

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

MDL Docket No. 1332

This Document relates to:

Hon. J. Frederick Motz

*City and County of San Francisco, et
al.*
v. Microsoft Corp.,
Civil Action No. 04-cv-03705

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into, subject to Court approval, as of June 22, 2006, on behalf of the Settlement Class (as defined below), and Microsoft Corporation ("Microsoft"), in *City and County of San Francisco, et al. v. Microsoft Corp.*, Civil Action No. 04-cv-03705, which is coordinated as part of *In Re Microsoft Corp. Antitrust Litigation*, MDL Docket No. 1332, pending before the Honorable J. Frederick Motz in the United States District Court for the District of Maryland (the "Lawsuit").

WHEREAS, the City and County of San Francisco, County of Santa Clara, County of Los Angeles, City of Los Angeles, County of San Mateo, and County of Contra Costa are named plaintiffs in the Lawsuit (the "Plaintiffs");

WHEREAS, Townsend and Townsend and Crew LLP ("Townsend") is one of the law firms representing Plaintiffs in the Lawsuit;

WHEREAS, Plaintiffs have made certain claims against Microsoft based upon alleged violations of California state law as well as violations of federal antitrust law that serve as predicates to state law claims of unfair competition;

WHEREAS, such Plaintiffs contend that they are members of certain putative classes that have suffered damages and other injuries as a result of Microsoft's alleged unlawful conduct;

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

WHEREAS, after arm's-length negotiations between counsel for Plaintiffs and counsel for Microsoft, this Settlement Agreement has been reached;

WHEREAS, the Class Representatives (as defined below) and Townsend have concluded, after investigation of the facts, and after careful consideration of the circumstances, that it would be in the best interests of the Settlement Class to enter into this Settlement Agreement; and both the Class Representatives and Townsend consider the Settlement set forth below to be fair, reasonable, adequate and in the best interests of the Settlement Class;

WHEREAS, Plaintiffs will promptly file a motion requesting preliminary approval of this Settlement Agreement, conditional certification of the Settlement Class, approval of Townsend as Lead Counsel for the Settlement Class and appointment of Plaintiffs as Class Representatives with full authority to enter into this Settlement Agreement on behalf of all members of the Settlement Class; and

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 that, upon final approval of this Settlement Agreement by the Court, All Claims (as defined below) of the Settlement Class against Microsoft be settled and compromised, and that this case 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. "All Claims" means all claims, demands, actions, suits and causes of action for damages, restitution, disgorgement and injunctive relief against Microsoft and/or its directors,

officers, employees, attorneys, insurers or agents, whether known or unknown, asserted or unasserted, that any member of the Settlement 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 that is the subject matter of the Complaint filed in the Lawsuit, or which was alleged or at issue in any of the cases coordinated in *Microsoft I-V Cases*, J.C.C.P. No. 4106, Superior Court of California, County of San Francisco, 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 Cartwright Act, California Business and Professions Code §§ 16720 *et seq.*), (b) unfair competition, (c) unfair practices, (d) price discrimination, (e) trade regulation, (f) trade practices, (g) California's Unfair Competition Law, California Business and Professions Code §§ 17200 *et seq.*, (h) California's Unfair Practices Act, California Business and Professions Code §§ 17000 *et seq.* and/or (i) other federal or state law, regulation or common law similar or analogous to any of the above. "All Claims" does not include claims relating to the acquisition or licensing of Microsoft Operating System or Microsoft Application software for use outside of California. "All Claims" does not include claims relating to Microsoft's conduct, acts or omissions that take place after March 31, 2005. However, "All Claims" does include any and all claims referenced above relating to Microsoft's conduct, acts or omissions that occurred on or prior to March 31, 2005 and should be construed broadly to the maximum extent permitted by law. Furthermore, with respect to the City and County of San Francisco, through its City Attorney, and the City of Los Angeles, through its City Attorney, to the full extent of their authority to act on behalf of the People of the State of California pursuant to Business and Professions Code § 17204, "All Claims" includes all claims, demands, actions, suits and causes of action for civil penalties arising from any of the conduct, acts or omissions described above.

B. "Class Representatives" means City and County of San Francisco, County of Santa Clara, County of Los Angeles, City of Los Angeles, County of San Mateo, and County of Contra Costa.

C. "Court" means the United States District Court for the District of Maryland.

D. "Date of Final Approval" means the first date upon which all of the events listed in section I.I. below have occurred.

E. "Description of Settlement Benefits" means a written notice that fully informs each government entity on the Eligible Class Member List of the amount of its allocated share of the Settlement Benefits to be distributed directly to that particular Eligible Member of the Settlement Class and the procedures for redemption of the Settlement Benefits.

F. "Effective Date of the Settlement" means 30 days after the Date of Final Approval.

G. "Eligible Class Member List" means an alphabetical list of government entities compiled by Lead Counsel for the Settlement Class which it believes to be Eligible Members of the Settlement Class, as defined in section I.H below. Unless it is provided with credible information to the contrary, Lead Counsel for the Settlement Class may, in its sole discretion, assume that school districts whose financial data is reported to the California Department of Education and government entities whose financial data is reported to the Controller of California, as required by law, satisfy the requirements for Eligible Members of the Settlement Class specified in section I.H below. However, the Eligible Class Member List shall be modified to reflect any corrections that Lead Counsel for the Settlement Class believe to be necessary prior to the Objection Date or that are required by order of the Court. Neither Microsoft nor its counsel shall have any responsibility for the determination of which government entities are Eligible Members of the Settlement Class, the determination of which government entities should be listed on the Eligible Class Member List, or the determination of whether any modifications should be made to the Eligible Class Member List.

H. "Eligible Members of the Settlement Class" means the government entities that are included in the Settlement Class and are entitled to receive a direct distribution of Settlement Benefits under the terms of this Settlement Agreement for further distribution among the departments, divisions, agencies, and other subsidiary organizations operating under their authority as they deem appropriate in their sole discretion. The Eligible Members of the Settlement Class are all government entities located in California (excluding the federal government, foreign governments and government entities from states other than California) that:

1. were established by law as entities that have a legal existence which is separate and distinct from any other government entity,
2. are not legally bound by a release of claims executed by or on behalf of any other government entity,
3. have the independent legal capacity to levy taxes, incur debt and/or take title to real or personal property in their own names,
4. indirectly licensed Microsoft Operating System software and/or Microsoft Application software at any time between August 27, 2000 and March 31, 2005 and did not obtain such software for purposes of resale, and
5. remain in existence on the Effective Date of the Settlement.

I. "Final Approval" means 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.I below;
3. The Court dismisses this case with prejudice as provided in sections II.I and II.K below; and
4. 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.

J. The "Initial Redemption Period" means the period beginning on the Effective Date of the Settlement and ending five years later.

K. "Lead Counsel for the Settlement Class" means Townsend and Townsend and Crew LLP.

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

M. "Microsoft Application" means versions of "Word" word processing applications and Excel spreadsheet applications (other than Word or Excel applications exclusively for servers or personal digital assistants ("PDAs")) that were licensed either on a standalone basis or included in productivity suite applications for use with either MS-DOS or Windows and that were available for purchase at any time on or before March 31, 2005.

N. "Microsoft Operating System" means versions of MS-DOS and Windows operating system software (other than operating system software exclusively for servers or PDAs) that were available for purchase at any time on or before March 31, 2005.

O. "Notice Commencement Date" means 30 days after the Court enters an order preliminarily approving this Settlement Agreement.

P. "Notice Ending Date" means 60 days after the Notice Commencement Date.

Q. "Notice Period" means the period of time from the Notice Commencement Date through the Notice Ending Date.

R. "Objection Date" means the date that is 45 days after the Notice Ending Date and shall be the deadline by which members of the Settlement Class must file with the Court and serve on Lead Counsel for the Settlement Class and counsel for Microsoft any written objections to any of the terms of this Settlement and any written objections to the request for attorneys' fees included in the class notice, along with any supporting documentation, in order for those

objections to be considered by the Court. Objections may be filed by any entity whose claims against Microsoft will be released under the terms of Section III of this Settlement Agreement.

S. "Opt-Out Date" means the date that is 45 days after the Notice Ending Date and shall be the postmark deadline by which members of the Settlement Class must mail their request to be excluded from the Settlement Class in order for that request to be effective.

T. "Qualifying Hardware" means any new desktop, laptop or tablet computer(s) for any operating system platform and/or the following devices or components: printers, scanners, monitors, keyboards and pointing devices, e.g., mouse, trackball, etc. 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) that are not included as part of the purchase of a computer. Qualifying Hardware also excludes servers, PDAs and other hand-held devices.

U. "Qualifying Software" means any non-custom software title, including any software title not published by Microsoft, that (a) is designed for use with any Qualifying Hardware described in section I.T. above, and (b) is not software designed to operate exclusively on a server.

V. "Settlement Administrator" means Rust Consulting, Inc., which will be responsible for managing specified portions of the notice program, issuing Settlement Benefits and redeeming Settlement Benefits for class members under sections II, IV and V below.

W. "Settlement Class" means all government entities located in California (excluding the federal government, foreign governments and government entities from states other than California) that indirectly licensed Microsoft Operating System software and/or Microsoft Application software between August 27, 2000 and March 31, 2005 and did not obtain such software for purposes of resale.

X. "Redistribution Redemption Period" means the period beginning 60 days after the last day of the Initial Redemption Period and ending two years later.

Y. "Settlement Benefits" means the benefits made available directly to the Eligible Members of the Settlement Class pursuant to the terms of this Settlement Agreement.

II. COURT APPROVAL, CLASS NOTICE, OPT-OUT PROCEDURES, AND OBJECTION PROCEDURES

A. Best Efforts. Townsend, the Class Representatives, Microsoft and counsel for 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. Townsend agrees that it will recommend approval of this Settlement Agreement to all other counsel for Plaintiffs.

B. Certification of Settlement Class.

1. Plaintiffs shall submit to the Court on or before June 26, 2006 a motion for conditional certification of the Settlement Class and preliminary approval of this Settlement Agreement on behalf of the Settlement Class, together with a proposed preliminary approval order substantially in the form attached as Appendix A. The motion for conditional certification of the Settlement Class and preliminary approval shall seek appointment of Plaintiffs as representatives of the Settlement Class, appointment of Townsend as Lead Counsel for the Settlement Class, and approval of the form and manner of the notice, opt-out and objection procedures as set forth in sections II.E, II.F and II.H below. Microsoft will not oppose Preliminary Approval and Conditional Certification of the Settlement Class that is consistent with the terms of this Settlement Agreement.

2. Microsoft does not consent to certification of the Settlement Class for any purpose other than to effectuate the settlement of this action. The proposed preliminary approval order (attached as Appendix A) that Plaintiffs will submit to the Court with their motion for preliminary approval and conditional certification of the Settlement Class shall specify that if this settlement is terminated, or does not obtain Final Approval, the conditional certification of

the Settlement Class shall be automatically vacated upon notice to the Court of the termination of the settlement, and the matter shall proceed as though the Settlement Class had never been conditionally certified and such findings had never been made, without prejudice to the ability of any party thereafter to request or oppose class certification on any basis.

C. Hearing Date. The motion for conditional certification of the Settlement Class and preliminary approval shall also ask the Court to schedule a hearing date for final approval of this Settlement Agreement.

D. Stay of Discovery and Other Proceedings. Upon moving for preliminary approval, the parties will seek from the Court a stay of the Lawsuit, including discovery, except for any action required to implement or enforce this Settlement Agreement. Plaintiffs and Microsoft shall file pleadings and otherwise take any steps necessary to implement this stay.

E. Notice.

1. The Eligible Class Member List. The Settlement Administrator shall post the Eligible Class Member List and make it electronically searchable on the Settlement Administrator's publicly accessible Web site beginning no later than the Notice Commencement Date and ending no earlier than the Effective Date of the Settlement.

2. Form of Notice. In the motion for preliminary approval of this Settlement Agreement, Lead Counsel for the Settlement Class shall apply to the Court for an order authorizing notice of the Settlement by dissemination to the Settlement Class, substantially in a form to be approved by Plaintiffs and Microsoft or, in the event of a disagreement between Plaintiffs and Microsoft, in a form to be approved by the Court. Such notice shall inform the Settlement 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 rights to opt out of the Settlement, object to the Settlement or any of its provisions, object to the request for attorneys' fees and costs submitted by counsel for the Settlement Class and appear at the hearing on final approval. The notice disseminated pursuant to sections II.E.4.b and II.E.4.c below shall also inform class members that failure to opt out of this Settlement in a timely manner and/or the

acceptance of the benefits distributed under the terms of this Settlement will constitute the class member's certification that all legal requirements necessary for the class member to participate in the Lawsuit and agree to a release of All Claims described herein have been fully satisfied. The notice will summarize the method of distribution of Settlement Benefits and will inform its recipients that all of the Settlement Benefits will be distributed to Eligible Members of the Settlement Class. The notice will also explain to its recipients that their receipt of the notice does not mean that departments, subdivisions, agencies or other subsidiary organizations that are part of or operate under the authority of Eligible Members of the Settlement Class will receive Settlement Benefits directly.

3. Modification of the Eligible Class Member List. The notice of the Settlement shall inform its recipients that on the Settlement Administrator's Web site they may review a detailed explanation of the method used to allocate the Settlement Benefits among the government entities included in the Eligible Class Member List. The notice of the Settlement shall also urge its recipients to check the Eligible Class Member List posted on the Settlement Administrator's Web site and notify the Settlement Administrator if the recipient finds that a government entity has been improperly included or excluded from the Eligible Class Member List. The notice shall list the criteria that must be satisfied to qualify as an Eligible Member of the Settlement Class and shall inform all recipients that a request to modify the Eligible Class Member List must be sent to the Settlement Administrator together with satisfactory evidence and legal authority concerning each of the relevant criteria and must be postmarked no later than 15 days after the Notice Ending Date. Lead Counsel for the Settlement Class shall respond to any such request through a mailed communication from the Settlement Administrator post-marked at least 15 days prior to the Objection Date.

4. Methods of Dissemination of Notice.

a. Print Publications. Plaintiffs and Microsoft will jointly develop a program for dissemination of a summary notice of the Settlement to be published in print publications whose combined circulation is sufficiently broad in geographic and demographic

scope to satisfy the Court that the published notice program is reasonably designed to, in conjunction with the notice described in section II.E.4.b below, reach as many members of the Settlement Class as practicable. The detailed program proposed for published notice to the Settlement Class and the form of the summary notice to be published shall be submitted to the Court for approval together with Plaintiffs' motion for preliminary approval of this Settlement Agreement.

b. Mailed and/or Emailed Notice. In the motion for preliminary approval of this Settlement Agreement, Plaintiffs shall also apply to the Court for an order authorizing mailed written notice and/or emailed notice, where addresses are available, to all government entities on the Eligible Class Member List and to any other entities that are subsequently added to the Eligible Class Member List, in a form to be approved by the Court. Lead Counsel for the Settlement Class and Microsoft will provide the Settlement Administrator with the information in their possession that is necessary to facilitate such written notice to be mailed, by U.S. post, and/or emailed, where addresses are available, to the government entities on the Eligible Class Member List and to any other entities that are subsequently added to the Eligible Class Member List.

c. Settlement Web Site. Plaintiffs and Microsoft will also cause a Court-approved notice of the Settlement to be posted, during the entire Notice Period, on an Internet Web site. The Web site will be maintained and managed by the Settlement Administrator.

d. Microsoft's Web Site. In addition to the Web site described in section II.E.4.c above, a copy of the notice will be posted on Microsoft's corporate Web site and will be linked to the "legal information" tab or some other more descriptive tab name to be agreed upon by Lead Counsel for the Settlement Class and Microsoft.

5. Notice Period. The written notice sent by publication pursuant to section II.E.4.a above and by mail and email pursuant to section II.E.4.b above shall be provided during the Notice Period. The Settlement Administrator, Lead Counsel for the Settlement Class and

Microsoft shall use all reasonable efforts to ensure that the notice by publication and the mailed and emailed notice 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 shall not contradict the content of the notices.

6. Corrected Addresses. The Settlement Administrator shall utilize methods approved by Plaintiffs and Microsoft to obtain corrected mailing addresses for notice recipients whose notices are returned because they were sent to incorrect addresses.

7. Costs of Notice. Microsoft will bear all costs of notice as provided in this Settlement Agreement, whether or not this Settlement Agreement obtains Final Approval or is otherwise terminated.

F. Opt-Out Procedures.

1. Eligibility. Plaintiffs and Microsoft will recommend that the Court approve an Opt-Out Date that is 45 days after the Notice Ending Date. Any member of the Settlement Class other than the Class Representatives may request exclusion from the Settlement on or before the Opt-Out Date through the method described below. Except as otherwise authorized by law, no member of the Settlement Class may opt out on behalf of any other member of the Settlement Class, or on behalf of any other class or sub-class. Any member of the Settlement Class that opts out of the Settlement shall be deemed to have opted out on behalf of itself and all departments, subdivisions, agencies and other subsidiary organizations that are part of the member of the Settlement Class or operate under its authority.

2. Method of Exercise. Each member of the Settlement Class wishing to opt out of the Settlement Class must submit written notice bearing a postmark on or prior to the Opt-Out Date that is sent to an address designated by the Settlement Administrator. Any such written notice must be signed, must include the name and address of the member of the Settlement Class and must clearly manifest an intent to be excluded from the Settlement Class. Mere expression of disappointment with the terms of the Settlement, by itself, will be insufficient to manifest an

intent to be excluded. The written notice must also contain the position of the person submitting the exclusion request and a statement that the person executing the request is authorized to do so on behalf of the member of the Settlement Class that would like to be excluded. The written notice must also contain a statement under penalty of perjury specifying the number of full time equivalent employees that are currently employed by the member of the Settlement Class that requests exclusion. To be effective, written notice of intent to be excluded from the Settlement Class must be postmarked on or before the Opt-Out Date.

3. Challenges to Opt-Outs. Within 15 days after the Opt-Out Date, any party to this Settlement Agreement may file a motion with the Court challenging the legal validity of particular requests for exclusion (“opt outs”) from the Settlement. Any effort to opt out of the Settlement that is challenged in this manner shall not be considered valid under the terms of this Settlement Agreement unless and until the Court determines that the opt out is authorized by law.

G. Termination. In addition to whatever other termination rights are set forth in this Settlement Agreement, Microsoft has a right to terminate this Settlement Agreement in accordance with the terms reflected in Appendix B to this Settlement Agreement, which will be filed under seal and will remain under seal until and through the Opt-Out Date. Effective the first business day after the Opt-Out Date, Appendix B will be unsealed.

H. Procedures for Objecting to the Settlement. Lead Counsel for the Settlement Class and Microsoft will recommend that the Court approve an Objection Date that is 45 days after the Notice Ending Date. Any member of the Settlement 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 counsel for the Settlement Class; provided, however, that no government entity in the Settlement Class shall be heard, unless 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, no later than the Objection Date, showing proof of service on Lead Counsel for the Settlement Class and counsel for Microsoft. The written objection must contain the name and address of the

objector, and satisfactory evidence that the objector is an entity whose claims against Microsoft will be released under the terms of Section III of this Settlement Agreement. Objections may be filed by any entity whose claims against Microsoft will be released under the terms of Section III of this Settlement Agreement. The written objection must also contain the position of the person submitting the objection, and a statement that the person executing the written objection is authorized to do so on behalf of a specified entity whose claims against Microsoft will be released under the terms of Section III of this Settlement Agreement.

I. Motion for Court Approval and Entry of Final Judgment. Plaintiffs and Microsoft will request that the Court set the hearing on final approval of the Settlement, as well as Plaintiffs' request for an award of attorneys' fees and costs, for a date that is approximately 90 days after the Notice Ending Date. At least 30 days prior to the date the Court sets for the hearing on final approval of the Settlement, Lead Counsel for the Settlement Class will submit a motion for an Order of Approval and Final Judgment, substantially in the forms attached as Appendices C and D, respectively, and:

1. Determining that Microsoft and the Settlement Class have submitted to the jurisdiction of the Court for purposes of this Settlement, that the Court has personal jurisdiction over Microsoft and all government entities in the Settlement Class and that the Court has jurisdiction to approve, and does approve, this Settlement Agreement as fair, reasonable and adequate under Rule 23 of the Federal Rules of Civil Procedure and the Local Rules of the Court;

2. Finding that the proposed Settlement Class satisfies the requirements of a class action under applicable law and is certified for settlement purposes only;

3. Finding 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 Settlement Class of the pendency of this action, the terms of this Settlement, the right to object to the Settlement, the right to 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, the Federal Rules of Civil Procedure, and any other applicable law or rules of the Court;

4. Directing that this case be dismissed with prejudice and, except as provided for below, that each party bears its own costs;

5. Awarding attorneys' fees and costs in the amount that the Court deems to be appropriate;

6. Reserving for the Court exclusive jurisdiction over this Settlement, including the administration, consummation and enforcement of this Settlement, and including all proceedings that are not the subject of a pending appeal;

7. Determining that there is no just reason for delay and directing that the Final Judgment shall be final and appealable;

8. Resolving any motions that either of the parties has filed under section II.F.3 of this Settlement Agreement challenging the legal validity of particular requests for exclusion ("opt outs") from the settlement (unless those motions have previously been resolved as provided in section II.G and Appendix B to the Settlement Agreement (filed under seal)), and directing that, for a period of four years from the Effective Date of the Settlement, the Clerk of the Court shall maintain the record of those members of the Settlement Class who have timely and validly excluded themselves from the Settlement Class and that a certified copy of such records shall be provided to Microsoft at Microsoft's expense;

9. Incorporating the release set forth in section III below and forever discharging Microsoft from All Claims of the Class Representatives and the Settlement Class (other than those members of the Settlement Class who have timely excluded themselves); and

10. Directing that post-judgment interest, at the rate applicable to federal court judgments (as determined under 28 U.S.C. § 1961 for a judgment entered on the date of execution of this Settlement Agreement), shall commence to accrue beginning on the date that

falls 180 days after entry of the Final Judgment on any portion of the Settlement Benefits that have not yet been transferred to the Settlement Administrator as provided in Section V.B below. Microsoft shall not oppose an Order of Approval and Final Judgment that are consistent with the terms of this Settlement Agreement and incorporate the terms described above.

J. Effect of Disapproval. If the Court for any reason (1) decides not to approve this Settlement Agreement, or (2) does not enter the Final Judgment substantially in the form described in section II.I above and Appendix D, this Settlement Agreement terminates and becomes null and void except as otherwise provided in this Settlement Agreement. If the Court approves the Settlement but the Court's approval is modified, reversed or set aside on appeal, this Settlement Agreement terminates and becomes null and void except as otherwise provided in this Settlement Agreement and, notwithstanding the prior dismissal with prejudice, Plaintiffs shall be free to pursue this litigation to the same extent as if the parties had not entered this Settlement Agreement.

K. Dismissal With Prejudice. Upon final approval of this Settlement, Plaintiffs and Microsoft shall join in seeking dismissal with prejudice of this case to the extent that the Court does not dismiss this case with prejudice in its Order of Approval and Final Judgment.

III. RELEASE

A. Release. Upon Final Approval, each Settlement Class member, on behalf of itself and its departments, subdivisions, agencies and other subsidiary organizations that are part of the Settlement Class member or operate under its authority, hereby expressly and irrevocably waives and fully, finally and forever settles and releases all claims, demands, actions, suits and causes of action for damages, restitution, disgorgement and injunctive relief against Microsoft and/or its directors, officers, employees, attorneys, insurers or agents, whether known or unknown, asserted or unasserted, that any of them ever had, could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, act or omission that is the subject matter of the Complaint filed in the Lawsuit, or which was alleged or at issue in any of the cases coordinated

in *Microsoft I-V Cases*, J.C.C.P. No. 4106, Superior Court of California, County of San Francisco, 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 Cartwright Act, California Business and Professions Code §§ 16720 *et seq.*), (b) unfair competition, (c) unfair practices, (d) price discrimination, (e) trade regulation, (f) trade practices, (g) California's Unfair Competition Law, California Business and Professions Code §§ 17200 *et seq.*, (h) California's Unfair Practices Act, California Business and Professions Code §§ 17000 *et seq.* and/or (i) other federal or state law, regulation or common law similar or analogous to any of the above. This Release does not include claims relating to the acquisition or licensing of Microsoft Operating System or Microsoft Application software for use outside of California. This Release does not include claims relating to Microsoft's conduct, acts or omissions that take place after March 31, 2005. However, this release does include any and all claims referenced above relating to Microsoft's conduct, acts or omissions that occurred on or prior to March 31, 2005 and should be construed broadly to the maximum extent permitted by law. Furthermore, the City and County of San Francisco, through its City Attorney, and the City of Los Angeles, through its City Attorney, to the full extent of their authority to act on behalf of the People of the State of California pursuant to Business and Professions Code § 17204, hereby waive and fully, finally and forever settle and release all claims, demands, actions, suits and causes of action for civil penalties arising from any of the conduct, acts or omissions described above.

B. Waiver of Release Limitations. In addition to the provisions of section III.A above, each member of the Settlement Class, on behalf of itself and its departments, subdivisions, agencies and other subsidiary organizations that are part of the Settlement Class member or operate under its authority, 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 or any of its departments, subdivisions, agencies or other subsidiary

organizations that are part of the Settlement Class member or operate under its authority, 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. Without limiting the generality of the foregoing, each member of the Settlement Class, on behalf of itself and its departments, subdivisions, agencies and other subsidiary organizations that are part of the Settlement Class member or operate under its authority, expressly and irrevocably waives any and all defenses, rights and benefits that the class member or any of its departments, subdivisions, agencies or other subsidiary organizations that are part of the Settlement Class member or operate under its authority, might otherwise have in relation to the release under or by virtue of the provisions of Section 1542 of the Civil Code of the State of California, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each member of the Settlement Class, on behalf of itself and its departments, subdivisions, agencies and other subsidiary organizations that are part of the Settlement Class member or operate under its authority, also 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 or any of its departments, subdivisions, agencies or other subsidiary organizations that are part of the Settlement Class member or operate under its authority, may have under any similar statute in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the release.

C. Binding Effect of Release. If, after Final Approval, any member of the Settlement Class (other than a government entity that has properly excluded itself from the Settlement under section II.F above), or any department, subdivision, agency or other subsidiary organization that is part of or operates under the authority of a member of the Settlement Class takes the position, in litigation or otherwise, that it is not bound by the Release of All Claims set forth in section III of this Settlement Agreement, Lead Counsel for the Settlement Class (on behalf of all members

of the Settlement Class) and the Class Representatives shall support in writing Microsoft's position that the government entity is bound by the Release.

IV. SETTLEMENT BENEFITS FOR DISTRIBUTION DIRECTLY TO GOVERNMENT ENTITIES ON THE ELIGIBLE CLASS MEMBER LIST

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, in accordance with the procedures set forth below, make the Settlement Benefits described in this section available for distribution to government entities on the Eligible Class Member List participating in the Settlement.

B. Amount of Settlement Benefits. This Settlement Agreement provides for \$70 million in Settlement Benefits. These Settlement Benefits will be distributed directly to the Eligible Members of the Settlement Class. However, if a member of the Settlement Class exercises a valid opt-out under the procedures described in section II.F of this Settlement Agreement, the amount of the Settlement Benefits to be distributed directly to the Eligible Members of the Settlement Class shall be reduced by the proportion that the number of full time equivalent employees employed by the opting-out member of the Settlement Class bears to the estimated total number of full time equivalent employees employed by all members of the Settlement Class. Under no circumstances shall Microsoft be required to pay an amount for direct distribution to Eligible Members of the Settlement Class in excess of \$70 million plus any post-judgment interest that accrues as provided in section II.I.10 above.

C. Initial Distribution of Settlement Benefits. On or before the Effective Date of the Settlement, the Settlement Administrator shall mail to each government entity on the Eligible Class Member List a Description of Settlement Benefits notifying each such Eligible Member of the Settlement Class of the portion of the \$70 million in Settlement Benefits that has been allocated for distribution to that Eligible Member of the Settlement Class. The Settlement

Benefits available for distribution directly to Eligible Members of the Settlement Class shall be allocated among the government entities included on the Eligible Class Member List based upon each such government entity's estimated proportionate share of the estimated total number of full time equivalent employees that are employed by those who are included on the Eligible Class Member List. In making this allocation it shall be assumed that each Eligible Member of the Settlement Class has a sufficient number of full time equivalent employees to be eligible for a minimum of five dollars of Settlement Benefits.

D. Allocation of Settlement Benefits. The precise calculations of each share of the Settlement Benefits to be distributed directly to the government entities on the Eligible Class Member List shall be made by economic experts at ApplEcon LLC, in accordance with the detailed mathematical allocation procedure attached hereto as Appendix E. Neither Microsoft nor its counsel shall have any responsibility for the allocation or distribution of the Settlement Benefits. The allocation procedure shall be presented to the Court by plaintiffs together with the motion for preliminary approval of the Settlement and, if approved, it shall be published by the Settlement Administrator on a public Web site beginning no later than the Notice Commencement Date and ending no earlier than 60 days after the Effective Date of the Settlement. Members of the Settlement Class may object to the allocation procedure.

E. Redistribution of Settlement Benefits. One year after the initial distribution of Settlement Benefits described in section IV.C. above, the unredeemed portion of the first \$500 in Settlement Benefits distributed to each government entity on the Eligible Class Member List shall be redistributed to all class members who received an initial distribution in excess of \$500 in Settlement Benefits and who redeemed at least \$500 in Settlement Benefits. At the end of the five year Initial Redemption Period, the value of all unredeemed Settlement Benefits will be redistributed to Eligible Members of the Settlement Class that have already redeemed all of their previously distributed Settlement Benefits and have signed a written commitment (mailed to them by the Settlement Administrator) to redeem any redistributed Settlement Benefits before the end of the Redistribution Redemption Period. Any redistribution shall be made in the same

