Final / Signed

SOFTWARE ACQUISITION AGREEMENT

THIS SOFTWARE ACQUISITION AGREEMENT, entered into as of the28th day of February, 1990, by and between **VENTURA SOFTWARE, INC.**, a corporation organized and existing under the laws of the State of California (hereinafter referred to as the "Seller"), **JOHN MEYER, DON HEISKELL** and **LEE LORENZEN** (hereinafter referred to as the "Principals") and **XEROX DESKTOP SOFTWARE,INC.** a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as the "Buyer"):

WITNESSETH:

WHEREAS:-

A. The Seller owns or has licensed certain software currently being marketed and distributed by Buyer and known as Ventura Publisher, version 1.1, version 2.0, Professional Extension and Network Server (such software in the form currently being shipped referred to as the "Current Software");

B. The Seller intends to produce and has demonstrated to Buyer certain additional software consisting of Ventura Publisher , Version 3.0 for the currently shipped version of GEM, Windows 3.0 Version, of Ventura Publisher and Presentation Manager, Version 1.2 , version of Ventura Publisher ("New Software");

C. Buyer's parent (Xerox Corporation) has had the exclusive worldwide marketing rights and distribution rights to the Current Software (or earlier versions) since the inception of Seller's business which rights are currently set forth in the Ventura Software Development and License Agreement, dated as of 9/23/87 (the " License");

D. The Buyer 's parent wishes to terminate the License and Buyer wishes to acquire all rights in, title to and ownership of the Current Software and New Software;

E. The Seller wishes to terminate the License and sell to the Buyer all such rights in, title to and ownership of the Current Software and the New Software;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Buyer and the Seller have agreed as follows:

ARTICLE I
PURCHASE AND SALE OF THE SOFTWARE

1.1 **Sale of the Software; Assumption of Liabilities.** Upon the terms, and subject to the conditions, set forth in this Agreement, the Seller hereby agrees to sell, convey, transfer, assign and deliver to the Buyer, and the Buyer agrees to purchase from the Seller, at the Closing (as that term is hereinafter defined), all right, title and interest of the Seller in and to the following software and related items existing on the Closing Date (as that term is hereinafter defined) or thereafter produced as hereinafter described (collectively, the "Software") :

(a) All of the Seller's interest in software, trade secrets, patents, knowhow, patent applications, inventions, algorithms, diagnostic routines, processes, logos, trademarks or service marks, registered or unregistered and applications therefor, copyrights and copyright applications;

(b) all business files and records relating to or used in connection with the Software (provided that Seller may retain copies for tax and accounting purposes) and as of the date of the transfer of the last of the New Software, certain computer equipment and other office equipment set forth in Appendix A (provided that all such equipment shall be delivered in their condition then existing, that Buyer agrees to accept the same "as is with all faults" and that Seller shall have no responsibility for maintenance or repair of such equipment until delivery) ;

(c) all right, title and interest of the Seller in and to the contracts and agreements listed in Schedule 4.2 of this Agreement, except as noted therein, (collectively, the "Contracts");

(d) all right, title and interest of the Seller in the name "Ventura", in any name incorporating the word "Ventura" including "Ventura Publisher", and in any other names, whether of product or otherwise, used in connection with the Seller's business; and

(e) in connection with such sale Buyer agrees to assume all liabilities arising out of the assets transferred, except as otherwise provided herein.

ARTICLE II
CLOSING DOCUMENTS AND DELIVERABLES

2.1 **Documents to be Delivered by the Seller and the Buyer.** The following documents shall be delivered at the Closing:

(a) By the Seller, a copy, certified as of the Closing Date by the Secretary or an Assistant Secretary of the Seller, of resolutions adopted by the Board of Directors of the Seller approving and authorizing the sale of the Software and the execution of all documents pursuant to this Agreement;

(b) Incumbency certificates:

(i) By the Seller, an Incumbency Certificate, dated the Closing Date, executed by the Secretary or an Assistant Secretary of the Seller certifying the name, title and signature of the officers of the Seller authorized to execute this Agreement, and the instruments and documents executed and delivered by the Seller at the Closing;

(ii) By the Buyer, an Incumbency Certificate, dated the Closing Date, executed by the Secretary or an Assistant Secretary of the Buyer, certifying the name, title and signature of the officers of the Buyer authorized to execute this Agreement and the instruments and documents executed and delivered by the Buyer at the Closing;

(c) An opinion of counsel on behalf of the Seller in the terms set out in Schedule 2.1. (c)

2.2 **Additional Documents to be Delivered by the Seller.** The following documents shall be delivered by the Seller to the Buyer at the Closing:

(a) A Bill of Sale , Assignment and Assumption Agreement in the form of Exhibit A, together with such other bills of sale, assignments and other instruments of transfer in form satisfactory to the Buyer as shall be necessary or appropriate to vest and confirm in the Buyer title to the Software and the items set forth in Appendix A ;

(b) A copy of a duly executed amendment to Seller's Articles of Incorporation changing Seller's name to a name not including the word "Ventura" which amendment shall be filed with the California Secretary of State no later than one business day following the Closing Date, together with such other appropriate documentation as may be necessary to reflect such change of name. In addition, the Seller agrees to execute and deliver to the Buyer from time to time any consents which may be necessary in connection with the Buyer's application to qualify to do business or to use the fictitious names "**Ventura**" or "**A Ventura** Company" or any variation thereof in any state.

2.3 **Computer Software to be Delivered by the Seller**

(a) All computer programs constituting the Current Software and the New Software will be assigned to the Buyer at the Closing, and the Seller shall deliver to the Buyer at or before the Closing, with respect to each such computer program, and to the extent that the Seller possesses the same, the then current versions of:

(i) source code, on magnetic tape or discs (collectively "magnetic media") or in documentary form,

(ii) object code, on magnetic media, and

(iii) any currently existing related manuals, logic diagrams, flow charts and other documentation (collectively, "documentation") relating thereto.

Buyer hereby acknowledges that it has received each of the foregoing items in accordance with the procedures agreed upon in Appendix B.

2.4 **Additional Documents To Be Delivered By Buyer**. The Buyer shall deliver to the Seller at the closing (a) a duly executed security agreement in form reasonably

satisfactory to Seller, together with a UCC-1 financing statement, assignments of copyright and trademark and such other documents in such forms as may be necessary or appropriate to perfect a security interest in the Software by filing with all appropriate governmental authorities; (b) a guaranty in form reasonably satisfactory to Seller, duly executed by Xerox Corporation, pursuant to which Xerox Corporation guarantees the payment of all obligations of the Buyer under this Agreement and the documents called for herein; and (c) a termination agreement, duly executed by Xerox Corporation, pursuant to which the License will be terminated as of the closing.

ARTICLE III
CONSIDERATION; CLOSING

3.1 Consideration Subject to the terms and conditions of this Agreement, and in consideration of the sale and transfer of all of the Software to the Buyer and of various future software development and related services and non-compete covenants specified herein, the aggregate consideration payable by the Buyer to the Seller, the Principals and certain other shareholders for their Non-Competition Agreements as described in Section 8.1 (the "Consideration") shall be $18.5 Million.

3.2. Allocation

The total Consideration payable hereunder shall be allocated and paid as follows:

(a) Seven million dollars ($7,000,000) has been allocated to the Noncompetition Agreement described in Section 8.1 in full consideration therefor, and will be payable to the individuals entering into such agreements in the respective amounts set forth in Appendix D;

(b) Four million six hundred thousand dollars ($4,600,000) shall be allocated to the purchase price of the Current Software and paid to the Seller;

(c) Three million dollars ($3,000,000) shall be allocated to the New Software and paid to the Seller;

(d) One million and four hundred thousand dollars ($1,400,000) shall be allocated to professional Services to be provided by the four individuals listed in Section 3.4 and shall be paid to those individuals in equal shares;

(e) Oneand one-half million dollars ($1,500,000) shall be allocated to training to be provided by the four individuals listed in Section 3.4 and shall be paid to those individuals in equal shares; and

(f) One million dollars ($1,000,000) shall be allocated to the tradename "Ventura Publisher" and shall be paid to the Seller.

Each payment called for in Section 3.3 below shall be allocated to the items referred to in Paragraphs (a), (d) and (e) above (in the proportion that each such category bears to the total of all three categories) until those items have been paid for in full, and thereafter to the items listed in Paragraphs (b), (c) and (f) (in the proportion that each category bears to the total of all three categories). The first allocation method shall be used until a total of $9.9 million has been allocated. Thereafter, payments will be allocated 53.49% to the Current Software, 34.88% to the New Software and 11.63% to the tradename. All payments to be made to the individuals signing a Non-Competition Agreement and to the individuals listed in Section 3.4 shall be made by Buyer to Seller (or its successor) in its capacity as agent for such persons and pursuant to an agreement to be entered among such parties, and Buyer shall have no obligation to any such individual on account of any such payment made to Seller (or such successor) pursuant to this paragraph.

The obligation of Buyer to make the payments called for in this Section at the times described in paragraph 3.3 shall not be subject to any defense or right of offset on account of non-performance by any person of any obligation set forth in this Article 3, or on account of any breach or non-performance by any person pursuant to the Non-Competition Agreements described in Section 8.1, except as and only to the extent provided in Section 3.5.

3.3 Manner of Payment. Buyer agrees to pay the Consideration by wire transfer to an account designated by Seller, allocated in accordance with Section 3.2 above, in accordance with the following schedule:

(a) $1.25 million prior to January 10,1990, receipt of which is hereby acknowledged .

(b) (i) $1.2 million prior to April 10,1990;

(ii)$4.5 Million at delivery of the Windows 3.0 version of Ventura Publisher software and "acceptance" by Buyer have occurred. "Acceptance" is defined as turnover by Buyer of a master to Buyer's designated publisher for reproduction with the deficiencies set forth in Appendix C corrected to the satisfaction of Buyer. Notwithstanding any failure of delivery or acceptance, Buyer shall in any event pay said $ 4.5 Million, no later than June 1, 1990.

(iii) $2.3 Million at delivery of the Presentation Manager,(version 1.2) version of Ventura Publisher software and acceptance (as defined above) by Buyer shall have occurred with the deficiencies set forth in Appendix C corrected to the satisfaction of Buyer. Notwithstanding any failure of delivery or acceptance, Buyer shall in any event, pay said $2.3 Million, no later than June 1, 1990.

(c). Seller recognizes that prompt delivery of the Windows 3.0 version is more critical to Buyer than that of the Presentation Manager(version 1.2) version and Seller will concentrate its efforts on delivery of all software to Buyer promptly in accordance with the terms herein and in the following order: (1) Release 3.0 ,GEM Version (2) Windows, 3.0 version (3) Presentation Manager(Version 1.2) version. Buyer will test all three versions in parallel. After the Windows 3.0 Version has been accepted, Buyer will not require Seller to fix bugs in the Presentation Manager Version that were previously accepted in the Windows 3.0 Version. However, Seller shall be required to fix those additional bugs that are unique to the Presentation Manager Version. LG 2/28 DH 2/28 2/28 jm 2/28

(d). The following two payments will be made as follows:

(1) $4.60 Million, six months after delivery and acceptance of Windows 3.0 version of Ventura Publisher. In any event, notwithstanding any failure of delivery or acceptance, Buyer shall pay $4.65 Million , no later than December 1, 1990. LG 2/28 DH 2/28 2/28

(2) $4.65 Million, six months after delivery and acceptance of Presentation Manager(version 1.2) version of Ventura Publisher. In any event, notwithstanding any failure of delivery or acceptance, Buyer shall will pay $4.65 Million, no later than December 1, 1990. 2/28 jm 2/28

(e). In addition, Buyer shall pay quarterly in advance, all reasonable expenses associated with the business operations at the Seller's location at Salinas, California, including rent, utilities and secretarial help to and including December 1, 1990, but not to exceed $90,000 in total. In addition Buyer shall reimburse Seller for

all hardware and software tools and licenses reasonably necessary to perform any service required of Seller or the Principals pursuant to this Agreement. Seller shall obtain advance consent , prior to any purchase for more than One thousand dollars or in the aggregate for any purchase that would cause such aggregate to exceed Five Thousand Dollars; which consent may not be delayed or withheld unless the item is not reasonably necessary to perform as provided above.

3.4 Obligations of Principals.

(a). During the six months after acceptance by Buyer of the New Software (provided that the six month period shall end no later than December 1,1990), the following services when requested by Buyer will be rendered for no fees nor expenses, except reasonable travel expenses and fees provided herein:

(1) Messrs. Heiskell, Lorenzen and Grant will be available during normal business hours to train up to five Buyer personnel, which training shall include assisting and directing said Buyer personnel in making changes to the Software, at the Seller's facilities in Salinas , California.

(2) Messrs. Heiskell, Lorenzen and Grant will be available at the Seller's Salinas facility during normal business hours, to provide documentation of the software changes. Title to such documentation shall be transferred to Buyer.

(3) Mr. John Meyer will be available during normal business hours, to provide assistance to Buyer for market development of Xerox software products.

Seller is not obligated to provide training and/or documentation services until the New Software is accepted.

(b). In the event that the Windows 3.0 version of Ventura Publisher is accepted by Buyer prior to Microsoft shipping Windows 3.0, and Microsoft institutes changes to Microsoft Windows 3.0 which require changes in the Windows 3.0 version of Ventura Publisher, then Messrs. Heiskell, Lorenzen, and Grant, will use all reasonable efforts to undertake to make such changes as are reasonably necessary to the Windows 3.0 Version of Ventura Publisher, up to

and including June 1,1990 for no fees nor expenses, except reasonable travel expenses and fees provided herein.

(c) In the event that either the Windows 3.0 version of Ventura Publisher is not delivered and accepted prior to June 1, 1990, or the Presentation Manager (version 1.2) is not delivered and accepted prior to August 1,1990, then Messrs. Heiskell, Grant, and Lorenzen shall be available during normal working hours to work for no fees nor expenses, except reasonable travel expenses and fees provided herein, at location(s), reasonably designated by Buyer, which locations shall include San Diego, California, under Buyer's direction until the software is accepted or for a period of six calendar months (but not later than December 1,1990) whichever comes first. This obligation shall not be transferable by Buyer. If the Windows 3.0 Version and Presentation Manager (Version 1.2) are not delivered and accepted prior to June 1, 1990, then weekly bug arbitration meetings shall be held between Buyer and Seller with Larry Gerhard presiding. If Buyer authorizes the work to be performed in Salinas, California, then the bug arbitration meetings will be held bi-weekly.

(d) During the period referred to in paragraph 3.4(c), Messrs. Heiskell, Grant and Lorenzen shall work to implement an "undo/redo" feature, as specified in Appendix C, in the Presentation Manager (version 1.2) and Windows 3.0 version of Ventura Publisher to the extent that feature is not incorporated in versions delivered prior to June 1, 1990 (if any). In the event that modified versions including an "undo/redo" feature having that functionality specified in Appendix C are delivered to Buyer on or before December 1, 1990, then the schedule of maximum liability set forth in Section 4.16 (c) shall apply and the schedule set forth in Section 4.16 (b) shall have no further force or effect. Within fifteen days after delivery of the modified version called for in the foregoing sentence, Buyer shall confirm to Seller that the "undo/redo" feature has been delivered as required, by letter in the form attached to Appendix C or specifying any respects in which the required functionality has not been met (in which event. Messrs. Heiskell, Grant and Lorenzen shall have an additional thirty days to correct the specified deficiencies).

3.5 Failure Of Principals To Perform In the event any of Messrs. Meyer, Heiskell, Grant, and Lorenzen willfully fail to perform the obligations under paragraph 3.4 of this agreement, then Buyer shall be entitled to deduct $1 Million from any payment due for failure by each such individual, for a total of not more than $4 Million, provided. that (i) no such damages shall be assessed on account of any willful failure

to perform unless Buyer notifies each of the above-listed individuals of such failure within ten days after it receives knowledge of such occurrence; (ii) no damages shall be assessed if the non-performing individual resumes performance within fifteen days after the notice called for in clause (i); and (iii) no damages shall be assessed for non-performance under Section 3.4 (c) in the event that the Presentation Manager (version 1.2) version of Ventura Publisher and the Windows 3.0 version of Ventura Publisher are delivered in acceptable form on or before December 1, 1990. It is understood that the remedy provided in this paragraph is intended to fully compensate Buyer for any non-performance by the above listed individuals; accordingly, the deductions called for above shall be the sole remedy available to Buyer under this Agreement at law or in equity for any such non performance and Buyer hereby irrevocably waives any and all other rights and remedies that would or could have been available to it but for this paragraph.

3.6 **Tax Obligations.** The Buyer shall be responsible for, and shall pay or reimburse within thirty days of demand, all applicable transfer, excise, sales, documentary, use or any other similar taxes payable in any jurisdiction, other than income tax liabilities, in connection with or arising from the sale and transfer of any of the Software to the Buyer hereunder. The Buyer will also pay any California corporate income taxes ,if any, which are reasonably payable by Seller arising out of the transactions described herein.

3.7 **Closing.** The closing of the purchase and sale of the Software hereunder (the "Closing") shall take place on February 28,1990, at nine o'clock in the morning at the offices of the Seller's attorney in San Francisco, or at such other date, time and place as the Buyer and the Seller shall mutually agree. The date on which the Closing shall take place in accordance with the provisions hereof is referred to herein as the "Closing Date".

3.8 **Security** Buyer's obligations under this Agreement will be secured by a security interest in the Software, pursuant to a Security Agreement, UCC-1 Financing Statement(s) and Copyright Assignment(s) in form reasonably acceptable to Seller.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE SELLER AND THE PRINCIPALS

The Seller and the Principals hereby jointly and severally make the following representations and warranties, each of which is complete and correct on and as of the date hereof:

4.1 Organization, Authority Qualification. The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of California, is eligible for and has filed an "S" election in conformity with Section 1361 of the Internal Revenue Code and has full corporate power and authority (i) to own or lease its properties relating to or used in the Seller's business, (ii) to operate the said business and (iii) to enter into and perform its obligations under this Agreement.

4.2 Contracts. Except as listed in Schedule 4.2 hereto, and except for agreements relating to services to be provided by the Seller and/or the Principals or on their behalf after the Closing Date to the best knowledge of the Seller and the Principals the Seller is not a party to, or bound by, in connection with its conduct of the Seller's business:

(a) Any employment or consulting contract which is not by its terms terminable at will without penalty to the Seller;

(b) Any contract with any labor union;

(c) Any contract not made in the ordinary course for the sale, lease, licensing or use of the Seller's products or services;

(d) Any agreement, promissory note, security agreement, financing statement or other instrument or document evidencing indebtedness for money borrowed or a security interest in the Software;

(e) Any contract, whether written or oral, with any entity controlled by the Seller;

(f) Any offer or commitment on the part of the Seller to enter into any contract of the nature described in paragraphs (a) through (e), above.

4.3 Litigation and Claims. Except as set forth in Schedule 4.3 hereto, no litigation, arbitral or administrative proceeding, claim, action or governmental investigation (collectively, "Litigation") is pending or, to the knowledge of the Seller, threatened against the Seller or the Current Software . Except as set forth in Schedule 4.3, there is no judgment, order, injunction, decree or award (whether rendered by a court, administrative agency or arbitrator) to which the Seller is a party affecting any of the Software or the Seller's business which is unsatisfied or which requires, or will require, continuing compliance therewith by the Buyer .

4.4 Absence of Changes or Events. To the best knowledge of the Seller and the Principals, since November 30,1989 the Seller has carried on the Seller's business in the ordinary course and has not, except as disclosed in Schedule 4.4, since November 30,1989 in connection with its conduct of the said business:

(a) incurred any obligation or liability (absolute, accrued, contingent or otherwise) material to the business, other than in the ordinary course of business;

(b) mortgaged, pledged or subjected to lien, charge or other encumbrance, or granted to third parties any rights to, any of the Software other than in the ordinary course of business;

(c) sold or transferred any of the Software, or canceled any debts or claims, or knowingly waived any rights, of a material nature;

(d) suffered any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the properties or business of the Seller.

The Seller and the Principals to their knowledge have not purposefully included in the Software any code or design that has or may damage the Software or make it unmarketable.

4.5 Compliance with Other Instruments and Laws. To the best knowledge of the Seller and the Principals, the Seller is not in violation of any provision of its Restated Articles of Incorporation or By-Laws or, except where the violation would not have a material adverse effect upon the Software or of any agreement, mortgage, indenture, governmental license, permit, lease or other instrument to which the Seller is a party, any judgment, decree or order outstanding against the Seller or any statute or governmental regulation applicable to the Seller.

4.6 Execution of the Agreement. The execution and delivery of this Agreement by the Seller and the performance by the Seller of its obligations hereunder have been duly and validly authorized by all necessary corporate action of the Seller. Neither the execution of this Agreement, the consummation of the transactions contemplated hereby nor the compliance with or fulfillment of the terms and conditions hereof will:

(a) violate or conflict with any provision of the Restated Articles of Incorporation or the By-Laws of the Seller,

(b) to the knowledge of the Seller, violate or conflict with any law, regulation, judgment, order, writ, injunction or decree of any court or governmental body of any jurisdiction as the same relates to the Software or the Seller's business.

To the best knowledge of Seller and the Principals, the Seller is not a party to or bound by any agreement or any judgment, order, writ, injunction or decree of any court or governmental body that prevents the making of, or the consummation of the transactions contemplated by, this Agreement.

4.7 Ability to Sell the Software. To the best knowledge of the Seller and the Principals, there is no agreement, judgment, order, writ, injunction or decree issued against the Seller by any court or governmental body that could prevent in any material manner the use by the Buyer of the Software after the Closing Date.

4.8 Patents, Trademarks, Service Marks, and Copyrights

(a) Schedule 4.8 sets forth a complete list of all material Patents, patent applications, trademarks and service marks and all applications and registrations therefor, trade names (including,"Ventura Publisher", registered copyrights and franchises for the foregoing (collectively, the "Rights") that relate to or are used in connection with the Seller's business, all of which the Seller owns or is using under license agreements, copies of which have been provided to Buyer. The expiration dates, if any, of any of the Rights are set forth in Schedule 4.8.

(b) Except as disclosed in Schedule 4.3, none of the Rights owned by Seller is subject to any pending, or, to the knowledge of the Seller, threatened challenge.

(c) To the best of the Seller's and Principals knowledge, except as set forth in Schedule 4.8 no person or entity other than the Seller has any right to use, license, sublicense or operate under any of the Rights owned by the Seller.

4.09 Approvals and Consents. To the best knowledge of the Seller and the Principals, no licenses, approvals or consents of any federal, state, local or foreign regulatory agencies are required with respect to the Seller's participation in transactions contemplated by this Agreement, except as herein provided for herein (it being understood that Buyer has performed its own research as to compliance with the Hart-Scott-Rodino Antitrust Improvements Act and Seller makes no representation or warranty with respect to the same)..

4.10 Tax Returns and Payments. None of Seller's assets is subject to any lien for the payment of taxes owed by the Seller.

4.11 Computer Software.

(a) Schedule 4.11 hereto sets forth a complete and correct list of all computer programs used in the Seller's business, except the Current and New Software .

(b) Except as set forth in Schedule 4.11, the Seller and the Principals represent and warrant that:

(i) the Seller is the owner of the Current Software and New Software and the related documentation,

and

(ii) the Seller has the right to assign the Current Software and New Software to the Buyer free and clear of any pledges, security interests, consensual liens, contractual commitments or encumbrances created by the Seller or the Principals, except as expressly set forth herein.

(c) Schedule 4.11 sets forth a complete and correct list of all Software consisting of computer programs not owned by the Seller (collectively,"Licensed Software"). All Licensed Software (other than public domain material as noted on Schedule 4.11) is duly licensed to the Seller under licenses from persons representing themselves to be the owners thereof, complete and correct copies of which have been delivered to the Buyer, except as set forth in Schedule 4.11 and to the Sellers

knowledge,(i) the Seller is not in default in any material respect under any of such licenses, (ii) no other party thereto is in default in any material respect thereunder and (iii) there are no disputes or disagreements pending or threatened between the Seller and any other party to any such license . With respect to all licenses to be assigned to Buyer as provide in Section 6.2, , the Seller shall deliver all computer programs constituting the Licensed Software to the Buyer at the Closing, to the extent that the Seller possesses the same, by delivering the then current versions of (i) source code, if applicable, on magnetic media or in documentary form, (ii) object code, on magnetic media, and (iii) any related documentation with respect to each such program.

4.12 Fees Payable. Except for royalties, license fees, commissions or other amounts howsoever characterized, payable under any of the contracts, agreements or arrangements disclosed in any Schedule attached hereto, the sale or other distribution by the Buyer after the Closing Date of any of the Current Software shall not give rise to any obligation to pay to any party any royalty, license fee, commission, or any other amount howsoever characterized, arising out of any agreement, commitment or promise made by the Seller and not assumed by the Buyer in accordance with the terms of this Agreement.

4.13 Material Disclosure. No representation or warranty by the Seller contained in this Agreement and no statement contained in any certificate, list, Schedule, Exhibit or other instrument specified in this Agreement, whether heretofore furnished to the Buyer or hereafter required to be furnished to the Buyer, contains or will contain any untrue statement of a material fact. All material information required to be disclosed by this Agreement concerning the Seller has been disclosed.

4.14 Reliance. The foregoing representations and warranties are made by the Seller and the Principals with the knowledge and expectation that the Buyer is placing reliance thereon in entering into, and performing its obligations under, this Agreement.

4.15 Limitation. Nothing in this agreement shall be construed to constitute a representation by the Seller as the value of any asset transferred, the market for any such asset or that the resale by Buyer of any such asset shall result in financial success to the Buyer.

4.16 Survival of Warranties and Representations.

(a) The warranties and representations set forth in Sections 4.2-4.10, 4.11 (a) and (c) and 4.12, shall terminate on December 1, 1990. The warranties and representations set forth in Section 4.11 (b) shall terminate on December 1, 1993. Sections 4.13 and 4.14 shall be construed to terminate when the warranty and representation to which it pertains terminates.

(b) The maximum, aggregate total liability of Seller and the Principals for all claims arising out of the representations and warranties set forth in this Agreement or otherwise made in connection with this transaction or arising out of the indemnity obligations of the Seller and/or the Principals set forth in this Agreement shall be: $18,500,000 for claims made by Buyer in writing prior to December 31, 1991; $12,000,000 for claims made by Buyer in writing prior to December 31, 1992; and $6,000,000 for claims made by Buyer in writing prior to December 1, 1993.

(c) Notwithstanding the provisions of paragraph (b) above, in the event that the conditions set forth in Section 3.4 are met as provided therein, the maximum, aggregate, total liability of Seller and the Principals for all claims arising out of the representations and warranties set forth in this Agreement or otherwise made in connection with this transaction or arising out of the indemnity obligations of the Seller and/or the Principals set forth in this Agreement, shall be: $18,500,000 for claims made by Buyer in writing prior to December 1, 1990; $10,000,000 for claims made by Buyer in writing prior to December 1, 1991; $5,000,000 for claims made by Buyer in writing prior to December 1, 1992; and $1,000,000 for claims made by Buyer in writing prior to December 1, 1993.

(d) In all events, unless sooner terminated under paragraph 4.16 (a) all of the warranties, representations and indemnities of Seller and the Principals set forth in this Agreement or otherwise made in connection with this transaction shall expire on November 30, 1993, and neither Seller nor any of the Principals shall have any liability whatsoever on account of any such warranties, representations or indemnities unless a claim has been made by the Buyer in writing, prior to December 1, 1993. A claim shall be considered "made" by the Buyer when Buyer has given notice to the Seller and each Principal stating the particular claim with reasonable specificity. The maximum liability amount for each time period is

intended to cover all claims made from the date of closing until the end of the period. For example, using the schedule set forth in Paragraph 4.16 (b), if a claim is made in January of 1991 that ultimately results in a liability of $10,000,000, additional claims could be made during the remainder of 1991 up to a maximum of $8,500,000. The $10,000,000 would, however, count against the $12,000,000 ceiling applicable from January 1 to December 1, 1992. Thus, if no further claims were made in 1991, but a claim was made in January of 1992 which resulted in a total liability of $6,000,000, Seller and the Principals would only be liable for $2,000,000 of the $6,000,000 and Buyer would have no recourse against Seller or the Principals for the remaining $4,000,000.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer makes the following representations and warranties, each of which is true in all material respects on and as of the date hereof:

5.1 Organization. The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

5.2 Authorization and Approval of Agreement. The execution, delivery and performance of this Agreement by the Buyer and all documents to be executed and delivered by the Buyer hereunder have been duly and validly authorized by all requisite corporate action and constitute the legal and valid obligations of the Buyer, binding upon it in accordance with their respective terms.

5.3 Execution of the Agreement. Neither the execution of this Agreement, the consummation of the transactions contemplated hereby nor the compliance with or fulfillment of the terms and conditions hereof will:

(a) violate or conflict with any provision of the Restated Certificate of Incorporation or By-Laws of the Buyer,

(b) (i) violate or conflict with, (ii) result in the breach or termination of or otherwise give any other contracting party the right to terminate, or (iii) constitute a default (or an event which, with the lapse of time, or the giving of notice, or both, will constitute a default) under any material contract or other instrument to which the Buyer is a party or by which it is bound, or result in the creation of any lien,

charge or encumbrance upon its properties or assets pursuant to the terms of any such instrument, or

(c) violate or conflict with any law, regulation, judgment, order, writ, injunction or decree of any court or governmental body of any jurisdiction as such law or regulation is related to the Buyer or its assets.

The Buyer is not a party to, subject to or bound by any agreement or any judgment, order, writ, injunction or decree of any court or governmental body that prevents the making of, or the consummation of the transactions contemplated by, this Agreement.

5.4 Approvals and Consents. No licenses, approvals or consents of any federal, state, local or foreign regulatory agencies are required with respect to the transactions contemplated by this Agreement, except as otherwise stated herein.

ARTICLE VI

MISCELLANEOUS COVENANTS

6.1 New Software

The Seller and the Principals will take all lawful steps necessary to transfer to the Buyer all rights in, title to and ownership of all the New Software, including source code, object code and related documentation, developed by them or on their behalf both prior to and subsequent to the execution of this Agreement .

6.2 Assignment of Contracts, Rights, Etc.

(a) Anything contained in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any contract, license, lease, commitment, sales order, purchase order or other agreement or any claim or right of any benefit arising thereunder or resulting therefrom if an attempted assignment thereof, without the consent of a third party thereto, would constitute a breach thereof or in any way adversely affect the rights of the Buyer or the Seller thereunder.

(b) the Buyer has entered into its own agreements with the parties specified in Schedule 6.2 and no assigments of Seller's contracts shall be made. Buyer agrees to

indemnify Seller for any claims arising out substitute contracts with third parties for any activities arising after said substitution.

6.3 Further Assurance, Etc. The Seller shall, at any time and from time to time after the Closing, upon the request and at the expense of the Buyer do, execute, acknowledge, deliver and file, or shall cause to be done, executed, acknowledged, delivered or filed, all such further acts, deeds, transfers, conveyances, assignments or assurances as may be reasonably required for the efficient transferring, conveying, assigning and assuring to the Buyer, or for aiding and assisting in the reducing to possession by the Buyer, of any of the Software.

6.4 Termination of the License. The parties hereto agree that upon the closing of this Agreement that the License shall be terminated and that all rights and obligations thereunder shall cease . The parties further agree that the payment made to Seller from Buyer's affiliate Xerox Corporation, of One Million, Two Hundred and Fifty thousand dollars ($1,250,000) on January 10,1990 shall constitute the payment required by paragraph 3.2 (a) and that such payment was made.

6.5 Covenants of Buyer. Buyer agrees to assume and perform all obligations of Seller to support the Current Software and all developer relationships(respond to inquires, provide information, etc.) with parties other than the Buyer.

ARTICLE VII

INDEMNIFICATION OF THE BUYER AND THE SELLER/ PRINCIPALS

7.1 The Seller's/Principals' Agreement to Indemnify. Subject to the limitations set forth hereinafter and in Section 4.16, the Seller and the Principals jointly and severally agree to defend, indemnify and hold harmless the Buyer against and in respect of any and all losses arising(and only to the extent so arising) as a result of any known and undisclosed claims that the New Software, as delivered to Seller and only as to those aspects of the New Software which have not been modified by the Buyer, infringes any copyright or patent held by a third party. As to sales after a notice of infringement, if Buyer can make reasonable changes to said software to avoid such infringement, Seller shall not be liable for any future infringement and Buyer shall indemnify Seller as to any Seller liability if such changes are not made. In any event Messrs. Meyer, Heiskell, Grant, and Lorenzen agree to render reasonable

assistance to Buyer as required to defend against any charge of infringement, at Buyers expense. This indemnity shall expire on December 1, 1993.

7.2 **The Buyer's Agreement to Indemnify.** The Buyer agrees to defend, indemnify and hold harmless the Seller and the Principals against and in respect of any and all loss, damage, liability, cost or deficiency arising out or resulting from (i) any misrepresentation or breach of warranty by the Buyer made or contained in this Agreement; or (ii) any misrepresentation in or material omission from any certificate or document delivered to the Seller under or in connection with this Agreement, or the transactions contemplated herein; or (iii) any nonfulfillment by the Buyer of any obligation under this Agreement or (iv) the actions of the Buyer or its affiliates; or (v) the Software, including claims for defects and for copyright and patent infringement except to the extent that Seller has indemnified Buyer for such infringement under Section 7.1 as limited by Section 4.16; or (vi) the matters for which Buyer has agreed to indemnify Seller under Sections 6.2 and 7.1; or (vii) any claim or demand made or action taken by Digital Research Inc. (DRI) arising out of (a) the ISV Software License Agreement, dated October 22,1985, as amended or the Termination Agreement, dated February 28, 1990 between Seller and DRI and/or (b) the Software License Agreement between Buyer and DRI, dated February 26,1990 or relating to the Software or any portion thereof, the business conducted by Seller or the Principals prior to the Closing or thereafter in furtherance of this Agreement, and/or the business conducted and to be conducted by Buyer.

7.3 **Notice of Liability.** Each of the Seller or Principals, or any of them as appropriate, and the Buyer shall, in a timely manner, provide the other with notice of all third party actions, suits, proceedings, claims, demands or assessments subject to the indemnification provisions of this Section VII (collectively,"Third Party Claims") brought against it at any time following the date hereof, and shall otherwise make available to the other party all relevant information in its possession or under its control material to the defense of any Third Party Claims against it. The indemnifying party shall immediately provide a defense if so requested by the indemnified party or, if not so requested , shall have the right to elect to join in the defense of any such Third Party Claim all at its sole expense. No Third Party Claim shall be settled or compromised without the consent of the indemnifying party unless the indemnifying party shall have failed, after the lapse of a reasonable time, but in no event more than 30 days, after notice to it of such Third Party Claim, to join in the defense of the same. If the indemnifying party wishes, it may control the defense of

such Litigation, at its own expense, insofar as such Third Party Claim relates to the liability of the indemnifying party. A party's failure to give timely notice or to provide copies of documents or to furnish relevant data in connection with any Third Party Claim shall not constitute a defense (in part or in whole) to any claim for Indemnification for such party, except and only to the extent that such failure shall result in any prejudice to the indemnifying party.

ARTICLE VIII

COVENANTS PROTECTING THE GOODWILL OF THE SOFTWARE

8.1 **Restrictive Covenants.** In order to make effective the transfer to Buyer of the ownership of the Software, and to ensure the Buyer of the full benefit of such transfer , the Seller and the Principals hereby jointly and severally undertake and agree to deliver at the Closing fully executed Non-Competition Agreements in the form attached as Schedule 8.1, from the Seller, each of the Principals and the following additional persons affiliated with the Seller: Loren Lorenzen, Kevin Holmes, Jay Lorenzen, Gary Lorenzen, John Grant and F. Richard Meyer .

8.2 (a) Seller and the Principals agree not to knowingly disclose or knowingly make available to any third party any trade secrets or confidential and proprietary information owned by Seller and sold to Buyer pursuant to this agreement including but not limited to Current Software or New Software (all such information hereinafter referred to as "Proprietary Information") in any form without the express written approval of the Buyer.

(b) The obligations recited in 8.2 (a) hereof shall terminate with respect to any particular portion of such Proprietary Information when and to the extent that it is or becomes:

i) part of the public domain through no fault of the Seller or Principals;

ii) legally disclosable to anyone by a third party who receives such Proprietary Information from the Buyer;

iii) known to the Seller or any Principal free of any obligation of confidence.

(c) In no event shall the obligations recited in (a) extend for concepts and algorithms beyond five (5) years from the date of this Agreement, however, Seller agrees not to knowingly make available any part of the program listings to a third party unless the program listing is within the realm of 8.2(b) (i), not withstanding the fact that the period for this obligation may extend beyond the five (5) years.

ARTICLE IX

CONDITIONS TO CLOSING

9.1 **Conditions to the Buyer's Obligation to Close.** The obligation of the Buyer to close hereunder shall be subject to the following conditions:

(a) The Seller shall have delivered to the Buyer each of the documents and instruments specified in Article 2 for the Seller to deliver.

(b) The representations and warranties of the Seller contained in this Agreement shall be correct and complete in all material respects at and as of the Closing Date.

(c) The Seller shall have fully performed and complied with the covenants, conditions and other obligations under this Agreement which are to be performed or complied with by it on or prior to the Closing Date.

(d) The Buyer shall have obtained executed written consents from the parties specified in Section 6.2(b) to the assignments or transfers referred to therein, or shall have entered into new agreements with such parties as provided in Section 6.2.

(e) No action, suit or proceeding before any court or any governmental or regulatory authority shall have been commenced, and no investigation by any governmental or regulatory authority shall have been commenced, and no action, investigation, suit or proceeding shall have been threatened, against the Seller, the Buyer or any of their respective affiliates, officers or directors, seeking to restrain, prevent or change the transactions contemplated hereby, questioning the validity or legality of any of such transactions or seeking damages in connection with any of such transactions.

(f) Non-competition agreements substantially in the form attached hereto at Schedule 8.1 shall have been executed between the Buyer and each of the persons specified in Section 8.1.

9.2 Conditions to the Seller's Obligation to Close. The obligation of the Seller to close hereunder shall be subject to the following conditions:

(a) The Buyer shall have delivered to the Seller each of the documents and instruments specified in Article 2 for the Buyer to deliver.

(b) The representations and warranties of the Buyer contained in this Agreement shall be correct and complete in all material respects at and as of the Closing Date .

(c) The Buyer shall have fully performed and complied with the covenants, conditions and other obligations under this Agreement which are to be performed or complied with by it on or prior to the Closing Date.

(d) No action, suit or proceeding before any court or any governmental or regulatory authority shall have been commenced, and no investigation by any governmental or regulatory authority shall have been commenced, and no action, investigation, suit or proceeding shall have been threatened, against the Seller, the Buyer or any of their respective affiliates, officers or directors, seeking to restrain, prevent or change the transactions contemplated hereby, questioning the validity or legality of any of such transactions or seeking damages in connection with any of such transactions.

(e) The Buyer shall have delivered to the Seller executed written consents from or new agreements with the parties specified in Section 6.2(b), terminating any and all obligations of Seller to such parties and releasing Seller from any liability to such parties .

ARTICLE X

EXPENSES AND FINDER'S FEES

The Buyer and the Seller shall each bear its own expenses incurred in connection with the negotiation, execution and performance of this Agreement.

The Buyer agrees to indemnify and hold the Seller harmless, and the Seller agrees to indemnify and hold the Buyer harmless, against and in respect of any liability to any broker, finder or agent for any brokerage fees, finder's fees, or commissions arising out of the conduct of the Buyer or the Seller, respectively, with respect to the transactions contemplated by this Agreement.

ARTICLE XI

SURVIVAL OF REPRESENTATIONS AND WARRANTIES

All representations and warranties made by the Seller and the Buyer under this Agreement in connection with the transactions contemplated herein or in any Schedule or Exhibit attached hereto or in any certificate or other instrument delivered pursuant hereto shall survive the Closing for the period specified in Section 4.16hereof.

ARTICLE XII

GENERAL

12.1 Waiver. Any failure of either of the parties hereto to comply with any of its obligations or agreements or to fulfill conditions herein contained may be waived only by a written waiver from the other party. No failure by any party hereto to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder by any party preclude any other or future exercise of that right or any other right hereunder by that party.

12.2 Notices. All notices, requests or other communications required or permitted hereunder shall be given in writing by hand delivery or by registered or certified mail, return receipt requested, postage prepaid, or by fax with receipt confirmed or by telex with confirmed answer back to the party to receive the same at its respective

address set forth below, or at such other address as may from time to time be designated by such party to the others in accordance with this Section 12.2:

If to the **Buyer**, to:

Xerox Desktop Software, Inc.
15175 Innovation Drive
San Diego, CA 92128

If to the **Seller**, to:

DLJ Software, Inc.
1188 Padre Drive
Salinas, CA 93901

with a copy to:

Office of the General Counsel
Xerox Corporation
800 Long Ridge Road
Stamford, Connecticut 06904

Attention: Vice President and General Counsel

If to the **Principals**, to:

John Meyer
25665 Tierra Grande
Carmel, CA
93923

Lee Lorenzen
619 Spazier
Pacific Grove, CA
93950

Don Heiskell
10 Los Robles
Carmel Valley, CA
93924

If to Grant:

John Grant
7385 Leafwood Dr.
Salinas, CA
93907

All such notices and communications hereunder shall be deemed given when received, as evidenced by the acknowledgment of receipt issued with respect thereto by the applicable postal authorities or the signed acknowledgment of receipt of the person to whom such notice or communication shall have been addressed, or confirmation by telephone or return fax that a fax transmission was received, or the confirmed answer back of a telex transmission, as applicable.

12.3 Publicity. None of the parties hereto shall issue any public announcement or press release or any promotion, advertising and the like concerning the transactions contemplated by this Agreement other than general statements to the effect that the transactions took place and that the Principals are no longer affiliated with Ventura Software, without the prior approval of the other parties except to the extent (if any) that such announcement may be required by U.S. or foreign laws or

governmental regulations, or by the New York Stock Exchange or any other securities exchange.

12.4 No Third Party Beneficiaries. Neither this Agreement nor any provision hereof, nor any Exhibit or Schedule hereto or document executed or delivered herewith, shall create any right in favor of or impose any obligation upon any person or entity other than the Buyer, the Seller and the Principals and their respective successors and assigns.

12.5 Captions and Paragraph Headings. Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.

12.6 Entire Agreement. The making, execution and delivery of this Agreement by the parties has been induced by no representations, statements, warranties or agreements other than those herein expressed. This Agreement embodies the entire understanding of the parties and there are no other agreements or understandings, written or oral, in effect between parties relating to the subject matter hereof, unless expressly referred to by reference herein. This Agreement may be amended or modified only by an instrument of equal formality signed by the parties or their duly authorized agents. The Seller, the Buyer and the Principals make no representations or warranties not expressly set forth in this Agreement. This Agreement supersedes and terminates all prior discussions, negotiations, understandings, arrangements and agreements between the parties relating to the subject matter hereof.

12.7 Counterparts. This Agreement may be executed in any number of duplicate counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

12.8 Assignability.

(a) No party hereto may assign this Agreement without the prior written consent of the other prior to December 1,1990.Seller shall have the right to assign this Agreement after December 1,1990. Buyer shall have the right to assign this Agreement and all of the Software after December 1,1990, provided however that no obligations of Seller shall be transferred and that immediately upon such assignment, all of the obligations and liabilities of the Seller and the Principals under this Agreement shall automatically terminate and be of no further force or effect,

except for sections 8.1 and 8.2. Notwithstanding the foregoing, the Buyer may assign its rights and all such obligations under this Agreement to any subsidiary, controlled directly or indirectly by the Buyer. Any impermissible attempted assignment of this Agreement without such prior written consent shall be void.

(b) No assignment of this Agreement by Buyer shall release or otherwise affect the obligations and liabilities of Buyer or any guarantor of Buyer's obligations hereunder and Buyer and all such guarantors agree that in the event of any such assignment they shall continue to be liable (directly and primarily and not as a surety or guarantor) for all of their respective obligations and liabilities of Buyer hereunder.

12.9 Successors and Assigns. This Agreement and the provisions thereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Buyer, the Seller and the Principals.

12.10 Governing Law. The validity, construction, operation and effect of any and all of the terms and provisions of this Agreement shall be determined and enforced in accordance with the laws of the State of California

12.11 Choice of Jurisdiction. . Buyer and Seller hereby agree that any litigation, arbitration or other dispute resolution proceeding arising out of this Agreement or the transactions contemplated hereby (including the Non-competition Agreements referred to in Section 8.1) shall take place in the state of California, unless the parties to the dispute agree otherwise at the time the dispute arises. Accordingly, each party hereby submits and consents to the non-exclusive jurisdiction of the federal and state courts of the state of California for purposes of any such proceedings and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue in such a court and any claim that any proceeding brought in such a court has been brought in an inconvenient forum.

12.12 Attorney's Fees In the event of any litigation, arbitration or other legal proceeding arising out of this Agreement or the transactions called for herein, the prevailing party shall be entitled to an award or judgment for the costs and expenses incurred in connection with such proceeding (including reasonable attorneys fees and expert witness fees).

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

VENTURA SOFTWARE, INC.

By: John Meyer
Name: John Meyer
Title: President

XEROX DESKTOP SOFTWARE, INC.

By: Larry J. Gerhard
Name: LARRY J. GERHARD
Title: PRESIDENT

The following individuals are signing for the sole purpose of making those covenants, representations and warranties stated to be made by the Principals under Articles III and IV hereof.

John Meyer

John Meyer

Don Heiskell

Lee Lorenzen

SCHEDULE 2.1(c)

February 28, 1990

Xerox Desktop Software, Inc.
15175 Innovation Drive
San Diego, CA 92128

Re: **Ventura Software, Inc.**

Gentlemen:

We have acted as counsel to Ventura Software, Inc. ("the Company") in connection with the sale to Xerox Desktop Software, Inc. of certain software (the "Software"), as contemplated in the Software Acquisition Agreement between the Company and Xerox Desktop Software, Inc., dated February 28, 1990 (the "Agreement"). This opinion is rendered pursuant to Section 2.1(c) of the Agreement. Unless otherwise defined herein, defined terms in this letter shall have the same meaning as when used in the Agreement.

For purposes of this opinion, we have reviewed the originals or copies identified to our satisfaction of the following documents: (i) the Agreement; (ii) copies of the Restated Articles of Incorporation and the By-Laws of the Company, certified by the Secretary of the Company; (iii) a good standing certificate from the California Secretary of State, dated February 28, 1990, certifying that the Company is duly qualified and in good standing in such state; (iv) certified copies of resolutions of the Company dated as of February 28, 1990

approving and authorizing the sale of the Software and the execution of all documents pursuant to the Agreement; and (v) a certificate of the Secretary of the Company dated as of February 28, 1990 certifying the names, title and signature of the officers of the Company authorized to execute the Agreement and the instruments and documents executed and delivered by the Company as of the Closing.

In our examination of the foregoing specified documents and other certificates, records and documents, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity with the original documents of all documents submitted to us as certified or telecopies or photostatic or reproduced copies, and the accuracy and completeness of all corporate records and documents (as supplemented or amended by certificates of officers, directors, and others and/or subsequent actions by the Board of Directors and/or shareholders of the Company) and of all certificates and statements of fact, in each case given or made available to us by the Company and its officers or directors.

Except as specified above, we have not inspected or reviewed the books, records or assets of the Company. We have made no independent investigation of any matter of fact relevant to the opinions contained herein, nor have we independently verified information received from third parties. As to factual matters,

we have relied solely on the statements contained in the documents listed above.

The use in this opinion letter of the phrase "to our knowledge" means that the opinion expressed in the applicable paragraph is limited exclusively to the current, actual knowledge of Mary Ellen Richey and Amy Beer, who are the attorneys with our firm who have worked on this matter. We have represented the Company in connection with specific transactions only. We have not acted as outside general counsel and are not generally familiar with the Company's history or affairs.

Subject to the foregoing and the qualifications set forth below, it is our opinion that:

1. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of California and has full power and authority to own and operate its properties and assets, and to carry on its business as presently conducted. To our knowledge, the Company is duly qualified and authorized to do business, and is in good standing as a foreign corporation, in each jurisdiction where the failure to so qualify would have a material adverse effect on the Software.

2. The Company has all requisite corporate power to enter into the Agreement and to carry out and perform its obligations thereunder.

3. The execution, delivery and performance of the Agreement has been duly and validly authorized by all corporate action required to be taken by the Company and the Agreement is the legal, valid and binding obligation of the Company and is enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally and to the availability of equitable remedies (whether an action is brought at law or in equity).

4. To our knowledge, the Company is not in violation of any term of its Articles or By-Laws and the execution, delivery and performance of the Agreement will not result in any such violation.

5. We have participated in conferences with officers of the Company in which the representations and warranties contained in Article IV of the Agreement were discussed. Although we are not passing upon, do not assume any responsibility for and have made no independent verification of the accuracy, completeness or fairness of the representations and

warranties, we advise you that nothing has come to our attention in the course of those conferences in which we have participated that leads us to believe that the representations and warranties (including the representations as to ownership and encumbrances set forth in Section 4.11(b) of the Agreement) contain any untrue statement of a material fact.

The foregoing opinions are subject to the following qualifications:

(a) This opinion is limited to the existing laws of the state of California and the United States of America. We express no opinion with respect to the effect on this transaction of the laws of any other time or jurisdiction.

(b) We express no opinion as to the applicability of the laws of any particular jurisdiction.

(c) We express no opinion on the applicability or effect of or compliance with the Revenue and Taxation Code of the State of California or the Internal Revenue Code of 1986 of the United States.

(d) We express no opinion on the enforceability of provisions in the Agreement whose terms are left open for later resolution by the parties.

(e) We express no opinion on the applicability or effect of or compliance with any state or federal securities laws.

(f) All opinions expressed herein are subject to the following, as applicable: (i) the parties' duty to act in accordance with the covenants of good faith and fair dealing implied in every agreement under California law, which has been construed (among other things) to require parties to act reasonably and in good faith when exercising rights and remedies afforded by the contract; (ii) Section 1670.5 of the California Civil Code regarding unconscionability of contracts and related case law dealing with common law defenses based on unconscionability, duress, unequal bargaining power and similar theories; and (iii) the parties' duty to act in accordance with the obligations of good faith and commercial reasonableness under the California Commercial Code.

(g) We express no opinion as to the validity or enforceability of (i) any indemnity obligations imposed by or arising under the Agreement to the extent such obligations allow indemnification for the indemnitees' own wrongful acts or are otherwise contrary to public policy; (ii) any provision of the Agreement that could be construed as a penalty for non-performance or impose a forfeiture, except to the extent

complying with applicable California statutes regarding liquidated damages; or (iii) any provision of the Agreement authorizing a remedy or action against a party based upon the occurrence of a non-material breach, or upon false or misleading representations to the extent the other party's reliance therein was not reasonable in the circumstances or if the enforcement of the provision would be unreasonable under then-existing circumstances.

(h) A requirement that provisions in the Agreement may be waived only in writing may not be enforced to the extent that an oral agreement has been performed modifying the provisions of the Agreement.

(i) The parties' rights to attorneys' fees will be modified to the extent inconsistent with California Civil Code Section 1717 and case law decided thereunder.

(j) We express no opinion as to the Company's or the Buyer's title to or ownership of any software or other assets.

The opinions expressed in this letter are based upon the applicable laws and regulations in effect as of the date of this letter. We expressly decline any continuing obligation to advise you after the date of this letter of any changes in the foregoing or any changes of circumstances of which we may become

aware that may affect the conclusions reached herein. This letter has been prepared solely for your benefit, and it may not be quoted in full or in part or otherwise referred to, or filed with or furnished to any other person or entity, with or without reference to our firm, without the prior written consent of this firm.

Very truly yours,

FARELLA, BRAUN & MARTEL

SCHEDULE 4.2

Contracts

Name of Contracting Party	Subject Matter	Date	Additional Information
Digital Research, Inc.	Licensing of GEM system software (agreement plus two addendums).	9/15/88	Non-transferable; not assignable; terminated.
Adobe Systems, Inc.	Licensing and distribution of Adobe screen fonts.	5/1/87	Assignable with prior written consent; not to be transferred.
Ventura Publisher Users Group	Sub-licensing and distribution of Adobe screen fonts.	5/29/87	No assignment clause; terminable without cause on 90 days notice; not to be transferred.
Bitstream	Licensing and distribution of screen and printer fonts with Ventura Publisher.	4/15/86	Assignable on transfer of "relevant portion of Licensee's business," with prior written consent; not to be transferred.
Bitstream	Production of additional bitmaps using Fontware.	9/3/87	Not to be transferred.

Name of Contracting Party	Subject Matter	Date	Additional Information
Bitstream	Production of derivative of "Fontware" to work with Ventura Publisher; resulting derivative owned by Bitstream.	9/8/87	Not to be transferred.
Bitstream	Use of one typeface outline in Ventura Publisher 3.0 HPGL converter; requires Ventura to mention Bitstream products in user documentation for Ventura Publisher.	11/13/89	Not to be transferred.
Edco Services	Edco to provide a hyphenation dictionary to its users; Edco to pay royalties to Ventura.	6/10/87	Not to be transferred.

Name of Contracting Party	Subject Matter	Date	Additional Information
Edco Services	Distribution by Ventura of Edco hyphenation dictionary with "Professional Extension;" payment of royalties to Edco. A ROYALTY IS DUE TO EDCO FOR EACH DICTIONARY SHIPPED.	9/20/88	Not to be transferred.
PKWARE, Inc.	Distribution of "PKUNZIP" program; to be used in Ventura Publisher 3.0.	6/28/89	Non-exclusive; non-transferable; not to be transferred.
XPO, Inc.	Sales representative agreement; commissions paid from early 1986 through November 30, 1988; could claim further commission with respect to sales by or to Xerox.	11/11/85	Terminated by letter dated November 21, 1986; copies of correspondence have been delivered to Buyer; no claim was made for additional commission at the time of termination, and no claim has been made since the last payment was made. Not to be transferred.

Name of Contracting Party	Subject Matter	Date	Additional Information
Various Developers	Several hundred non-disclosure agreements (covering information required to produce Ventura Publisher), copies of which have been delivered to Buyer.	Various Dates	
Various Companies	Several hundred product loan and product evaluation agreements, some of which contain non-disclosure provisions; copies of which have been delivered to Xerox.	Various Dates	
Various Companies	Several hundred disclosures by others of their Digital Research licenses for GEM system software, copies of which have been delivered to Buyer.	Various Dates	
Parkland Properties	Lease for premises at 675 Jarvis Drive, Morgan Hill, CA 95037.	11/19/85	Not to be assigned/assumed by Xerox.

Name of Contracting Party	Subject Matter	Date	Additional Information
Brandon & Tibbs	Lease for premises at 1188 Padre Drive, Suite 201, Salinas, CA 93901.	6/18/87	Not to be assigned/assumed by Xerox.

SCHEDULE 4.3

Litigation

1. THE LASER EDGE threatened action against both Buyer and Seller by letter of May 31, 1989. Copies of the correspondence have been provided to Buyer. Except for this correspondence, Seller has received no other documents or other communications on this matter.

2. Eric Bader has filed a complaint against Xerox Corporation. A copy of the complaint and associated correspondence has been provided to Buyer.

3. MUSIC DESIGN complained about Xerox customer service. A copy of the correspondence has been provided to Buyer. Seller has received many similar letters relating to complaints on customer service.

4. Seller terminated the employment of Melinda White on October 25, 1989. A copy of the offer letter and termination notice has been provided to Buyer.

5. Seller has received several hundred letters reporting software bugs, software anomalies and other problems typically found in microcomputer software. Many of these letters suggest or request corrective action, although to Seller's knowledge none threaten specific legal action except as disclosed in this Schedule.

SCHEDULE 4.4

Absence of Changes or Events

To the best knowledge of Seller and the Principals, none.

SCHEDULE 4.8

Patents, Trademarks, Service Marks, and Copyrights

A. Trademarks and Tradenames.

1. **Ventura Publisher** (U.S. Registered Trademark No. 1,446,089, expires July 2007 unless sooner canceled or abandoned).

2. **Professional Extension** (U.S. Registered Trademark No. 1,548,070, expires July 2009 unless sooner canceled or abandoned).

3. Trademark registrations and filings for Ventura Publisher have been obtained or made by Xerox or its counsel in various foreign countries (including Australia, India, Korea, New Zealand, Malaysia and Singapore). Seller has no independent knowledge of and makes no representation or warranty whatsoever regarding any such registrations or filing, or the status of the name outside the United States.

4. Ventura Software, Inc. is a trade name used by Seller but has not been legally protected by Seller in any way, other than its use as Seller's corporate name in the State of California.

5. Seller has never attempted to claim any rights to the name Ventura, except as a part of the trademarks and tradenames listed above, and makes no representation or warranty regarding any right to use "Ventura," either alone or in conjunction with other words, except as part of those trademarks or tradenames.

B. Copyrights

Work	Registration date
Ventura Publisher version 1.0	November 3, 1986
Ventura Publisher version 1.1/1.11	December 4, 1987
Ventura Network Server version 2.0	September 28, 1988
Ventura Publisher version 2.0	December 28, 1988
Ventura Publisher Professional Extension version 1.0	January 31, 1989

Each copyright expires 75 years from the date of registration.

C. Threatened Challenges

Xerox legal counsel has informed the Seller of an IBM patent filing. Seller has no other knowledge of such filing and makes no representation or warranty as to its validity or effect on the Rights.

D. Rights of Other Persons

1. Approximately thirty developers and media persons have requested permission to use photographs of Ventura Publisher screens and similar items. All of these requests were granted. Copies of several typical requests have been provided to Buyer.

2. The Seller is aware of the following uses of names similar to the Rights by entities not affiliated with Seller:

Ventura Publisher User Group

Ventura Publishing Co., of Kennewick, WA (509) 582-2064, who makes a software program called **Pipedate** which computers pipe flow calculations.

Ventura Peripherals (100 Rancho Road, Suite 27, Thousand Oaks, CA 91362) who makes a product called **ACCEL-500**, which is a computer printer.

Ventura Micro Support of 3140 South Eden Street, Oxnard, CA 93033.

Ventura Software, Inc., a consulting software business located in India.

Seller has taken no action against any of these companies, nor to Seller's and the Principal's knowledge have they taken action against Seller.

SCHEDULE 4.11

(a) Computer Software Used in Seller's Business (other than Current and New Software). A directory listing of all software on John Grant's, Lee Lorenzen's, and Don Heiskell's computers as well as all software on Seller's network server has been provided to Buyer and shall be considered to be the "list" required by Section 4.11(a).

(b) Computer Software Not Owned by Seller

1. GEM system software, including but not limited to GEM.EXE, GEM.EMS, and portions of screen and printer drivers (i.e., files beginning with the letters SD or PD); owned by Digital Research.

2. All fonts contained in the product; owned by Bitstream, Inc.

3. PKUNZIP.EXE, compression utility to be included in all Version 3.0 products; owned by PKWARE, Inc.

4. Hyphenation algorithms and dictionaries shipped with Ventura Publisher.

   (A) The TEX (US hyphenation) algorithm was (i) obtained from Allen Holub, an author at Dr. Dobbs Journal, M&T Publishing, Inc., 2464 Embarcadero Way, Palo Alto, CA 94303, (ii) described in the C Chest column of the October 1985 Dobbs Journal. Seller believes that this software is in the public domain and has no license to use it.

   (B) Other algorithms were licensed by Rank Xerox; Seller has no knowledge of the status or effect of these licenses and makes no representation or warranty with respect to them.

   (C) Seller has no license, contract or other rights with respect to the Houghton-Mifflin hyphenation dictionary.

   (D) The Edco hyphenation dictionary distributed by Professional Extension; owned by Edco Services.

5. Tools. All files on John Grant's, Lee Lorenzen's and Don Heiskell's computers which have the file extensions EXE or COM are not owned by Seller. These are the computer tools used to build the Current and New Software. The Buyer agrees to obtain its own licenses to use these tools. Seller shall have no obligation with respect to the same and shall have no liability for any claim, loss or damage arising out of Buyer's failure to obtain such licenses.

(c) License Agreements

The agreements covering the Software listed in Paragraphs (b) (1)-(3) above are listed in Schedule 4.2.

SCHEDULE 6.2

Third Party Contracts

Digital Research, Inc.

Bitstream

Edco Services

PKWARE, Inc.

APPENDIX A

Equipment to be Transferred Under Section 1.1 (b)

- Compaq 386 and VGA Monitor, SN 4809AQ3B0625
- Compaq 386 and VGA Monitor, SN 4809AQB0239
- Compaq 386 and VGA Monitor, SN
- Compaq 386 portable, SN 4803AQ2B1102
- Compaq 286 Deskpro, SN 455106180455
- Compaq 286 Deskpro, SN 452406180188
- Compaq Deskpro and CGA monitor SN 3508520057
- Compaq Deskpro and CGA monitor SN 4517052B0422
- Apple Laserwriter Plus printer SN A62773FRM0156
- Apple Macintosh Plus and Monitor SN F7411BH
- IBM System/2 Model 60 Computer and VGA monitor SN 72-80006993

APPENDIX B

Delivery Of Software

The requirements of Section 2.3 of the Agreement will be satisfied and all Software deemed delivered to Buyer in accordance with the Agreement upon delivery of each of the following:

1. A complete "mirror image" copy of the hard disks of the computers used by Lee Lorenzen, Don Heiskell and John Grant, to be made on computers provided by the Buyer. These computers must be Compaq 386/20 (or faster) with 300 megabyte hard disks, VGA and 6 megabytes of memory. Buyer shall be responsible for obtaining valid licenses for all development tools contained on these computers. including but not limited to the Microsoft C compiler, Epsilon editor, and Wordstar. Program files which may require licensing include files having the extension EXE or COM. The software collectively contained on the three computers are intended to include all those necessary to build the GEM (currently shipped version), Windows (version 3.0) or Presentation Manager (version 1.2) version of Ventura Publisher version 3.0. Buyer assumes responsibility to verify that these three programs can be built from the files contained on these computers and Seller assumes the responsibility to provide any files which have been inadvertently omitted from the disks of these three computers.

2. A tape backup of the entire contents of the Novell file server used in the development of the various versions of Ventura Publisher. This will be provided on DC-600A streaming tape.

3. Copies of any and all source code for previous releases stored in the safe deposit box leased by the company in the vault at Bank of America in Salinas, CA.

4. A copy of all developer technical notes and the disks which accompany those notes.

5. Seller will deliver new updates to the New Software approximately once each week, together with copies of any source, make, help, etc. files which changed in

making the new updates, to the extent such files are neccessary to Buyer's ability to create the new Software.

APPENDIX C

New Software Product Specification Summary and Deficiency List

3.0 DOS/GEM Version

- As demonstrated in the December 1989 edition (with mutually agreed upon bugs fixed).

Windows 3.0 Version

- Graphical user interface and performance as demonstrated in the XVP Windows edition dated 1/31/90 with minor changes to achieve dialog consistency between the Windows and PM versions.
- Environmental and driver limitations as listed herein with deficiencies corrected as specified.
- Help and network as shown in the XVP Windows edition dated 1/31/90 with deficiencies corrected as specified herein.
- Otherwise all detail functionality and features of the XVP 3.0 DOS/GEM edition dated 12/90 (with bugs fixed) except that the Xerox provided Houghton-Mifflin hyphenation software replaces the EDCO hyphenation software.
- Reference Manual to be written by John Meyer.
- Undo/redo as specified herein will be implemented immediately after acceptance of the initial release of the Windows and Presentation Manager versions.

Presentation Manager Version

- Graphical user interface as demonstrated in the XVP PM edition dated 2/20/90 except the fonts and manage width table dialogs will be changed to look like the 1/31/90 Windows edition.
- Environmental and driver limitations as listed herein with deficiencies corrected as specified.
- Help and network as shown in the XVP Windows edition dated 1/31/90 with deficiencies corrected as specified. (Help topics are the same as in the Windows version, but the user interface is like other PM applications such as the Program Manager.)
- Otherwise all the detail functionality and features of the XVP 3.0 DOS/GEM edition dated 12/90 (with bugs fixed) except that Xerox provided Houghton-Mifflin hyphenation software in place of the EDCO hyphenation software.
- Undo/redo will be implemented as specified herein immediately after acceptance of the initial release of the Windows and presentation Manager versions.
- Performance as demonstrated in the XVP Presentation Manager edition dated 1/31/90 except for the ability to switch to another application or another instance of XVP during time consuming tasks such as drawing a page, loading a chapter, or printing.

- Reference Manual to be written by John Meyer.

Feature to be Added to all Platforms

A feature that allows the user to flag a chapter for export.

Deficiencies to be Corrected

Networking (All Versions)

Ventura will provide a call to a routine at the beginning of the Ventura Publisher application for validating the network installation and continue or terminate depending on the return. In the Windows and Presentation Manager versions this should be a DLL routine. As the application is delivered, Ventura may provide a null routine that always returns a "continue" response and Xerox will assume responsibility for subsequent development of the network validation routine.

HELP (Windows and PM)

- The HELP index will be accessible by using the F1 key in the Windows and Presentation Manager versions, whether dialog boxes are open or not.

Internationalization (Windows and PM)

- There must be space in the resource files to expand messages and prompts for internationalization. Expansion space will be provided in the VPPMLIB.DLL and VPWINLIB.DLL files for those strings which currently do not have expansion space.

Deficiencies To Be Corrected

Undo/Redo

On the Windows and Presentation Manager versions there will be one level of undo/redo functionality in the following areas:

Frame

- Cut, copy, paste
- Add frame
- Moving frame, resizing frame
- Change file displayed in selected frame

Paragraph/Tagging

- Change to a tag (from any dialog above the dotted line on Tags Menu)

- Last change in which tag is applied to selected paragraph(s)

Text

- Cut, copy, paste
- Typing (including backspace key, not supported across paragraph boundary, and any jump overs it may delete)
- Font change within the text of a paragraph

Graphics

- Cut, copy, paste
- Add graphic
- Moving graphic, resizing graphic

Tables

- Cut, copy, paste

Chapter menu

- Remove page is not undoable. The user will be warned that it is not undoable.

The minimum memory requirements must be raised to support undo/redo. No undo/redo for the GEM/DOS 3.0 version.

Environmental And Driver Limitations

(With deficiencies to be corrected as noted)

- **Character Set-Display Screen/Printer Limitations** (Windows)

  Microsoft is planning to launch Windows 3.0 with the default character set of ANSI and not the 1004 code page (publishing character set). The ANSI character set is a sub set of the Ventura character set, and several characters are not displayed or printed, 19 characters from XVP international set and seven characters from the symbol set. 22 characters from the XVP international set are not displayed in PM. The ANSI character set provides room to map in the additional characters. The Microsoft 1004 code page character set contains all the characters except for the florin character.

  Ventura will implement the facility for loading an additional .FON file for the Windows version to supplement or replace the fonts already built into these platforms. Xerox will obtain the Fontware from Bitstream with the character set in place. Ventura will only support those characters that can be printed by a Windows Postscript printer driver.

- **Equations Are Not WYSIWYG** (Windows)

  Microsoft symbol font does not carry the font cell left and right character alignment delta like the GEM fonts. It is the difference between the cell width and character width. This is useful for building an equation character from several symbol characters in order to eliminate the white gaps.

  Ventura Software will tweek the equation code to make the equations look as close to WYSIWYG as possible.

- **No Gray Scale Image Representation On Screen** (Windows and PM)

  The Microsoft platforms do not permit full access to the operating system sixteen color register look-up table to do gray scaling. Only the GEM/DOS product has access to the full LUT.

  Ventura Software will display gray scale image files as dither pattern. All gray scale image setting saved in the document, should not be lost.

- **Window Metafile Transfer Limitations** (Windows and PM)

  Microsoft metafiles are not compatible across platforms. Windows and GEM do not recognize a PM metafile, and the GEM and PM metafile filter only supports Windows metafile 2.X format.

  For transportability across platforms, the user should keep the image file in the original graphics file format or convert the image file to some graphics format, e.g. EPS that the Ventura application accepts.

Environmental And Driver Limitations
(With Deficiencies to be corrected as noted)

- **Platform Driver Limitations** (Windows and PM)

  - Performance (Screen/printer)
  - Font Downloading
  - Fonts
  - Print To Disk

  Attached at the end of this Appendix C is a list of the driver and platform deficiencies.

- **Memory Requirements** (Windows and PM)

  Xerox needs to measure the memory used in the demonstration software and determine whether it will be satisfactory for the final product. A user should be able to use the Windows version reasonably well with a machine with 3 Mbytes and the PM version reasonably well with a machine with 4 Mbytes.

- **Line Drawing Endings** (Windows)

  Ventura Software is using the Windows line art commands to draw the graphic lines. Windows has a bug where lines that are six points and larger and specified with square corners are drawn with rounded corners.

- **No Symbol Screen Fonts** (PM)

  Microsoft will not have a symbol screen font. Xerox will contract Bitstream or other font house to create a finished Symbol font that can be added to PM with the "Add Font" interface.

- **Multiple Threads** (PM)

  Ventura Software will provide the ability to switch to other applications or another instance of XVP during time consuming tasks such as drawing a page, loading a chapter, or printing.

Functionality and Feature Differences
(No corrections required)

- **Make/Remove Directories**

  The new platforms provide tools to make and remove directories without terminating the Ventura application. There is no strong requirement to maintain "Make/Remove Directories" within the application.

- **Change Screen Fonts**

  XVP Gem/DOS edition provides its own screen fonts (e.g. EGA, VGA, PSF) and allows the user to change the screen fonts from within XVP. The new platforms provide the screen fonts. Use the platform tools to change fonts. There is no strong requirement to maintain "Change Screen Fonts" within the application.

- **Drop-Down/Pop-Up Menus**

  Drop-down and pop-up menus selections are removed. The new platforms only support pull-down menus.

- **Assign Keys Differently**

  Function keys F1 and F10 are predefined by the new platforms. Ventura Software will rotate current function key definitions to the next function key position.

- **Set Printer Information Dialogue**

  "Set Printer Info" dialogue selects printers, defines output, and printer and screen fonts. The same functionality is provided by the platform control panel and is no longer needed from within the Ventura application. The width table selection is moved to the "Manage Width Table" dialogue.

APPENDIX C

DRIVER AND PLATFORM DEFICIENCIES TO BE CORRECTED

AR	SUBJECT
4	Landscape Printing Cuts Off Left Margin
9	Two Messages Appear Simultaneously When Printing
71	2600* Printing Tiff Causes Fatal Error If Screen Colors On
137	Scoop.chp Not Printing Well On Epson 9 Pin
139	Print All Prints Text Of By One Line In Charset.chp
181	Setup.exe For HPLJ Uses Postscript Width Table
182	Bitstream Fonts For HPLJII Are Not Being Recognized
184	Capabili.chp Does Not Print Ventura Graphics To HPLJ/IID
187	Printing Only Right Or Left Side Of Chps, Skips Pg One

Buyer understands that Seller is not preparing drivers for the Windows and PM platforms.

APPENDIX C (continued)

Form of Notice of Delivery of "Undo/Redo" Feature

DLJ Software, Inc.
1188 Padre Drive
Salinas, California 93901

Re: Software Acquisition Agreement dated as of February 28, 1990

Gentlemen:

This will confirm that the "undo/redo" feature called for in Section 3.4(d) of the above-referenced Agreement has been delivered as required by the Agreement, except that the required functionality has not been met in the following specific respects:

[list deficiencies]

[Upon correction of the foregoing deficiencies within thirty days of the date of this letter] [This will further confirm that] the schedule of maximum liabilities set forth in Section 4.16(c) of the Agreement shall apply and the schedule set forth in Section 4.16(b) has no further force or effect.

Very truly yours,

XEROX DESKTOP SOFTWARE, INC.

By:_____

APPENDIX D

Allocation of Payment for Non-Competition Agreements

NAME	AMOUNT (million)
Don Heiskell	$1.912
John Meyer	$1.912
Lee Lorenzen	$1.912
John Grant	$0.535
Loren Lorenzen	$0.182
Kevin Holmes	$0.036
Jay Lorenzen	$0.073
Gary Lorenzen	$0.036
Richard Meyer	$0.401
TOTAL:	$7.000