



Microsoft Corporation
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Microsoft

January 18, 1996

Mr. Mike Culver
ACER AMERICA CORPORATION
2641 Orchard Parkway
San Jose, CA 95134

Dear Mr. Culver:

Enclosed is the fully executed Amendment No. 1 to the License Agreement #A009-5257 with Microsoft.

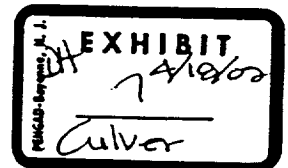
Microsoft looks forward to continuing a positive and mutually rewarding relationship with you.

Sincerely,

Arthur T. Hannum, Jr.
Business Manager, OEM Sales

Enclosure

cc: Pekka Niikkonen - Account Manager



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PROTECTIVE ORDER Microsoft
v. Comes, J.C.P. No. 496, CA
Superior Court, San Francisco

AAC 002055
Confidential

AMENDMENT NUMBER 1
Amendment Date: February 1, 1996
to MICROSOFT OEM LICENSE AGREEMENT WITH MINIMUM COMMITMENT PAYMENTS
between MICROSOFT CORPORATION, a Washington, U.S.A. Corporation
and ACER AMERICA CORPORATION, a Corporation of California
Agreement Effective Date: August 1, 1995
MICROSOFT LICENSE # A009-5257

**SIGNED
ORIGINAL**

Effective as of the Amendment Date indicated above, the below signed parties agree that the indicated portions of the above referenced license agreement (hereinafter the "Agreement") are hereby amended by this instrument (hereinafter the "Amendment"), as follows:

1. Section 9 of the Agreement is hereby amended and as amended shall read as follows:
"The term of this Agreement shall run from the Effective Date until October 31, 1996"
2. Exhibit B of the Agreement is hereby amended and replaced with the attached Exhibit B.
3. Exhibit C1 of the Agreement is hereby amended and replaced with the attached Exhibit C1.
4. Carryover of Prepaid Royalties from Office License.

Whereas, MS and COMPANY have entered into the Microsoft OEM License Agreement with Minimum Commitment Payments dated May 15, 1995 (Microsoft Contract No. A009-5089) (the "Office License");

Whereas, the Office License was terminated as of September 30, 1995 pursuant to the letter agreement dated September 27, 1995 ("Letter Agreement"), from Ted Hannum, Business Manager, OEM Sales, on behalf of MS, and countersigned by Mike Culver, Senior Director of Product Management, on behalf of COMPANY, which was countersigned by COMPANY; and

Whereas, pursuant to the Letter Agreement, COMPANY was authorized to distribute licensed Office Customer Systems for a defined period following termination of the Office License, subject to reporting and payment of applicable royalties; and

Whereas, MS and COMPANY subsequently agreed to permit COMPANY to carry over certain prepaid royalties from the Office License to this Agreement.

Now, therefore, the parties hereby agree as follows:

If COMPANY has paid MS all amounts due in accordance with, and has otherwise complied with, the terms and conditions specified in, the Office License, as amended, an amount equal to the difference of i) minimum commitment payments made by COMPANY pursuant to Exhibit B of the Office License, minus ii) the amount of said minimum commitment payments determined to represent royalties in accordance with the Office License, shall be carried over and transferred to this Agreement as prepaid royalties. Any prepaid royalties carried over to this Agreement pursuant to this provision (x) may be recouped directly against actual earned royalties due MS for the Acer Aspire Spring '96 Value Pack referenced in Exhibit C1, irrespective of minimum commitment payments specified in Exhibit B, and (y) shall be applied at the rate of Two Dollars and Fifty Cents (US\$2.50) for each Customer System licensed for such Product Value Pack. COMPANY shall report the full amount of all royalties due for such Product Value Pack and MS shall make the appropriate accounting entries to comply with this provision.

5. Limited Exclusive Distribution Rights

(a) From February 1, 1996 through the earlier of (i) ninety (90) days after COMPANY's first shipment of the Product referenced in Exhibit C1 as "Microsoft® 3D Movie Maker," or (ii) May 31, 1996, COMPANY shall be the exclusive manufacturer of personal computer systems licensed to distribute the English language version of such Product in the United States and Canada pursuant to a direct, royalty-

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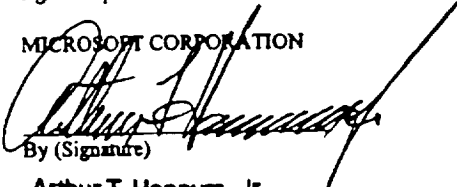
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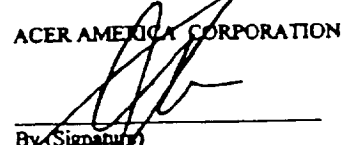
based OEM license agreement by or through MS' OEM (Original Equipment Manufacturing) Sales Division. Nothing in this provision shall be construed to limit MS from licensing (x) such Product to an OEM for distribution outside the United States or Canada, or to an OEM in a language version other than English, or (y) the retail version of such Product.

(b) Notwithstanding any provision to the contrary, the limited exclusive distribution rights described in the preceding subsection may be terminated by MS if COMPANY fails to make any royalty report or payment required hereunder, or is otherwise in material breach of the Agreement.

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement. The terms of this Amendment shall supersede any inconsistent terms contained in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment in duplicate as of the date first written above. All signed copies of this Amendment shall be deemed originals. This Amendment is executed only in the English language.

MICROSOFT CORPORATION

By (Signature)
Arthur T. Hannum, Jr.
Name (Printed)
Business Manager
Title
Jan 17, 1995
Date

ACER AMERICA CORPORATION

By (Signature)
Anthony Lai
Name (Printed)
Product Manager
Title
1/9/96
Date

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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
Three (3) months after the end of the calendar quarter in which the Effective Date occurs ("FIRST PAYMENT DATE"), i.e., December 31, 1995	\$960,000.00	\$960,000.00
3 months after the FIRST PAYMENT DATE, i.e., March 31, 1996	\$900,000.00	\$1,860,000.00
6 months after the FIRST PAYMENT DATE, i.e., June 30, 1996	\$900,000.00	\$2,760,000.00
9 months after the FIRST PAYMENT DATE, i.e., September 30, 1996	\$900,000.00	\$3,660,000.00
10 months after the FIRST PAYMENT DATE, i.e., October 31, 1996	\$300,000.00	\$3,960,000.00
Total First Period Minimum Commitment	<u>\$3,960,000.00</u>	<u>\$3,960,000.00</u>

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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EXHIBIT C1
CONSUMER APPLICATIONS PRODUCTS

*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 = Hangul, HB = Hebrew, HUN = Hungarian, I = Italian, K = Kanji, N = Norwegian, POL = Polish, POR = Portuguese, PRC = PRC Simplified Chinese, RU = Russian, SW = Swedish, TH = Thai, TR = Turkish

Products May Be Provided on CD Media As and If Available

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
ACER ASPIRE™ SPRING '96 VALUE PACK <i>Includes:</i> Works v. 4.0 for Windows® 95 Scholastic's The Magic School Bus™ Explores The Solar System Version 1.0 Microsoft® 3D Movie Maker Money v4.0 for Windows® 95 Home CD Sampler	Authorized Replication	EN	Yes	(a), (b), (c), (d)	1	US\$9.00 per system	N/A	1
Works v. 4.0 for Windows® 95	Authorized Replication	EN	Yes	(a)	—	US\$ _____ per _____	N/A	Original Agreement

"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 only one copy of Product software in addition to one copy of 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.

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EXHIBIT C1

(Continued)

(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 only one copy of Product software in addition to one copy of Preinstalled Product Software in one language and Release for use on each such Customer System.

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>	<u>Description</u>
1.	Pentium†		Acer Aspire™ Series	

† 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).

COMPANY BRAND NAMES AND TRADEMARKS:

If COMPANY Customer Systems are marketed, licensed, or distributed under COMPANY's or COMPANY Subsidiaries' brand names and trademarks which do not include COMPANY's name, those brand names and trademarks are listed below.

Brand Names & Trademarks

- 1.
- 2.

If COMPANY Customer Systems are marketed, licensed, or distributed by a third party under brand names and trademarks which do not include COMPANY's name, those brand names and trademarks and model names used for the Customer Systems by a third party are listed below.

Brand Names & Trademarks

Customer System

Model Name Used by Third Party

- 1.
- 2.

ADDITIONAL PROVISIONS KEY

(a) The following provisions shall apply to all Products listed in this Exhibit C:

(1) Provided that COMPANY has complied with the terms and conditions of this Agreement, COMPANY may terminate its license for the Product by providing written notice to MS thirty (30) days before the occurrence of each six (6) month interval after the date the Product was added to this Agreement.

(2) Notwithstanding anything to the contrary in Section 2(a) or 2(c) of the Agreement, with each full or partial unit of Product distributed by COMPANY with COMPANY's Customer Systems, COMPANY shall include the following:

(A) Product documentation;

(B) Product software in CD-ROM or diskette form as acquired from an Authorized Replicator; and

(C) if the Customer System includes a hard disk drive, Preinstalled Product Software. For Product acquired in CD-ROM form, however, COMPANY shall preinstall the executable files of Product.

(3) Except for accurate informational references to and descriptions of the Product(s), and accurate reproductions or depictions of the Product(s) front packaging, MS expressly prohibits any use of the Product(s) contents (e.g., photographs, video, audio, screen shots, etc.) and associated packaging in connection with COMPANY's distribution of the Product(s), including, without limitation, advertising and promotional use.

EXHIBIT C
(Continued)

- (4) COMPANY may distribute Product(s) only within the geographical boundaries of the United States of America and Canada.
- (5) Notwithstanding anything to the contrary in Section 7(c) of the Agreement, COMPANY's use of the MS Home Logo shall be subject to the restrictions and guidelines described in the MS Home Logo Guidelines provided by MS.
- (6) If MS provides COMPANY with a marketing materials kit for Product ("Marketing Materials Kit"), then COMPANY is authorized to use materials contained in Marketing Materials Kit for promotional purposes provided that:
- (A) Use is in compliance with the guidelines provided in Marketing Materials Kit;
 - (B) COMPANY's promotion of Product(s) shall be restricted to the guidelines provided in Marketing Materials Kit and subsection (a)(3) above.
 - (C) Use is confined to the advertising and promotion of Customer Systems licensed for and distributed with Product; and
 - (D) COMPANY agrees to cease use of the Marketing Materials Kit and cease any promotion for Product(s) upon expiration or termination of COMPANY's license for this Product.
- (7) The royalty rate(s) specified above for Product(s) are based on COMPANY's agreement as follows:
- (A) With respect to advertising that includes those Customer Systems distributed with Product(s), COMPANY shall refer to the relevant Product names and place accurate reproductions or depictions of the Product front packaging in point of purchase materials, print advertising, packaging, and marketing collateral.
 - (B) According to the restrictions and guidelines contained in the MS Home Logo Guidelines, place the MS Home Logo on all point of purchase materials, print advertising, packaging, and marketing collateral that include those Customer Systems distributed with Product(s).
 - (B) COMPANY shall not advertise, publish or otherwise mark a separate price for the Product.
- (9) COMPANY agrees to provide end user support for the Product under terms and conditions at least as favorable to the end user as the terms under which COMPANY provides support for COMPANY's Customer Systems to end users generally. COMPANY agrees to provide MS with ninety (90) days prior written notice of any substantive change in COMPANY's support policy for the Product.
- (b) (1) The individual software programs which comprise the Product shall be distributed together with one Customer System and may not be distributed separately or licensed for use by more than one end-user.
- (2) This Value Pack includes a license for Microsoft's Home CD Sampler. COMPANY agrees to distribute such CD Sampler with all Customer Systems with which COMPANY distributes this Value Pack.
- (c) In addition to the required Customer System components specified in the Customer System definition in Section 1(e) of this Agreement, Customer Systems distributed with this Product must include a CD-ROM drive and audio capabilities.
- (d) The following provision shall apply to the licensing of Microsoft® 3D Movie Maker under this Exhibit C: The Product is designed for use with Windows 95 or Windows NT™ Workstation v. 3.51 or later, and may not function properly with other operating system products.

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ATTACHMENT I TO EXHIBIT C1

PRODUCT RECOVERY CD OPTION

- (a) This Attachment is not a license for MS products. COMPANY must maintain a valid OEM license agreement for all MS products included in whole or in part on the Recovery CD (as defined below).
- (b) Notwithstanding anything to the contrary contained in Section 6(a)(iv) or 2(a)(ii) of the Agreement, for Customer Systems which include a CD-ROM drive in the Customer System package and on which software for Product(s) licensed in accordance with this Agreement are preinstalled on the Customer System hard disk, COMPANY may distribute, on an encrypted CD-ROM disk, backup images of licensed software described below which are distributed by COMPANY preinstalled on the hard disk of the Customer System ("Recovery CD"): (i) MS products for which COMPANY has a valid license from MS for such Customer System, and (ii) non-MS products for which COMPANY has valid licenses for such non-MS products with such Customer Systems, if and as replication and distribution of backup images are permitted under such licenses. The Recovery CD may be used only to restore the Customer System hard disk drive and the software originally installed on the Customer System to its original state in conjunction with COMPANY's dedicated user support utility diskette ("Support Utility").
- (c) MS' authorization to distribute the Recovery CD is subject to COMPANY's compliance with all of the following provisions:
- (1) MS product software on the Recovery CD shall be encrypted such that the software cannot be downloaded or used without decryption using the Support Utility.
 - (2) The Recovery CD and Support Utility shall comply with the specifications set forth in the then-current "Microsoft OEM Product Backup and Recovery CD-ROM Implementation Guide" (the "Implementation Guide"). MS shall have the right to modify the Implementation Guide from time to time and provide COMPANY updated versions thereof.
 - (3) The Support Utility documentation shall prominently indicate that the Recovery CD is provided only for the purpose of restoring the software on the hard disk to its original state on designated COMPANY computer systems.
 - (4) The Support Utility shall be subject to an online and printed end user license agreement which includes provisions that (i) the software may be used only for restoring the hard disk of the COMPANY computer system with which the Recovery CD originally was provided, and (ii) the MS product(s) contained on the Recovery CD are subject to the terms of their respective EULA(s). The end user shall be required to affirmatively accept the terms of such end user license agreement in order to proceed with using the Recovery CD.
 - (5) The Support Utility shall include a BIOS check to verify that the computer system to which software will be downloaded from the Recovery CD is a COMPANY Customer System.
 - (6) The images of the MS product software on the Recovery CD shall be identical to the object code that was preinstalled on the Customer System hard disk including any initial end user startup sequence and OEM support information.
 - (7) The Recovery CD and Support Utility may only be distributed inside the original Customer System package.
 - (8) The Recovery CD and Support Utility may be replicated only by an Authorized Replicator.
 - (9) COMPANY shall comply with all provisions of this Agreement and the MS license agreements for any MS products included on the Recovery CD, including, without limitation, the

Additional Provisions of the applicable exhibit(s) C for such MS products.

(10) COMPANY shall submit the Recovery CD and Support Utility master media to MS for review and approval. If approved, MS shall provide such master media to a single Authorized Replicator of COMPANY's choice. COMPANY shall not distribute the Recovery CD before the date MS provides written notice to COMPANY approving distribution of such Recovery CD and Support Utility.

(d) MS shall have the right to terminate or restrict COMPANY's rights to distribute a Recovery CD upon thirty (30) days prior written notice to COMPANY. Without limiting the preceding sentence, MS may terminate or restrict such distribution rights by product(s), by market(s) to which Recovery CD may be distributed, or by Customer System configuration.

(e) COMPANY hereby indemnifies MS from and against all damages, costs and attorneys' fees arising from any and all claims or demands in connection with the licensing, distribution, or use of the Recovery CD and/or Support Utility.

(f) COMPANY agrees to provide commercially reasonable end user support for the Product(s) licensed in the Agreement which, in any event, shall be under terms and conditions at least as favorable to the end user as the terms under which COMPANY provides support for COMPANY's Customer Systems to end users generally. COMPANY agrees to provide MS with ninety (90) days prior written notice of any substantive change in COMPANY's support policy for the Product(s).

(g) Provided COMPANY complies with all of the requirements stated above, COMPANY may include the Recovery CD and Support Utility inside COMPANY's Customer System package without payment of additional royalties to MS.

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