Systems below, net of returns, shipped or placed in use by COMPAQ or (ii) Product(s) shipped or placed in use by or for COMPAQ. Notwithstanding anything to the contrary in Section 2(a)(iv), payment of such royalty shall entitle COMPAQ to ship a single copy of the Product(s) listed under MICROSOFT PRODUCT TABLE above with each Customer System, per terms of the Agreement. Royalty is exclusive of cost of goods (i.e. cost of media and/or documentation, APM, etc.) to be paid by COMPAQ to Authorized Replicator(s).

ADDITIONAL PROVISIONS KEY

(a) The following provisions shall apply to all Products listed in this Exhibit C:

(1) Preinstallation

The above royalties require that COMPAQ distribute the Products preinstalled on all Customer Systems.

COMPAQ may include Products on a Recovery CD-ROM (QuickRestore CD) that employs a BIOS checking mechanism provided that COMPAQ

- (i) supplies MS with a Recovery CD-ROM Bill of Materials (BOM) and selected Authorized Replicator for each Recovery CD-ROM planned.
- (ii) supplies MS with copies of all artwork and software masters prior to MS assigning a tracking number.
- (iii) prints the MS assigned tracking number on each Recovery CD-ROM provided that MS supplies such tracking number to COMPAQ within a reasonable time.
- (iv) prints appropriate MS Copyright and Trademark identification on each Recovery CD-ROM as follows: "Portions © 1981-1997 Microsoft Corporation. All rights reserved."
- (v) includes language similar to "For Distribution only with a new Compaq PC" on each Recovery CD-ROM and as part of the overall Recovery CD-ROM packaging.

Any changes to the BOM other than the addition/subtraction of non-MS Product require review by MS and may result in a new tracking number.

All Product documentation, backup media and Recovery CD-ROMs (QuickRestore CD) shall be provided only by an Authorized Replicator.

(2) Technical Support for COMPAQ Customers

The above Product royalties require that COMPAQ's Product documentation and/or Customer System documentation shall advise end users that the Product(s) is supported by Compaq (or for COMPAQ by a third party) and shall include COMPAQ's (or other's) telephone support number for the Product(s).

- (b) Products which are labeled "North America Only Version" (i.e. US English version of Money 97 for Windows 95) may only be distributed within the USA and Canada. If Product is labeled "North America Only Version" on the Product packaging or other written materials, then the following applies: The Product is intended for distribution only in the United States and Canada. At the time of this Agreement export of the Product from the United States is regulated by the International Traffic in Arms Regulations (ITAR, 22 CFR 120-130) of the U.S. State Department Office of Defense Trade Controls. A State Department license is required to export the Product outside of the United States or Canada. COMPAQ agrees that it will not directly or indirectly, export or re-export the Product (or portions thereof) to any country, other than Canada or to any person, entity or end user subject to U.S. Export restrictions without first obtaining a State Department export license. You warrant and represent that neither the U.S. State Department Office of Defense Trade Controls nor any other U.S. federal agency has suspended, revoked or denied your export privileges. Effective January 1, 1997, the U.S. government will transfer export jurisdiction of the Product to the Export Administration Regulations (EAR, 15 CFR 730-799) of the U.S. Commerce Department Bureau of Export Administration. COMPAQ acknowledges that the transfer of jurisdiction may have no effect on the export control of the Product and that the restrictions of this paragraph will remain unchanged.
- (c) COMPAQ may substitute Money 95 for Windows 95 Product (US English) for Money 97 for Windows 95 Product (US English) for Customer Systems manufactured outside of North America and subsequently imported for end customer purchase inside North America in the event that COMPAQ does not have a proper U.S. State Department or U.S. Commerce Department license per Special Provision (b) above.
- (d) COMPAQ may substitute Encarta 97 Encyclopedia for Windows 95 Product (US English) for Encarta 97 World Atlas for Windows 95 Product.
- (e) Notwithstanding anything to the contrary in Section 2(a) of the Agreement or under Royalty Payments and Reporting Requirements above, COMPAQ may ship Works 4.0 for Windows 95 preinstalled in both US English and French language versions as part of a Windows 95 dual language preinstall, provided that once the user has selected a Windows 95 language, the copy of Works 4.0 for Windows 95 in the non-selected language will be automatically and permanently removed from the hard disk drive.
- (f) Notwithstanding anything to the contrary in Section 2(a) of the Agreement or under Royalty Payments and Reporting Requirements above, COMPAQ may ship Works 4.0 for Windows 95 and Money 97 for Windows 95 preinstalled in both Dutch and French or French and German language versions as part of a Windows 95 dual language preinstall, provided that once the user has selected a Windows 95 language, the copies of Works 4.0 for Windows 95 and Money 97 for Windows 95 in the non-selected language will be automatically and permanently removed from the hard disk drive.

CUSTOMER SYSTEMS

COMPAQ's Customer Systems shall be the assembled computer systems described in the table below which (i) are configured for use only by a single user; and (ii) include at least a CPU, a motherboard, a power supply, and a case. For each Product which COMPAQ chooses to license for distribution with the listed Customer System, the letter "S" or "C" in the relevant box indicates whether COMPAQ is licensing the Product on a "per system" or "per copy" basis, respectively. New models may be added by agreement of the parties.

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

Product Number Key: Please refer to the Product Number in the Microsoft Product Table above.

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

CUSTOMER SYSTEM TABLE

Model Name, Model Number, Model Line, or Model Description	Processor Type	Product Number							
		1	2	3	4	5	6	7	8
Presario 12xx Series known within COMPAQ as "Road Warriors Lite" and shipped into North America (United States and Canada)	Pentium or Pentium II		S						
Presario 12xx Series known within COMPAQ as "Road Warriors Lite" and shipped outside of North America (United States and Canada)	Pentium or Pentium II				S				
Presario 16xx Series known within COMPAQ as "Road Warriors" and shipped into North America (United States and Canada)	Pentium or Pentium II		S						
Presario 16xx Series known within COMPAQ as "Road Warriors" and shipped outside of North America (United States and Canada)	Pentium or Pentium II				S				
Presario 22xx Series known within COMPAQ as "Conquest" and shipped into North America (United States and Canada)	Cyrix Media GX	S							
Presario 22xx Series known within COMPAQ as "Conquest" and shipped outside of North America (United States and Canada)	Cyrix Media GX			S					
Presario 42xx Series known within COMPAQ as "Commando" and shipped into North America (United States and Canada)	Pentium or Pentium II	S							
Presario 42xx Series known within COMPAQ as "Commando" and shipped outside of North America (United States and Canada)	Pentium or Pentium II			S					
Presario 45xx Series known within COMPAQ as "Terminator" and shipped into North America (United States and Canada)	Pentium or Pentium II	S							
Presario 45xx Series known within COMPAQ as "Terminator" and shipped outside of North America (United States and Canada)	Pentium or Pentium II			S					
Presario 48xx Series known within COMPAQ as "Warriors" and shipped into North America (United States and Canada)	Pentium or Pentium II		S						
Presario 48xx Series known within COMPAQ as "Warriors" and shipped outside of North America (United States and Canada)	Pentium or Pentium II				S				
PC Theater Series	Pentium or Pentium II					S			

Exhibit to the License Agreement dated April 1, 1997, between MICROSOFT CORPORATION and COMPAQ COMPUTER CORPORATION.

EXHIBIT C1
OFFICE PRODUCTS

MICROSOFT PRODUCT TABLE

<u>Product Number</u>	<u>Product Name and Version</u>	<u>Licensed Language Version(s)**</u>	<u>Applicable Additional Provisions</u>	<u>Per System Royalty *</u>	<u>Per Copy Royalty *</u>
I.	Office 97 Small Business Edition	XZ	(a), (b), (c), (d), (e), (f), (g)	US\$150.00	N/A

* A Product is not licensed hereunder unless royalty rate(s) are indicated in the Product table and the Product is indicated as licensed for one or more Customer Systems in the Customer System table of this Exhibit C.

** Language Version Key: EN=English, XT=Chinese (Simplified), ZH=Chinese (Traditional), DA=Danish, NL=Dutch, XZ=International English (UK), XA=English (Australian), FI=Finnish, FR=French, XD=French (Canadian), DE=German, IT=Italian, JA=Japanese, KO=Korean (Hangul), NO=Norwegian, XC=Portuguese (Brazilian), ES=Spanish, SV=Swedish, TH=Thai.

PRODUCT DELIVERABLES:

- (d) OEM Distribution Kit consisting of Product in object code form and install utilities. MS may substitute a copy of retail Product if such OEM Distribution Kit is not available.
- (e) Single copy of Product documentation for support purposes only.
- (f) Electronic copy of Product documentation (including graphics files) for adaptation purposes only as described in Section 2(c) of the Agreement.

PRODUCT SPECIFICATIONS:

The Product will have features as specified in the above-referenced Product documentation.

ROYALTY PAYMENTS AND REPORTING REQUIREMENTS:

Except as provided for in Section 3(d) of the Agreement, COMPAQ agrees to pay MS a royalty, at one of the applicable rates set forth above, multiplied by the greater of the number of (i) Customer System(s) identified under Customer Systems below, net of returns, shipped or placed in use by COMPAQ or (ii) Product(s) shipped or placed in use by or for COMPAQ. Notwithstanding anything to the contrary in Section 2(a)(iv), payment of such royalty shall entitle COMPAQ to ship a single copy of the Product(s) listed under MICROSOFT PRODUCT TABLE above with each Customer System, per terms of the Agreement. Royalty is exclusive of cost of goods (i.e. cost of media and/or documentation, APM, etc.) to be paid by COMPAQ to Authorized Replicator(s).

ADDITIONAL PROVISIONS KEY

- (a) The following provisions shall apply to all Products listed in this Exhibit C:

- (1) Preinstallation

The above royalties require that COMPAQ distribute the Products preinstalled on all Customer Systems. COMPAQ 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. COMPAQ 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, COMPAQ shall not modify the Product software, nor delete or remove any features or functionality without the prior written approval of MS in each instance.

COMPAQ may include Products on a Recovery CD-ROM (QuickRestore CD) that employs a BIOS checking mechanism provided that COMPAQ

- (vi) supplies MS with a Recovery CD-ROM Bill of Materials (BOM) and selected Authorized Replicator for each Recovery CD-ROM planned,
- (vii) supplies MS with copies of all artwork and software masters prior to MS assigning a tracking number,
- (viii) prints the MS assigned tracking number on each Recovery CD-ROM provided that MS supplies such tracking number to COMPAQ within a reasonable time.

FL AG 0001097
CONFIDENTIAL

HIGHLY CONFIDENTIAL

- (ix) prints appropriate MS Copyright and Trademark identification on each Recovery CD-ROM as follows: "Portions © 1981-1997 Microsoft Corporation. All rights reserved."
- (x) includes language similar to "For Distribution only with a new Compaq PC" on each Recovery CD-ROM and as part of the overall Recovery CD-ROM packaging.

Any changes to the BOM other than the addition/subtraction of non-MS Product require review by MS and may result in a new tracking number.

All Product documentation, backup media and Recovery CD-ROMs (QuickRestore CD) shall be provided only by an Authorized Replicator.

(2) Technical Support for COMPAQ Customers

The above Product royalties require that COMPAQ's Product documentation and/or Customer System documentation shall advise end users that the Product(s) is supported by Compaq (or for COMPAQ by a third party) and shall include COMPAQ's (or other's) telephone support number for the Product(s).

COMPAQ shall provide a link on COMPAQ's support and marketing web site(s) to the web page for Product(s) at MS' web site (<http://www.microsoft.com>)

(3) Term of Exhibit C2

The Product(s) described in this Exhibit C2 are licensed for the purpose of a limited market test. Notwithstanding anything to the contrary in Section 9 of the Agreement, COMPAQ's license rights to Product(s) in this Exhibit C2 shall be effective from July 1, 1997 through September 30, 1997. MS shall have no obligation to renew these license rights upon expiration.

In the event that this limited market test is deemed successful by both COMPAQ and MS, MS agrees to negotiate with COMPAQ in good faith to enter into a separate license agreement to distribute the Product(s), subject to terms and conditions to be agreed upon by both parties.

- (b) (1) Except for accurate informational references to and descriptions of the Product(s), and accurate reproductions or depictions of the Product(s) front packaging, MS expressly prohibits any use of the Product(s) contents (e.g., photographs, video, audio, screen shots, etc.) and associated packaging in connection with COMPAQ distribution of the Product(s), including, without limitation, advertising and promotional use.
- (2) If MS provides COMPAQ with a marketing materials kit for Product ("Marketing Materials Kit"), then COMPAQ is authorized to use materials contained in Marketing Materials Kit for promotional purposes provided that:
 - (A) Use is in compliance with the guidelines provided in Marketing Materials Kit;
 - (B) COMPAQ's promotion of Product(s) shall be restricted to the guidelines provided in Marketing Materials Kit and subsection (b)(1) above;
 - (C) Use is confined to the advertising and promotion of Customer Systems licensed for and distributed with Product; and
 - (D) COMPAQ agrees to cease use of the Marketing Materials Kit and cease any promotion for Product(s) upon expiration or termination of COMPAQ's license for this Product
- (3) With respect to advertising that includes those Customer Systems distributed with Product(s), COMPAQ shall refer to the relevant Product names and place accurate reproductions or depictions of the Product's front packaging in point of purchase materials, print advertising, packaging, and marketing collateral.
- (c) Notwithstanding anything to the contrary contained in Section 2, COMPAQ must distribute Product documentation as supplied by an Authorized Replicator 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. COMPAQ may not adapt, translate, or otherwise modify Product documentation.
- (d) COMPAQ may distribute Product(s) only within the geographical boundaries of the United Kingdom (England, Scotland, Wales, Ireland).
- (e) (1) COMPAQ may only distribute Product(s) directly to end user customers through the COMPAQ "Home and Office" direct sales channel; COMPAQ may not offer Customer Systems with Product(s) through COMPAQ's distributor, reseller, or dealer channels.
- (2) COMPAQ shall include as licensed Customer Systems for this Product in the table below only those Customer Systems which are marketed and distributed by COMPAQ directly to small business and home/consumer customers. For purposes of this Exhibit C2, a small business shall be a business entity employing 100 or fewer employees. Computer systems marketed or distributed to other channels are not licensed for the Product under this Exhibit C2.

FL AG 0001098
CONFIDENTIAL

HIGHLY CONFIDENTIAL

- (f) 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 MS Account Manager assigned to COMPAQ.
- (g) (1) Notwithstanding anything to the contrary in Section 7(c) of the Agreement, COMPAQ's use of the Product or Product family Logo shall be subject to the restrictions and guidelines described in the Logo Guidelines for such Logo provided by MS.
- (2) The royalty rate(s) specified above for Product(s) are based on COMPAQ's Agreement, according to the restrictions and guidelines contained in the Logo Guidelines, to place the Product or Product family Logo on all point of purchase materials, print advertising, packaging, and marketing collateral that include those Customer Systems distributed with Product(s).

CUSTOMER SYSTEMS

COMPAQ's Customer Systems shall be the assembled computer systems described in the table below which (i) are configured for use only by a single user; and (ii) include at least a CPU, a motherboard, a power supply, and a case. For each Product which COMPAQ chooses to license for distribution with the listed Customer System, the letter "S" or "C" in the relevant box indicates whether COMPAQ is licensing the Product on a "per system" or "per copy" basis, respectively. New models may be added by agreement of the parties.

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

Product Number Key: Please refer to the Product Number in the Microsoft Product Table above.

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

CUSTOMER SYSTEM TABLE

Model Name, Model Number, Model Line, or Model Description	Processor Type	Product Number								
		1	2	3	4	5	6	7	8	
Presario 2xxx Series known within COMPAQ as "Conquest" and shipped into the United Kingdom (England, Scotland, Wales, Ireland)	Cyrix Media GX	S								

Exhibit to the License Agreement dated April 1, 1997, between MICROSOFT CORPORATION and COMPAQ COMPUTER CORPORATION.

FL AG 0001099
CONFIDENTIAL

HIGHLY CONFIDENTIAL

EXHIBIT I
COMPAQ USE OF THIRD PARTY INSTALLERS

Except as expressly provided in this Exhibit I, COMPAQ 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 COMPAQ premises by COMPAQ employees. COMPAQ may engage a third party installer specifically approved in writing by MS ("Third Party Installer") to install the Product Software for COMPAQ on the Customer System hard disk pursuant to Section 2(a)(ii) and/or place the Product packages inside the Customer System packaging provided that all of the conditions listed below are and remain satisfied.

(a) COMPAQ shall provide MS with the name and address of any Third Party Installer COMPAQ intends to engage for installation of the Product(s).

(b) COMPAQ 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 is substantially similar to Attachment I to this Exhibit I.

(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, COMPAQ shall require the Authorized Replicator to place COMPAQ's name on a conspicuous location on each Product package delivered to the

Third Party Installer by or on behalf of COMPAQ.

(d) COMPAQ hereby indemnifies MS for all damages (including reasonable attorney's fees) of any kind in connection with the Third Party Installer's activities for COMPAQ, 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 by the Third Party Installer of any portion of the Product delivered by COMPAQ or by Authorized Replicator on behalf of COMPAQ.

(e) Within thirty (30) days of COMPAQ's execution of the Installation Agreement with each Third Party Installer, COMPAQ shall provide a copy of such agreement to MS at the address for notices specified in Section 15 of the Agreement. If the Installation Agreement is not completed in the English language, COMPAQ shall also provide an accurate and complete English translation thereof.

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

(g) Sections (d) and (e) of this Exhibit I shall survive any termination or expiration of this Exhibit I.

Exhibit to the License Agreement dated April 1, 1997, between MICROSOFT CORPORATION and COMPAQ COMPUTER CORPORATION.

FL AG 0001100
CONFIDENTIAL

HIGHLY CONFIDENTIAL

Attachment 1 to Exhibit I

**COMPAQ COMPUTER CORPORATION
PREINSTALLATION AGREEMENT**

This Preinstallation Agreement ("Agreement") is made and entered into this ____ day of _____, 19__ ("Effective Date") by and between COMPAQ COMPUTER CORPORATION, a Delaware corporation ("COMPAQ") and _____, a _____ corporation ("INSTALLER").

RECITALS

Whereas, COMPAQ is licensee to certain software owned by Microsoft Corporation ("MS") under OEM License Agreement #1107-6292 dated October 1, 1996 ("MS/COMPAQ License Agreement"); and

Whereas, COMPAQ desires to have INSTALLER preinstall certain MS licensed software described in Attachment A to this Agreement (the "Product(s)") in the ROM of COMPAQ's handheld computing devices; and

Whereas, under the MS/COMPAQ License Agreement, COMPAQ is required to contractually obligate, in writing, third parties to comply with specific terms and conditions relating to installation of licensed software.

Now, Therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. License Grant.

a. Subject to the terms and conditions of this Agreement, COMPAQ grants to INSTALLER a non-exclusive, nontransferable, worldwide license right to only preinstall the Product(s) in object code form on the hard disk of COMPAQ's personal computers identified in Attachment B ("COMPAQ Customer Systems") to this Agreement.

b. COMPAQ shall make reasonable efforts to ensure INSTALLER's compliance with the terms and conditions imposed on COMPAQ by MS/COMPAQ License Agreement.

2. License Restrictions. The license rights granted to INSTALLER are subject to the following restrictions:

a. INSTALLER shall not reverse engineer, decompile or disassemble any Product(s).

b. INSTALLER shall only preinstall Product(s) on COMPAQ's Customer System(s).

c. INSTALLER shall perform preinstallation of Product(s) only on INSTALLER's premises by INSTALLER employees.

**FL AG 0001101
CONFIDENTIAL**

HIGHLY CONFIDENTIAL

3. Intellectual Property Notices.

a. INSTALLER will not remove any copyright, trademark or patent notice that appears on the Product(s) as delivered by COMPAQ.

b. The parties agree that this Agreement will terminate if INSTALLER violates MS' intellectual property rights as provided herein.

4. Confidentiality. INSTALLER expressly undertakes to retain in confidence all information and know-how transmitted to INSTALLER by COMPAQ that COMPAQ has identified as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential to COMPAQ or MS, and will make no use of such information and know-how except under the terms and during the existence of this Agreement. However, INSTALLER shall have no obligation to maintain the confidentiality of information that is independently developed by INSTALLER. Further, INSTALLER may disclose confidential information as required by governmental or judicial order, provided INSTALLER gives COMPAQ prompt notice of such order and complies with any protective order (or equivalent) imposed on such disclosure. INSTALLER shall treat all Product adaptation materials (including source code) as confidential information and shall not disclose, disseminate or distribute such materials to any third party without COMPAQ's and/or MS' prior written permission. INSTALLER shall treat the terms and conditions of this Agreement as confidential; however, INSTALLER may disclose such information in confidence to its immediate legal and financial consultants as required in the ordinary course of INSTALLER's business. INSTALLER's obligation under this Section 4 shall extend until the earlier of such time as the information protected hereby is in the public domain through no fault of INSTALLER or ten (10) years following termination or expiration of this Agreement.

5. Audits.

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

b. COMPAQ or MS may cause an audit to be made of the applicable INSTALLER records and facilities in order to verify INSTALLER's compliance with the terms of this Agreement and to verify statements issued by INSTALLER and prompt adjustment shall be made to compensate for any errors or omissions disclosed by such audit. Any such audit shall be conducted by an independent certified public accountant selected by COMPAQ or MS (other than on a contingent fee basis) and shall be conducted during regular business hours at INSTALLER's offices and in such a manner as not to interfere with INSTALLER's normal business activities. Any such audit shall be paid for by COMPAQ or MS unless material discrepancies are disclosed. "Material" shall mean the lesser of Ten Thousand Dollars (US\$10,000.00) or five percent (5%) of the amount that was reported. If Material discrepancies are disclosed, INSTALLER agrees to pay COMPAQ or MS for the costs associated with the audit. In no event shall audits be made more frequently than semi-annually unless the immediately preceding audit discloses a Material discrepancy.

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

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

FL AG 0001102
CONFIDENTIAL

HIGHLY CONFIDENTIAL

6. **Reports to MS.** Upon request by MS, INSTALLER shall report promptly to MS by Customer System and Product(s), (i) the number of Customer Systems received from (or manufactured for) COMPAQ during the preceding calendar quarter(s), and (ii) the number of copies of Product(s) preinstalled for COMPAQ on such Customer Systems.

7. **Term.** This Agreement shall commence on the Effective Date and continue until the earlier of termination or expiration of the MS/COMPAQ License Agreement or termination or expiration of this Agreement as agreed by COMPAQ and INSTALLER or as provided in Section 3(b) of this Agreement.

8. **Obligations Upon Termination.** Within thirty (30) days after earlier of: (i) termination or expiration of this Agreement; or (ii) notice to INSTALLER from COMPAQ of termination or expiration of the MS/COMPAQ License Agreement, INSTALLER shall return the preinstallation "master" and any Product(s) in its possession or under its control to COMPAQ. From and after termination or expiration, INSTALLER shall not use internally nor employ any Product(s) as part or portion of any product that INSTALLER may use, sell, assign, lease, license or transfer to third parties. INSTALLER shall cease and desist from all use of any Product(s) name(s) and associated trademark(s) and, upon request, deliver to COMPAQ or its authorized representatives or destroy all material upon which the Product(s) name(s) and the associated trademark(s) appear.

9. **MS Intended Third Party Beneficiary.** INSTALLER hereby acknowledges that MS is an intended third party beneficiary of this Agreement with rights to enforce any of the terms and conditions contained herein.

10. **Attorneys' Fees.** INSTALLER agrees to pay COMPAQ's or MS' attorneys' fees if COMPAQ or MS employ attorneys to enforce any rights of this Agreement.

In Witness Whereof, the parties have executed this Agreement as of the date set forth above. All signed copies of this Agreement shall be deemed originals.

COMPAQ COMPUTER CORPORATION

INSTALLER Name

By (Signature)

By (Signature)

Name (Print)

Name (Print)

Title

Title

FL AG 0001103
CONFIDENTIAL

HIGHLY CONFIDENTIAL

**EXHIBIT R
ROYALTY REPORT**

COMPANY NAME: _____
 LICENSE #: _____
 REPORTING PERIOD: _____
 REPORT DUE: _____

Customer System		Prod.1	Prod.2	Prod.3	Prod.4	Prod.5	Prod.6	Prod.7
Model Name or Model Number	Product Units / Royalty Type							
1	"Per System" units							
	"Per Copy" units							
2	"Per System" units							
	"Per Copy" units							
3	"Per System" units							
	"Per Copy" units							
4	"Per System" units							
	"Per Copy" units							
5	"Per System" units							
	"Per Copy" units							
6	"Per System" units							
	"Per Copy" units							
7	"Per System" units							
	"Per Copy" units							
8	"Per System" units							
	"Per Copy" units							
9	"Per System" units							
	"Per Copy" units							
10	"Per System" units							
	"Per Copy" units							
SUMMARY								
Total Units	"Per System" units	0	0	0	0	0	0	0
	"Per Copy" units	0	0	0	0	0	0	0

Enter the number of localized version units shipped for each Microsoft Product							

FL AG 0001104
CONFIDENTIAL

EXHIBIT R
(Continued)
Dollar Recap

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

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

Please send report to:
Microsoft Corporation
OEM Accounting Services
FAX: (1) 206-936-5298

Total Reported	\$0.00
-----------------------	---------------

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.

Report completed by:

_____ Signature	_____ Date
_____ Print name and title	_____ Telephone Number

FL AG 0001105
CONFIDENTIAL

EXHIBIT R
(Continued)
Dollar Recap

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

Product 2									
<i>"Per System" Activity</i>				<i>"Per Copy" Activity</i>					
<u>Units</u>	<u>Royalty</u>	<u>Quantity</u>	<u>Amount Due</u>	<u>Units</u>	<u>Royalty</u>	<u>Quantity</u>	<u>Amount Due</u>		
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		
<i>Localized Version Activity</i>									
	<u>Royalty</u>	<u>Quantity</u>	<u>Amount Due</u>						
	\$0.00	0	\$0.00						
Product Total									\$0.00

Please send report to:
 Microsoft Corporation
 OEM Accounting Services
 FAX: (1) 206-936-5298

Total Reported	\$0.00
-----------------------	--------

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.

Report completed by:

_____	_____
Signature	Date
_____	_____
Print name and title	Telephone Number

Exhibit to the License Agreement dated April 1, 1997, between MICROSOFT CORPORATION and COMPAQ COMPUTER CORPORATION.

FL AG 0001106
CONFIDENTIAL

HIGHLY CONFIDENTIAL