

MICROSOFT OEM LICENSE AGREEMENT  
FOR DESKTOP OPERATING SYSTEMS

# M001-5236 dated August 24, 1995

with INTERNATIONAL BUSINESS MACHINES, a corporation of New York.



This License Agreement ("Agreement") is made and entered into as of the date first set forth above ("Effective Date"), by and between MICROSOFT CORPORATION, a Washington, U.S.A. corporation, ("MS"), and the company specified above ("IBM").

1. DEFINITIONS.

(a) "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 from time to time which IBM shall acquire from an Authorized Replicator.

(b) "Authorized Replicator" shall mean a third party approved by MS from which IBM shall acquire Product reproduced in accordance with MS specifications. MS shall provide IBM with a list of Authorized Replicators and shall notify IBM from time to time of changes to this list.

(c) "Subsidiary" shall mean a company, corporation or other entity 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, directly or indirectly, by IBM, or in the case of a company or other entity which does not have outstanding shares or securities as may be the case in a partnership, joint venture, or unincorporated association, more than fifty percent (50%) of the ownership interest representing the right to make the decisions for such corporation, company, or other entity, but only so long as such ownership or control exists. IBM shall provide MS annual written notice of the name and address of each such Subsidiary and at such other time(s) upon MS' written request and not more than once a year.

(d) "Customer System" shall mean IBM's and IBM Subsidiaries computer system product(s) which are marketed under IBM's or IBM Subsidiaries' brand names and trademarks.

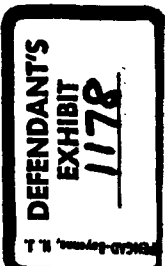
Unless otherwise expressly specified in the applicable Exhibit C, a Customer System shall be an assembled computer system which (i) is configured for use only by a single user (this configuration shall not preclude access by other users over a network/dial-in line via use of networking features in the Product); (ii) is designed to use a video display and keyboard and/or other input/output devices; and (iii) includes at least a CPU, a motherboard, a power supply, and a case. A "Designated Customer System" shall mean any Customer System listed (from time to time) on Exhibit C for which a per system royalty is due. Designated Customer Systems may differ from non-Designated Customer Systems solely because such Customer Systems have different software configurations.

(e) "Product" shall mean the copyrighted and/or patented MS product(s) (including, where applicable, Product software in object code form, Product documentation, APM, and Product hardware) identified in the attached Exhibit(s) C. Only those Product(s) for which royalty rate(s) and Customer System(s) are specified in the applicable Exhibit C are licensed under this Agreement.

(f) "Product Deliverables" shall mean (i) Product software in object code form (ii) installation utilities, if applicable, (iii) a single copy of Product documentation; and (iv) any other deliverables identified in Exhibit C or otherwise identified by MS as Product Deliverables.

(g) "Product Release" shall mean a release of Product which MS designates as a change in the digit(s) to the left of the decimal point in the Product version number [(x).xx].

(h) "Update Release" shall mean a release of Product which MS designates as a change in the



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digit(s) to the right of the tenths digit in the Product version number [x.x(x)].

(i) "Version Release" shall mean a release of Product which MS designates as a change in the tenths digit in the Product version number [x.(x)x].

(j) "Harmful Code" shall mean any computer code, programming instruction or set of instructions that is designed to damage, interfere with or otherwise adversely affect computer programs, data files, or hardware without the consent or intent of the computer user.

## 2. LICENSE GRANT.

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

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

(ii) acquire the Product from an Authorized Replicator;

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

(iv) distribute directly or indirectly (e.g. through resellers and distributors) and license (in object code form) to end users to use, execute, display and reproduce for operational and archival purposes under the terms of IBM's end user license agreement (s) no more than one (1) copy each of Product software (in addition to Preinstalled Product Software and/or a Recovery CD defined in Attachment 1 to Exhibit C1) and Product documentation with each Customer System;

(v) use, execute, display and distribute the Product software internally, and reproduce the Product software for such purposes, and to use and display the Product software for customer demonstration purposes. Except as necessary to install Preinstalled Product software and as provided in this Section 2(a)(v), IBM may not reproduce Product or Product Deliverables. IBM may supplement but shall not modify or translate Product documentation.

(vi) modify the Product software by applying any fixes to bugs or errors which were either (i) provided by MS to IBM or (ii) created pursuant to subsection 2(g) of this Agreement.

(vii) IBM shall have no license rights for Product Deliverables except as expressly granted in this Agreement.

(b) IBM may grant to IBM Subsidiaries the foregoing rights subject to the terms and conditions set forth in this Agreement. IBM shall have a continuing obligation during the term of this Agreement to require IBM Subsidiaries' compliance with the terms and conditions of this Agreement.

(c) In the event that IBM's quarterly orders for Product from Authorized Replicator(s) exceeds 200% of its past quarterly seasonally adjusted orders, then upon written request by MS, IBM shall provide MS with a written and reasonably detailed explanation as to the reasons for the size of any such orders. IBM acknowledges that MS may suspend IBM's license rights hereunder and/or require Authorized Replicator to refuse to fill IBM's orders if IBM materially breaches this Agreement and fails to cure the breach as set forth in Section 10 of this Agreement.

(d) IBM shall include APM with each copy of Product software distributed by IBM except that IBM shall distribute only one (1) APM where Customer System is distributed with preinstalled Product software, an archival copy of Product software and/or a Recovery CD (defined in Attachment 1 to Exhibit C1). If the APM includes any marketing or sales material ("Marketing Material"), IBM has the right to elect not to distribute such Marketing Material and to remove the Marketing Material from the APM. MS agrees to provide IBM prior written notice if it intends to include Marketing Material in the APM. MS agrees to assist IBM in removing Marketing Material from the APM by instructing the Authorized Replicator that IBM has the right to remove Marketing Material from the APM. If, in IBM's judgment, the cost and/or disruption associated with removing the Marketing Material from the APM is unacceptable, IBM shall not be obligated to

include the APM other than the COA, EULA, MS registration card and other materials directly related to the protection of the Product software and/or intellectual property generally. IBM must distribute Product documentation with each Customer system distributed with Product software, unless and until MS waives this requirement for another OEM, in which case (1) IBM shall be relieved of this requirement and (2) IBM, at its option, may fulfill Product documentation to end users through an Authorized Replicator. A COA shall be affixed by an Authorized Replicator to each copy of Product documentation for a particular Product as determined by MS.

(e) IBM's license shall extend to Update Releases and Version Releases and to any corrections to bugs or errors provided by MS to IBM and to those created by IBM pursuant to Section 2(g) below. IBM's license shall not extend to future Product Releases; provided, however, that in the event MS makes a future Product Release available to OEMs generally, it shall offer IBM the opportunity to license such Product Release on MS' then current standard terms and conditions.

(f) Except as provided in Section 4(b)(iii), this Agreement, does not include technical support by MS to IBM, its distributors, dealers or end users. Technical support may be available from MS or an MS subsidiary pursuant to a separate agreement.

(g) In the event that IBM identifies bugs or errors in the Product software which (1) are unique to Customer Systems and (2) are either Severity 1 (the user is unable to use the Product and such inability has a critical impact on the user's operations) or are of such a nature that IBM elects to suspend its manufacturing operations of Customer Systems, then IBM shall notify MS of such bug or error. In the event MS fails to correct the bug or error within a commercially reasonable period of time, then IBM may modify the Windows 95 Product software including and limited to the files outlined in the Windows 95 Software Developer's Kit ("SDK") designated as shell.dll,

olecli.dll, olesv.dll, ddeml.dll, penwin.dll, regload.dll, ver.dll, markmidi.exe, commdlg.dll, winhelp.exe, winhelp.hlp, toolhelp.dll, dib.drv, vtd.386, mcipionr.drv, oemsetup.inf, smallb.fon, smalle.fon, smallf.fon, expand.exe, lzexpand.dll, stress.dll, setup.exe, setup.lst, \_mstest.exe, \_mssetup.exe, mscomstf.dll, msdetstf.dll, msinsst.dll, msshstf.dll, msuilstf.dll, setupapi.inc, msdetect.inc, msregdb.inc, msshared.inc, winmem32.dll, \*.grp, \*.ini, \*.inf, \*.txt and the files outlined in the OPK designated as user.dat and system.dat to correct the bug or error provided that (3) the correction is transparent to the end user and (4) IBM supplies MS with a copy of the correction. This Section shall not obligate MS to provide Product source code to IBM.

(h) MS reserves all rights not expressly granted including, without limitation, modification rights, translation rights, rental rights, and rights to source code. MS shall retain title to Product software and Product Deliverables.

(i) IBM shall not reproduce, duplicate, copy or otherwise permit the installation of Product software except on IBM premises by IBM employees or contract employees. Notwithstanding the foregoing, IBM may engage a third party installer specifically approved in writing by MS ("Third Party Installer") to install the Preinstalled Product Software for IBM on the Customer System hard disk or ROM pursuant to Section 2(a)(iii), provided that the following conditions are and remain satisfied:

(i) IBM shall provide MS with the name and address of any Third Party Installer IBM intends to engage for preinstallation of the Product(s) at least sixty (60) days before IBM intends to have the Third Party Installer begin work for IBM. The Third Party Installer must be approved in writing by MS prior to beginning work, which approval shall not be unreasonably withheld;

(ii) IBM shall enter into a written agreement with the Third Party Installer (hereinafter "Installation Agreement") that expressly provides that MS is a third party intended beneficiary of the Installation Agreement with

rights to enforce such agreement, and that requires the Third Party Installer:

A) to comply with obligations identical to those imposed on IBM by Sections 2(a), 6(a), 6(b), 7(a), 11, 13, 14 and 17(b) of this Agreement;

B) to halt installation of the Product upon notice from IBM or MS of the suspension, termination, or expiration of this Agreement;

C) to distribute Customer Systems with Preinstalled Product Software only to IBM, IBM Subsidiaries, and/or IBM resellers and distributors on behalf of IBM;

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

E) to report to MS, in the form provided by MS, information concerning Products preinstalled including, without limitation, the units of each Product, corresponding model name(s), and shipment destination; and, if the Third Party Installer will prepare the final Customer System package for IBM; and

F) to maintain a separate inventory of Product packages received from IBM or the Authorized Replicator for inclusion inside the Customer System package.

(iii) IBM hereby agrees to cease use of any Third Party Installer upon receipt of prior written notice from MS (as described below) that in MS's reasonable belief the Third Party Installer is unable to protect the intellectual property rights of third parties. MS will explain the reasons for such belief and will provide IBM with thirty (30) days notice to cease use of the Third Party Installer, except in such circumstances where delay or the provision of notice would limit or reduce the remedies available to MS or increase the risk of damages to MS. During the thirty (30) day notice period, MS and IBM will attempt to agree on mutually agreeable measures to permanently resolve MS concerns regarding the Third Party Installer;

(iv) IBM hereby guarantees the Third Party Installer's fulfillment of the applicable

obligations imposed by this Agreement and/or the Installation Agreement;

(v) IBM hereby indemnifies MS for all damages (including attorney's fees) of any kind in connection with the Third Party Installer's activities for IBM, including, without limitation, damages resulting from: A) a material breach of the terms of this Agreement and/or the Installation Agreement, or B) any and all unauthorized reproduction and/or distribution of any portion of the Product by the Third Party Installer in breach of the Agreement or the Installation Agreement;

(vi) Upon written request, IBM shall provide MS with a copy of the Installation Agreement; and

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

### 3. PAYMENT AND REPORTING.

(a) IBM agrees to pay MS the royalties in Exhibit(s) C. Royalties are based upon IBM's estimated shipment volume indicated in Exhibit(s) C. Royalties exclude any charges by Authorized Replicator for units of Product or APM ordered by IBM. Royalties also exclude any taxes, duties, fees, excises or tariffs imposed on any of IBM's or IBM's Subsidiaries' activities in connection with this Agreement. Such charges, taxes, duties, fees, excises or tariffs, if any, shall be paid by IBM.

(b) In the event income taxes are required to be withheld by any non-U.S.A. government on payments to MS required hereunder, provided that IBM promptly delivers to MS an official receipt for any such taxes withheld or other documents necessary to enable MS to claim a U.S.A. Foreign Tax Credit, IBM may deduct such taxes from the amount owed MS and shall pay them to the appropriate tax authority. IBM will use reasonable efforts to make certain that any taxes withheld are minimized to the extent permitted by the applicable law.

(c) IBM agrees to make consolidated (i.e., on behalf of IBM and IBM Subsidiaries) monthly

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royalty reports to MS within fifteen (15) days after the end of each calendar month, and fifteen (15) days after termination or expiration for the final full or partial month. Such reports shall identify shipments by:

(A) IBM's following regions: EMEA (Europe, Middle East, East Europe and Africa), AP (Asia Pacific), NA (North America) and LA (Latin America); (B) Customer System "family" (e.g. Aptiva, Commercial Desktop, ThinkPad, and successor/replacement families); (C) Per Copy basis and Per System basis; and (D) US English and non-US English versions.

(i) IBM's report for every other calendar quarter (i.e. every six months), shall include an estimate of Product shipments by each language version.

(ii) In the event that IBM's monthly report is not received by MS for any three (3) consecutive months, IBM authorizes MS to bill IBM, and IBM agrees to pay MS, based on reports submitted to MS by the Authorized Replicator(s) for the subject months and, at MS' option, for all subsequent months during the term of this Agreement. Prior to issuing any such bill, MS shall provide IBM with any such Authorized Replicator report in order to allow IBM to verify the accuracy of any such report. MS' monthly billing of IBM based on reports submitted by the Authorized Replicator(s) shall not relieve IBM of any reporting or payment obligations under the Agreement.

(iii) IBM's report shall be certified as complete and correct and signed by a duly authorized representative of IBM. A copy of IBM's report shall be sent to MS electronically or via facsimile in addition to the original copy sent in accordance with Exhibit N. IBM's royalty reports shall be in the royalty report format attached as Exhibit R or other format as MS and IBM may agree to from time to time and shall specify royalties for each Product described in Exhibit(s) C.

(d) IBM agrees to make consolidated (i.e., on behalf of IBM and IBM Subsidiaries) payments to MS thirty (30) days after the end of each calendar month and thirty (30) days after

termination or expiration for the final full or partial month. A one percent (1%) monthly finance charge will be assessed on all amounts that are past due, including receipts for foreign taxes withheld. A five percent (5%) late charge will be assessed on all amounts that are more than thirty (30) days past due.

(e) No royalty shall accrue to MS for Product software (i) used by IBM solely for testing or development provided that IBM takes commercially reasonable steps to assure that the use of such Product is in accordance with IBM's standard policies and guidelines for testing and development of third party software; (ii) shipped to replace lost, defective or accidentally destroyed copies; (iii) shipped as a backup copy in addition to Preinstalled Product Software in accordance with Section 2(a); (iv) used for demonstrations of Customer Systems to prospective customers if clearly marked "For Demonstration Purposes Only" (not to exceed two thousand (2,000) copies per Product); (v) shipped as a Recovery CD in accordance with the requirements of Attachment 1 to Exhibit C1 or (vi) returned to IBM prior to initial use of Product.

(f) For the August, September and October as well as December and January monthly periods, IBM's consolidated reports and consolidated payments shall be based on gross shipments of Customer Systems and Product. IBM's consolidated reports and consolidated payments for the November and February monthly reporting periods shall be adjusted to reflect returns for which no royalty is due pursuant to Section 3(e)(vi) during the prior monthly reporting periods:

(g) IBM shall, upon written request, provide MS with a copy of its U.S.A. state resale exempt certificate, if applicable.

#### **4. DELIVERY AND LIMITED WARRANTY.**

(a) For each Product licensed hereunder, MS shall deliver Product Deliverables to IBM.

(b) MS warrants that Product conforms to the specifications contained in Product

documentation and the specifications referenced in the applicable Exhibit C.

(i) If Product software fails to conform to such specifications, then within thirty (30) days after MS' delivery to IBM of Product Deliverables for each release of Product licensed hereunder, IBM may report such deviations to MS in writing. If IBM 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 IBM, IBM shall have thirty (30) days in which to reject the Product software for failure to meet specifications.

(ii) If IBM does not report deviations from Product software specifications within the applicable thirty (30) day period described in Section 4(b)(i) above, or if IBM distributes the Product to a customer for revenue, IBM shall be deemed to have accepted the Product. If MS fails to correct deviations from specifications prior to acceptance, then as IBM's sole remedy IBM may terminate this Agreement with respect to such release of Product.

(iii) MS will use reasonable commercial efforts to correct Product software defects in a timely manner and to provide such defect corrections to IBM.

(c) MS shall have no liability for failure to deliver Product Deliverables by any particular date. IBM shall not distribute for revenue any release of a Product until MS delivers Product Deliverables to IBM.

(d) MS represents and warrants that royalties (including renegotiated royalties under Exhibit(s) C) applicable to IBM taking into account any payments, credits, discounts or similar savings given by MS to others shall be at least as favorable to those granted to any other OEM whose material terms and conditions, volumes, volume commitments and/or other activities/milestones used to determine royalties (whichever are used by MS to determine royalties) are comparable to those of IBM.

## 5. DEFENSE OF INFRINGEMENT CLAIM.

(a) MS represents and warrants that (i) the Product does not infringe any copyright, patent, trademark, trade secret or other intellectual property right in the Included Jurisdictions (as defined in Section 5 (d)); (ii) MS has the right to grant to IBM the rights and licenses granted hereunder; and (iii) MS will use reasonable efforts to implement procedures adequate to prevent Harmful Code from contaminating the Product(s) as delivered to IBM and MS will use its best efforts to remove such Harmful Code from such Product(s) immediately upon becoming aware of such contamination. MS agrees to indemnify, hold harmless, and defend IBM from and against any and all damages, costs and expenses, including reasonable attorneys' fees awarded by a court of competent jurisdiction (or a settlement to which MS consents) resulting from claims which, if true, would constitute a breach of Sections 5(a)(i), (ii) or (iii) above (hereinafter "Indemnified Claims") provided MS is notified promptly in writing of the Indemnified Claim and has sole control over its defense or settlement, and IBM provides reasonable assistance in the defense of the same. MS shall reimburse IBM for any out-of-pocket expenses incurred in providing such assistance.

(b) In the event MS receives information concerning an intellectual property infringement claim (including an Indemnified Claim) related to the Product(s); Product name(s) or trademark(s) ("Mark(s)), MS may at its expense, without obligation to do so, either (i) procure for IBM the right to continue to distribute the alleged infringing Product or Mark, or (ii) replace or modify the Product or Mark to make it non-infringing, and in which case, IBM shall thereupon cease distribution of the alleged infringing Product or Mark. If MS elects to replace or modify the Product, such replacement shall meet substantially the specifications provided or referenced in Exhibit C for the Product being replaced and shall be subject to the acceptance provisions of Section 4.

(c) MS shall have no indemnification or related obligations under this Section 5 to IBM with respect to any intellectual property infringement claim (including an Indemnified Claim) based solely on IBM's (i) manufacture, distribution, or use of any Product or Mark after MS' notice that IBM should cease manufacture, distribution, or use of such Product or Mark due to such a claim following initiation of attempts by MS under Section 5(b); or (ii) combination of a Product with a non-MS product, program or data unless

(A) every combination of a Product with any non-MS product, program or data would have resulted in an infringement and (B) the Product is a material part of the Infringement; or (iii) adaptation or modification of any Product.

(d) MS shall have no obligation to IBM for any Indemnified Claims which arise outside the geographical boundaries of countries in which MS distributes or markets Products ("Included Jurisdictions").

## 6. LICENSE RESTRICTIONS.

(a) (i) IBM shall distribute Product(s) only with Customer System(s) and only inside the Customer System package, except as provided in Attachment 1 to Exhibit C1 and Exhibit C2. In the event that MS notifies IBM in writing that Product is being distributed by IBM outside the Customer System package, IBM shall take immediate corrective action. In the event that any such unauthorized distribution is not discontinued by IBM within thirty (30) days after MS' written notice, in addition to MS' other remedies, for each copy of the Product(s) that is available other than inside the Customer System package, MS may charge IBM an additional royalty equal to thirty percent (30%) of the highest royalty rate (corresponding to the lowest volume) stated in Exhibit C for the Product. IBM shall pay such additional royalty within thirty (30) days of receipt of MS' invoice. Except as provided in this Agreement, IBM shall not remove or modify the package contents of Product or APM.

(ii) IBM shall comply with the additional provisions, if any, provided in Exhibit(s) C with respect to Product.

(iii) IBM shall contractually obligate (e.g., by contract, invoice or other written instrument) all distributors, dealers and others in its entire distribution channels to comply with the foregoing; (B) promptly discontinue distribution of Product to any such distributor, dealer or other in its distribution channel which does not comply with the foregoing; and (C) cooperate with MS in investigating instances of distribution of Product which does not comply with the foregoing.

(iv) If IBM distributes the Product(s) software on media other than installed on the Customer System hard disk or ROM, IBM shall distribute the Product(s) software on separate media (e.g., separate diskettes, CD-ROM disc, etc.) from other products, except as provided in Attachment 1 of Exhibit C1.

(b) IBM shall not reverse engineer, i.e., decompile or disassemble, any Product software licensed to IBM under this Agreement except as permitted by applicable law without the possibility of contractual waiver.

(c) IBM shall distribute and license the use of Product to end users only pursuant to the end user license agreement ("EULA") then currently available for the Product from the Authorized Replicator, (or an IBM EULA that has been approved by MS) except that the EULA shall be adapted as may be required by the laws of any non-U.S.A. jurisdiction in which IBM distributes the Product. MS's current EULA for the Product(s) licensed on the Effective Date is attached hereto as Exhibit A.

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

user has the opportunity to read the EULA before taking such action. Any such alternative procedure shall be at least as protective of the MS intellectual property as used by IBM for its own personal computer software.

(d) IBM agrees to provide commercially reasonable end user support for the Product(s) licensed in the Agreement which, in any event, shall be under terms and conditions at least as favorable to the end user as the terms under which IBM provides support for IBM's Customer Systems to end users generally. IBM agrees to provide MS with ninety (90) days prior written notice of any substantive change in IBM's support policy for the Product(s). IBM shall prominently display its customer support telephone number, if applicable, for such assistance in Customer System documentation or otherwise inform customers on how to obtain support.

#### 7. INTELLECTUAL PROPERTY NOTICES.

(a) IBM will not remove any copyright, trademark or patent notices that appear on the Product as delivered to IBM.

(b) IBM shall market the Product only under the Product name(s) and version number for such Product provided to IBM. IBM agrees to use the appropriate trademark, product descriptor and trademark symbol (either "TM" or "®"), 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. IBM shall not, at any time, use any name or trademark confusingly similar to Marks (as defined in Section 5(b)). IBM 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) IBM shall not use or display any MS logo (i.e., including without limitation any stylized representation of the MS name used by MS) in its materials or packaging, except as

provided in this Agreement or by separate written agreement with MS.

(d) Nothing in this Agreement grants MS any right to use IBM trademarks, trade names or product names.

#### 8. PROHIBITION AGAINST ASSIGNMENT AND SUBLICICENSE.

This Agreement, and any rights or obligations hereunder, shall not be assigned or sublicensed (by contract, merger, operation of law, or otherwise) except in the case of IBM to IBM Subsidiaries as provided in Section 2(b) and in the case of MS, to MS Subsidiaries, without the prior written consent of the other party.

#### 9. TERM OF AGREEMENT.

The term of this Agreement shall run from the Effective Date until one (1) year from the end of the calendar quarter in which the Effective Date occurs (September 30, 1996). In the event that IBM does not commence distribution of Windows 95 on or before September 30, 1995, then IBM may extend the term of this Agreement until December 31, 1996 by providing MS with written notice between 120 and 90 days prior to September 30, 1996.

#### 10. DEFAULT AND TERMINATION.

(a) This Agreement may terminate if any of the following events of default occur: (i) if either party materially fails to perform or comply with any provision of this Agreement; (ii) if IBM becomes insolvent, enters bankruptcy, reorganization, composition or other similar proceedings under applicable laws, whether voluntary or involuntary, or admits in writing its inability to pay its debts, or makes or attempts to make an assignment for the benefit of creditors.

(b) Termination due to material breach shall be effective sixty (60) days after written notice of termination to the defaulting party (i) if the defaults have not been cured within such sixty (60) day period or (ii) if the default is not curable during that period in a commercially reasonable manner, the defaulting party has failed to take commercially reasonable steps to effect a cure and prevent a reoccurrence or, if



despite such steps a reoccurrence takes place, termination shall be effective upon such reoccurrence. Notwithstanding the foregoing, termination due to (iii) material breach for IBM's unauthorized distribution of Product shall be effective thirty (30) days after written notice of termination to IBM by MS if the default has not been cured within such thirty (30) day period and (iv) IBM's material breach of Section 8 of this Agreement or IBM's material breach of the Section 6(b) of this Agreement by decompiling or disassembling, with knowledge or direction of any level of IBM management, of Product software licensed to IBM under this Agreement, shall be effective upon written notice to IBM by MS or as soon thereafter as is permitted by applicable law.

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

#### 11. OBLIGATIONS UPON TERMINATION.

(a) Within ten (10) days after termination or expiration of this Agreement, except as otherwise provided in this Section 11, IBM shall return to MS all units of Product for which a royalty has not been paid and all Product Deliverables. IBM and each IBM Subsidiary may, however, retain one unit of each Product for support purposes only.

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

(c) Upon termination or expiration of this Agreement, IBM's license rights in Section 2(a) (ii), (iii) and (iv) shall continue for sixty (60) days, subject to all applicable terms of this Agreement including payment of royalties, provided that IBM distribution volume does not

exceed IBM's seasonally adjusted estimated monthly volume in Exhibit C for the Product(s). IBM's license rights in Section 2(a)(ii), (iii) and (iv) shall continue longer than sixty (60) days as necessary to enable IBM to fulfill any contractual commitments for large account/government bids existing as of the expiration date of this Agreement provided that on or before expiration IBM provides MS with a copy of those portions of any such contract or other written verification required to verify the existence of the contract, contract term, large account or government agency/department name, address and quantities of Product remaining to be delivered as of the expiration date of this Agreement. Sections 4, 5, 12, 13, 14, 15 and 16 of this Agreement and Section S1(d) of Exhibit(s) S, if applicable, shall survive termination or expiration of this Agreement.

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

(a) Each party's total liability to the other party under this Agreement other than Section 5, shall be limited to one hundred percent (100%) of the amount having actually been paid or owed by IBM to MS under Section 3. The parties acknowledge that other parts of this Agreement rely upon this inclusion of this Section 12.

(b) The rights and remedies granted to IBM under Sections 4 and 5 constitute IBM's sole and exclusive remedy against MS, its officers, agents and employees for (i) breach of any representation or warranty under Sections 4 and 5 or any other representations or warranties, whether express or implied and (ii) for any default whatsoever relating to the condition of the Product or MS' duties to correct any deviations from specifications, including without limitation any such default as a result of negligence or, inexcusable delay.

(c) SECTIONS 4 AND 5 CONTAIN THE ONLY WARRANTIES MADE BY MS. ANY AND ALL OTHER WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING THOSE FOR NON-INFRINGEMENT, MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE

EXPRESSLY EXCLUDED. MS MAKES NO WARRANTY THAT THE PRODUCT WILL OPERATE PROPERLY ON ANY CUSTOMER SYSTEM(S). EXCEPT AS AWARDED AGAINST IBM AS A PART OF A JUDGMENT OR SETTLEMENT FOR THIRD PARTY INFRINGEMENT CLAIM UNDER SECTIONS 5 (a)(i) - (iii) NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, ECONOMIC OR PUNITIVE DAMAGES EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(d) (i) Capitalized terms used in Section 12(d) shall have the following meaning:

"Applicable Products" means:

(A) all releases of the Product(s) accepted by IBM under this Agreement; and

(B) other releases of the Product(s), or successors to the Product, but only to the extent such releases or successors use or embody inventions used or embodied in a release of the Product(s) accepted by IBM under this Agreement.

"IBM Licensee" shall mean any party which enters into a license agreement with IBM as a licensee of Applicable Products (and IBM software products, if applicable), such as an OEM, distributor, integrator, etc. but excluding an end user.

"IBM Patent" means any claim in any patent or patent application throughout the world that is owned, acquired or sublicensable by IBM or IBM Subsidiaries with an effective filing date prior to termination or expiration of this Agreement.

"Immunity Period" shall commence upon the Effective Date and shall expire thirty six (36) months after the expiration date provided in this Agreement.

"MS Licensee" shall mean any party which enters into a license agreement with MS as a licensee of MS software products, including Applicable Products, such as an OEM,

distributor, integrator, etc. but excluding an end user.

"MS Patent" means any claim in any patent or patent application throughout the world that is owned, acquired or sublicensable by MS or MS Subsidiaries with an effective filing date prior to termination or expiration of this Agreement.

(ii) Except as provided in subsection (d)(iv) below, IBM agrees not to sue MS or its end users at any time for infringement of a IBM Patent, on account of the manufacture, use, sale, licensing or distribution of Applicable Products, or for practicing any method or process involved in the manufacture or use thereof, which occurs during the Immunity Period.

(iii) Except for those MS Licensees and IBM Patents identified in Subsections (a) and (b) below and except as provided in subsection (d)(iv) below, IBM shall not sue any MS Licensee at any time for infringement of a IBM Patent on account of the manufacture, use, sale, licensing or distribution of Applicable Products which occurs during the Immunity Period. Exceptions to this general agreement not to sue are as follows:

(A) For an MS Licensee which, as of the Effective Date of this Agreement, also is a licensee of one or more IBM Patents, and for those IBM Patents licensed to the MS Licensee as of the Effective Date of this Agreement (hereinafter "Licensed Patents"), the agreement not to sue the MS Licensee in Subsection 12(d)(iii) above is waived for all Licensed Patents for the term of the patent license agreement between IBM and the MS Licensee and for the term of any extensions/renewals of such patent license agreements provided that IBM offers to extend/renew the original patent license under similar terms and conditions or under IBM's then standard terms and conditions. However, IBM agrees not to seek to enjoin the MS Licensee at any time for infringement of the Licensed Patents on account of the manufacture, use, sale, licensing or distribution of Applicable Products which occurs during the Immunity Period.

(B) For an MS Licensee which, as of the Effective Date of this Agreement, has been placed on notice of patent infringement for certain IBM Patents (hereinafter "Negotiation Patents"), the agreement not to sue the MS Licensee in Subsection 12(d)(iii) above is waived for all Negotiation Patents during the course of patent license negotiations and (1) thereafter, if a patent license agreement is not executed and (2) for the term of any patent license agreement that results from such negotiations. However, IBM agrees not to seek to enjoin the MS Licensee at any time for infringement of the Negotiation Patents on account of the manufacture, use, sale, licensing or distribution of Applicable Products which occurs during the Immunity Period.

(iv) If IBM is sued or threatened with imminent suit by MS or by any MS licensee for patent infringement on account of the manufacture, use, sale, licensing or distribution of Applicable Products which occurs during the Immunity Period, IBM may terminate the Immunity Period effective as of the date of the suit/threat with respect to MS (if suit/threat is made by MS) and/or to such MS Licensee (if suit/threat is made by MS Licensee), as applicable. If a IBM Licensee is sued or threatened with imminent suit by MS or by an MS licensee for patent infringement on account of the manufacture, use, sale, licensing or distribution of the Applicable Products which occurs during the Immunity Period and IBM is contractually obligated to indemnify and/or defend such IBM Licensee against such patent infringement suit/threat, then IBM may terminate the Immunity Period effective as of the date of the suit/threat with respect to MS (if suit/threat is made by MS) and/or with respect to such MS Licensee (if suit/threat is made by MS Licensee, as applicable).

(v) This Section shall be binding upon successors or assigns of IBM Patents.

### 13. NONDISCLOSURE AGREEMENT.

Confidential information transferred between MS and IBM shall be exchanged in accordance with the Information Disclosure Agreement ("IDA") dated December 1, 1992, as amended

by the parties. Each party shall also treat the terms of this Agreement as the Confidential Information of the other party under IDA. However, IBM may disclose the terms and conditions of this Agreement in confidence to its immediate legal and financial consultants as required in the ordinary course of IBM's business.

### 14. AUDITS AND INSPECTIONS.

(a) During the term of this Agreement, IBM agrees to keep all usual and proper records and books of account and all usual and proper entries relating to each Product licensed sufficient to substantiate the number of copies of Product and the number of Customer Systems distributed by or for IBM. IBM shall maintain on IBM premises such records for itself and for each IBM Subsidiary which exercises rights under this Agreement.

(b) In order to verify statements issued by IBM and IBM's compliance with the terms of this Agreement, MS may cause (i) an audit to be made of IBM's and/or IBM's Subsidiaries' books and records and/or (ii) an inspection to be made of IBM's and/or IBM's Subsidiaries' facilities and procedures for the sole purpose of determining the accuracy of IBM's royalty reports. Any audit and/or inspection shall be conducted during regular business hours at IBM's and/or IBM's Subsidiaries' facilities, with at least forty five (45) days prior written notice. Any audit and/or inspection shall be conducted (other than on a contingent fee basis) by an independent certified public accountant which is either (1) jointly selected by MS and IBM or (2) has been agreed to by the parties for any prior audit of any MS/IBM license or agreement.

(c) IBM agrees to provide the audit or inspection team access to the relevant IBM's and/or IBM's Subsidiaries' records and facilities for the purpose of performing the audit.

(d) Prompt adjustment shall be made to compensate for any errors or omissions disclosed by such audit. Any such audit shall be paid for by MS unless material discrepancies are disclosed. "Material" shall mean an

underpayment of at least \$2,000. J. If material discrepancies are disclosed, IBM agrees to pay MS for the costs associated with the audit. Further, IBM shall pay MS an additional royalty of five percent (5%) of the applicable royalty on Exhibit(s) C for each unit IBM failed to report that is in excess of any \$2,000,000 underpayment and a one percent (1%) monthly finance charge on all amounts that are past due, which charge will be retroactive to the date that the royalty was due. In no event shall audits be made more frequently than semi-annually unless the immediately preceding audit disclosed a material discrepancy.

(e) Any audit must be initiated within two (2) years after termination or expiration of this Agreement.

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

(a) This Agreement and all matters relating to 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 16 for the delivery of notices or by such other method as is authorized by applicable law or court rule.

(b) If either MS or IBM 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.

#### 16. NOTICES.

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.A. mails, postage prepaid, certified or registered, return receipt requested; or (ii) sent by air express courier, charges prepaid; and addressed as stated in Exhibit N (or to such other address as the party to receive the notice or request so designates by written notice to the other).

#### 17. GENERAL.

(a) Any Product which IBM distributes or licenses to or on behalf of the United States of

America, its agencies and/or instrumentalities (the "Government"), shall be provided with RESTRICTED RIGHTS in accordance with DFARS 252.227-7013(c)1(ii), or as set forth in the particular department or agency regulations or rules, or particular contract which provide MS equivalent or greater protection.

(b) IBM agrees that it will not export or re-export Product to any country to which such export is restricted by Section 770 of the Export Administration Regulations, without 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. Restricted countries currently include, but are not necessarily limited to, Cuba, the Federal Republic of Yugoslavia (Serbia and Montenegro, U.N. Protected Areas and areas of Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces), Iran, Iraq, Libya, North Korea, and Syria. IBM warrants and represents that neither the U.S.A. Bureau of Export Administration nor any other federal agency has suspended, revoked or denied IBM's export privileges.

(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 and the Market Development Agreement (MDA) dated January 31, 1995 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 IBM and MS by their respective duly authorized representatives. 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) 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.

(e) If any provision of this Agreement or license of any particular Product shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions and license for remaining Products, as applicable, shall remain in full force and effect.

(f) 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.

(g) IBM shall, at its own expense, promptly obtain and arrange for the maintenance of all non-U.S.A. government approvals, if any, as may be necessary for IBM's performance under this Agreement.

#### 18. EXHIBITS.

The following Exhibits are part of this Agreement:

Exhibit A	Sample End User License Agreement
Exhibit(s) C	Product and Customer Systems
Exhibit N	Addresses
Exhibit R	Royalty Report

NOTICE:

For Product(s) specified in Exhibit C as licensed under the "per system" royalty calculation provisions, please note the following:

This is a MS Per System License. As a Customer, you may create a "New System" at any time that does not require the payment of a royalty to MS unless the Customer and MS agree to add it to the License Agreement.

Any New System created may be identical in every respect to a system as to which the Customer pays a Per System royalty to MS provided that the New System has a unique model number or model name for internal and external identification purposes which distinguishes it from any system the Customer sells that is included in a Per System License. The requirement of external identification may be satisfied by placement of the unique model name or model number on the machine and its container (if any), without more.

If the Customer does not intend to include a MS operating system product with a New System, the Customer does not need to notify MS at any time of the creation, use or sale of any such New System, nor does it need to take any particular steps to market or advertise the New System.

Under MS's License Agreement, there is no charge or penalty if a Customer chooses at any time to create a New System incorporating a non-MS operating system. If the Customer intends to include a MS operating system product with the New System, the Customer must so notify MS, after which the parties may enter into arm's length negotiation with respect to a license to apply to the New System.

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

INTERNATIONAL BUSINESS MACHINES CORPORATION

By (Signature) [Signature]  
Name (Print) J. KEMPEN  
Title SENIOR VP DEPT  
Date 08/24/95

By (Signature) [Signature]  
Name (Print) BRUCE L. CLIFTON  
Title General Mgr - Product Resour Mgmt  
Date 8/24/95

NOTICE:

This is an OEM distribution license. Product can only be distributed with a Customer System, as specified in Sections 1(e) and 6(a).

12/21/94 42150001.DOC

## END-USER LICENSE AGREEMENT FOR MICROSOFT SOFTWARE

MICROSOFT® WINDOWS® 95

**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") of the computer system ("COMPUTER") with which you acquired the Microsoft software product(s) identified above ("SOFTWARE PRODUCT" or "SOFTWARE"). If the SOFTWARE PRODUCT is not accompanied by a new computer system, you may not use or copy the SOFTWARE PRODUCT. The SOFTWARE PRODUCT includes computer software, the associated media, 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, PC Manufacturer and 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 PC Manufacturer for instructions on return of the unused 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.

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

- **Software.** You may install and use one copy of the SOFTWARE PRODUCT on the COMPUTER.
- **Network Services.** If the SOFTWARE PRODUCT includes functionality that enables the COMPUTER to act as a network server, any number of computers or workstations may access or otherwise utilize the basic network services of that server. The basic network services are more fully described in the printed materials accompanying the SOFTWARE PRODUCT.
- **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.
- **Operating System Choice.** PC Manufacturer may have elected to provide you with a choice of Microsoft operating system software for the COMPUTER. If the SOFTWARE PRODUCT includes both the Windows 95 and an "Alternate Microsoft OS" (either (a) Windows for Workgroups, (b) the MS-DOS and the Windows, (c) the MS-DOS operating system and the Windows for Workgroups operating system, or (d) the Windows operating system), you are licensed to use only one of the Microsoft operating system choices provided. As part of the setup process for the SOFTWARE you will be given a one-time option to choose either Windows 95 or an Alternate Microsoft OS. Upon selection, the Microsoft operating system choice selected by you will be set up on the COMPUTER, and the Microsoft operating system choice not selected by you will be automatically and permanently deleted from the hard disk of the COMPUTER.
- **Back-up Utility.** If PC Manufacturer has not included a back-up copy of the SOFTWARE PRODUCT with the COMPUTER, you may use the Microsoft back-up utility, if included with the SOFTWARE PRODUCT, to make a single back-up copy of the SOFTWARE PRODUCT. You may use the back-up copy solely for archival purposes. After the single back-up copy is made, the backup utility will be permanently disabled.

**2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.**

- **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 COMPUTER as a single integrated product. The SOFTWARE PRODUCT may only be used with the COMPUTER.
  - **Rental.** You may not rent or lease 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 COMPUTER, 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 may terminate 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 an upgrade from another product, whether from Microsoft or another supplier, you may use or transfer the SOFTWARE PRODUCT only in conjunction with that upgraded product, unless you destroy the upgraded product. If the SOFTWARE PRODUCT is an upgrade of a Microsoft product, you now may use that upgraded product only in accordance with this EULA. If the SOFTWARE PRODUCT is an upgrade of a component of a package of software programs which you licensed as a single product, the SOFTWARE PRODUCT may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.
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. The SOFTWARE PRODUCT is protected by copyright laws and international treaty provisions. You may not copy the printed materials accompanying the SOFTWARE PRODUCT.
5. **DUAL-MEDIA SOFTWARE.** 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 your single 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. **PRODUCT SUPPORT.** Product support for the SOFTWARE PRODUCT is not provided by Microsoft Corporation or its subsidiaries. For product support, please refer to PC Manufacturer's support number provided in the documentation for the COMPUTER. Should you have any questions concerning this EULA, or if you desire to contact PC Manufacturer for any other reason, please refer to the address provided in the documentation the COMPUTER.
7. **U.S. GOVERNMENT RESTRICTED RIGHTS.** The SOFTWARE PRODUCT and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software



clause at DFARS 252.227-7013 or 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.

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**FOR THE LIMITED WARRANTIES AND SPECIAL PROVISIONS PERTAINING TO YOUR PARTICULAR JURISDICTION, PLEASE REFER TO YOUR WARRANTY BOOKLET INCLUDED WITH THIS PACKAGE 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.

**MSV 0000159  
CONFIDENTIAL**

**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.

04/10/95 40970003.D

**EXHIBIT C1  
WINDOWS 95  
(For MDA Accounts)**

Product Number Name and Version	Language Versions **	Applicable Additional Provisions	Per System Royalty*	Per Copy Royalty*	Non-English Additional Royalty	Added by Amendment Number
1. Windows® 95 operating system	EN	(a), (b)	US\$45.90* Estimated monthly volume: 300k	US\$ 70.50 - \$15.00 #	US \$6.00	

# The above royalty rates for Windows 95 reflect the \$15.00 maximum allowable discount which IBM may earn under its "Windows 95-Based PC Market Development Agreement (the "MDA"). The royalty rates shall remain effective until the end of the month in which MS notifies IBM of its final MDA results and actual discounts. Effective the beginning of the next month, IBM shall pay royalty rates equal to the above rates plus any unearned MDA discounts as ultimately determined under the MDA. (For example, if MS and IBM determine that IBM's actual MDA discounts are \$10.00 and notifies IBM on November 15, 1995, then IBM's royalty rate shall increase \$5.00 effective December 1, 1995.)

\* A Product is not licensed hereunder unless royalty rates 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 Key: A = Arabic, CE = Cyrillic Enabled, , CZ = Czech, D = German, DA = Danish, DU = Dutch, E = Spanish, EE = Eastern and Central European, EN = English, FF = France's French, FI = Finnish, FR = non-France's French, HB = Hebrew, HUN = Hungarian, I = Italian, N = Norwegian, POL = Polish, POR = Portuguese, RU = Russian, SW = Swedish, TH = Thai, TR = Turkish. In addition to the language versions specified in the Product table above, IBM may receive Product Deliverables for the licensed Products in available language versions listed in this Language Key by sending a written request to the attention of OEM Accounting Services at the address listed in Exhibit N for royalty reports.

**EXHIBIT C1**  
**(Continued)**

**"PER SYSTEM" ROYALTY CALCULATION**

For Designated Customer Systems Product(s) which specify "per system" in the Customer System table below:

1. Except as provided in Section 3(e) of the Agreement, IBM agrees to pay MS the royalty set forth above, for each Designated Customer System distributed or placed in use by or for IBM.
2. In addition, except as provided in Section 3(e) of the Agreement, IBM agrees to pay MS the Non-English Additional Royalty specified above for each unit of non-English versions of Product distributed or placed in use by IBM.
3. Where multiple "Releases" (i.e., Update Releases, Version Releases or Product Releases), language versions, or media versions (e.g., MS-DOS and MS-DOS ROM) of a Product are licensed for the same Customer Systems, IBM may distribute only one copy of Product software and/or a Recovery CD defined in Attachment 1 to Exhibit C1 in addition to one copy of Preinstalled Product Software in one language and Release for use on each such Customer System. IBM shall pay MS the royalty applicable to the Release and language version shipped.
4. Any Designated Customer System licensed for more than one Update Release or Version Release of a Product, but distributed without Product, shall bear the base royalty for the most recent Release of Product licensed.
5. Notwithstanding anything to the contrary contained in Section 3 of the Agreement, if in any five (5) monthly reporting periods (whether or not consecutive), IBM's reported shipments of the applicable Customer Systems are twenty percent or more below IBM's lowest estimated monthly volume specified for per system shipments of the Product in the Product table above, at IBM's request, MS shall negotiate an increase in the per system royalty rate(s) to reflect IBM's lower shipment volumes. If, for any reason, MS and IBM are unable to agree upon new royalty rate(s) within thirty (30) days after the date IBM's royalty report is due for the fifth such low-volume month, IBM's per system royalty rate(s) for the Product shall increase by twenty percent (20%). Such increased royalty rate(s) shall be in effect for the remainder of the term of the Agreement commencing with the monthly reporting period following the fifth low-volume month. Provided, however, if IBM's reported monthly volume returns to or exceeds the original estimated monthly volume for any three (3) consecutive months thereafter, IBM's per system royalty rate(s) shall be restored to the rate(s) specified in the Product table above.

**"PER COPY" ROYALTY CALCULATION**

For Product(s) distributed on a "per copy" basis:

1. Except as provided in Section 3(e) of the Agreement, IBM agrees to pay MS the royalty rates set forth above for each unit of Product licensed or distributed by IBM.
2. In addition, except as provided in Section 3(e) of the Agreement, IBM agrees to pay MS the Non-English Additional Royalty specified above for each unit of non-English versions of Product distributed or placed in use by IBM.

**EXHIBIT C1**  
**(Continued)**

3. Where multiple "Releases" (i.e., Update Releases, Version Releases or Product Releases), language versions, or media versions (e.g., MS-DOS and MS-DOS ROM) of a Product are licensed for the same Customer Systems, IBM may distribute only one copy of Product software and/or a Recovery CD and/or a Recovery CD defined in Attachment 1 to Exhibit C1 in addition to one copy of Preinstalled Product Software in one language and Release for use on each such Customer System.

**ADDITIONAL PROVISIONS KEY - WINDOWS 95**

(a) (1) Product Deliverables will include an OEM Pre-installation Kit ("OPK"). If IBM preinstalls the Product software, IBM shall preinstall the Product software solely in accordance with the installation instructions set forth in the "OPK User's Guide" included in the OPK. IBM may use the tangible forms of the programming code (tools and software), in the OPK solely to preinstall the Product software in accordance with the OPK User's Guide and for no other purpose.

(2) Other than as specified in the OPK User's Guide, and as set forth in this Agreement, IBM shall not modify the Product software, nor delete or remove any features or functionality without the written approval of MS in each instance. If IBM wishes to include its name and/or logo on the Product software "start-up" screen, IBM will do so only in the location and manner as designated in the OPK User's Guide. Otherwise, IBM shall not alter the content or sequence of the Product software "start-up", initialization or other screens.

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

(4) If and only if IBM distributes the Product software solely as Preinstalled Product Software (i.e., without a back-up copy of the Product on CD, diskette, magnetic tape, or other external media) with any Customer System, then IBM shall also preinstall the Microsoft Create System Disk Tools together with the back-up diskette images ("CAB" files) contained in the OPK on the hard disk drive of such Customer System to enable the end user to make a back-up copy of the Product software according to the terms of the EULA. Diskette images may only be used with the Microsoft Create System Disk Tools. IBM may not distribute, use, or authorize the use of the Microsoft Create System Disk Tools or diskette images except as provided in this Additional Provision.

(5) Notwithstanding the definition of "Product Release" in this Agreement, Windows 95 (and any subsequent releases of Windows which may be designated by a change in the calendar year -- e.g., Windows 96, 97, 98, etc.) shall be deemed to be a Product Release.

(6) Subject to Section 4(c) of this Agreement, IBM agrees that it will not distribute Windows 95 until MS advises any OEM customers that Customer Systems with Windows 95 may be distributed.

**EXHIBIT C1**  
**(Continued)**

(7) Except as set forth in Section 2(d) of this Agreement, IBM must distribute Product documentation with each Customer System distributed with Product Software. A COA must be affixed to each copy of Product documentation.

(8) Any EULA for the Product distributed by IBM must be identical to the on screen EULA presented to the end user during Product setup.

(9) Windows 95 includes Microsoft At Work fax transmission software, Remote Access Service, and Remote Procedure Calls, each of which provide methods for stand-alone and networked computers to send and receive messages with certain security levels. French law (Decree 92-1358 of December 1992) generally prohibits the use in France of such technology, unless special approvals are granted. Accordingly, Windows 95 has been designed to disable the security in each of these features when the default locale assigned during installation is France.

(10) Notwithstanding anything to the contrary contained in this Agreement, IBM may distribute Windows 95 only with Customer Systems which are marketed and distributed under IBM's or IBM Subsidiaries' brandnames and trademarks. Windows 95 may not be distributed with Customer Systems which are marketed or distributed under any third party brandnames or trademarks.

(b) If Customer System(s) licensed for Windows 95 on a per system basis under this Agreement are also licensed on a per system basis for Windows 3.xx, Windows for Workgroups 3.xx, and/or MS-DOS ("Other Products") in a separate agreement with MS, then IBM shall be relieved of its obligation to pay the associated Other Products royalties for those Customer Systems, provided that IBM does not distribute Other Products with such Customer Systems and IBM reports and pays the Windows 95 royalty for such Customer Systems due under this Agreement.

**CUSTOMER SYSTEMS**

Each Customer System must have a unique model line name, model name, or model number which IBM uses both internally (in IBM's books and records) and externally (on the Customer System case and packaging). All Customer Systems described below shall be deemed licensed on a "Per System" basis and shall be deemed Designated Customer Systems. IBM may add to this Exhibit Designated Customer Systems first distributed for revenue during the first six full or partial monthly reporting periods of the Agreement by giving written notice to MS of such additional Designated Customer System within thirty (30) days of IBM's initial shipment of the Customer Systems for revenue and the notice shall be deemed effective as of the first day of shipment of the Customer System by IBM. After the first six monthly reporting periods, IBM may add Designated Customer Systems to this Exhibit by giving written notice of such additional Customer System to MS. IBM shall use best efforts to provide such notice prior to IBM's initial shipment of the Customer Systems for revenue, and in any event within thirty (30) days of the first shipment of the Customer System by IBM. IBM may convert a Customer System licensed on a "Per Copy" basis to a Customer System licensed on a "Per System" basis by giving MS written notice of IBM's desire to convert the Customer System from "Per Copy" to "Per System". IBM's notice to convert a Customer System from "Per Copy" to "Per System" shall be effective from the first day of the next monthly reporting period. IBM may convert a Designated Customer System licensed on a "Per System" basis to a Customer System licensed on a "Per Copy" basis by giving MS written notice of IBM's desire to

**EXHIBIT C1**  
(Continued)

convert the Customer System from "Per System" to "Per Copy". IBM's notice to convert a Customer System from "Per System" to "Per Copy" shall be effective from the first day of the next monthly reporting period. Notwithstanding the foregoing, once a Customer System has been added to this Exhibit as a Designated Customer System, or IBM has converted a Customer System from Per System to Per Copy, by amendment or the notice procedure described above, a Customer System shall remain a Designated Customer System or a Customer System licensed on a Per Copy basis, as applicable, for a minimum of six consecutive monthly reporting periods.

Designated Customer Systems shall be identified by family name (e.g.: Aptiva, Commercial Desktop, ThinkPad and successor/replacement families) or model number. At IBM's option, for purposes of administrative convenience, IBM may designate models by model line or series, e.g., "Jaguar model line", "Jaguar Pro series", "Jaguar Pro 750 model line", "Jaguar Pro 950 series", etc.)." Customer Systems defined by model line or series shall include all present models which include the designated model line or series name, (e.g., "Jaguar Pro model line" includes Jaguar Pro, Jaguar Pro 950, Jaguar Pro S, etc.; "Jaguar series" includes Jaguar, Jaguar Pro, Jaguar Pro 950, Jaguar S400, etc.; "Jaguar Pro 950 series" includes Jaguar Pro 950, Jaguar Pro 955, etc.).

**DESIGNATED CUSTOMER SYSTEMS**

**Product Number Key:** 1 = Windows® 95

**Royalty Basis Key:** if Product box is blank, such Product is not licensed for distribution with the listed Customer System.

	<b>Model Name or Model Number</b>	<b>Processor Type</b>	<b>Product Number</b>
1			1
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			

**ATTACHMENT 1 TO EXHIBIT C1  
PRODUCT RECOVERY CD OPTION**

(a) This Attachment is not a license for MS products. IBM must maintain a valid OEM license agreement for all MS products included in whole or in part on the Recovery CD (as defined below).

(b) For purposes of this Attachment, "Alternate MS OS" shall mean either (i) Windows for Workgroups, (ii) MS-DOS and Windows, (iii) MS-DOS and Windows for Workgroups, (iv) Windows, or (v) MS-DOS. Notwithstanding anything to the contrary contained in Section 6(a)(iv) or 2(a)(iv) of the Agreement, IBM may distribute, on an encrypted CD-ROM disk, backup images of all of the software which is rightfully distributed by IBM preinstalled on the hard disk of the Customer System ("Recovery CD") either (i) with such Customer Systems which include a CD-ROM drive in the Customer System package and on which Product software for either Windows 95 or an Alternate MS OS licensed in accordance with this Agreement is preinstalled on the Customer System hard disk and/or (ii) with a parallel port CD-ROM drive as a fulfillment item to end users which previously purchased any Customer System on which Product software for either Windows 95 or an Alternate MS OS licensed in accordance with this Agreement is preinstalled on the Customer System hard disk, up to a maximum of ten percent (10%) of the number of such Customer Systems previously distributed by IBM. The Recovery CD may be used only to restore the Customer System hard disk drive and the software originally installed on the Customer System to its original state in conjunction with IBM's dedicated user support utility diskette ("Support Utility"). The Recovery CD may include backup images of (i) MS products for which IBM has a valid license from MS for such Customer System; and (ii) any non-MS products that IBM distributes preinstalled on the hard disk of the Customer System.

(c) If the Products licensed for and distributed with the Customer System include MS-DOS® or Windows® 95, the Support Utility diskette may also

include a single copy of each of the following files in order that such diskette shall be "bootable": command.com; io.sys; msdos.sys, and, for Customer Systems with Windows 95, drvspace.bin ("Boot Files").

(d) MS' authorization to distribute the Recovery CD and Boot Files is subject to IBM's compliance with all of the following provisions:

(1) MS product software on the Recovery CD shall be encrypted such that the software cannot be downloaded or used without decryption using the Support Utility.

(2) The Recovery CD and Support Utility shall comply with the specifications set forth in the then-current "MS OEM Product Backup and Recovery CD-ROM Implementation Guide" (the "Implementation Guide"). In the event of inconsistency or conflict between this Attachment and the Implementation Guide, the terms and conditions of this Attachment shall govern. MS shall have the right to modify the Implementation Guide in a manner consistent with the terms of the Agreement from time to time and provide IBM updated versions thereof. IBM will make reasonable best efforts to adjust its process to comply with any new versions of the Implementation Guide within a reasonable period of time, but in no event more than one hundred and eighty (180) days after MS provides a new version.

(3) The Support Utility documentation shall prominently indicate that the Recovery CD is provided only for the purpose of restoring the software on the hard disk to its original state on Customer Systems.

(4) The Support Utility shall be subject to an online end user license agreement which includes provisions that (i) the software may be used only for restoring the hard disk of the IBM computer system with which the Recovery CD originally was provided, and (ii) the MS product(s) contained on the Recovery CD are subject to the terms of their



respective EULA(s) originally provided with such MS products. The end user shall be required to affirmatively accept the terms of such online end user license agreement in order to proceed with using the Recovery CD.

(5) The Support Utility shall include a BIOS check to verify that the computer system to which software will be downloaded from the Recovery CD is a IBM Customer System.

(6) The images of the MS product software on the Recovery CD shall be substantially identical to the object code that was preinstalled on the Customer System hard disk including any initial end user startup sequence and OEM support information.

(7) The Recovery CD and Support Utility shall be distributed inside the original Customer System package or as a fulfillment item as described in Section (b) above.

(8) The Recovery CD and Support Utility may be replicated only by an Authorized Replicator.

(9) If the Recovery CD includes Windows 95, IBM shall also include with each Customer System distributed with the Recovery CD, a single copy of the "Windows 95 CD" from the Authorized Replicator. The Windows 95 CD includes Windows 95 Product software and other software and information in a form specified by MS for distribution in connection with the Recovery CD. IBM shall not include the Windows 95 backup disk utility (MSCSD) with any Customer System distributed with the Recovery CD.

(10) IBM shall comply with all provisions of this Agreement and the MS license agreements for any MS products included on the Recovery CD,

including, without limitation, the Additional Provisions of the applicable exhibit(s) C for such MS products.

(11) IBM shall submit to MS for review and approval a Recovery CD and Support Utility master media for each major Customer System family or series that is representative of all models and language versions within that family or series (the "Representative Recovery CD"). IBM agrees to submit an additional Representative CD for MS review and approval for each Customer System family or series or in the event of material changes in the Recovery CD. MS shall not unreasonably withhold its approval. MS shall have seven (7) business days to approve/disapprove the Representative Recovery CD and Support Utility following MS's specified IBM account contact's receipt of the same. If approved, MS shall provide such master media to an Authorized Replicator of IBM's choice. IBM shall not distribute the Recovery CD or Boot Files before the date MS provides written notice to IBM approving distribution of such Recovery CD and Support Utility.

(e) IBM hereby indemnifies MS from and against all damages, costs and attorneys' fees arising from any and all claims or demands by third parties in connection with the licensing, distribution, or use of the Recovery CD and/or Support Utility.

(f) Provided IBM complies with all of the requirements stated above, IBM may distribute the Recovery CD and Support utility as described in Section (b) above. without payment of additional royalties to MS.

PLEASE INITIAL: IBM  MS 

**EXHIBIT C2  
WINDOWS 95 UPGRADE**

\* If royalty rate and Maximum Number of Units of Product are not specified for a particular Product, then such Product is not licensed under this Agreement.

\*\* Language Key: EN = English

Product Name and Version	Language Version(s) **	Applicable Additional Provisions	Royalty/Basis *	Maximum Number of Units of Product *	Added by Amendment Number
Windows 95 Upgrade	EN, Cr, Danish, Dutch, Sp, Finnish, FR, IT, Norwegian, Port, Swedish	(a), (b), (c), (d), (e), (f), (g), (h), (i), (j)	US\$ 35.00 per copy	250,000	

**ROYALTY CALCULATION, ORDER, AND PAYMENT**

1. IBM agrees to pay MS the royalty rates set forth above for each unit of Product ordered by IBM.
2. IBM may order no more than the Maximum Number of Units of Product indicated in the Product Table above.
3. Notwithstanding anything to the contrary contained in Section 3 of the Agreement, IBM shall prepay to MS the royalties due for each unit of Product in advance of each order placed with the Authorized Replicator by wire transfer or certified check in accordance with the royalty payment information specified in Attachment 1 hereto. IBM shall identify the quantity of each language version of Product to be ordered when making payment. Each payment must be for a minimum of two hundred fifty (250) units of Product. Royalties exclude any charges by Authorized Replicator for units of Product ordered by IBM.

**ADDITIONAL PROVISIONS KEY**

- (a) IBM agrees that it will not distribute Product until MS advises its OEM customers generally that Customer Systems with Windows 95 may be distributed.
- (b) Notwithstanding anything to the contrary contained in Sections 2 and 6 of the Agreement, IBM shall distribute the Product only in the form/packaging available from the Authorized Replicator.
- (c) For purposes of this Exhibit C, "Customer System" shall mean IBM computer systems which IBM can conclusively establish: (i) were distributed with the Prior Product (as specified in the chart in Additional Provision (d) of this Exhibit) during the period beginning July 1, 1995 and ending October 1, 1995 in compliance with a valid OEM license agreement between IBM and MS; and (ii) were marketed and distributed under IBM's or IBM Subsidiaries' (and not any third party's) brandnames and trademarks.
- (d) Notwithstanding anything to the contrary contained in Sections 2 and 6 of the Agreement, IBM may distribute the Product only as an "upgrade" provided by IBM separate from a Customer System directly to an existing authorized end-user of the Prior Product (as specified in the chart below) on a Customer System.

**Prior Product**

Windows 3.11  
Windows for Workgroups 3.11

**Product**

Windows 95 Upgrade  
Windows 95 Upgrade

- (e) IBM may only distribute the Product either (i) directly (without use of dealers or other intermediaries) to end users, or (ii) as a mail order fulfillment item directly (without use of dealers or other intermediaries) to end users from IBM or an MS designated fulfillment source.
- (f) The packaging for the Product shall indicate that it is intended as an "Upgrade" only (or similar wording) and not for use by a new customer.

(g) IBM's license to distribute this Product shall expire November 30, 1995.

(h) IBM shall acquire the Product through one Authorized Replicator of IBM's choice on each continent. IBM shall notify MS of the Authorized Replicator through which IBM will acquire the Product prior to placing the first order for Product.

(i) IBM agrees to provide commercially reasonable end user support for Windows 95 licensed in the Agreement which shall be under terms and conditions at least as favorable to the end user as the terms under which IBM provides support for IBM's Customer Systems to end users generally. IBM agrees to provide MS with ninety (90) days prior written notice of any substantive change in IBM's support policy for Windows 95.

(j) The English language version of the Product may only be distributed to end user customers located within the geographical boundaries of the United States of America and Canada. The licensed European language version of the Product may only be distributed to end user customers located within the geographical boundaries of Europe.

**WINDOWS 95 OEM UPGRADE PROGRAM ROYALTY PAYMENT INFORMATION**

Please complete this form and fax to:

OEM Accounting Services  
FAX: 206-936-5298  
PHONE: 206-882-8080

Domestic Contact: Jayne McKelvy  
International Contact: Leanne Furugori

- 1). Company Name: \_\_\_\_\_
- 2). License ID #: \_\_\_\_\_
- 3). Quantity to Purchase: \_\_\_\_\_
- 4). Payment amount: \_\_\_\_\_
- 5). Date of Payment: \_\_\_\_\_
- 6). MS Authorized Replicator: \_\_\_\_\_

Please check the appropriate box to indicate whether pre-payment will be submitted via Wire Transfer or certified check and submit such payment as indicated below.

Payment by Wire Transfer:

CITIBANK N.A.  
399 Park Avenue  
New York, NY 10043  
ABA# 021000089

Regarding:  
Microsoft Corporation OEM pre-payment  
Account # 4067-5942

Payment by Certified Check: (please deliver by courier)

Microsoft Corporation  
Attention: OEM Accounting Services  
P.O. Box 84808  
Seattle, WA 98124-6108

Microsoft internal use only  
Accounting Services document control number: \_\_\_\_\_

MSV 0000170  
CONFIDENTIAL

**EXHIBIT N**  
**ADDRESSES**

**IBM:**

**NOTICES:**  
Division Counsel, IBM PC Company  
IBM Corporation  
P.O. Box 100 Route 100 BLDG 3  
Somers, N.Y. 10589  
Attn.: David L. Walsh  
Telephone: (914) 766-3279  
Fax: (914) 766-3833

**BILL TO:**  
Accounts Payable  
IBM Corporation  
1701 North Street P.O. Box 8099  
Endicott, N.Y. 13760  
Attn.: phone: 607-755-4848

**IBM Support**  
telephone no.: 800-772-2227

**MS:**

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

**With copy to:**  
MICROSOFT CORPORATION  
One Microsoft Way  
Redmond, WA 98052-6399  
U.S.A.  
Attn.: Law & Corporate Affairs  
Fax: +1-206-936-7329

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

**Reports and Payments:**

If IBM is a U.S.A. based company, payments and royalty reports shall be made to:

**If sent by U.S.A. Mail:**  
MICROSOFT CORPORATION  
Attention: OEM Finance  
P.O. Box 84808  
Seattle, WA 98124-6108

**If sent by private courier:**  
MICROSOFT CORPORATION  
Attention: OEM Finance  
Remittance Processing  
Wholesale Lockbox  
6801 South 180th  
Tukwila, WA 98188

**Fax copies of royalty reports to:**  
OEM Finance Fax: (206) 936-5298

If IBM is based outside the U.S.A., IBM agrees to make such payments and royalty reports as follows:

**Payment by wire transfer to:**  
Citibank N.A.  
399 Park Avenue  
New York, NY 10043  
U.S.A.  
ABA 021000089

**Regarding:**  
Microsoft International OEM Collections  
Account #38468231

**Royalty reports to:**  
MICROSOFT CORPORATION  
One Microsoft Way  
Redmond, WA 98052-6399  
U.S.A.  
Attention: OEM Finance

**Fax copies of royalty reports to:**  
OEM Finance Fax: +1-206-936-5298

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