

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

	X	
CHARLES COX and OLD FACTORIES,)	
INC.,)	
Individually and on Behalf of all Others)	Index No. 105193/00
Similarly Situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
MICROSOFT CORPORATION and DOES)	
1-100, inclusive,)	
)	
Defendants.	X	

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into, subject to Court approval, as of December 16, 2005, on behalf of the New York Class (as defined below as plaintiffs), and Microsoft Corporation ("Microsoft" as defendant), in *Cox et al. v. Microsoft Corporation*, Case No. 105193/00, pending in the Supreme Court of the State of New York, New York County ("The Case").

WHEREAS, plaintiffs have made certain claims against Microsoft based upon alleged violations of New York law;

WHEREAS, such plaintiffs contend that they and the members of certain certified classes have suffered damages and other injuries as a result;

WHEREAS, Microsoft denies each and every one of plaintiffs' allegations of unlawful conduct, damages and other injuries;

WHEREAS, after arm's-length negotiations between Lead Counsel for the New York

Class (as defined below) and Microsoft, this Settlement Agreement has been reached;

WHEREAS, the class representatives and Lead Counsel for the New York Class have concluded, after investigation of the facts, and after carefully considering the circumstances, that it would be in the best interests of the New York Class to enter into this Settlement Agreement; and both the class representatives and Lead Counsel for the New York Class consider the Settlement set forth below to be fair, reasonable, adequate and in the best interests of the New York Class;

WHEREAS, Microsoft has concluded that it will enter into this Settlement Agreement in order to, among other things, avoid the further expense, inconvenience, burden, uncertainty and risk of this litigation;

NOW, THEREFORE, it is agreed by the undersigned on behalf of the New York Class and Microsoft, that All Claims (as defined below) of the New York Class against Microsoft be settled and compromised, and that The Case (as defined below) against Microsoft be dismissed with prejudice, without costs to any party (except as provided below), on the following terms and conditions:

I. DEFINITIONS

For purposes of this Settlement Agreement, the following terms shall have the meanings set forth below.

A. "The Case" has been defined as *Cox et al. v. Microsoft Corporation*, Case No. 105193/00 (N.Y. Sup. Ct.).

B. "All Claims" means all claims, demands, actions, suits and causes of action against Microsoft and/or its directors, officers, employees, attorneys, insurers or agents, whether known or unknown, asserted or unasserted, that any member of the New York Class ever had,

could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, act or omission which was or could have been alleged in The Case and which arise from or relate to the purchase, use and/or acquisition of a license for a Microsoft Operating System and/or Microsoft Application (as defined below) and where the claims, demands, actions, suits or causes of action concern or relate to any of the following: (a) antitrust (including without limitation the Sherman Antitrust Act, 15 U.S.C. §§ 1 *et seq.*, and the New York Donnelly Act, New York Gen. Bus. Law § 340, *et seq.*), (b) deceptive practices (including without limitation New York Gen. Bus. Law § 349, *et seq.*); (c) unfair competition, (d) unfair practices, (e) price discrimination, (f) trade regulation, (g) trade practices, and/or (h) other federal or state law, regulation or common law similar or analogous to any of the above. "All Claims" does not include (a) claims relating to the acquisition or licensing of Microsoft Operating System or Microsoft Application software for use outside of New York; (b) claims arising from purchases directly from Microsoft Corporation of licenses for Microsoft Operating System or Microsoft Application software; (c) claims by competitors of Microsoft in their capacity as competitors; or (d) claims alleging that Microsoft software is a defective product or claims that Microsoft breached its warranty by selling a defective product. "All Claims" does not include claims relating to Microsoft's conduct, acts or omissions that take place after December 31, 2004. However, "All Claims" includes any and all claims described above relating to Microsoft's conduct, acts or omissions that occurred on or prior to December 31, 2004.

C. "New York End Users" means persons or entities who indirectly licensed Microsoft Applications and/or Microsoft Operating Systems software for use in New York and not for resale during the Class Period. "New York End Users" include companies headquartered outside New York who are identified in the MS Sales database as entities that indirectly licensed

Microsoft Applications and/or Microsoft Operating Systems for use in New York.

D. "New York Class" means all persons or entities who, from and including May 18, 1994, through December 31, 2004 (the "Class Period"), indirectly acquired a license for Microsoft Operating System and/or Microsoft Applications software for use in New York and who did not acquire it for the purpose of resale. The New York Class includes all New York End Users. Excluded from the New York Class are:

1. government entities, Microsoft officers and directors, subsidiaries in which Microsoft has greater than a 50 percent ownership interest and any judges or justices assigned to hear any aspect of this litigation; and
2. all persons or entities who have properly excluded themselves from the plaintiff classes previously certified by the Court.

E. "Category I products" means all titles of software listed on Appendix A-1.

F. "Category II products" means all titles of software listed on Appendix A-2.

G. "Category III products" means all titles of software listed on Appendix A-3.

H. "Claim Period" means the period beginning with the Notice Commencement Date (defined in Section II.D.3 below) and ending six months after the Notice Ending Date (defined in Section II.D.3 below), provided, however, that the Claim Period shall end no sooner than 30 days after the date on which the Court enters an Order of Approval and Final Judgment as provided in section II.G below. The Claim Period may be extended by agreement of the parties or subsequent order of the Court for good cause shown.

I. "Consumer Vouchers" means the vouchers issued to members of the New York Class pursuant to the terms of this Settlement Agreement.

J. "Lead Counsel for the New York Class" means Daniel Hume of Kirby McInerney

& Squire, LLP; David Stelling of Lieff, Cabraser, Heimann & Bernstein, LLP; and J. Douglas Richards of Milberg Weiss Bershad & Schulman LLP.

K. "Court" means the Supreme Court of the State of New York, New York County.

L. The "Cy Pres Amount" is fifty percent (50%) of the difference between \$225 million and the amount of issued Consumer Vouchers.

M. The "Cy Pres Period" shall begin on a date no later than the Effective Date of the Settlement (the "Cy Pres Distribution Date") and shall end on a date six years after the Cy Pres Distribution Date.

N. "Effective Date of the Settlement" means 60 days after the occurrence of all of the following events:

1. This Settlement is approved in all respects by the Court;
2. The Court enters an Order of Approval and Final Judgment as provided in Section II.K below;
3. The Court dismisses The Case with prejudice as provided in Sections II.G and II.I below;
4. The clerk of the court enters the Final Judgment and serves notice of entry of the Final Judgment upon all named parties to The Case; and
5. The time to appeal or seek permission to appeal from the Court's Order of Approval and/or Final Judgment has expired, or, if appealed, the Order of Approval and Final Judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

O. "Eligible Schools" means all public, elementary, middle, junior high and high schools (K-12) in New York at which at least 50% of the attending students are eligible to

receive free or reduced-priced meals through the National School Lunch Program (*see* National School Lunch Act, 42 U.S.C. §§ 1751-1769). The determination of whether a public school qualifies as an Eligible School shall be made by the Settlement Administrator based on a review of the school's last publicly available filing with the United States Department of Agriculture (or the relevant state agency responsible for ensuring compliance with the requirements of the National School Lunch Program) between January 1, 2004 and December 31, 2004.

P. "IT Support Services" are services that primarily involve the maintenance of hardware procured through this Settlement and the installation and maintenance of software procured through this Settlement.

Q. "Microsoft" means Microsoft Corporation, its successors, assigns and subsidiaries.

R. "Microsoft Application" means the versions of the products listed on Appendix A-2.

S. "Microsoft Operating System" means the versions of the products listed on Appendices A-1 and A-3.

T. "Microsoft's End User Data" shall include the following: the Microsoft eOpen database, the Microsoft Volume Licensing Services ("MVLS") database, the Worldwide Marketing Database ("WWMDB"), the Microsoft Open License Program ("MOLP") database, the Microsoft License Information Repository ("LIR") database, the Microsoft License ("MSL") database, and, as necessary, any reasonably accessible data in the MS Sales database.

U. "Objection Date" means the date by which members of the New York Class must file with the Court and serve on Lead Counsel for the New York Class and counsel for Microsoft any written objections to the Settlement and any written objections to the request for attorneys'

fees included in the class notice, along with any supporting documentation.

V. "Professional Development Services" are: (1) Professional development services directed solely at leadership development for school administrators; (2) Professional development services directed solely at general curriculum development and instructional strategies; (3) Professional development services directed solely at the improvement of technology integration for any software title acquired through this Settlement; and (4) Training in the use of any hardware or software title acquired through this Settlement.

W. The "Settlement Claims Administrator" is Rust Consulting, Inc., who is designated to manage specified portions of the notice program, receive requests to opt-out from class members under Section II.E below, process claims, issue Consumer Vouchers and redeem Consumer Vouchers from class members under Sections IV and V below as well as issue and redeem cy pres General Purpose Vouchers and Software Vouchers under Section VI below. The Settlement Claims Administrator shall be jointly retained and supervised by Microsoft and Lead Counsel and copies of all information or correspondence sent to the Settlement Claims Administrator by Microsoft or counsel for the New York Class shall also be sent simultaneously to the other party. Microsoft will pay all reasonable costs and expenses of the Settlement Claims Administrator relating to this Settlement Agreement. The New York Class and Class Counsel shall not be responsible for paying any costs or expenses of the Settlement Claims Administrator relating to this Settlement Agreement.

X. The "Settlement Period" means four years from the Effective Date of the Settlement.

Y. "Opt-Out Date" means the postmark date by which members of the New York Class must mail their request to be excluded from the New York Class in order for that request to

be effective.

Z. "Class Counsel" means Kirby, McInerney & Squire LLP; Lieff, Cabraser, Heimann & Bernstein LLP; Milberg Weiss Bershad & Schulman LLP; Mark D. Bogen, P.A. and Gergosian and Gralewski, LLP.

II. COURT APPROVAL, CLASS NOTICE AND OBJECTION PROCEDURES

A. Best Efforts. Lead Counsel for the New York Class and Microsoft agree that they will: (1) recommend approval of this Settlement Agreement to the Court; (2) use their best efforts to obtain approval of this Settlement Agreement and to carry out its terms; and (3) support the Settlement contemplated by this Settlement Agreement in all public statements, including all statements in court and all statements to the news media.

B. Motion for Preliminary Approval. Lead Counsel for the New York Class shall submit to the Court on or before January 16, 2006 a motion for preliminary approval of this Settlement Agreement on behalf of the New York Class seeking a preliminary approval hearing on February 6, 2006 or the Court's first available date thereafter, together with a proposed preliminary approval order substantially in the form attached as Appendix A. The motion for preliminary approval shall seek approval of the form and manner of notice and opt-out and objection procedures as set forth in Sections II.D-F below. The motion for preliminary approval shall also ask the Court to schedule a hearing date for final approval of this Settlement Agreement. If such settlement is terminated or does not obtain Final Approval, then the status of class certification in this litigation shall be as it existed prior to the execution of this Settlement Agreement.

C. Stay of Proceedings. Upon moving for preliminary approval, the parties will seek from the Court a stay of this litigation. Lead Counsel for the New York Class and Microsoft

shall file pleadings and otherwise take any steps necessary to effect this stay in this Court.

D. Notice.

1. In the motion for preliminary approval of this Settlement Agreement (as set forth in Section II.B above) or prior to making such motion, Lead Counsel for the New York Class shall apply to the Court for an order authorizing summary notice by publication to the New York Class, substantially in the same form that was approved for use in the settlement of the consumer antitrust class action against Microsoft in California and/or Minnesota, subject to modification as agreed by the parties and approval by the Court. Such notice shall inform the New York Class of the terms of the Settlement Agreement, state the date scheduled by the Court for the hearing on final approval of the Settlement, and advise class members of their right to exclude themselves from the Settlement or to object to the Settlement or to the request for attorneys' fees and costs submitted by Lead Counsel for the New York Class, and to appear at the hearing on final approval. The notice will also contain a stern warning regarding the possibility of audit and the penalties for the submission of false information in connection with claiming and/or redeeming Consumer Vouchers.

2. Subject to approval of the Court, Lead Counsel for the New York Class and Microsoft agree that notice shall be published in print publications and disseminated via electronic media (such as America Online, Hotmail, and/or other Internet Access Providers that can direct notice specifically to New York customers). Microsoft will bear the reasonable cost of publishing notice in print publications and the cost of disseminating notice via electronic media. Lead Counsel for the New York Class will determine the reasonable allocation of these funds between print publications and electronic media.

a. Postal Mail:

(1) In the motion for preliminary approval of this Settlement Agreement (as set forth in Section II.B above), Lead Counsel for the New York Class shall apply to the Court for an order authorizing mailed written notice (which notice shall include a hard copy of a Claim Form) substantially in the same form that was approved for use in the settlement of the consumer antitrust class action against Microsoft in California, subject to modification as agreed by the parties and approval by the Court.

(2) Lead Counsel for the New York Class and Microsoft will provide the Settlement Claims Administrator with the information in their possession that is necessary to facilitate such written notice to be mailed, via the U.S. Postal Service, (a) to those New York End Users whose mailing addresses are in any of the following databases: MS Sales, MSL, MOLP, WWMDB, and Microsoft product support databases (including the Clarify, PSS Reporting Warehouse and PID Server databases); (b) to those New York End Users who are subscribers to MSN-Internet Services and whose mailing addresses indicate that they live in New York; (c) to those Information Technology managers whose mailing address indicates that they are located in New York or work for companies with operations in New York, or are included in any database compilation of IT managers maintained by Microsoft, including but not limited to TechNet; and (d) to those New York End Users whose mailing addresses may be identified by Lead Counsel for the New York Class and provided to the Settlement Claims Administrator within 45 days after preliminary approval of the Settlement.

(3) The mailed notice to each New York End User whose mailing address is recorded in WWMDB and who is not a volume licensee will include a printout (to be provided by Microsoft to the Settlement Claims Administrator) sufficient to identify the number and type of licenses when such information is available in each applicable

product category found in WWMDB for that New York End User.

(4) The Settlement Claims Administrator shall utilize the national change of address service through the United States Postal Service to obtain corrected mailing addresses for New York End Users whose notices are returned because they were sent to incorrect addresses. Microsoft will pay up to an additional ten thousand dollars (\$10,000.00) to allow the Settlement Claims Administrator to utilize other reasonable means to obtain corrected addresses.

(5) All mailed notices will contain a stern warning regarding the possibility of audit and the penalties for the submission of false information in connection with claiming and/or redeeming Consumer Vouchers. Microsoft will bear the cost of such notice.

b. Email:

(1) In the motion for preliminary approval of this Settlement Agreement (as set forth in Section II.B above), Lead Counsel for the New York Class shall apply to the Court for an order authorizing emailed notice (which notice shall include a link to an electronic copy of a Claim Form) substantially in the same form that was approved for use in the settlement of the consumer antitrust class action against Microsoft in California, subject to modification as agreed by the parties and approval by the Court.

(2) Lead Counsel for the New York Class and Microsoft will provide the Settlement Claims Administrator with the information in their possession that is necessary to facilitate the issuance of such notice to be emailed, (a) to those New York End Users whose email addresses are in any of the following databases: MS Sales, MSL, MOLP, WWMDB, and Microsoft product support databases (including the Clarify, PSS Reporting Warehouse and PID Server databases); (b) to those New York End Users who are subscribers to

MSN-Internet Services and whose mailing addresses indicate that they live in New York; (c) to those Information Technology managers whose mailing address indicates that they are located in New York or work for companies with operations in New York, or whose email addresses are included in any database compilation of IT managers maintained by Microsoft, including but not limited to TechNet; and (d) to those New York End Users whose email addresses may be identified by Lead Counsel for the New York Class and provided to the Settlement Claims Administrator within 45 days after preliminary approval of the Settlement.

(3) All emailed notices will contain a stern warning regarding the possibility of audit and the penalties for the submission of false information in connection with claiming and/or redeeming Consumer Vouchers. Microsoft will bear the cost of such notice.

c. Online:

(1) Lead Counsel for the New York Class will also cause the Court-approved notice of the Settlement to be posted, during the entire Claim Period, on an Internet Web site. The Web site will be maintained and managed by the Settlement Claims Administrator. An electronic copy of a Claim Form will be available on the Web site, as well as additional instructions relating to the filing and processing of claims. All notices pursuant to Sections II.D.1 and II.D.2 above shall direct New York End Users to the Web site. All notices pursuant to Sections II.D.1 and II.D.2 above shall also direct New York End Users to a toll-free "800" telephone number from which Claim Forms and additional information can be obtained. Microsoft will pay all costs and expenses incurred in connection with the maintenance of the Web site and the toll-free telephone number.

(2) In addition to the Web site described in Section II.D.2.c(1) above, a copy of the notice will be posted on Microsoft's corporate Web site and will be linked

to the “legal issues” tab or some other more descriptive tab name to be agreed upon by Lead Counsel for the New York Class and Microsoft.

3. The written notice sent by mail and by email pursuant to Sections II.D.2.a and II.D.2.b above shall be provided during a period (“Notice Period”), which shall begin on a date within 15 days after the Court enters an order preliminarily approving this Settlement Agreement (“Notice Commencement Date”), and which shall end on a date 60 days after the Notice Commencement Date (“Notice Ending Date”). The Settlement Claims Administrator, Lead Counsel for the New York Class and Microsoft shall use all reasonable efforts to ensure that the notice by publication described in Section II.D.1 above and the mailed and emailed notice described in Sections II.D.2.a and II.D.2.b above are completed during the Notice Period. If it is not possible to complete the required notice before the end of the Notice Period it shall be completed as soon as possible thereafter, and the parties will seek an Order of the Court relating to the completion of the Notice. Public statements about the Settlement during the Claim Period shall not contradict the content of the notices described in this Section II.D.

4. Microsoft will bear the costs of notice as provided in this Section II.D, subject to the limitation on the cost of published notice set forth in Section II.D.2 above and the limitation on the cost of obtaining corrected addresses set forth in Section II.D.2.a(5) above, whether or not this Settlement Agreement obtains Final Approval or is otherwise terminated.

E. Opt-Out Procedure.

1. Eligibility. Lead Counsel for the New York Class and Microsoft will recommend that the Court approve an Opt-Out Date that is 30 days after the Notice Ending Date. Any member of the New York Class may request exclusion from (“opt out” of) the settlement on or before the Opt-Out Date through the method described below. Except as otherwise authorized

by law, no person may opt out on behalf of any other person, persons, classes or sub-classes.

2. Method of Exercise. Each member of the New York Class wishing to opt out of the New York Class must individually sign and submit timely written notice to a Post Office Box designated by the Settlement Administrator. This written notice must clearly manifest an intent to be excluded from the New York Class. To be effective, written notice must be postmarked on or before the Opt-Out Date.

F. Procedures for Objecting to the Settlement. Lead Counsel for the New York Class and Microsoft will recommend that the Court approve an Objection Date that is 30 days after the Notice Ending Date. Any member of the New York Class may appear at the hearing on final approval of the Settlement to present any objections to the Settlement, or to present any opposition to the request for attorneys' fees and costs submitted by Lead Counsel for the New York Class or by any other counsel for plaintiffs; provided, however, that no member of the New York Class shall be heard, unless his, her or its objection or opposition is made in writing and is filed, together with copies of all other papers and briefs to be submitted to the Court at the hearing on final approval of the Settlement, with the Court no later than the Objection Date, showing proof of service on Lead Counsel for the New York Class and counsel for Microsoft.

G. Motion for Court Approval and Entry of Final Judgment. Lead Counsel for the New York Class and Microsoft will request that the Court set the hearing on final approval of the settlement for a date that is approximately 30 days after the Opt-Out Date and Objection Date. At least 37 days prior to the date the Court sets for the hearing on final approval of the Settlement, Lead Counsel for the New York Class will submit a fee application and a motion and supporting papers for an Order of Approval and Final Judgment, substantially in the forms attached as Appendices B and C, respectively. Microsoft may also submit papers in support of

final approval at that time. At least seven days in advance of the hearing on Final Approval, Lead Counsel and Microsoft shall have the opportunity to submit papers in response to any objections. The Order of Approval and Final Judgment will:

1. Determine that Microsoft and the New York Class have submitted to the jurisdiction of the Court for purposes of this Settlement, that the Court has personal jurisdiction over Microsoft and all members of the New York Class and that the Court has jurisdiction to approve this Settlement Agreement as fair, reasonable and adequate;
2. Find that the notice provided in this Settlement Agreement (a) constitutes reasonable and the best practicable notice; (b) constitutes notice that is reasonably calculated, under the circumstances, to apprise members of the New York Class of the pendency of this action, the terms of this Settlement, the right to object to or exclude themselves from this Settlement, and the right to appear at the hearing on final approval; (c) constitutes due, adequate and sufficient notice to all persons or entities entitled to receive such notice; and (d) meets the requirements of due process, and other applicable law or rules of the Court;
3. Direct that All Cases be dismissed with prejudice and, except as provided for below, without costs;
4. Reserve for the Court exclusive jurisdiction over this Settlement, including the administration, consummation and enforcement of this Settlement, and including all proceedings both before and after the Final Judgment becomes final and is no longer subject to appeal;
5. Determine that there is no just reason for delay and directing that the Final Judgment shall be final and appealable;
6. Direct that, for a period of four years from the Effective Date of the

Settlement, the Clerk of the Court shall maintain a record of those members of the New York Class who have timely excluded themselves from the New York Class and that a certified copy of such records shall be provided to Microsoft at Microsoft's expense; and

7. Incorporate the release set forth in Section III below and forever discharge Microsoft from All Claims.

H. Effect of Disapproval. If the Court for any reason (1) determines not to approve an amendment agreed to by the parties hereto to the existing Complaint; (2) determines not to approve this Settlement Agreement; (3) does not enter the Final Judgment substantially in the form described in Section II.G above and Appendix E; or (4) if the Court's approval is modified reversed or set aside on appeal, then this Settlement Agreement terminates and becomes null and void except as otherwise provided in this Settlement Agreement.

I. Dismissal With Prejudice. Upon final approval of this Settlement, Lead Counsel for the New York Class and Microsoft shall join in seeking dismissal with prejudice of The Case to the extent that the Court does not dismiss The Case with prejudice in its Order of Approval and Final Judgment.

III. RELEASE

A. Release. Upon Final Approval, each member of the New York Class hereby expressly and irrevocably waives and fully, finally and forever settles and releases all claims, demands, actions, suits and causes of action against Microsoft and/or its directors, officers, employees, attorneys, insurers or agents, whether known or unknown, asserted or unasserted, that any member of the New York Class ever had, could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, act or omission which was or could have been alleged in any of The Case and which arise from or relate to the purchase, use and/or

acquisition of a license for a Microsoft Operating System and/or Microsoft Application and where the claims, demands, actions, suits or causes of action concern or relate to any of the following: (a) antitrust (including without limitation the Sherman Antitrust Act, 15 U.S.C. §§ 1 *et seq.*, and the New York Donnelly Act, New York Gen. Bus. Law § 340, *et seq.*), (b) deceptive practices (including without limitation New York Gen. Bus. Law § 349, *et seq.*), (c) unfair competition, (d) unfair practices, (e) price discrimination, (f) trade regulation, (g) trade practices, and/or (h) other federal or state law, regulation or common law similar or analogous to any of the above. This Release does not include (a) claims relating to the acquisition or licensing of Microsoft Operating System or Microsoft Application software for use outside of New York; (b) claims arising from purchases directly from Microsoft Corporation of licenses for Microsoft Operating System or Microsoft Application software; (c) claims by competitors of Microsoft in their capacity as competitors; or (d) claims alleging that Microsoft software is a defective product, or claims that Microsoft breached its warranty by selling a defective product. This Release does not include claims relating to Microsoft's conduct, acts or omissions that take place after December 31, 2004. However, class members hereby release any and all claims described above relating to Microsoft's conduct, acts or omissions that occurred on or prior to December 31, 2004.

B. Waiver of Release Limitations. In addition to the provisions of Section III.A above, each member of the New York Class hereby expressly and irrevocably waives and fully, finally and forever settles and releases, upon Final Approval, any and all defenses, rights and benefits that the class member may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in Section III.A above.

IV. CONSUMER VOUCHERS

A. Consideration. As part of the consideration for the agreement to dismiss All Claims with prejudice, and for entry of the Final Judgment as provided for in the Settlement Agreement, on the Effective Date of the Settlement, Microsoft shall make the Consumer Vouchers described in this Section available to all members of the New York Class in accordance with the procedures set forth below.

B. Consumer Voucher Amounts. Upon presentation of a satisfactory proof of claim as set forth in Section V.A below, each member of the New York Class who acquired a Category I, Category II, or Category III software license in New York, or who acquired indirectly a Category I, Category II or Category III software license outside New York for use in New York during the period from and including May 18, 1994 through December 31, 2004, may obtain a Consumer Voucher as follows:

1. Members of the New York Class who acquired a license for a Category I product in New York during the period from and including May 18, 1994, through December 31, 2004 for use in New York will receive a Consumer Voucher worth \$12.00 for each such license.
2. Members of the New York Class who acquired a license for a Category II product in New York during the period from and including May 18, 1994, through December 31, 2004 for use in New York will receive a Consumer Voucher worth \$5.00 for each such license.
3. Members of the New York Class who acquired a license for a Category III product in New York during the period from and including May 18, 1994, through December 31, 2004 for use in New York will receive a Consumer Voucher worth \$5.00 for each such license.
4. For purposes of determining the appropriate number of vouchers to be awarded, a New York Class Member shall be considered to have a separate license for each

desktop or laptop computer that is authorized for use in conjunction with the licensed software under the terms of the New York Class Member's license agreement. For example, if the New York Class Member's license agreement authorizes installation of the software on up to 100 computers, the New York Class Member is entitled to 100 vouchers, regardless of whether the software is actually installed on 100 computers, as long as the New York Class Member has paid for 100 licenses. For Enterprise Agreement licenses, the New York Class Member shall be considered to have a separate license for the initial licenses purchased under the agreement and not for automatic upgrade licenses which they are eligible to receive and install under their Enterprise Agreement. For all other types of licensing arrangements the initial license and each upgrade license shall be counted as separate licenses.

C. Consumer Voucher Restrictions. The Consumer Vouchers may be aggregated by any claimant possessing a number of any such Consumer Vouchers. The Consumer Vouchers are not redeemable for cash and may not be presented directly to a retailer or computer manufacturer for redemption upon the purchase of the hardware or software described in Section IV.E below. The Consumer Vouchers issued to members of the New York Class shall expire at the end of the Settlement Period. Consumer Vouchers will be printed with security features, will be serialized and, if possible, will be printed with the name of the Consumer Voucher recipient on the face of the Consumer Voucher.

D. Transfer of Consumer Vouchers. A claimant may transfer up to \$650.00 of the value of any Consumer Vouchers awarded to that claimant. Each Consumer Voucher may be transferred only once. A transferee may redeem no more than \$10,000 in transferred Consumer Vouchers. When transferees submit Consumer Vouchers for redemption, they must declare under penalty of perjury that they intend to use the products purchased with the transferred

Consumer Vouchers for their own personal or business use, and that they will not directly, indirectly or in concert with others redeem more than \$10,000 of transferred Consumer Vouchers. Neither claims nor Consumer Vouchers are transferable under any other circumstances.

E. Redemption. Claimants may present the Consumer Vouchers to the Settlement Claims Administrator during the Settlement Period, together with satisfactory proof of purchase (described in Section V.B.1 below) of any of the following hardware and/or software purchased after the date of preliminary approval of this Settlement Agreement, to receive the face value of the Consumer Vouchers. Otherwise valid Consumer Vouchers will be accepted by the Settlement Claims Administrator if they are postmarked on or before the last day of the Settlement Period and are received by the Settlement Claims Administrator within 14 days of the last day of the Settlement Period.

1. Hardware. Claimants may redeem the Consumer Vouchers from the Settlement Claims Administrator during the Settlement Period by presenting satisfactory proof of purchase(s) made after the date of preliminary approval of this Settlement Agreement of any new desktop, laptop or tablet computer for any operating system platform ("Qualifying Hardware"). The definition of Qualifying Hardware excludes servers, personal digital assistants ("PDAs") and other hand-held devices. The definition of Qualifying Hardware includes the following devices or components ("Peripheral Devices"): printers, scanners, monitors, keyboards and pointing devices (e.g., mouse, trackball, etc.). A member of the New York Class whose total claim is less than \$950 may use his or her Consumer Vouchers to purchase Peripheral Devices regardless of whether or not the class member also purchases a computer. All other members of the New York Class may use Consumer Vouchers to purchase Peripheral Devices only in connection with the

purchase of a computer. The definition of Qualifying Hardware excludes all other devices and components (including, but not limited to, cables, speakers or other external devices, internal or external storage units, internal or external CD-ROM, DVD or other read/write devices, zip drives, tape backup or storage units, memory, video or audio cards, motherboards or CPUs).

2. Software. Claimants may redeem the Consumer Vouchers from the Settlement Claims Administrator during the Settlement Period by presenting satisfactory proof of purchase after the date of preliminary approval of this Settlement Agreement of any non-custom software title, including any software title not published by Microsoft, that (a) is designed for use on any Qualifying Hardware described in Section IV.E.1 above, and (b) is not software designed to operate on a server ("Qualifying Software").

V. PROCESSES FOR CLAIMING AND REDEEMING CONSUMER VOUCHERS

A. Step 1. Members of the New York Class may claim the Consumer Vouchers described in Section IV.C above by mailing a completed Claim Form, together with satisfactory proof of qualification as specified below, to the Settlement Claims Administrator prior to the close of the Claim Period. Completion of this first step (submission of a Claim Form and satisfactory proof of qualification) shall entitle the claimant to receive only a Consumer Voucher and nothing more. Claimants should retain copies of their completed Claim Forms and copies of all other documentation that they submit to the Settlement Claims Administrator with their Claim Forms.

1. Claim Forms. The mailed notice provided pursuant to Section II.D.2.a above will include a Claim Form to be used by members of the New York Class. The emailed notice provided pursuant to Section II.D.2.b above will include a link to an electronic copy of the Claim Form. In addition, an electronic copy of the Claim Form will be available on the Internet

Web site described in Section II.D.2.c above, which will also contain information on how to make claims. Members of the New York Class may also obtain Claim Forms by calling a toll free "800" telephone number established by the Settlement Claims Administrator. The Claim Form will contain a stern warning regarding the possibility of audit and the penalties for the submission of false information in connection with claiming and/or redeeming Consumer Vouchers.

a. All Claim Forms to be completed by members of the New York Class that are not Volume Licensees will require a sworn declaration under penalty of perjury that sets forth the claimant's name, street address, telephone number, either a photocopy of a valid driver's license or the last four digits of a social security number or a taxpayer identification number, email address (optional), and the quantity acquired of each of the three categories of software licenses at issue in this litigation (Category I products, Category II products, and Category III products). The Claim Form will also call for the year in which each purchase was made and the identity of the seller. In addition, claims submitted by businesses must include a sworn declaration under penalty of perjury that the software covered by the claim was used in New York.

b. All Claim Forms to be completed by members of the New York Class that are Volume Licensees will require a sworn declaration under penalty of perjury that sets forth the claimant's name, street address, telephone number, taxpayer identification number, email address (optional), and the quantity acquired of each of the three categories of software licenses at issue in this litigation (Category I products, Category II products, and Category III products). In addition, claims must include a sworn declaration under penalty of perjury that the software covered by the claim was used in New York.

2. Proof of Qualification (Claims For Up To Five Licenses). A member of the New York Class that is not a Volume Licensee may submit up to five (5) license claims supported only by the sworn declaration under penalty of perjury described in Section V.A.1.a above. If a member of the New York Class that is a Volume Licensee wishes to submit up to five (5) license claims without submitting the documentation specified in Section V.A.5 below, that class member must support its submission with the declaration under penalty of perjury described in Section V.A.1.b above. The Settlement Claims Administrator shall approve such claims without requiring further documentation unless there is reasonable cause to suspect that the claim is fraudulent or otherwise improper. Any additional license claims will require documentation. A claimant who submits more than five license claims may submit: (a) five license claims supported only by the sworn declaration under penalty of perjury described in Section V.A.1.a above; and (b) any additional license claims supported by the documentation described below.

3. Online Claims Submission. In lieu of the process described in Section V.A.2 above, a member of the New York Class that is not a Volume Licensee may submit up to five (5) license claims through an online claims submission process established and administered by the Settlement Claims Administrator. Such claims must be supported by: (1) a sworn declaration under penalty of perjury as described in Section V.A.1.a. above, except that members of the New York Class shall swear to this declaration in the process of submitting their claim online rather than by providing a handwritten signature as is otherwise required; and (2) the Product Identification (“PID”) number for each license. The Settlement Administrator shall approve such claims without requiring further documentation unless there is reasonable cause to suspect that the claim is fraudulent or otherwise improper. Members of the New York Class that

do not know or cannot find the PIDs for their licenses may submit their claims in the other ways provided for by this Settlement Agreement, and the Web site established for the online claims submission process will have a link to the forms required to submit claims pursuant to Section V.A.2 above. Members of the New York Class may not submit claims online by any other means or through any party other than the Settlement Claims Administrator. Claims submitted through any online process other than that described in this paragraph or by any person other than the claimant will be rejected. Claims submitted online will thereafter be processed in the normal manner.

4. Proof of Qualification (Customers Other Than Volume Licensing Customers). A member of the New York Class who submits claims for additional licenses (other than volume licenses) beyond the five license claims described in Sections V.A.2 or V.A.3 above must support such claims by providing, prior to the close of the Claim Period, for each license:
- (1) a sworn declaration under penalty of perjury as described in Section V.A.1.a above; and
 - (2) **one** of the following:
 - a. the Product Identification (“PID”) number;
 - b. the Product Key number that is found on the computer hardware (for preinstalled Microsoft Operating Systems) or printed on the Certificate of Authenticity (“COA”) obtained with the Microsoft Operating System and/or Microsoft Application or that is located on the back of the case for the CD-ROM containing such software;
 - c. the original COA;
 - d. printed information obtained from Microsoft’s End User Data; or
 - e. receipts reflecting the purchase of bona fide Microsoft products

that are eligible for settlement benefits.

The Claim Form will clearly explain where the PID, Product Key or COA can be found on the products at issue. The Settlement Claims Administrator shall approve such claims without requiring further documentation unless there is reasonable cause to suspect that the claim is fraudulent or otherwise improper. In the absence of the information listed in Sections V.A.4.a through V.A.4.e above, claimants may support their claims with such other proof of qualification as the parties and the Settlement Claims Administrator shall agree to accept, or, in the absence of such an agreement, such other proof of qualification as the Special Master(s) described in Section V.A.7 may accept.

5. Proof of Qualification (Volume Licensing Customers). A member of the New York Class who licensed a Microsoft Operating System and/or Microsoft Application through Microsoft's volume licensing programs (including Open, Select and Enterprise Agreement programs) ("Volume Licensees") must support such claims by providing, prior to the close of the Claim Period, for each license: (1) a sworn declaration under penalty of perjury as described in Section V.A.1.b above; and (2) one of the following proofs of licensing:

- a. the claimant's license agreement;
- b. license confirmations;
- c. Enterprise Agreement enrollment forms;
- d. interim true-up orders;
- e. eOpen documentation or MVLS documentation;
- f. printed information obtained from Microsoft's End User Data; or
- g. receipts reflecting the purchase of bona fide Microsoft products that are eligible for settlement benefits.

The Settlement Claims Administrator shall approve such claims without requiring further documentation unless there is reasonable cause to suspect that the claim is fraudulent or otherwise improper.

6. Requesting Microsoft to Search End User Data. Instead of or in addition to attaching the types of documentation set forth in Section V.A.5 above, a member of the New York Class may check a box prominently displayed on the first page of its Claim Form that will require Microsoft (with the active supervision of the Settlement Claims Administrator) to search Microsoft's End User Data to determine whether there is license information in Microsoft's End User Data that the claimant can use to further document the claim. A representative of Lead Counsel for the New York Class may, at its option, monitor the search process. Microsoft shall provide the Settlement Claims Administrator with copies of the necessary portions of Microsoft's End User Data and the assistance necessary to facilitate access to the claimant's license information and will communicate that information to the claimant for use in making a claim. The Settlement Claims Administrator shall authorize otherwise valid claims documented by the claimant as further supplemented by the license records found in Microsoft's End User Data.

7. Other Written Evidence. If a member of the New York Class is unable to attach the types of documentation that will automatically authorize the full amount of its claims (as set forth in Sections V.A.4 and V.A.5 above), it may submit other credible written evidence (along with a sworn declaration under penalty of perjury as described in Section V.A.2 above) to prove its claim. The parties will jointly select one or more Special Masters to review such additional written evidence. The Special Master(s) may approve the claim based on the additional written evidence if such evidence is clear and convincing. The parties will jointly meet

with the Special Master(s) to explain the purpose of the clear and convincing evidence standard. If a claimant only has a sworn declaration or the full amount of a claimant's claim is not approved based on the submitted written documentation, the claimant must appear at a hearing before the Special Master(s) if it wishes to attempt to meet the standard of clear and convincing evidence. The Special Master(s) shall hold hearings throughout the State of New York so that no claimant must travel more than 125 miles to appear. Lead Counsel for the New York Class and Microsoft shall have the right to present evidence and contest claims at such hearings. The ruling of the Special Master(s) may be appealed to the Court.

8. Approval. The Settlement Claims Administrator will promptly review each claim and make a determination of the number and amount of Consumer Vouchers to be issued to each claimant. The Settlement Claims Administrator shall mail the Consumer Voucher(s) for each claimant whose claim is approved to the address provided by the claimant. The Settlement Claims Administrator shall not be responsible for ensuring that the claimant actually receives the Consumer Voucher.

B. Step 2. To redeem any Consumer Voucher for its face value, a claimant must submit the Consumer Voucher, together with satisfactory proof of purchase of Qualifying Hardware and/or Qualifying Software (as defined in Section IV.E above), to the Settlement Claims Administrator. The claimant must have purchased the Qualifying Hardware and/or Qualifying Software after the date of preliminary approval of this Settlement Agreement. Consumer Vouchers and proofs of purchase must be postmarked on or before the last day of the Settlement Period and must be received by the Settlement Claims Administrator within 14 days of the last day of the Settlement Period. Claimants should retain copies of their Consumer Vouchers and all other documentation submitted to the Settlement Claims Administrator as proof

of purchase of Qualifying Hardware and/or Qualifying Software.

1. Proof of Purchase. The proof of purchase must include (a) the original receipt for the purchase of Qualifying Hardware and/or Qualifying Software or (b) a box top or other original packing material with a U.P.C. bar code or a proof-of-purchase mark. Subject to Section V.D.1 below, the Settlement Claims Administrator will be responsible for determining whether the information submitted is sufficient. The claimant should retain copies of all submitted materials. The claimant must have purchased the Qualifying Hardware and/or Qualifying Software after the date of preliminary approval of this Settlement Agreement. If the amount of the Consumer Vouchers submitted with the proof(s) of purchase exceeds the purchase price of the Qualifying Hardware and/or Qualifying Software, the Settlement Claims Administrator will process such submissions in a manner to be agreed upon by the parties, in consultation with the Settlement Claims Administrator. The parties agree in principle that claimants who make such submissions for less than the full amount of their Consumer Vouchers will be permitted to make multiple submissions of their Consumer Vouchers. The parties, in consultation with the Settlement Claims Administrator, will agree as to the details, rules and procedures for processing such submissions.

2. Limits On Transferability. Except as provided in Section IV.D above, once issued, Consumer Vouchers are not transferable to, and may not be redeemed by, any person or entity other than the member of the New York Class to whom such Consumer Vouchers were issued, and, as to members of the New York Class that are business entities, their legal successors in interest.

3. Approval. Consumer Vouchers, together with all necessary supporting documentation, must be postmarked on or before the last day of the Settlement Period and must

be received by the Settlement Claims Administrator within 14 days of the last day of the Settlement Period. If the Settlement Claims Administrator approves the submission, the Settlement Claims Administrator shall mail to the claimant a check for the appropriate amount to the address provided by the claimant. The Settlement Claims Administrator is not responsible for ensuring that the claimant actually receives the check.

C. Combined Claims. A member of the New York Class may, at his or her option, submit a Claim Form and satisfactory proof of qualification (as described in Section V.A above) and satisfactory proof of purchase of Qualifying Hardware and/or Qualifying Software (as described in Section V.B above) at the same time. The claimant must have purchased the Qualifying Hardware and/or Qualifying Software after the date of preliminary approval of this Settlement Agreement. If all of the submitted documentation is satisfactory, and the Settlement is approved and becomes final, the Settlement Claims Administrator shall issue a check to the member of the New York Class for the appropriate amount. However, it is possible that (a) some or all of the class member's submitted documentation may not be approved by the Settlement Claims Administrator and that the class member's claims may not be approved, or (b) the Settlement may not be approved or become final and the class member's claims may not be approved.

D. Settlement Claims Administration.

1. The Settlement Claims Administrator shall process claims under this Settlement Agreement and administer this Settlement generally in substantially the same way as it did the claims in and settlement of the consumer antitrust class action against Microsoft in California. In the event that new issues arise, the Settlement Claims Administrator, Lead Counsel for the New York Class and Microsoft will endeavor to agree on the appropriate rules and

procedures. If the Settlement Claims Administrator and the parties are unable to agree on any such rules or procedures, the parties shall submit their disagreement to the Court or to a referee appointed by the Court with the consent of the parties for resolution.

2. The Settlement Claims Administrator shall review the Claim Forms and proofs of purchase described in Sections V.A, V.B and V.C above to determine whether they contain the required documentation and whether the claims are duplicative or otherwise invalid, and shall reject any invalid claims unless Lead Counsel for the New York Class and Microsoft otherwise direct. In the event that the Settlement Claims Administrator intends to reject a claim valued at over \$10,000, the Settlement Claims Administrator shall notify Microsoft and Lead Counsel for the New York Class of such rejection at least seven days before the Settlement Claims Administrator sends written notice to the claimant that its claim has been rejected. Lead Counsel for the New York Class and Microsoft may work with the Settlement Claims Administrator to verify the validity of claims through Microsoft's End User Data or other reliable information. If Lead Counsel for the New York Class or Microsoft disputes any claim, the Settlement Claims Administrator may request additional documentation from the claimant.

3. In the event a Claim Form or proof of purchase described in Sections V.A, V.B or V.C above is rejected by the Settlement Claims Administrator, the Settlement Claims Administrator shall send mailed written notice to the claimant at the address included on the Claim Form, clearly informing the claimant of the deficiency, with copies to Lead Counsel for the New York Class and Microsoft. The written notice shall clearly inform the claimant concerning the details of any deficiency and shall provide instructions concerning what must be done to cure any deficiency.

4. The decision concerning the validity of any particular claim or redemption

shall be made by the Settlement Claims Administrator, subject to appeal by the claimant, Lead Counsel for the New York Class or Microsoft to the Court, whose decision is final. Before appealing a decision of the Settlement Claims Administrator to the Court, counsel for the parties shall attempt to resolve informally any disputes over the Settlement Claims Administrator's decision. To the extent such appeals to the Court must be made, the parties will endeavor to present appeals to the Court in batches, to avoid, to the extent practicable, burdening it with multiple appeals.

5. Microsoft will advise its sales team and PSS team that all inquiries from members of the New York Class regarding claims procedures shall be redirected to the Settlement Claims Administrator. Neither Microsoft nor any of its officers or employees shall attempt to induce members of the New York Class to give up or reduce the value of their claims under this Settlement. Information on Claim Forms will not be made available to Microsoft or any other entity for any purpose other than administration of the claims process under this Settlement Agreement. Microsoft agrees that it does not and will not in any way attempt to punish, economically discriminate against or retaliate against any Class Member for submitting a claim.

E. Costs of Settlement Claims Administration. The Settlement Claims Administrator shall send Microsoft periodic invoices for the costs of claims administration under this Settlement Agreement. Except as otherwise provided in this Section V.E, Microsoft shall pay such costs within 30 days of invoice. If Microsoft believes the amount charged on any invoice is excessive, Microsoft may submit its objections to the Court for resolution and need not pay the disputed amount until the Court has resolved the objections.

VI. CYPRES

- A. Cy Pres Remedy. The parties will provide a form of cy pres remedy, which will be available to Eligible Schools. The cy pres remedy will involve the distribution of vouchers (“General Purpose Vouchers” and “Software Vouchers”) to Eligible Schools.
- B. Platform Neutrality and Purpose of Cy Pres Program. The cy pres program is intended to be platform neutral. The General Purpose Vouchers and Software Vouchers distributed in the cy pres program may be used for any platform that the school districts choose. The purpose of the cy pres program is to benefit public schools in New York at which a substantial percentage of the attending students come from low income households.
- C. The Cy Pres Distribution. In the event that the total amount of Consumer Vouchers issued pursuant to Sections IV.B and V.A above does not exceed \$225 million, the remaining portion of the \$225 million shall be used as follows:
1. Consumer Voucher Totals. Within 60 days after the Effective Date of the Settlement, the Settlement Claims Administrator shall identify the total value of the Consumer Vouchers issued pursuant to Sections IV.B and V.A above to members of the New York Class. This amount shall be deducted from \$225 million. Fifty percent (50%) of the difference between \$225 million and the total amount of issued Consumer Vouchers shall be designated as the “Cy Pres Amount.” The other fifty percent (50%) of the difference between \$225 million and the total amount of issued Consumer Vouchers shall be not paid out by Microsoft, but shall instead be retained by it.
 2. Cy Pres. Fifty percent (50%) of the Cy Pres Amount shall be in the form of General Purpose Vouchers, and fifty percent (50%) of the Cy Pres Amount shall be in the form of Software Vouchers.
 3. Distribution. The Settlement Administrator will identify, no later than

three months after the close of the Claim Period, those school districts in New York that have Eligible Schools under Section I.O above. The Settlement Administrator shall notify the school districts having Eligible Schools that they may be entitled to receive General Purpose Vouchers and Software Vouchers according to the terms of this settlement and shall confirm with the school districts that such Eligible Schools are still in operation. The Settlement Administrator shall estimate the total number of students attending Eligible Schools in each district based upon the schools' publicly-available National School Lunch Program filings as described in Section I.O above. School districts having Eligible Schools shall be eligible to receive a pro-rata share (based on the Settlement Administrator's estimation of the total number of students attending certified Eligible Schools) of the Cy Pres Amount in General Purpose Vouchers and Software Vouchers. The Settlement Administrator shall distribute to the school districts having certified Eligible Schools the General Purpose Vouchers and Software Vouchers in the amounts defined above no later than 180 days after the end of the Claim Period. All General Purpose Vouchers and/or Software Vouchers shall expire at the end of the Settlement Period.

4. General Purpose Vouchers. General Purpose Vouchers distributed in the Cy Pres Distribution may be redeemed during the Cy Pres Period for any Qualifying Hardware (as defined in Section IV.E.1 above), any non-custom software that could be used with Qualifying Hardware, "Professional Development Services" (as defined in Section I.V above) and/or "IT Support Services" (as defined in Section I.P above) used in connection with the hardware or software acquired through use of the General Purpose Vouchers and/or Software Vouchers. Eligible Schools may also use General Purpose Vouchers to purchase:

a. equipment needed for networking and infrastructure (e.g., routers, servers, wireless network cards, or wireless access points);

- b. hardware for accessing the internet through television sets (e.g., MSNTV units or comparable technologies in the market) and internet access for such hardware for students' homes;
- c. certification training for software and networking;
- d. tablet computers or comparable technology that may become available;
- e. non-custom assistive technology devices and non-custom software designed for use by students with special needs; and
- f. evaluation tool(s) to assist participating schools in monitoring their use of the General Purpose Vouchers and Software Vouchers, as well as to assist in gathering evaluation data on this cy pres program.

5. Software Vouchers.

a. Software Vouchers distributed in the Cy Pres Distribution may be redeemed during the Cy Pres Period for current or future Microsoft operating system software (e.g., Microsoft Windows), word processing software (e.g., Microsoft Word), spreadsheet software (e.g., Microsoft Excel), presentation software (e.g., Microsoft PowerPoint), desktop relational database software oriented towards single users and typically residing on a standard personal computer (e.g., Microsoft Access), web-authoring software (e.g., Microsoft Front Page), productivity suite software (e.g., Microsoft Office), and encyclopedia software (e.g., Microsoft Encarta) for either personal computers or Macintosh computers, and server software including client access licenses.

b. The Software Vouchers distributed in the Cy Pres Distribution may also be redeemed during the Cy Pres Period for non-custom software titles produced by other

companies that compete with and/or have substantially similar functionality to the above identified Microsoft software titles or their successors, and can be used with Qualifying Hardware employing either a Microsoft operating system or another operating system.

c. The Software Vouchers distributed in the Cy Pres Distribution may also be used to cover the cost of the software described in this Section VI.C.5 when such software is bundled with a computer purchased with the General Purpose Vouchers. In such circumstances, Software Vouchers may be applied to the bundled operating system software included in the hardware purchase price in an amount equal to the standard academic upgrade price for the operating system software.

d. When any of the other software categories described in this Section is bundled with a computer purchased with the General Purpose Vouchers, the Software Vouchers may be applied in an amount no greater than the standard academic price or, if an academic price is not available, in an amount not to exceed the normal or standard price established by the manufacturer for such software.

e. Eligible Schools will have reasonable access to the Microsoft Help Desk for assistance in using Microsoft software obtained using the Software Vouchers, subject to parameters on the scope of such access that will be agreed on by the parties and consistent with the level of support given to retail purchasers. However, if such software was pre-installed, then the party originally responsible for providing support for the product will continue to be responsible.

D. Access to General Purpose Vouchers and Software Vouchers. Access to the General Purpose Vouchers and Software Vouchers described above shall be provided either directly to school districts that serve Eligible Schools or directly to Individual Eligible Schools.

Both the General Purpose Vouchers and the Software Vouchers may only be used in Eligible Schools, except that server products may be used by a school district for the benefit of both Eligible Schools and ineligible schools within the district, so long as the Eligible Schools receive a substantial benefit from such use. General Purpose Vouchers and Software Vouchers may also be used to make future acquisitions of software titles eligible under this cy pres program pursuant to license agreements to which the school district or the Individual Eligible School is a party. In such circumstances, the price of the eligible software to which the vouchers may be applied is the price specified for such software in the applicable license agreement. The district or the Individual Eligible School shall put in place procedures for determining the entitlement of Eligible Schools to the General Purpose Vouchers and Software Vouchers for use at the Eligible Schools themselves, as well as for distribution by the Eligible Schools to school-sponsored programs that make technology available to students after school hours. Eligible Schools may also select a licensing solution that gives students the option to use the software at home.

E. “Approved Providers” of Professional Development Services and IT Support Services. The parties may develop a process for determining how providers become “approved providers” for the Professional Development Services and IT Support Services available under the General Purpose Voucher program. However, any such list of “approved providers” must be platform neutral and must include some providers that will offer PC-based services and Microsoft software services. The parties may take steps to ensure that this process promotes high-quality professional development aligned with State efforts to improve education.

F. Monitoring and Interim Meetings. It is agreed that all of the proceeds of the cy pres program are to be distributed and none shall revert back to Microsoft. It is the intent of the parties that, to the extent consistent with the needs and requirements of the Eligible Schools, all

of the benefits of this cy pres program distributed in the Cy Pres Distribution are to be distributed to Eligible Schools prior to the end of the Cy Pres Period. The parties may meet annually with appropriate education representatives to discuss the implementation and operation of the cy pres program, including specifically the redemption of the General Purpose Vouchers and Software Vouchers by the Eligible Schools. In the event that the parties determine that the General Purpose Vouchers and/or Software Vouchers are not being utilized at a reasonable rate or consistent with the intentions of the parties in establishing this cy pres program, they may consider possible modifications to the program to facilitate the realization of those intentions. Possible modifications may include, but are not limited to, changes in the eligibility criteria for schools or an extension of the Cy Pres Period. However, any changes to the program shall not materially alter the cost of the program to Microsoft. The parties will endeavor to agree on any proposed changes to the program. In the event that no agreement is reached, the parties will present the issue to the Court for prompt resolution.

G. Excess General Purpose Vouchers And/Or Software Vouchers. Resale of any excess General Purpose Vouchers and/or Software Vouchers that are not used by Eligible Schools is prohibited. In the event there remain available General Purpose Vouchers and/or Software Vouchers that have not been used or distributed at the end of the Cy Pres Period, Lead Counsel for the New York Class and Microsoft will agree to either (1) extend the Cy Pres Period or (2) offer the remaining available General Purpose Vouchers and/or Software Vouchers to other needy organizations in New York, to be jointly selected (with court approval) by the parties.

H. Vendor Invoices And Certification for Software. When software that is acquired by Eligible Schools under this cy pres program is not pre-installed on Qualifying Hardware, the

General Purpose Vouchers and Software Vouchers may be used to pay for such software only if the vendor provides an invoice with a separate price for software that can be purchased with General Purpose Vouchers and/or Software Vouchers, and certifies that the price charged for such software is no greater than its standard academic price or, if an academic price is not available, is the normal or standard price charged by the vendor for such software. When computer hardware, Professional Development Services or IT Support Services are acquired by Eligible Schools under this cy pres program, the General Purpose Vouchers may be used to pay for such products and services only if the vendor provides an invoice with separate prices for such products and services and certifies that these prices are no greater than its standard academic prices or, if academic prices are not available, are the normal or standard prices charged by the vendor for such products and services. The Settlement Claims Administrator shall verify by audit or otherwise such certifications and the use of the General Purpose Vouchers and Software Vouchers under this program generally. As part of the verification process, the Settlement Claims Administrator may request assistance or information from the parties to this Settlement Agreement.

I. Non-Displacement of Other Charitable and Educational Activities. Microsoft undertakes its obligations under this Settlement Agreement in addition to its existing corporate charitable giving. Microsoft does not intend to reduce below its typical national charitable giving of cash for a period of 6 years after this Settlement is approved because of the Settlement in this case. This provision does not relate to Microsoft's program of matching employees' gifts. If Microsoft reduces its national charitable giving below its average annual national charitable giving during the period from fiscal year 2003 to fiscal year 2005 in any year covered by this provision, it will provide Lead Counsel for the New York Class with a sworn declaration by an

officer of Microsoft that Microsoft did not discriminate against New York with respect to any such reduction and that the reduction was not made because of the Settlement in this case.

VII. OTHER PROVISIONS

A. No Admission. By entering into this Settlement Agreement, neither party admits the truth of any of the assertions, claims or allegations made by the other party in any of The Case. Microsoft specifically denies each and every one of the allegations of liability, wrongdoing, unlawful conduct and damages in The Case. It is expressly understood and agreed that this Settlement Agreement is being entered into solely for the purpose of amicably resolving All Claims between Microsoft and the New York Class. The Settlement does not, in any way, embody, reflect, or imply any wrongdoing on the part of Microsoft or any of its directors, officers, employees, attorneys, insurers or agents, and the parties may not represent that it does in any public statement and may not use it for that purpose in any subsequent legal proceeding.

B. Microsoft and Class Counsel agree that no aspect of this settlement shall have any bearing in any other litigation. Class Counsel and Microsoft shall not take the position in any litigation in which the other is involved that the settlement terms herein or subsequently agreed to should guide the courts in such other litigations in any way as to such matters.

C. Attorneys' Fees and Costs.

1. Microsoft agrees that the case was settled solely as a result of Class Counsel's efforts, under the direction of Lead Counsel.

2. Microsoft agrees to pay the reasonable attorneys' fees of Class Counsel on behalf of the New York Class. After settlement was reached as to the benefits to the New York Class, the parties separately negotiated the issue of attorneys' fees, costs and expenses for Class Counsel. As a result of these negotiations, Microsoft agrees not to oppose an award of

\$23,500,000.00 in attorneys' fees for Class Counsel, plus reasonable costs and expenses. Upon approval by the Court, Microsoft will pay such attorneys' fees, costs and expenses in cash. The attorneys' fees, costs and expenses will not diminish the benefit to the New York Class and will be paid in addition to the recovery by the Class and the Cy Pres described above. This agreement regarding attorneys' fees is intended to allow the Court to enter an award or order of attorneys' fees, costs and expenses in the amount set forth above as part of the Order Approving Settlement without further proceedings on the issue of attorneys' fees. In the event the Court requires Class Counsel to submit a fee application, said Counsel will submit a fee application for the amount set forth above, and Microsoft agrees that it will not oppose the fee application for that amount.

3. Microsoft shall pay such fees, costs and expenses no later than 14 days after the Court both grants final approval to the settlement and approves class counsel's application for attorneys' fees, costs and expenses.

4. Microsoft also shall pay Lead Counsel fees, costs and expenses in connection with administering the settlement and claims process. Fees attributable to administering the Settlement and the claims process post-preliminary-approval shall be paid on a straight hourly basis with no multiplier, upon application by Lead Counsel to the Court, in the manner of a court-appointed receivership. These fees, costs and expenses will be paid in addition to the \$23.5 million in fees, costs and expenses discussed in Section VII.C.2 above.

5. All fee and expense payments by Microsoft shall be made to Lead Counsel, who will distribute the funds at their discretion to Class Counsel.

D. Incentive Awards to Class Representatives. In recognition of the commitment of the class representatives on behalf of the New York Class in The Case, subject to Court approval

Microsoft shall pay to each a sum of \$7,500 within 14 days of final approval.

E. Binding Effect. This Settlement Agreement shall be binding upon, and inure to the benefit of, each member of the New York Class, Microsoft, and their respective successors, assigns and subsidiaries.

F. Choice of Law. This Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of New York without regard to its choice of law or conflict of laws principles.

G. Discovery Materials.

1. All discovery materials and information (including but not limited to documents; responses to interrogatories, document requests, subpoenas or other oral or written requests; transcripts (including but not limited to deposition transcripts) of any kind and in any medium; privilege logs; and all data furnished or stored by electronic means (including but not limited to CDs, computer files, emails and attachments and tape storage units)) produced or provided by any of the parties or non-parties either before, on or after the date of this Settlement Agreement, whether produced or provided informally or pursuant to discovery requests, shall be governed by all Confidentiality/Protective Orders in force as of the date of this Settlement Agreement, subject to such modifications, if any, that the Court may make to such Confidentiality/Protective Orders as the result of any agreements between Lead Counsel for the New York Class and Microsoft or as the result of any future motions or proceedings.

2. Notwithstanding the above, Lead Counsel for the New York Class may retain, subject to all applicable confidentiality orders, one file copy each of any pleadings, motions, briefs or affidavits that have been filed with the Court or any special master appointed by the Court.

H. Execution in Counterparts. The signatories to this Settlement Agreement may execute this Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all counsel had signed the same instrument. Facsimile signatures shall be considered as valid signatures as of the date of this Settlement Agreement, but the original signature pages shall subsequently be appended to this Settlement Agreement and filed with the Court.

I. Integrated Agreement. This Settlement Agreement (with its appendices and expressly incorporated documents) contains the entire, complete and integrated statement of each and every term and provision agreed to by Lead Counsel for the New York Class and Microsoft, and is not subject to any condition not provided for in this Settlement Agreement. This Settlement Agreement shall not be modified in any respect except by a writing executed by all signatories to the Settlement Agreement. In entering into this Settlement Agreement, neither Lead Counsel for the New York Class nor Microsoft has made or relied on any warranty or representation not specifically set forth in the document.

J. Jurisdiction. The Supreme Court for the State of New York, County of New York, shall have exclusive jurisdiction over all provisions of this Settlement Agreement and over any and all disputes of any kind relating in any way to, or arising in any way out of, this Settlement Agreement.

K. Notice. Any notice, request, instruction or other document to be given by Microsoft to Lead Counsel for the New York Class, or vice versa, shall be in writing and (a) delivered personally, or (b) sent by courier, facsimile or by Certified Mail, Return Receipt Requested.

If to Microsoft:

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If to the New York Class:

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J. Douglas Richards
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(212) 594-5300

IN WITNESS WHEREOF, Lead Counsel for the New York Class and Microsoft have
duly executed this Settlement Agreement on this 16th day of December 2005.

AGREED to this 16th day of December 2005.

Counsel for Microsoft Corporation



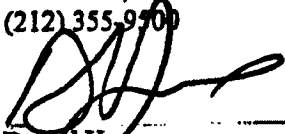
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APPENDIX A-1

<i>Product Title/Edition</i>	<i>Version</i>
Windows 95	
Windows 98	
Windows 98 Second Edition	
Windows Millennium Edition	

APPENDIX A-2

The covered applications products listed below include versions licensed for use with either MS-DOS or Windows.

<i>Product Title/Edition</i>	<i>Version</i>
Office	1.0
Office	1.5
Office	1.6
Office	2.0
Office	2.5
Office	3.0
Office	3.2
Office	4.0
Office	4.1
Office	4.2
Office	4.21
Office	4.3
Office	4.5
Office	7.0
Office 95	
Office 97	
Office 2000	
Office XP	
Office Professional	1.0
Office Professional	3.0
Office Professional	4.0
Office Professional	4.1
Office Professional	4.2
Office Professional	4.21
Office Professional	4.3
Office Professional	7.0
Office 95 Professional	
Office 97 Professional	
Office 2000 Professional	
Office 2002 Professional	
Office XP Professional	
Office XP Professional Special Edition	
Office 2000 Premium	
Office Small Business	7.0
Office 97 Small Business	
Office 97.2 Small Business	

<i>Product Title/Edition</i>	<i>Version</i>
Office 2000 Small Business	
Office XP Small Business	
Word	1.0
Word	1.1
Word	1.15
Word	1.2
Word	2.0
Word	2.01
Word	3.0
Word	3.1
Word	4.0
Word	5.0
Word	5.1
Word	5.5
Word	6.0
Word	6.01
Word	7.0
Word	7.1
Word 95	
Word 97	
Word 98	
Word 2000	
Word 2002	
Excel	1.0
Excel	1.1
Excel	2.0
Excel	2.1
Excel	2.2
Excel	2.21
Excel	3.0
Excel	4.0
Excel	5.0
Excel	6.0
Excel	7.0
Excel 95	
Excel 97	
Excel 2000	
Excel 2002	

APPENDIX A-3

<i>Product Title/Edition</i>	<i>Version</i>
MS-DOS	1.0
MS-DOS	2.0
MS-DOS	2.11
MS-DOS	3.1
MS-DOS	3.2
MS-DOS	3.21
MS-DOS	3.22
MS-DOS	3.3
MS-DOS	3.5
MS-DOS	4.0
MS-DOS	4.01
MS-DOS	4.2
MS-DOS	5.0
MS-DOS	6.0
MS-DOS	6.2
MS-DOS	6.21
MS-DOS	6.22
Windows	1.0
Windows	2.0
Windows	2.1
Windows	2.11
Windows	3.0
Windows	3.1
Windows	3.11
Windows	3.2
Windows for Workgroups	1.0
Windows for Workgroups	3.0
Windows for Workgroups	3.1
Windows for Workgroups	3.11
Windows 2000 Professional	
Windows NT Workstation	1.0
Windows NT Workstation	3.1
Windows NT Workstation	3.11
Windows NT Workstation	3.4
Windows NT Workstation	3.5
Windows NT Workstation	3.51
Windows NT Workstation	4.0
Windows NT Workstation	4.21
Windows XP Home Edition	
Windows XP Professional	

