Microsoft Master Service. .,grocment Number 00-10324

MICROSOFT MASTER SERVICES AGREEMENT

This Microsoft Master Services Agreement ("Agreement") is made as of the Effective Date indicated below by and between Microsoft Corporation, a Washington corporation, and _Snohomish County_, a _Subdivision of the_ ~~corporation~~ _State of Washington,_ ("Customer").

This Agreement sets forth the general terms and conditions under which Microsoft Corporation, either on its own behalf or through one or more divisions or, for services to be provided outside of the United States, subsidiaries (collectively, "Microsoft"), will provide consulting and support services to Customer and its Affiliates. Microsoft agrees that any of Customer's Affiliates shall have the right (but not the obligation) to submit Work Orders and Services Descriptions to Microsoft under the terms and conditions of this Agreement. All references to "Customer" in this Agreement shall be deemed to include the Affiliate placing the Work Order and/or Services Description Such Work Orders and Services Descriptions shall be subject to the terms and conditions of this Agreement and as to such Work Orders and Services Descriptions, the Affiliate becomes "Customer" hereunder. "Affiliate" means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including, but not limited to, subsidiaries, which directly or indirectly Control, are Controlled by, or are under common Control with Customer "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of the entity in respect of which the determination is being made, through the ownership of more than fifty percent (50%) of its voting or equity securities, contract, voting trust or otherwise

1.   **CONSULTING SERVICES** Microsoft, through its Microsoft Consulting Services division ("MCS"), shall perform the consulting services for Customer specified in work orders (each a "Work Order") that may be entered into pursuant to this Agreement from time to time ("Consulting Services") Neither Microsoft nor Customer shall be obligated to enter into any Work Order The rights in programs and data produced pursuant to the Consulting Services shall be specified in each Work Order

2.   **PREMIER SUPPORT SERVICES.** Microsoft shall perform the support services for Customer specified in Premier Support Services Description(s) (each a "Services Description") that may be entered into pursuant to this Agreement from time to time ("Premier Support Services." together with the Consulting Services, the "Services") Neither Microsoft nor Customer shall be obligated to enter into any Services Description The provision of Premier Support Services shall be subject to the following additional terms and conditions

    a   <u>Changes in Premier Support Services</u> Microsoft reserves the right to change the products supported under a Services Description during the term of the Services Description Microsoft may discontinue support for a product, provided that Customer will be given six (6) months notice of that discontinuance As an exception to the foregoing, should support for a product be discontinued by Microsoft because it has been sold to another company, Microsoft will provide written notice of the sale to Customer and, at Microsoft' option and in its sole discretion, either arrange for the acquiring company to begin providing support for that product immediately upon the date of notice, or provide continued support for that product for ninety (90) days from the date of notice Microsoft may add support for new products during the term of a Services Description pursuant to the terms and conditions of this Agreement

    b   <u>Right of Refusal</u> If Microsoft determines that an implementation of Microsoft products is not effectively supportable, Microsoft may refuse to provide Customer with Premier Support Services for that implementation. If Microsoft makes such a determination, Customer shall have thirty (30) days after Microsoft's notice to modify the implementation so as to make it effectively supportable. If the implementation is not modified to be supportable within thirty (30) days, Microsoft will no longer be obligated to support that implementation.

    c   <u>Ownership and License</u> Customer's use of any bug fixes, workarounds, patches, beta fixes and beta builds (as applicable) or other software that Microsoft provides to Customer in the course of the provision of Premier Support Services (collectively, the "ECU Software") shall be in accordance with the terms of the end user license agreement or other license agreement governing the Microsoft product for which the ECU Software is furnished · If not provided for a specific Microsoft product, Customer's use shall be in accordance with the terms of the end user license agreement packaged with such ECU Software, and/or any other terms expressly set forth by Microsoft in writing, provided that if such ECU Software is not packaged with a license agreement then such ECU Software will be subject to the following restrictions (i) the ECU Software may not be reverse engineered, decompiled or disassembled, except to the extent the foregoing restriction is expressly forbidden by applicable law; (ii) the ECU Software may not be loaned, sold, rented, leased, transferred or otherwise distributed to another user, (iii) Microsoft may terminate Customer's use of the ECU Software if Customer fails to comply with the terms and conditions of these restrictions, (iv) the ECU Software is provided "As-Is", without warranty of any kind; and (v) the ECU Software and any documentation accompanying it that is or may be provided to the U S Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described elsewhere herein Any software or materials 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 All rights not expressly granted are reserved

    d   <u>Licensed Product</u> Microsoft will provide Premier Support Services only for products published by Microsoft Corporation, validly licensed and unaltered

3.   **FEES.** Customer shall pay Microsoft the fees identified on each Work Order and/or Services Description for Services rendered, and the reasonable out-of-pocket travel and living expenses incurred during the performance of the Services Payment shall be made to Microsoft within thirty (30) days of the date of Microsoft's invoice Microsoft shall not change its fees during the term of a Work Order or a Services Description, unless otherwise agreed by Microsoft and Customer, but may adjust fees prior to entering any new Work Order or

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Services Description Microsoft's fees do not include any taxes, duties, tariffs or other governmental charges or expenses imposed in connection with this Agreement (including, without limitation, any value added taxes), and such taxes shall be billed to and paid by Customer Microsoft shall be responsible for all taxes based upon its personal property ownership and net income. A finance charge of one and one-half percent (1 5%) per month or the highest amount allowed by law, whichever is less, will be assessed on all payments that are past due Any amount outstanding for more than sixty (60) days after the date of invoice shall constitute a material breach on the part of Customer

4. CONFIDENTIALITY.

a.   Confidential Information Except as otherwise specified herein, Microsoft and Customer each expressly undertake to retain in confidence all information transmitted to it by the other party pursuant to this Agreement that the disclosing party identifies as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential ("Confidential Information"), and will make no use of such Confidential Information except under the terms and during the existence of this Agreement Information disclosed by Microsoft, in any form, regarding pre-release products, access numbers and passwords provided to Customer by Microsoft, shall be Microsoft Confidential Information. Microsoft and Customer shall treat the terms and conditions of this Agreement as confidential, however, either party may disclose such information in confidence to its immediate legal and financial consultants as required in the ordinary course of that party's business The receiving party's obligation hereunder shall extend for five (5) years following the disclosure of the Confidential Information Customer shall cause its Affiliates to retain Microsoft Confidential Information in accordance with the terms of this Section 4

b   Exclusions Confidential Information shall not include any information that (i) is at the time of disclosure or subsequently becomes publicly available without the receiving party's breach of any obligations owed the disclosing party, (ii) became known to the receiving party prior to the disclosing party's disclosure of such information to the receiving party; (iii) became known to the receiving party from a source other than the disclosing party other than by the breach of an obligation of confidentiality owed to the disclosing party, or (iv) is independently developed by the receiving party

c.   Independent Development, Residuals. The terms of confidentiality under this Agreement shall not be construed to limit Microsoft's or Customer's right to independently develop or acquire products without use of the other party's Confidential Information Further, Microsoft or Customer shall be free to use for any purpose the residuals resulting from access to or work with such Confidential Information, provided that such party shall maintain the confidentiality of the Confidential Information as provided herein. The term "residuals" means technical information related to computer software technology in non-tangible form, which may be retained by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein Neither Microsoft nor Customer shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to either Microsoft or Customer a license under the other party's copyrights or patents

d.   Customer Information Customer grants to Microsoft the right to use technical information for problem resolution, internal troubleshooting, product functionality enhancements and fixes, and Knowledge Base articles Microsoft will not identify Customer or publish any of Customer's Confidential Information in any Knowledge Base article

5. LIMITED WARRANTIES.

a   Consulting Services Microsoft warrants that the Consulting Services will be performed using generally accepted industry standards and practices

b   Premier Support Services Microsoft warrants that the Premier Support Services shall be substantially as described in this Agreement and the applicable Services Description, and that Microsoft will use commercially reasonable efforts in addressing all support problems

6. LIMITATION OF WARRANTIES. THE LIMITED WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT. THE PERFORMANCE OF MATERIALS OR PROCESSES DEVELOPED OR PROVIDED UNDER THIS AGREEMENT, OR AS TO THE RESULTS WHICH MAY BE OBTAINED THEREFROM, AND ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT MICROSOFT SHALL NOT BE LIABLE FOR ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO CUSTOMER BY MICROSOFT UNLESS SUCH THIRD PARTY SERVICES ARE PROVIDED UNDER WRITTEN AGREEMENT WITH MICROSOFT

7. LIMITATION OF LIABILITY.

a   Limitation Microsoft' total liability under this Agreement shall be limited to the total amount actually paid by Customer to Microsoft under the applicable Work Order or Services Description

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b   Exclusion of Certain Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT, MICROSOFT SUBSIDIARIES OR THEIR RESPECTIVE SUPPLIERS BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR OTHER PECUNIARY LOSS) REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

8.   TERM AND TERMINATION.

a   Term. This Agreement shall remain in effect until terminated by either Microsoft or Customer as provided herein. The term of any Work Order or Services Description shall be as provided therein Termination of this Agreement shall terminate all outstanding Work Orders and Services Descriptions between Microsoft and Customer

b   Termination. Customer may terminate this Agreement, any Work Order or Services Description without cause by giving Microsoft thirty (30) days written notice   Either Microsoft or Customer may terminate this Agreement or any Work Order or Services Description if the other party is in material breach or default of any obligation hereunder, which breach or default is not cured within thirty (30) days notice of such breach   Customer shall pay all fees to Microsoft for Services performed and expenses incurred which have accrued through the date of termination.

c   Survival. Sections 2(c), 3, 4, 5, 6, 7, 8(b), 8(c), 9, and 11 of this Agreement and any provisions specified as surviving in a Work Order or Services Description shall survive any termination of this Agreement and termination or expiration of any Work Order or Services Description.

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

To Customer:	To Microsoft:
Snohomish County 3000 Rockefeller Avenue MS709 Everett, WA 98201	Microsoft Corporation One Microsoft Way Redmond, WA 98052-6399
Attention: Technology Contract Administrator	Attention Laura Bergstrom
Phone (425) 388-6683	Phone 425-704-5512
Fax (425) 388-3999	Fax: 425-704-4657
	cc Law and Corporate Affairs One Microsoft Way Redmond, WA 98052-6399

10.   INSURANCE. At all times when Microsoft will be performing Services on Customer's premises pursuant to this Agreement, Microsoft will procure and maintain the following insurance coverage

a   Commercial General Liability covering bodily injury and property damage liability with a limit of not less than $1,000,000 each occurrence,

b   Workers' Compensation (or maintenance of a legally permitted and governmentally-approved program of self-insurance) covering Microsoft employees pursuant to applicable state workers' compensation laws for work-related injuries suffered by employees of Microsoft;

c   Employer's Liability with limits of not less than $1,000,000 each accident, and

d   Software Errors and Omissions Liability covering damages arising out of negligent acts, errors, or omissions committed by Microsoft or its employees in the performance of this Agreement, with a limit of liability of not less than $2,000,000 each claim.

Microsoft will provide Customer with certificates of insurance evidencing this coverage on request.

11.   MISCELLANEOUS.

a   No Assignment This Agreement and any rights or obligations hereunder shall not be assigned by contract or by operation of law without the prior written agreement of the other party Microsoft may use subcontractors to deliver the Services, provided that Microsoft shall remain liable to Customer, in accordance with this Agreement, for all Services provided to Customer The Services are

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provided solely for the benefit of Customer and its Affiliates, as applicable. Unless specifically permitted by Microsoft in writing, the Services and the software and materials provided thereunder may not be transferred or sold by Customer to any non-Affiliate third party.

b   Applicable Law This Agreement shall be governed by the laws of the State of Washington, and Customer further consents to the exclusive jurisdiction by the state and federal courts sitting in the State of Washington. Any action of any kind by any party against another party arising as a result of this Agreement must be commenced within two (2) years from the date the right, claim, demand, or cause of action shall first accrue.

c   Entire Agreement . This Agreement and the Services Descriptions and Work Orders constitute the entire agreement between Microsoft and Customer, and merge all prior and contemporaneous communications, with respect to the Services provided hereunder The terms on any purchase order or other form submitted by Customer shall not apply to this Agreement or any of the Services. This Agreement can be modified only by written agreement signed by both Microsoft and Customer In the event of a conflict between this Agreement and any Services Description or Work Order, the terms of this Agreement shall control

d.   Compliance with Laws. Microsoft and Customer shall comply with all applicable laws and regulations with respect to this Agreement. Customer acknowledges that the Services and the related software and other materials are subject to United States export control laws and regulations, and Customer confirms that it will not export or re-export them, directly or indirectly, either to (i) any countries that are subject to U S export restrictions (currently including, but not necessarily limited to, Cuba, Iran, Iraq, Libya, North Korea, Syria and Sudan), or to any national of any such country, wherever located, who intends to transmit or transport the Services or related software and other materials back to such country, or (ii) any end-user whom Customer knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or (iii) any end-user who has been prohibited from participating in U S export transactions by any federal agency of the U.S Government.

e   Severability/Waiver. If a court holds any provision of this Agreement to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. No waiver of any breach of this Agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party

f.   Independent Contractor Microsoft shall act at all times as an independent contractor, and shall be responsible for any and all social security, unemployment, workers' compensation and other withholding taxes for any and all of its employees.

g   Force Majeure Except for Customer's obligation to pay for services already performed by Microsoft, if either party is prevented from complying, either totally or in part, with any of the terms or provisions of this Agreement by reason of fire, flood, storm, strike, lockout or other labor trouble, riot, war, rebellion, accident or other acts of God, then upon written notice to the other party, the requirements of this Agreement, or the affected provisions hereof to the extent affected, shall be suspended during the period of such disability. During such period, the party not prevented from complying as aforesaid may seek to have its needs (which would otherwise be met hereunder) met by or through others without liability hereunder The party prevented from complying shall make all reasonable efforts to remove such disability within thirty (30) days of giving such notice

h.   English Language Governs. The parties have requested that this Agreement be drawn up in English; les parties ont exiges que cette entente soit redigee en anglais

IN WITNESS WHEREOF, the parties have agreed to the terms and conditions of this Agreement as of the Effective Date indicated below

MICROSOFT CORPORATION	Snohomish County
	Corporate Name of Customer
By _____	By _____
Signature	Signature
Kevin Allison	JOAN M EARL
Name (Print)	Name (Print) Deputy Executive
Group Manager, Premier West	
Title	Title
5/25/00	5-18-00
Effective Date	Date
rev. 5/99 lgf	