



MICROSOFT OEM LICENSE AGREEMENT WITH MINIMUM COMMITMENT PAYMENTS

A009-5089 dated March 15, 1995

CONFIDENTIAL SIGNED ORIGINAL

with ACER AMERICA CORPORATION, a corporation of California.

This License Agreement ("Agreement") is made and entered into as of the date first set forth above ("Effective Date"), by and between MICROSOFT CORPORATION, a Washington, U.S.A. corporation, ("MS"), and the company specified above ("COMPANY").

1. DEFINITIONS.

- (a) "Associated Product Materials" or "APM" shall mean a certificate of authenticity, an end user license agreement, a MS product registration card, and/or other materials designated by MS from time to time which COMPANY may acquire from an Authorized Replicator.
(b) "Authorized Replication Product" shall mean Product which is identified as such in the applicable Exhibit C.
(c) "Authorized Replicator" shall mean a third party approved by MS from which COMPANY may acquire Authorized Replication Product reproduced by the Authorized Replicator in accordance with MS specifications.
(d) "COMPANY Subsidiary" shall mean a company listed in Exhibit X, in which, on a class by class basis, more than fifty percent (50%) of the stock entitled to vote for the election of directors is directly owned by COMPANY.
(e) "Customer System" shall mean COMPANY's computer system product(s) described in the Exhibit(s) C.
(f) "Initial Term" shall mean the term of this Agreement as set forth in Section 9 as of the Effective Date.
(g) "OEM Replication Product" shall mean Product which is identified as such in the applicable Exhibit C.
(h) "Product" shall mean the copyrighted and/or patented MS product(s) including, where applicable, Product software in object code form, Product documentation, APM, Product packaging, and Product hardware.
(i) "Product Deliverables" shall mean (i) Product software in object code form; (ii) installation utilities, if applicable; (iii) a single copy of Product documentation; and (iv) any other deliverables identified in Exhibit C or otherwise identified by MS as Product Deliverables.
(j) "Product Release" shall mean a release of Product which MS designates as a change in the digit(s) to the left of the decimal point in the Product version number [x.xx].
(k) "Update Release" shall mean a release of Product which MS designates as a change in the digit(s) to the right of the tenths digit in the Product version number [x.x(x)].
(l) "Version Release" shall mean a release of Product which MS designates as a change in the tenths digit in the Product version number [x.(x)x].

2. LICENSE GRANT.

- (a) MS grants to COMPANY the non-exclusive, worldwide license rights to: (i) install no more than one (1) copy of Product software on each Customer System hard disk or ROM ("Preinstalled Product Software"); and (ii) directly or indirectly distribute to end users (in addition to Preinstalled Product Software) no more than one (1) copy each of Product software and Product documentation with each Customer System.
(b) With respect solely to OEM Replication Product, MS grants COMPANY the additional rights to: (i) reproduce, in accordance with specifications provided by

MS, Product software in object code form, Product documentation, and Product packaging for distribution pursuant to Section 2(a)(ii); and (ii) reproduce Product names and Product trademarks on Product packaging, labels, and documentation in accordance with specifications provided to COMPANY from time to time by MS.

- (c) COMPANY may grant to COMPANY Subsidiaries the foregoing rights subject to the terms and conditions set forth in this Agreement.
(d) COMPANY acknowledges that Authorized Replicator may refuse to fill orders for Product in quantities beyond those which, in MS' opinion, COMPANY will be able to distribute in compliance with the terms of this Agreement.
(e) COMPANY shall include APM with Product software distributed by COMPANY if specified as required in Exhibit C for the Product.
(f) COMPANY's license shall extend to Update Releases and Version Releases. MS may increase royalties for new Version Releases subject to the following maximum amount: Maximum royalty = R + (R*N*1.5%), where R is the initial royalty and N is the number of months that have elapsed from the Effective Date until MS delivers the new Version Release.
(g) This Agreement does not include technical support by MS to COMPANY, its distributors, dealers or end users.
(h) MS may change type of Product (Authorized Replication or OEM Replication) licensed to COMPANY under this Agreement upon ninety (90) days written notice to COMPANY.
(i) COMPANY shall make no use of Product Deliverables except as described in Sections 2(a) and 2(b) of this Agreement.
(j) MS reserves all rights not expressly granted including, without limitation, modification rights, translation rights, rental rights and rights to source code.

3. PAYMENT AND REPORTING.

- (a) COMPANY agrees to pay MS the royalties in Exhibit(s) C. Royalties exclude any charges by the Authorized Replicator for units of Product or APM ordered by COMPANY.
(b) COMPANY further agrees to pay MS the minimum commitment payments in Exhibit B. To the extent that royalties exceed the cumulative minimum commitment payments, COMPANY shall pay MS for royalties.
(c) In the event income taxes are required to be withheld by the COMPANY government on payments to MS required hereunder, provided that COMPANY promptly delivers to MS an official receipt for any such taxes.

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documents necessary to enable MS to claim a U.S.A. Foreign Tax Credit. COMPANY may deduct such taxes from the amount owed MS and shall pay them to the appropriate tax authority. COMPANY will make certain that any taxes withheld are minimized to the extent permitted by the applicable law.

(d) COMPANY agrees to make consolidated (i.e., on behalf of COMPANY and COMPANY Subsidiaries) quarterly royalty reports and payments to MS as specified in Exhibit N within thirty (30) days after the end of each calendar quarter, and thirty (30) days after termination or expiration for the final full or partial quarter.

(i) In the event that COMPANY's quarterly report is not received by MS within the above-specified thirty-day period, COMPANY authorizes MS to bill COMPANY, and COMPANY agrees to pay MS, based on reports submitted to MS by the Authorized Replicator(s), for the subject period and at MS' option, for all subsequent periods during the term of this Agreement. MS' billing of COMPANY based on reports submitted by the Authorized Replicator(s) shall not relieve COMPANY of any reporting or payment obligations under the Agreement.

(ii) COMPANY's reports shall be certified as complete and correct and signed by a duly authorized officer or director of COMPANY. A copy of COMPANY's report shall be sent to MS electronically or via facsimile in addition to the original copy sent in accordance with Exhibit N. COMPANY shall make such reports even if no royalties are due for such quarter. COMPANY's royalty reports shall be in the royalty report format attached as Exhibit R or other format as MS may provide from time to time. COMPANY's royalty reports shall specify royalties for each Product and language version described in Exhibit(s) C.

(e) A ten percent (10%) late charge and a one percent (1%) monthly finance charge will be assessed on all amounts that are past due, including receipts for foreign taxes withheld.

(f) No royalty shall accrue to MS for Product software (i) used by COMPANY solely for testing systems; (ii) shipped to replace defective copies or defective media (including hard disk drives) for copies of Product software previously licensed under this Agreement; (iii) shipped as a backup copy in addition to Preinstalled Product Software in accordance with Section 2(a)(ii); or (iv) used for demonstrations to prospective customers if clearly marked "For Demonstration Purposes Only" (not to exceed one hundred (100) copies per Product).

(g) COMPANY shall provide MS with a copy of its U.S.A. state resale exempt certificate, if applicable, with this Agreement when it is returned for signature by MS.

4. DELIVERY AND LIMITED WARRANTY

(a) For each Product licensed hereunder, MS shall deliver Product Deliverables to COMPANY.

(b) MS warrants that Product software conforms to the specifications contained in Product documentation.

(i) If the Product software fails to conform to such specifications, then within thirty (30) days after MS' delivery to COMPANY of Product Deliverables for each release of Product licensed hereunder, COMPANY may report such deviations to MS in writing. If COMPANY reports any deviations from Product specifications prior to acceptance, then MS shall have sixty (60) days to correct such deviations. Upon delivery of a corrected release of Product to COMPANY, COMPANY shall have thirty (30) days in which to reject the Product software for failure to meet specifications.

(ii) If COMPANY does not report deviations from Product software specifications within the applicable thirty (30) day period described in Section 4(b)(i) above, or if COMPANY distributes the Product to a customer for revenue, COMPANY shall be deemed to have accepted the Product. If MS fails to correct deviations from specifications prior to acceptance, then as COMPANY's sole remedy COMPANY may terminate this Agreement with respect to such release of Product.

(c) MS shall have no liability for failure to deliver Product Deliverables by any particular date. COMPANY shall not distribute for revenue any release of a Product until MS delivers Product Deliverables to COMPANY.

5. DEFENSE OF INFRINGEMENT CLAIM

(a) MS agrees to defend COMPANY against, and pay the amount of any adverse final judgment (or settlement to which MS consents) resulting from, third party claim(s) (hereinafter "Indemnified Claim(s)") that: (i) the Product(s) infringe any copyright enforceable in any Included Jurisdictions (defined in Section 5(d), below); or (ii) the Product name(s) or trademark(s) ("Mark(s)") infringe any trademark rights enforceable in the Included Jurisdictions; provided MS is notified promptly in writing of the Indemnified Claim and has sole control over its defense or settlement, and COMPANY provides reasonable assistance in the defense of the same.

(b) In the event MS receives information concerning an intellectual property infringement claim (including an Indemnified Claim) related to the Product(s) or Mark(s), MS may at its expense, without obligation to do so, either (i) procure for COMPANY the right to continue to distribute the alleged infringing Product or Mark, or (ii) replace or modify the Product or Mark to make it non-infringing, and in which case, COMPANY shall thereupon cease distribution of the alleged infringing Product or Mark.

(c) MS shall have no liability for any intellectual property infringement claim (including an Indemnified Claim) based on COMPANY's (i) manufacture, distribution, or use of any Product or Mark after MS' notice that COMPANY should cease manufacture, distribution, or use of such Product or Mark due to such a claim; or (ii) combination of a Product with a non-MS product, program or data; or (iii) adaptation or modification of any Product. For all claims described in this Section 5(c), COMPANY agrees to indemnify and defend MS from and against all damages, costs and expenses, including reasonable attorneys' fees, provided COMPANY is notified promptly in writing of an Infringement Claim and has sole control over its defense or settlement, and MS provides reasonable assistance in the defense of the same.

(d) MS shall have no obligation to COMPANY for any Indemnified Claims which arise outside the geographical boundaries of the United States, Canada, Australia, Japan, the European Union, Sweden, Norway, and Finland ("Included Jurisdictions").

6. LICENSE RESTRICTIONS.

(a) (i) COMPANY shall distribute Product(s) only with those Customer System(s) listed on Exhibit(s) C for the particular Product(s) and only inside the Customer System package. In addition to MS' other remedies, for each copy of the Product(s) that is available other than inside the Customer System package, MS may charge COMPANY an additional royalty equal to thirty percent (30%) of the royalty rate stated in Exhibit C for the Product. COMPANY shall pay such additional royalty within thirty (30) days of receipt of MS' invoice. COMPANY shall not remove or modify the package contents of Authorized Replication Product or APM.

(ii) COMPANY shall comply with the additional provisions, if any, provided in Exhibit(s) C with respect to Product.

(iii) COMPANY shall (A) contractually obligate (e.g., by contract, invoice or other written instrument) all distributors, dealers and others in its entire distribution channels to comply with the foregoing; (B) deliver copies of such contracts (or relevant portions thereof) to MS upon request; (C) promptly discontinue distribution of Product to any such distributor, dealer or other in its distribution channel which does not comply with the foregoing; and (D) cooperate with MS in investigating instances of distribution of Product which does not comply with the foregoing.

(iv) Notwithstanding anything to the contrary contained in Section 2(a) of this Agreement, in lieu of Product software acquired from an Authorized Replicator, COMPANY may distribute a single backup copy of Preinstalled Product Software on a CD-ROM disc reproduced by COMPANY ("Backup CD") which may be used in conjunction with COMPANY's dedicated user support program ("Acer CPR"). The Backup CD may include backup copies of non-MS products that are distributed by COMPANY preinstalled on the hard disk of the Customer System. The Acer CPR support program shall include a BIOS check to verify that the computer system to which Product files will be downloaded from the Backup CD is a COMPANY Customer System. Product files on the Backup CD shall be encrypted such that the Product files cannot be downloaded or used without decryption using Acer CPR utilities. The Backup CD shall indicate that it is for hard drive recovery only, and the label of the Backup CD shall include the clear and indelible notation, "May be used only with Acer Computer Systems. May not function on other Computer Systems." The Acer CPR manual shall clearly indicate that the Backup CD is for hard drive recovery only on designated Acer computer systems. The Acer CPR support program shall include a pop-up or splash screen that informs the end-user that (i) the software is provided only for purpose of

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restoring files to the Acer computer system with which the Backup CD originally was provided, and (ii) the Product(s) contained on the Backup CD are subject to the terms of the EULA(s). The end user shall be required to affirmatively accept the terms of the EULA in order to proceed with using the Backup CD. Except as expressly provided above in this subsection, if COMPANY distributes the Product(s) software on media other than preinstalled on the Customer System hard disk or in ROM, COMPANY shall distribute the Product(s) software on separate media (e.g., separate diskettes, CD-ROM disc, etc.) from non-MS products.

(b) COMPANY shall not reverse engineer, decompile or disassemble any Product except as permitted by applicable law without the possibility of contractual waiver.

(c) COMPANY shall distribute and license the use of Product to end users only pursuant to its end user license agreement ("EULA"). COMPANY's EULA shall conform substantially to the EULA then currently available for the Product from the Authorized Replicator, or, for OEM Replication Product, provided in the Product Deliverables, except that it shall be adapted as may be required by the laws of any non-U.S.A. jurisdiction in which COMPANY distributes the Product. MS' current standard EULA for most Products is attached hereto as Exhibit A. Where COMPANY distributes Preinstalled Product Software, COMPANY shall place a notice over either the Customer System power switch in the "off" position or the power inlet connector which informs the end user that turning on the Customer System indicates acceptance of the terms of the EULA. COMPANY may use an alternative procedure, subject to MS review and approval, provided that (i) the end user is required to take some affirmative action to use or install the Product software, such as breaking a seal, (ii) the end user is advised that taking such action indicates acceptance of the terms and conditions of the EULA; and (iii) the end user has the opportunity to read the EULA before taking such action.

(d) COMPANY shall provide to its end user customers commercially reasonable access to Product technical assistance and shall prominently display its customer support telephone number for such assistance in Customer System documentation or on Product documentation.

7. INTELLECTUAL PROPERTY NOTICES.

(a) COMPANY will not remove any copyright, trademark or patent notices that appear on the Product as delivered to COMPANY.

(b) COMPANY shall market the Product only under the Product name(s) and version number for such Product provided to COMPANY. COMPANY agrees to use the appropriate trademark, product descriptor and trademark symbol (either "TM" or "®"), and clearly indicate MS' or applicable third parties' ownership of its trademark(s) whenever the Product name is first mentioned in any advertisement, brochure or in any other manner in connection with the Product. COMPANY shall not, at any time, use any name or trademark confusingly similar to an MS or licensed third party trademark, trade name and/or product name. COMPANY shall undertake no action that will interfere with or diminish MS' right, title and/or interest in MS' or licensed third party's trademark(s), trade name(s) or Product name(s). COMPANY shall, upon request, provide MS samples of all COMPANY marketing literature which uses Product name(s).

(c) COMPANY shall not use or display any MS logo (i.e., including without limitation any stylized representation of the MS name used by MS) in its materials or packaging, except as provided by separate written agreement with MS. COMPANY shall not use or imitate the trade dress of MS products.

(d) With respect to OEM Replication Product only:

(i) COMPANY will cause to appear on the container and labels of each copy of Product software and on the title page of each volume of Product documentation, the copyright, trademark and patent notice(s), as they appear on the applicable release of Product Deliverables.

(ii) COMPANY's name and/or trademarks shall not be displayed in relation to Product name in a manner which suggests that COMPANY's name and/or trademarks are part of the Product name. COMPANY's name and/or trademarks shall be displayed on the packaging and disk labels and title page of Product documentation more prominently than the name "Microsoft":

(iii) COMPANY's Product packaging shall prominently indicate that the Product can only be distributed with a [name of COMPANY] computer system; and

(iv) Upon request, COMPANY shall submit Product packaging to MS for approval.

8. PROHIBITION AGAINST ASSIGNMENT AND SUBLICENSE.

This Agreement, and any rights or obligations hereunder, shall not be assigned or sublicensed by COMPANY (by contract, merger, operation of law, or otherwise) except to COMPANY Subsidiaries as provided in Section 2(c).

9. TERM OF AGREEMENT.

(a) The term of this Agreement shall run from the Effective Date until May 31, 1995, unless extended or terminated earlier by the parties in accordance with applicable provisions of this Agreement.

(b) If the license for any Product is extended beyond the expiration date stated in Section 9(a), the term of this Agreement shall be deemed to have been extended to run until the expiration date of such Product license, unless terminated earlier by the parties in accordance with applicable provisions of this Agreement.

10. DEFAULT AND TERMINATION.

(a) This Agreement may terminate if any of the following events of default occur: (i) if either party materially fails to perform or comply with any provision of this Agreement; (ii) if COMPANY manufactures or distributes any MS product which is not properly licensed under this Agreement or another valid agreement with MS or an MS licensee; (iii) if Product is available other than inside the COMPANY's Customer System package; (iv) if COMPANY becomes insolvent, enters bankruptcy, reorganization, composition or other similar proceedings under applicable laws, whether voluntary or involuntary, or admits in writing its inability to pay its debts, or makes or attempts to make an assignment for the benefit of creditors; or (v) upon termination of any other agreement between COMPANY and MS due to default by COMPANY.

(b) Termination due to breach of Sections 6(a)(i), 6(b), 8, 13, 14(a), 14(c) or (if applicable) Exhibit S shall be effective upon notice to the defaulting party. Termination due to Section 10(a)(iv) shall be effective upon notice or as soon thereafter as is permitted by applicable law. At the option of the non-defaulting party, termination due to a breach of any provision of this Agreement may be effective upon notice to the defaulting party if such party has received two (2) or more previous notices of default during the term of this Agreement (whether or not such previous defaults have been cured). In all other cases, termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period.

(c) In the event of COMPANY's default, MS may terminate this Agreement in its entirety or as to any individual Product(s). Termination of this Agreement as to any particular Product(s) will not affect the terms and conditions of this Agreement as they apply to the other Product(s) licensed under this Agreement.

11. OBLIGATIONS UPON TERMINATION.

(a) Within ten (10) days after termination or expiration of this Agreement, COMPANY shall return to MS all units of Product for which a royalty has not been paid and all Product Deliverables. COMPANY and each COMPANY Subsidiary may, however, retain ten (10) units of each Product for support purposes only.

(b) Termination of this Agreement as a result of COMPANY's default shall result in acceleration of COMPANY's obligation to pay all sums COMPANY contracted to pay under this Agreement, including all minimum commitment payments as described in Exhibit B.

(c) Upon termination or expiration of this Agreement, COMPANY shall cease distribution of Product and all of COMPANY's license rights herein shall cease. Sections 5, 12, 13, 14, 15 and 16 of this Agreement and Section S1(d) of Exhibit(s) S, if applicable, shall survive termination or expiration of this Agreement.

12. LIMITATION OF LIABILITY AND REMEDY.

(a) MS' total liability to COMPANY under this Agreement, including Section 5, shall be limited to one hundred percent (100%) of the amount having actually been paid by COMPANY to MS under Section 3. COMPANY releases MS from all obligations, liability, claims or demands in excess of the limitation.

(b) The rights and remedies granted to COMPANY under Sections 4 and 5 constitute COMPANY's sole and exclusive remedy against MS, its officers, agents and employees for negligence, inexcusable delay, breach of warranty, express or implied, or for any default whatsoever relating to the condition of the Product or MS duties to correct any deviations from specifications.

(c) SECTIONS 4 AND 5 CONTAIN THE ONLY WARRANTIES MADE BY MS. ANY AND ALL OTHER WARRANTIES OF ANY KIND

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Superior Court, San Francisco

WHATSOEVER, INCLUDING THOSE FOR NON-INFRINGEMENT, MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. MS MAKES NO WARRANTY THAT THE PRODUCT WILL OPERATE PROPERLY ON ANY CUSTOMER SYSTEM(S). COMPANY AGREES MS SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, ECONOMIC OR PUNITIVE DAMAGES EVEN IF MS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(d) (i) As partial consideration for the rights granted to COMPANY hereunder, COMPANY agrees not to (A) sue or (B) bring, prosecute, assist or participate in any judicial, administrative or other proceedings of any kind against MS or its licensees (including without limitation OEM customers and end users) for infringement of COMPANY Patents (as defined below) on account of the manufacture, use, sale or distribution, during the Immunity Period (as defined below), of:

1) Any releases of the Product(s) licensed to COMPANY hereunder, except as otherwise provided in (iii), below; or

2) Future releases of the Product(s), or replacement or successor products to the Product, to the extent such future releases or replacement or successor product(s) use or embody inventions used or embodied in a version of such Product(s) licensed to COMPANY hereunder.

(ii) "COMPANY Patents" as used in this subsection 12(d) means all patents throughout the world, other than design patents or the equivalent, owned or acquired by COMPANY for inventions made prior to termination or expiration of this Agreement, or for which COMPANY has or acquires rights prior to the termination or expiration of this Agreement. The "Immunity Period" shall commence upon the first to issue and shall terminate upon the last to expire, of any of the COMPANY Patents (in any jurisdiction).

(iii) In the event that MS provides COMPANY a new release of a Product under this Agreement, and COMPANY determines that such new release uses or embodies inventions not used or embodied in a prior release of the Product licensed to COMPANY hereunder, COMPANY may elect to not license such new release by so notifying MS in writing within sixty (60) days after its receipt and prior to shipment of such new release. COMPANY's election under this paragraph shall not affect COMPANY's obligations above with respect to any prior release(s) of the Product licensed hereunder.

13. NONDISCLOSURE AGREEMENT.

COMPANY shall keep confidential the Product Deliverables, the terms and conditions of this Agreement, and other non-public information and know-how disclosed to COMPANY by MS. However, COMPANY may disclose the terms and conditions of this Agreement in confidence to its immediate legal and financial consultants as required in the ordinary course of COMPANY's business. Notwithstanding the foregoing, COMPANY shall have no obligation under this Section 13 with respect to any information that COMPANY can conclusively establish: (i) is or subsequently becomes generally publicly available without COMPANY's breach of any obligation owed MS; (ii) became rightfully known to COMPANY prior to MS' disclosure of such information to COMPANY; or (iii) is independently developed by COMPANY without use or access to confidential information or materials.

14. AUDITS AND INSPECTIONS.

(a) During the term of this Agreement, COMPANY agrees to keep all usual and proper records and books of account and all usual and proper entries relating to each Product licensed sufficient to substantiate the number of copies of Product and the number of Customer Systems distributed by or for COMPANY. COMPANY shall maintain on COMPANY premises such records for itself and for each COMPANY Subsidiary which exercises rights under this Agreement.

(b) In order to verify statements issued by COMPANY and COMPANY's compliance with the terms of this Agreement, MS may cause (i) an audit to be made of COMPANY's and/or COMPANY's Subsidiaries' books and records and/or (ii) an inspection to be made of COMPANY's and/or COMPANY's Subsidiaries' facilities and procedures. Any audit and/or inspection shall be conducted during regular business hours at COMPANY's and/or COMPANY's Subsidiaries' facilities, with or without notice. Any audit shall be conducted by an independent certified public accountant selected by MS (other than on a contingent fee basis).

(c) COMPANY agrees to provide MS' designated audit or inspection team access to the relevant records and facilities of COMPANY and/or COMPANY's Subsidiaries.

(d) Prompt adjustment shall be made to compensate for any errors or omissions disclosed by such audit. Any such audit shall be paid for by MS unless material discrepancies are disclosed. "Material" shall mean the lesser of Ten Thousand Dollars (US\$10,000.00) or five percent (5%) of the amount that was reported. If Material discrepancies are disclosed, COMPANY agrees to pay MS for the costs associated with the audit. Further, COMPANY shall pay MS an additional royalty of twenty-five percent (25%) of the applicable royalty on Exhibit(s) C for each unit of COMPANY failed to report that is in excess of five percent (5%) of the number of units actually reported by COMPANY. In no event shall audits be made more frequently than semi-annually unless the immediately preceding audit disclosed a material discrepancy.

15. CONTROLLING LAW; ATTORNEYS' FEES.

(a) This Agreement and all matters relating to this Agreement shall be construed and controlled by the laws of the State of Washington, and COMPANY consents to jurisdiction and venue in the state and federal courts sitting in the State of Washington. Process may be served on either party in the manner set forth in Section 16 for the delivery of notices or by such other method as is authorized by applicable law or court rule.

(b) If either MS or COMPANY employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses.

16. NOTICES.

All notices, authorizations, and requests in connection with this Agreement (a) shall be deemed given on the day they are (i) deposited in the U.S.A. mails, postage prepaid, certified or registered, return receipt requested; or (ii) sent by air express courier, charges prepaid; and addressed as stated in Exhibit N (or to such other address as the party to receive the notice or request so designates by written notice to the other), and (b) shall be deemed received as of the date of actual receipt by the party to which such notice, authorization, or request is given.

17. GENERAL.

(a) Any Product which COMPANY distributes or licenses to or on behalf of the United States of America, its agencies and/or instrumentalities (the "Government"), shall be provided with RESTRICTED RIGHTS in accordance with DFARS 252.227-7013(c)(1)(ii), or as set forth in the particular department or agency regulations or rules, or particular contract which provide MS equivalent or greater protection.

(b) COMPANY agrees that it will not export or re-export Product to any country, person, entity or end user subject to U.S.A. export restrictions. Restricted countries currently include, but are not necessarily limited to, Cuba, the Federal Republic of Yugoslavia (Serbia and Montenegro), Iran, Iraq, Libya, North Korea, and Syria. COMPANY warrants and represents that neither the U.S.A. Bureau of Export Administration nor any other federal agency has suspended, revoked or denied COMPANY's export privileges.

(c) This Agreement does not constitute an offer by MS and it shall not be effective until signed by both parties. Upon execution by both parties, this Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. It shall not be modified except by a written agreement signed on behalf of COMPANY and MS by their respective duly authorized representatives. Any statement appearing as a restrictive endorsement on a check or other document which purports to modify a right, obligation or liability of either party shall be of no force and effect.

(d) Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture or agency relationship or as granting a franchise.

(e) If any provision of this Agreement or license of any particular Product shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions and license for remaining Products, as applicable, shall remain in full force and effect.

(f) No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

(g) COMPANY shall, at its own expense, promptly obtain and arrange for the maintenance of all non-U.S.A. government approvals, if any, as may be necessary for COMPANY's performance under this Agreement.

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I-V Cases, J.C.P. No. 495, E.A.
Superior Court, San Francisco

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18. EXHIBITS.

The following Exhibits are part of this Agreement:

- Exhibit A Sample End User License Agreement
- Exhibit B Minimum Commitments
- Exhibit(s) C Product and Customer Systems
- Exhibit N Addresses

- Exhibit P (if executed) Promissory Note/Guarantee
- Exhibit R Royalty Report
- Exhibit(s) S (if executed) Source Code
- Exhibit T (if executed) Shipments to Third-Party MS Licensees
- Exhibit X (if executed) COMPANY Subsidiaries
- Exhibit Z (if executed) Additional Country/Region Provisions

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above. All signed copies of this Agreement shall be deemed originals.

MICROSOFT CORPORATION

[Handwritten Signature]
 By (Signature) _____
 ARTHUR J. HANNUM, Jr.

Name (Print) _____
 Business Manager
 Title _____
 Date April 27, 1995

ACER AMERICA CORPORATION

[Handwritten Signature]
 By (Signature) _____

MICHAEL D. CULVER

SR. DIRECTOR PRODUCT MGMT

Title 3/31/95

Date

NOTICE:

This is an OEM distribution license. Product can only be distributed with a Customer System, as specified in Sections 1(e) and 6(a).

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HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER Microsoft I-V Cases, J.C.P.P. No. 406, CA Superior Court, San Francisco

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EXHIBIT A - SAMPLE END USER LICENSE AGREEMENT

IMPORTANT- READ CAREFULLY BEFORE OPENING SOFTWARE PACKETS) AND/OR USING THE SOFTWARE. By opening the sealed packet(s) containing the software and/or using the software, you indicate your acceptance of the following Software License Agreement.

SOFTWARE LICENSE AGREEMENT
(Single User Products)

This software license agreement, including the Warranty and Special Provisions set forth in the appendix or separate booklet included in this package, is a legal agreement between you (either an individual or an entity) and the manufacturer ("PC Manufacturer") of the computer system purchased with this software product. By opening the sealed software packet(s) and/or using the software, you are agreeing to be bound by the terms of this agreement. If you do not agree to the terms of this agreement, promptly return the unopened software packet(s) and the accompanying items (including any Microsoft hardware, written materials, and binders or other contact(s)) to the place from which you obtained them.

1. **GRANT OF LICENSE** This License Agreement permits you to use one copy of the Microsoft software program(s) included in this package (the "SOFTWARE") on a single computer. The SOFTWARE is in "use" on a computer when it is loaded into temporary memory (i.e., RAM) or installed into permanent memory (e.g., hard disk, CD-ROM, or other storage device) of that computer. However, installation on a network server for the sole purpose of internal distribution shall not constitute "use" for which a separate license is required, provided you have a separate license for each computer to which the SOFTWARE is distributed.

2. **ADDITIONAL GRANT OF LICENSE (LANGUAGE SOFTWARE)** If the SOFTWARE includes a Microsoft language program, then you have a royalty-free right to reproduce and distribute the runtime modules of executable files created using the SOFTWARE. If the language program is a BASIC or COBOL compiler product, then PC Manufacturer grants to you a royalty-free right to reproduce and distribute the runtime modules of the SOFTWARE provided that you: (a) distribute the runtime modules only in conjunction with and as a part of your software product; (b) do not use PC Manufacturer's or its suppliers' names, logos, or trademarks to market your software product; (c) include a valid copyright notice on your product label and as part of the sign-on message for your software product; and (d) agree to indemnify, hold harmless, and defend PC Manufacturer and its suppliers from and against any claims or lawsuits, including attorneys' fees, that arise or result from the use or distribution of your software product. The "runtime modules" are those files in the SOFTWARE that are identified in the accompanying user documentation as required during execution of your software program. The runtime modules are limited to runtime files, install files, and ISAM and REBUTLD files.

3. **COPYRIGHT** The SOFTWARE (including any images, "applets", photographs, animations, video, audio, music and text incorporated into the SOFTWARE) is owned by Microsoft Corporation or its suppliers and is protected by United States copyright laws and international treaty provisions and all other applicable national laws. Therefore, you must treat the SOFTWARE like any other copyrighted material (e.g., a book or musical recording) except that if the SOFTWARE is not copy protected you may either (a) make one copy of the SOFTWARE solely for backup or archival purposes, or (b) transfer the SOFTWARE to a single hard disk provided you keep the original solely for backup or archival purposes. You may not copy the user documentation accompanying the SOFTWARE.

4. **SOFTWARE MEDIA** You may receive the SOFTWARE in disk media or on a CD-ROM or installed on the hard disk drive or ROM of your computer, or in multiple forms of media. Regardless of the number or type(s) of media you receive, you may use only the media appropriate for your single computer. You may not use the other media on another computer or loan, rent, lease, or transfer them to another user except as part of the permanent transfer (as provided below) of all SOFTWARE and user documentation.

5. **OTHER RESTRICTIONS** You may not rent or lease the SOFTWARE, but you may transfer the SOFTWARE and any accompanying Microsoft hardware, user documentation on a permanent basis provided you retain no copies and the recipient agrees to the terms of this Agreement. If the SOFTWARE is an update or has been updated, any transfer must include the most recent update and all prior versions. You may not reverse engineer, decompile, or disassemble the SOFTWARE, unless otherwise provided in the Warranty and Special Provisions for your country.

6. **U.S. GOVERNMENT RESTRICTED RIGHTS** The SOFTWARE and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Microsoft Corporation/One Microsoft Way/Redmond, WA 98052-6399

Please see the Warranty and Special Provisions for information concerning governing law.

Product support for the SOFTWARE is not provided by Microsoft Corporation or its subsidiaries. For product support, please refer to PC Manufacturer's support number provided in the documentation for the SOFTWARE or for your computer. Should you have any questions concerning this Agreement, or if you desire to contact PC Manufacturer for any other reason, please refer to the address provided in the documentation for your computer.

FOR THE LIMITED WARRANTY AND SPECIAL PROVISIONS PERTAINING TO YOUR COUNTRY, PLEASE REFER TO APPENDIX ____ OF THE SOFTWARE DOCUMENTATION OR THE WARRANTY AND SPECIAL PROVISIONS BOOKLET INCLUDED IN THIS PACKAGE.

APPENDIX
WARRANTY AND SPECIAL PROVISIONS FOR (INSERT NAMES OF COUNTRIES)

LIMITED WARRANTY

LIMITED WARRANTY. PC Manufacturer warrants that (a) the SOFTWARE will perform substantially in accordance with the accompanying written materials for a period of ninety (90) days from the date of receipt, and (b) any Microsoft hardware accompanying the SOFTWARE will be free from defects in materials and workmanship under normal use and service for a period of one (1) year from the date of receipt. Any implied warranties on the SOFTWARE and Microsoft hardware are limited to ninety (90) days and one (1) year, respectively. Some states/jurisdictions do not allow limitations on duration of an implied warranty, so the above limitation may not apply to you.

CUSTOMER REMEDIES. PC Manufacturer's and its suppliers' entire liability and your exclusive remedy shall be, at PC Manufacturer's option, either (a) return of the price paid, or (b) repair or replacement of the SOFTWARE or hardware that does not meet this Limited Warranty and which is returned to PC Manufacturer with a copy of your receipt. This Limited Warranty is void if failure of the SOFTWARE or hardware has resulted from accident, abuse, or misapplication. Any replacement SOFTWARE or hardware will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

NO OTHER WARRANTIES. To the maximum extent permitted by applicable law, PC Manufacturer and its suppliers disclaim all other warranties, either express or implied, including, but not limited to implied warranties of merchantability and fitness for a particular purpose, with regard to the SOFTWARE, the accompanying written materials, and any accompanying hardware. This limited warranty gives you specific legal rights. You may have others which vary from state/jurisdiction to state/jurisdiction.

NO LIABILITY FOR CONSEQUENTIAL DAMAGES. To the maximum extent permitted by applicable law, in no event shall PC Manufacturer or its suppliers be liable for any damages whatsoever (including without limitation, direct or indirect damages for personal injury, loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the use of or inability to use this product, even if PC Manufacturer has been advised of the possibility of such damages. In any case, PC Manufacturer's and its suppliers' entire liability under any provision of this agreement shall be limited to the amount actually paid by you for the SOFTWARE and/or Microsoft hardware. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to you.

SPECIAL PROVISIONS

This Software License Agreement and Warranty are governed by the laws of the State of Washington, U.S.A.

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HIGHLY CONFIDENTIAL UNDER
PROTECTIVE ORDER MICROSOFT
1-V Cases, J.C.P.P. No. 404 CA
Superior Court, San Francisco

Microsoft OEM License Agreement With Minimum Commitment Payments dated March 15, 1995 between MICROSOFT CORPORATION and ACER AMERICA CORPORATION.

ACER 004447

EXHIBIT B
MINIMUM COMMITMENT PAYMENTS

First Period of This Agreement

<u>Date</u>	<u>Payment Amount (US\$)</u>	<u>Cumulative Amount of Payments for Period (US\$)</u>
Signing of this Agreement (payment due upon signing)	\$0	\$0
May 31, 1995 ("FIRST PAYMENT DATE")	\$1,460,000	\$1,460,000
Total First Period Minimum Commitment	\$1,460,000	\$1,460,000

Except the payment due on signing, if any, payments shall be due as specified in Section 3(d) of the Agreement.

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HIGHLY CONFIDENTIAL UNDER
PROTECTIVE ORDER Microsoft
I-V Cases, J.C.P.P. No. 406, CA
Superior Court, San Francisco

Microsoft OEM License Agreement With Minimum Commitment Payments dated March 15, 1995 between MICROSOFT CORPORATION and ACER AMERICA CORPORATION.

ACER 004448

**EXHIBIT C
MICROSOFT OFFICE
(DIRECT CHANNEL DISTRIBUTION)**

*If royalty rate and Customer System are not specified for a particular Product, then such Product is not licensed under this Agreement.

**Language Key: A = Arabic, CE = Cyrillic Enabled, CH = Chinese, CZ = Czech, D = German, DA = Danish, DU = Dutch, E = Spanish, EE = Eastern and Central European, EN = English, FI = Finnish, FR = French, HAN = Hangeul, HB = Hebrew, HUN = Hungarian, I = Italian, K = Kanji, N = Norwegian, POL = Polish, POR = Portuguese, PRC = PRC Simplified Chinese, RU = Russian, SW = Swedish, TH = Thai, TU = Turkish

Product Name and Version	Product Type	Language Version(s)	APM Required	Applicable Additional Provisions	Customer System Number*	Royalty/Basis (per system or per copy)*	Non-English Additional Royalty	Added by Amendment Number
Microsoft Office Version 4.2 for Windows® Standard Version	Authorized Replication	EN	Yes	(a), (b), (c)	1, 2	US\$175.00 per system	N/A	

"PER SYSTEM" ROYALTY CALCULATION

For Product(s) which specify "per system" in the Royalty/Basis column in the above table:

- (1) COMPANY agrees to pay MS a royalty, at the applicable rate set forth above, for each full or partial Customer System distributed or placed in use by or for COMPANY.
- (2) In addition, COMPANY agrees to pay MS the Non-English Additional Royalty specified above for each full or partial unit of non-English versions of Product licensed or distributed by COMPANY. Non-English versions are provided on an if and when available basis.
- (3) Where multiple "Releases" (i.e., Update Releases, Version Releases or Product Releases), language versions, or media versions (e.g., MS-DOS and MS-DOS ROM) of a Product are licensed for the same Customer Systems, COMPANY may distribute Product software only as Preinstalled Product Software in one language and Release for use on each such Customer System. COMPANY shall pay MS the royalty applicable to the Release and language version shipped.
- (4) Any Customer System distributed without Product shall bear the base royalty for the most recent Release of Product licensed on a per system basis for distribution with such Customer System.

"PER COPY" ROYALTY CALCULATION

For Product(s) which specify "per copy" in the Royalty/Basis column in the above table:

- (1) COMPANY agrees to pay MS a royalty, at the applicable rate set forth above, for each full or partial unit of Product licensed or distributed by COMPANY.
- (2) In addition, COMPANY agrees to pay MS the Non-English Additional Royalty specified above for each full or partial unit of non-English versions of Product licensed or distributed by COMPANY. Non-English versions are provided on an if and when available basis.
- (3) Where multiple "Releases" (i.e., Update Releases, Version Releases or Product Releases), language versions, or media versions (e.g., MS-DOS and MS-DOS ROM) of a Product are licensed for the same Customer Systems, COMPANY may distribute Product software only as Preinstalled Product Software in one language and Release for use on each such Customer System.

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I-V Cases, J.C.P.P. No. 406, CA
Superior Court, San Francisco

Microsoft OEM License Agreement With Minimum Commitment Payments dated March 15, 1995 between MICROSOFT CORPORATION and ACER AMERICA CORPORATION.

ACER 004449

EXHIBIT C

(Continued)

CUSTOMER SYSTEMS

COMPANY's Customer Systems shall be defined to be COMPANY's current and future single user computer systems described below.

<u>Customer System Number</u>	<u>Microprocessor Type</u>	<u>Maximum Number of Microprocessors††</u>	<u>Model(s)†††</u>
1.	80486†		AcerPower models 5695 and 5096 that are equipped with a hard drive
2.	Pentium†		AcerPower models 5710, 9714 and 9136 that are equipped with a hard drive

- † Intel microprocessors, or non-Intel microprocessors that execute the same instruction sets.
- †† If no maximum number of processors is specified, the maximum number of processors shall be one (1).
- ††† If no models are specified, Customer Systems shall include all models that utilize the specified processor.

COMPANY BRAND NAMES AND TRADEMARKS:

If COMPANY markets, licenses, or distributes COMPANY Customer Systems under brand names and trademarks other than COMPANY's name, those brand names and trademarks are listed below:

- 1.
- 2.
- 3.
- 4.

ADDITIONAL PROVISIONS KEY

- (a) Use of Product content for marketing/advertising purposes may be subject to restrictions which MS will provide.
- (b) The software is licensed as a single Product, and its component parts may not be separated for inclusion with more than one computer for use by more than one user at any time.
- (c) Notwithstanding any provision in the Agreement to the contrary, the following provisions shall apply to this Product (Office for Windows®):
 - (i) This Product may be distributed with licensed Customer Systems marketed under the Acer brand name ("Office Customer System") only directly to end user customers by COMPANY, i.e., the "Acer Direct Response Channel," or to business end user customers by COMPANY's distributors, value added resellers, system integrators, corporate account resellers, mail order companies and other companies that do not display computer systems for sale predominately to the general public (collectively, "Acer Distributors"), i.e., the "Acer Distributor Channel." COMPANY acknowledges and agrees that Office Customer Systems may not be distributed with this Product through any of the following channel segment customers of COMPANY as defined in International Data Corporation's "US PC Distribution Channels Forecast, 1994-1998" (IDC #9544): (A) Computer Specialty Retailers, (B) Computer Superstores, (C) Mass Merchants, (D) Consumer Electronic Retailers, (E) Office Product Dealers, or (F) Others (e.g., distributors that sell directly to end users and liquidators, home shopping networks and on-line buying services).
 - (ii) COMPANY shall not distribute any computer hardware and software combination that is identical to an Office Customer System except for absence of the Product unless such combination is designated with a different model number. COMPANY acknowledges and agrees that MS may impose additional restrictions on the distribution of this Product at any time upon written notice to COMPANY.
 - (iii) COMPANY shall provide Preinstalled Product Software on all hard drives of Customer Systems with which COMPANY distributes Product. In addition to Preinstalled Product Software, COMPANY may provide one (1) additional copy of Product software only either (A) as included on a Backup CD in accordance with Section 6(a)(iv), or (B) as a fulfillment item to end user purchasers of such Customer Systems for use as a backup copy of the Product.
 - (iv) COMPANY shall provide a copy of the related Product documentation with all Customer Systems with which COMPANY distributes Product, provided however, COMPANY may exclude Product documentation relating to the "Visual Basic" component of this Product

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(v) COMPANY shall not distribute Office Customer Systems with this Product directly to any Acer Distributor unless and until COMPANY and such Acer Distributor have entered into a written agreement that requires the Acer Distributor to comply with the restrictions of this Additional Provision (c), and expressly provides that MS is a third party intended beneficiary with rights to enforce such written agreement.

(vi) (A) The license for this Product shall expire as of the earlier of May 31, 1995, or the date the Agreement terminates or expires ("Product Expiration Date"), unless terminated earlier by MS in accordance with Additional Provision (c)(vi)(B), or extended in accordance with Additional Provision (c)(vi)(C).

(B) Prior to the Product Expiration Date, MS shall have the right to terminate the license for this Product, with or without cause, immediately upon written notice to COMPANY. COMPANY understands and acknowledges that (I) COMPANY may be required to terminate immediately distribution of Office Customer Systems with this Product and that there may be no phase out period. In such event, COMPANY shall require all Acer Distributors to terminate distribution of Office Customer Systems with this Product within thirty (30) days thereafter, provided, however, MS may direct that COMPANY require Acer Distributors identified by MS to terminate immediately distribution of such Office Customer Systems and Product, and to return them to COMPANY. In addition, COMPANY's minimum commitment shall terminate and COMPANY shall pay only royalties based on the number of licensed Office Customer Systems distributed.

(C) If COMPANY has complied with all terms and conditions for distribution of this Product (and MS has not terminated the Product license prior to the Product Expiration Date), COMPANY may give written request to MS within ten (10) days prior to the Product Expiration Date to extend the Product license for a period of ten (10) additional months, i.e., through March 31, 1996, under one of the following options which COMPANY shall specify in its request:

Option 1: COMPANY's quarterly minimum commitment obligation shall be Two Million One Hundred Eighty Seven Thousand Five Hundred (US\$2,187,500) for the period that begins as of the Effective Date of the Agreement and ends June 30, 1995 (to be allocated between calendar quarters as the parties may mutually agree), and for each subsequent calendar quarter of the extended term, and the per system royalty rate shall be One Hundred Seventy Five Dollars (US\$175.00); or

Option 2: COMPANY's quarterly minimum commitment obligation shall be Two Million One Hundred Eighty Seven Thousand Five Hundred (US\$2,187,500) for the period that begins as of the Effective Date of the Agreement and ends June 30, 1995 (to be allocated between calendar quarters as the parties may mutually agree), and increased to Three Million Five Hundred Thousand Dollars (US\$3,500,000) for each subsequent calendar quarter of the extended term, and the per system royalty rate shall be reduced to One Hundred Forty Dollars (US\$140.00) effective as of June 1, 1995.

Product royalties for licensed Office Customer Systems distributed by COMPANY between March 15, 1995 and May 31, 1995 shall be applied against COMPANY's minimum commitment obligation for the period that begins as of the Effective Date of the Agreement and ends June 30, 1995.

MS shall accept such request and prepare a formal amendment to the Agreement unless within ten (10) days after receipt of COMPANY's written request, MS notifies COMPANY that such request is declined based on a good faith determination that continued distribution of this Product with Office Customer Systems will have a significant adverse effect on retail sales of the Product by MS.

(D) If the license for this Product is extended in accordance with Additional Provision (c)(vi)(C), during such extended license term:

(1) MS shall have the right to terminate the license for this Product upon thirty (30) days prior written notice if MS determines in good faith that continued distribution of this Product with Office Customer Systems will have a significant adverse effect on retail sales of the Product by MS.

(2) COMPANY may terminate the license for this Product as of September 30, 1995 by providing MS with thirty (30) days prior written notice.

(E) MS and COMPANY agree to enter into good faith negotiations for the licensing of the successor to this Product, commonly referenced within MS as "Office 95." If the parties fail to reach agreement for the licensing of Office 95 after a reasonable period of negotiation, but in no event later than thirty (30) days after a licensing proposal has been offered to COMPANY by MS, COMPANY may terminate the license for this Product upon thirty days prior written notice to MS.

(F) Except as provided in Additional Provision (c)(vi)(B), if either party terminates the license for this Product in accordance with Additional Provision (c), COMPANY's minimum commitment for the reporting period in which the date of such termination occurs shall be prorated for the duration that has elapsed since the beginning of such reporting period, and COMPANY's minimum commitment for subsequent reporting period(s), if any, shall be terminated.

Exhibit to the License Agreement dated March 15, 1995, between MICROSOFT CORPORATION and ACER AMERICA CORPORATION.

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HIGHLY CONFIDENTIAL UNDER
PROTECTIVE ORDER Microsoft
LV Case No. J.C.P.P. No. 406, CA
Superior Court, San Francisco

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Microsoft OEM License Agreement With Minimum Commitment Payments dated March 15, 1995 between MICROSOFT CORPORATION and ACER AMERICA CORPORATION.

ACER 004451

EXHIBIT N
ADDRESSES

COMPANY:

NOTICES:

ACER AMERICA CORPORATION
2641 Orchard Parkway
San Jose, CA 95134
Attn: Director of Product Marketing
Telephone: (408) 433-3646
Fax: (408) 922-2939

BILL TO:

ACER AMERICA CORPORATION
2641 Orchard Parkway
San Jose, CA 95134
Attn: Accounts Payable

SHIP TO:

ACER AMERICA CORPORATION
2641 Orchard Parkway
San Jose, CA 95134
Attn: Director of Product Marketing

COMPANY Support

telephone no.: (408) 432-6200

MS:

NOTICES:

MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
U.S.A.
Attn: Vice President, OEM Group

With copy to:

MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
U.S.A.
Attn: Law & Corporate Affairs
Fax: +1-206-936-7329

Other Correspondence:

OEM Sales
MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
U.S.A.

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HIGHLY CONFIDENTIAL UNDER
PROTECTIVE ORDER Microsoft
TV Cases, J.C.P.P. No. 408, CA
Superior Court, San Francisco

Microsoft OEM License Agreement With Minimum Commitment Payments dated March 15, 1995 between MICROSOFT CORPORATION and ACER AMERICA CORPORATION.

ACER 004452

Reports and Payments:

If COMPANY is a U.S.A. based company, payments and royalty reports shall be made to:

If sent by U.S.A. Mail
MICROSOFT CORPORATION
Attention: OEM Finance
P.O. Box 84808
Seattle, WA 98124-6108

If sent by private courier:
MICROSOFT CORPORATION
Attention: OEM Finance
Remittance Processing
Wholesale Lockbox
6801 South 180th
Tukwila, WA 98188

Fax copies of royalty reports to:
OEM Finance Fax: (206) 936-5298

If COMPANY is based outside the U.S.A., COMPANY agrees to make such payments and royalty reports as follows:

Payment by wire transfer to:
Citibank N.A.
399 Park Avenue
New York, NY 10043
U.S.A.
ABA 021000089

Regarding:
Microsoft International OEM Collections
Account #38468231

Royalty reports to:
MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
U.S.A.

Attention: OEM Finance
Fax copies of royalty reports to:
+1-206-936-5298

or to such other address or account as MS may specify from time to time. COMPANY agrees to specify the MS License Agreement number and the MS invoice number, if any, with respect to which payment is made.

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PROTECTIVE ORDER Microsoft
I-V Cases, J.C.P. No. 406 CA
Superior Court, San Francisco

**EXHIBIT R
ROYALTY REPORT**

Royalty Report for _____ [COMPANY]
 Reporting Period: _____, 19__ to _____, 19__
 Microsoft License # _____

PER-SYSTEM PRODUCT

Product, Version Number, and Language Version: _____

	CPU Type	A Royalty Rate	B Number of Systems	C (= A x B) Royalty Due
System 1:	_____	\$ _____	_____	\$ _____
System 2:	_____	\$ _____	_____	\$ _____
			Total Reported:	\$ _____
				PRODUCT TOTAL \$

PER-COPY PRODUCT

Product, Version Number, and Language Version: _____

	A Royalty Rate	B Units Shipped	C (= A x B) Royalty Due
Per Copy	\$ _____	_____	\$ _____
			PRODUCT TOTAL \$

Total Royalty Reported: \$ _____

Total Payment Enclosed: \$ _____

If this is your initial royalty report, please indicate date of first Product shipment for revenue: _____

The undersigned hereby certifies that he/she is an officer or director of COMPANY and that this report is complete and correct.

(Signature)
 (Print)
 (Title)
 (Date)

Telephone Number: () _____

**EXHIBIT X
COMPANY SUBSIDIARIES**

COMPANY Subsidiaries authorized to exercise rights under this Agreement are:

I. Name: _____	II. Name: _____
Address: _____	Address: _____
_____	_____
_____	_____
Telephone: _____	Telephone: _____
Fax: _____	Fax: _____

COMPANY shall provide MS at least thirty (30) days prior written notice of the name and address of each additional COMPANY Subsidiary that COMPANY wishes to add to Exhibit X. The addition to Exhibit X of any such additional COMPANY Subsidiaries shall be deemed accepted by MS unless MS sends written notice of rejection to COMPANY within thirty (30) days of MS' receipt of COMPANY's written request. Each COMPANY Subsidiary shall execute and submit to MS a COMPANY Subsidiary Agreement in the form provided below prior to exercising any rights under the Agreement.

(To be reprinted on Company Subsidiary Letterhead)
COMPANY SUBSIDIARY AGREEMENT

For good and valuable consideration, _____, a corporation of _____ ("COMPANY Subsidiary") hereby covenants and agrees with Microsoft Corporation, a Washington U.S.A. corporation that COMPANY Subsidiary will comply with all obligations of _____, a corporation of _____ ("COMPANY") pursuant to that certain License Agreement # _____ between MS and COMPANY dated _____ (the "Agreement").

COMPANY Subsidiary acknowledges that its agreement herein is a condition for COMPANY Subsidiary to exercise any of the rights sub-licensed by COMPANY to COMPANY Subsidiary pursuant to the terms of the Agreement. COMPANY Subsidiary shall be jointly and severally liable to MS for all obligations related to COMPANY Subsidiary's exercise of license rights or receipt of confidential information under the Agreement, including but not limited to the payment of royalties for Product.

Capitalized terms used herein and not otherwise defined shall have the same meaning as in the Agreement.

IN WITNESS WHEREOF, COMPANY Subsidiary has executed this agreement as of the date set forth below. All signed copies of this Agreement shall be deemed originals.

_____ (COMPANY Subsidiary)	_____
Signature _____	Title _____
Name (Print) _____	Date _____

MICROSOFT CORPORATION

By _____

Name (Print) _____

Title _____

Date _____

(Name of COMPANY)

By _____

Name (Print) _____

Title _____

Date _____

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PROTECTIVE ORDER Microsoft
I-V Cases, J.C.P. No. 406, CA
Superior Court, San Francisco