

**This is a legal agreement (“Agreement”) between you (either an individual or an entity), the end user (“Recipient”), and Microsoft Corporation (“Microsoft”). BY INSTALLING, COPYING OR OTHERWISE USING THE PRODUCT (AS DEFINED BELOW), YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL, COPY OR USE THE PRODUCT.**

#### **MICROSOFT CORPORATION END-USER LICENSE AGREEMENT FOR PRE-RELEASE PRODUCTS**

#### **MICROSOFT MANAGED DIRECTX LAYER**

Accompanying this Agreement is a pre-release copy of the Microsoft product identified above, which may include software (the “Software”) and related documentation and information (collectively the “Product”). The Product is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Product is licensed, not sold.

**NOTICE:** The Product is time-sensitive and will not function upon the expiration date of February 12, 2002.

1. **GRANT OF LICENSE.** This Agreement grants Recipient the following rights provided that Recipient complies with all terms and conditions of this Agreement:

(a) Microsoft grants to Recipient a limited, non-exclusive, nontransferable, royalty-free license to install and use one copy of the executable code of the Product on a single CPU residing on Recipient’s premises, solely to test the compatibility of Recipient’s application or other product(s) which operate in conjunction with the Product and to evaluate the Product for the purpose of providing feedback thereon to Microsoft. All other rights are reserved to Microsoft. Recipient shall not rent, lease, sell, sublicense, assign, or otherwise transfer any portion of the Product. Recipient may not reverse engineer, decompile or disassemble any portion of the Product, except and only to the extent that this limitation is expressly prohibited by applicable law notwithstanding this limitation.

(b) Recipient agrees to provide reasonable feedback to Microsoft, including but not limited to usability, bug reports and test results, with respect to Product testing. All bug reports, test results and other feedback provided to Microsoft by Recipient shall be the property of Microsoft and may be used by Microsoft for any purpose. Due to the nature of the development work, Microsoft provides no assurance that any specific errors or discrepancies in the Product will be corrected.

(c) Recipient may disclose the Product only to its employees who have a need to know in order to accomplish the purposes identified in Section 1(a), and such employees’ use of the Product shall take place solely at Recipient’s site. Recipient will have executed appropriate written agreements with its employees sufficient to enable it to comply with the terms of this Agreement.

(d) Recipient agrees that, for a period of up to six (6) months after commercial release of the Product, it will maintain a list of all employees who have had access hereunder to the Product or related information and provide such list to Microsoft upon Microsoft’s request.

(e) In the event Microsoft, in its sole discretion, elects to provide deliveries of Product to more than one individual employed by Recipient (if Recipient is not a single individual), each such recipient shall be entitled to exercise the rights granted in this Agreement, and shall be bound by the terms and conditions herein.

2. **TERM OF AGREEMENT.** The term of this Agreement shall commence on the date you first install the Product on a computer. You may use the Product until the February 12, 2002 expiration date. This Agreement may be terminated by Microsoft in writing at any time, with or without cause, prior to the expiration date. Upon the termination of this Agreement (or upon request by Microsoft), Recipient shall promptly return to Microsoft, or certify destruction of, all full or partial copies of the Product provided by Microsoft. The following Sections shall survive termination or expiration of this Agreement: Sections 1(b), 1(d), 7, 8, 9, and 10; and Section 5 with respect to any information that has not been made public by Microsoft as of the commercial release of the Product, provided that in no case shall Section 5 survive longer than one year from receipt of the Product.

3. **COST OF TESTING.** There is no charge to Recipient for testing of the Product. Microsoft shall bear all direct freight expenses relating to the shipment of the Product to Recipient’s place of business and Recipient will pay any return freight expenses.

4. **PRODUCT MAINTENANCE/UPDATES.** Microsoft is not obligated to provide maintenance, technical support or updates to Recipient for the Product provided to Recipient pursuant to this Agreement. However, Microsoft may, in its sole discretion, provide further pre-release versions, technical support, updates and/or supplements of the Product and/or related information (“Updates”) to Recipient hereunder, in which case such Updates shall also be deemed to be included in the “Product” and the “Software”, and therefore governed by this Agreement, unless other terms of use are provided by Microsoft with such Updates. In no event shall Microsoft be obligated to provide Recipient a copy of the commercial release version of the Product in connection with Recipient’s participation in the testing program. Microsoft is not obligated to make the Product commercially available.

5. **CONFIDENTIALITY.** The Product, including its existence and features, and related information are proprietary and confidential information to Microsoft and its suppliers. Recipient agrees not to disclose or provide the Product, documentation, or any related information (including the Product features or the results of use or testing) to any third party, for a period of one year following receipt of the Product or commercial release of the Product, whichever occurs first. However, Recipient may disclose confidential information in accordance with judicial or other governmental order, provided Recipient shall give Microsoft reasonable written notice prior to such disclosure and shall comply with any applicable protective order or equivalent. Further, Recipient shall not be liable to Microsoft for disclosure of information which Recipient can prove (a) is already known to Recipient without an obligation to maintain the same as confidential; (b) becomes publicly known through no wrongful act of Recipient; (c) is rightfully received from a third party without breach of an obligation of confidentiality owed to Microsoft; or (d) is independently developed by Recipient.

6. **INTELLECTUAL PROPERTY RIGHTS.** All title and intellectual property rights in and to the Product and any copies of the Product that Recipient is expressly permitted to make herein are owned by Microsoft or its suppliers. All title and intellectual property rights in and to the content which may be accessed through use of the Product are the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This Agreement grants Recipient no rights to use such content. If the Product contains documentation which is provided only in electronic form, Recipient may print one copy of such electronic documentation. Recipient may not copy the printed materials accompanying the Product. All rights not expressly granted are reserved by Microsoft.

7. **DISCLAIMER OF WARRANTIES. THE PRODUCT IS DEEMED ACCEPTED BY RECIPIENT. THE PRODUCT CONTAINS PRE-RELEASE SOFTWARE AND MAY BE CHANGED SUBSTANTIALLY BEFORE COMMERCIAL RELEASE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT AND ITS SUPPLIERS PROVIDE THE PRODUCT AND ANY (IF ANY) SUPPORT SERVICES RELATED TO THE PRODUCT (“SUPPORT SERVICES”) AS IS AND WITH ALL FAULTS, AND HEREBY DISCLAIM WITH RESPECT TO THE PRODUCT AND SUPPORT SERVICES ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY (IF ANY) WARRANTIES, DUTIES OR CONDITIONS OF OR RELATED TO: MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, WORKMANLIKE EFFORT AND LACK OF NEGLIGENCE. ALSO, THERE IS NO WARRANTY, DUTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT. THE ENTIRE RISK AS TO THE QUALITY, OR ARISING OUT OF THE USE OR PERFORMANCE OF THE PRODUCT AND ANY SUPPORT SERVICES, REMAINS WITH RECIPIENT.**

8. **EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT OR ITS SUPPLIERS BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR: LOSS OF PROFITS, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, BUSINESS INTERRUPTION, PERSONAL INJURY, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY (INCLUDING OF GOOD FAITH OR OF REASONABLE CARE), NEGLIGENCE, AND ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCT OR SUPPORT SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF MICROSOFT OR ANY SUPPLIER, AND EVEN IF MICROSOFT OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. 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 RECIPIENT.**

**9. LIMITATION OF LIABILITY AND REMEDIES. NOTWITHSTANDING ANY DAMAGES THAT RECIPIENT MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED ABOVE AND ALL DIRECT OR GENERAL DAMAGES), THE ENTIRE LIABILITY OF MICROSOFT AND ANY OF ITS SUPPLIERS UNDER ANY PROVISION OF THIS AGREEMENT AND RECIPIENT'S EXCLUSIVE REMEDY FOR ALL OF THE FOREGOING SHALL BE LIMITED TO ACTUAL DAMAGES INCURRED BY YOU BASED ON REASONABLE RELIANCE UP TO THE GREATER OF THE AMOUNT ACTUALLY PAID BY RECIPIENT FOR THE PRODUCT OR FIVE DOLLARS (US\$5.00). THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS (INCLUDING SECTIONS 7 AND 8 ABOVE) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.**

10. GOVERNING LAW/JURISDICTION/ATTORNEYS' FEES. This Agreement shall be construed and controlled by the laws of the State of Washington, and Recipient consents to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, unless no federal jurisdiction exists, in which case Recipient consents to exclusive jurisdiction and venue in the Superior Court of King County, Washington. Recipient waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. If either party 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.

11. U.S. GOVERNMENT RIGHTS. All Software provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the rights and restrictions described elsewhere herein. All Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with RESTRICTED RIGHTS as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.

12. EXPORT RESTRICTIONS. Recipient acknowledges that Product is of U.S. origin. Recipient agrees to comply with all applicable international and national laws that apply to the Product, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

13. NOTE ON JAVA SUPPORT. THE SOFTWARE MAY CONTAIN SUPPORT FOR PROGRAMS WRITTEN IN JAVA. JAVA TECHNOLOGY IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE AS ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF JAVA TECHNOLOGY COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. Sun Microsystems, Inc. has contractually obligated Microsoft to make this disclaimer.

14. ENTIRE AGREEMENT. This Agreement constitutes the complete and exclusive agreement between Microsoft and Recipient with respect to the subject matter hereof, and supersedes all prior or contemporaneous oral or written communications, proposals, representations, understandings, or agreements not specifically incorporated herein. This Agreement may not be amended except in a writing duly signed by an authorized representative of Microsoft and Recipient.