

MICROSOFT OEM LICENSE AGREEMENT
WITH MINIMUM COMMITMENT PAYMENTS
#030700002 dated July 1, 1997

SIGNED
ORIGINAL

with ACER AMERICA CORPORATION, a corporation of California, United States Of America.

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, an 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 Replicator" shall mean a third party approved by MS from which COMPANY may acquire Product reproduced in accordance with MS specifications. MS shall provide COMPANY with a list of Authorized Replicators and shall notify COMPANY from time to time of changes to this list.

(c) "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, but only so long as such ownership exists.

(d) "Customer System" shall mean COMPANY's computer system product(s) described in the Exhibit(s) C. Unless otherwise expressly specified in the applicable Exhibit C, a Customer System shall be an assembled computer system which (i) is configured for use only by a single user; (ii) is designed to use a video display and keyboard; and (iii) includes at least a CPU, a motherboard, a power supply, and a case. Unless otherwise provided in applicable Exhibits C or D, Customer Systems shall be marketed and distributed only under a brand name which includes COMPANY's name.

(e) "EULA" shall mean an end user license agreement for the Product as available from the Authorized Replicator. MS' current standard EULA for most Products is attached hereto as Exhibit A.

(f) "Initial Term" shall mean the term of this Agreement as set forth in Section 9 as of the Effective Date. The Initial Term shall not include any extension to the term unless expressly agreed in writing by the parties.

(g) "Period" shall mean a period described in Exhibit B, such as the First Period.

(h) "Product" shall mean the copyrighted and/or patented MS product(s) (including, where applicable, Product software in object code form, Product end user documentation, APM, and Product hardware) identified in the attached Exhibit(s) C. Only those Product(s) for which royalty rate(s) and Customer System(s) are specified in the applicable Exhibit C are licensed under this Agreement.

(i) "Product Deliverables" shall mean (i) Product software in object code form; (ii) installation utilities and related documentation, if applicable; (iii) a single copy of Product end user 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} or a change in the annual identifier (e.g., 96 or 1996).

(k) "Reporting Period" shall mean the interval described in Section 3 for which COMPANY shall submit its royalty reports and payments.

(l) "Supplement" shall mean a release of a supplement to, or replacement of, any portion of Product as MS may provide to COMPANY from time to time.

(m) "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)].

(n) "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) Subject to limitations in this Agreement and COMPANY's compliance with all terms and conditions of this Agreement, including the attached Exhibits, MS grants to COMPANY a non-exclusive, limited license to:

(i) install one (1) copy of Product software on a Customer System hard disk or ROM ("Preinstalled Product Software") in accordance the applicable provisions of Exhibit(s) C and with instructions accompanying the Product Deliverables; and

(ii) distribute with Customer System(s):

(A) one (1) copy of Preinstalled Product Software,

(B) one (1) copy of Product software on external media (i.e., diskette or CD-ROM) as acquired from Authorized Replicator, and

(C) one (1) copy of Product end user documentation as acquired from Authorized Replicator.

(iii) With respect to Supplements, MS may also grant to COMPANY one or more non-exclusive, limited additional rights, including without limitation, those set forth in Exhibit F hereto, in a "Supplement Addendum" for such Supplement. If COMPANY decides to exercise any such additional rights granted for a particular Supplement, COMPANY agrees to fully comply with all of the terms and conditions of the applicable Supplement Addendum, regardless of whether the particular terms of the Supplement Addendum are described in Exhibit F.

(b) Except as otherwise provided in Exhibit(s) C or Z, COMPANY's license rights granted herein shall be worldwide. Except as necessary to install Preinstalled Product Software, COMPANY may not reproduce Product or any part of Product Deliverables. COMPANY shall make no use of Product Deliverables except as described in Section 2(a) of this Agreement.

(c) (i) COMPANY's license to distribute the Product is limited to distribution only with those Customer System(s) listed on Exhibit(s) C for the particular Product(s) and only inside the Customer System package.

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

(iii) COMPANY shall not modify or delete any part of the Product software in any manner, except as expressly permitted in the applicable Exhibit C.

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Plaintiff's Exhibit

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ACER 000730

(iv) COMPANY may supplement but shall not modify or translate Product end user documentation. COMPANY shall not remove or modify the package contents of Product or APM.

(d) (i) COMPANY shall include APM with Product software distributed by COMPANY.

(ii) COMPANY must distribute one (1) copy of such Product end user documentation as may be required by MS with and inside the package of each Customer System distributed with Product software. One (1) copy of any Product end user documentation that MS does not require COMPANY to distribute with the Product software shall be made available by COMPANY to the licensed end user of the Product software either (A) inside the Customer System package, or (B) directly through an MS authorized fulfillment source in accordance with MS' then current specifications for fulfillment of Product end user documentation or other fulfillment process if and as may be approved by MS. Product end user documentation shall not be available through any other COMPANY distribution channel.

(iii) COMPANY may provide Product software on external media (i.e., diskette or CD-ROM) to licensed end users of the Product software to replace a copy of Product software originally distributed by COMPANY in accordance with this Agreement which is defective in media or reproduction directly through an MS authorized fulfillment source in accordance with MS' then current specifications for fulfillment of Product software replacement media or other fulfillment process if and as may be approved by MS. Product software replacement media shall not be available through any other COMPANY distribution channel.

(iv) MS shall provide COMPANY from time to time with a list of fulfillment sources authorized by MS.

(e) If COMPANY distributes the Product software (other than as Preinstalled Product Software), COMPANY shall distribute the Product software on separate media (e.g., separate diskettes, CD-ROM disc, etc.) from other products.

(f) (i) Except as otherwise provided in subsection (ii), COMPANY shall place Product packages inside Customer System packages and install Product software on the hard disk drive or ROM of a Customer System solely on COMPANY premises by COMPANY employees.

(ii) (A) COMPANY may engage the El Paso, Texas facility ("Acer Installer") owned directly or indirectly by Acer Incorporated, the corporate parent of COMPANY, to (1) install Preinstalled Product Software on the Customer System hard disk or ROM, (2) place Product packages inside the Customer System packaging, and (3) distribute Customer Systems with Product only to COMPANY and/or to COMPANY resellers and distributors at the direction and on behalf of COMPANY.

(B) COMPANY shall obligate and cause Acer Installer to:

(1) Perform all activities solely on Acer Installer premises with Acer Installer employees and strictly in compliance with COMPANY's obligations under the Agreement;

(2) Provide access to Acer Installer premises to audit or inspection team(s) sent on behalf of MS or COMPANY, with or without notice, in order that such team may perform an examination of the books, records, facilities and/or procedures to determine compliance with the terms of its obligations to perform all activities strictly in compliance with COMPANY's obligations under the Agreement;

(3) Halt installation or distribution of the Product upon notice from COMPANY or MS of the suspension, termination, or expiration of this Agreement; and

(4) Maintain inventory of Product received from COMPANY (or from Authorized Replicator on behalf of COMPANY) separate from inventory of Product held in its possession for itself or for other OEMs (including Acer Incorporated or other Acer companies), if any.

(C) In royalty reports submitted to MS, for each reporting period, COMPANY shall separately indicate the number of units of each Product (1) acquired by Acer Installer from COMPANY or from Authorized Replicators on behalf of COMPANY, (2) shipped with Customer Systems from Acer Installer to COMPANY, and (3) shipped with Customer Systems from Acer Installer to COMPANY's resellers and distributors on behalf of COMPANY.

(D) COMPANY hereby unconditionally and irrevocably guarantees that Acer Installer shall perform all activities strictly in compliance with COMPANY's obligations under the Agreement. COMPANY hereby indemnifies MS for all damage: (including attorneys' fees) of any kind arising in connection with activities of Acer Installer taken on behalf of COMPANY pursuant to this Agreement.

(g) COMPANY shall not reverse engineer, decompile or disassemble any Product except as permitted by applicable law without the possibility of contractual waiver. COMPANY acknowledges that information on interoperability of the Product with other products is readily available.

(h) All distribution and use of the Product is by license only. MS does not authorize the Product to be "issued to the public", "put into circulation", or subject to a "first sale" as the copyright laws may use those (or similar) terms. COMPANY's license to distribute the Product is limited to distribution of the Product by COMPANY to end users for use pursuant to a EULA. COMPANY shall adapt the EULA as may be required by the laws of any non-U.S.A. jurisdiction in which COMPANY distributes the Product. COMPANY may use its name in place of references to "PC Manufacturer" and/or "Manufacturer" in the EULA.

(i) COMPANY agrees that it shall not distribute Product in encrypted form, except as otherwise specifically provided in this Agreement.

(j) COMPANY acknowledges that MS may require the Authorized Replicator to refuse to fill orders for Product in quantities beyond those which, in MS' opinion, COMPANY will be able to distribute or make timely payment for in compliance with the terms of this Agreement. COMPANY further acknowledges that MS may suspend COMPANY's license rights hereunder and/or require Authorized Replicator to refuse to fill COMPANY's orders if (i) COMPANY or any COMPANY Subsidiary fails to comply with any provision of this Agreement or any other agreement between COMPANY or any COMPANY Subsidiary and MS, or if (ii) Product licensed to COMPANY is available other than inside Customer System package.

(k) COMPANY's license shall extend to Supplements, Update Releases, and Version Releases. COMPANY's license shall not extend to Product Releases.

(l) COMPANY may grant to COMPANY Subsidiaries the limited rights granted to COMPANY in Section 2(a) above, subject to all the terms and conditions set forth in this Agreement. COMPANY hereby irrevocably and unconditionally guarantees each of its

COMPANY Subsidiaries' compliance with the terms and conditions of this Agreement. COMPANY agrees that it shall be jointly and severally liable with each COMPANY Subsidiary for any breach of the terms and conditions of the Agreement by a COMPANY Subsidiary. At least thirty (30) days prior to exercising any license rights or receiving any confidential information under this Agreement, each COMPANY Subsidiary shall execute and deliver to MS the COMPANY Subsidiary Agreement in the form indicated in Exhibit X. Subsidiaries of COMPANY (or any other entities) which distribute Customer Systems received fully assembled and packaged with Product in accordance with this Agreement from COMPANY or COMPANY Subsidiaries need not be listed on Exhibit X as COMPANY Subsidiaries.

(m) MS reserves all rights not expressly granted including, without limitation, modification rights, translation rights, rental rights, and rights to source code. MS expressly reserves its exclusive right under applicable copyright, patent, and trademark laws to distribute copies of Product by any means. Without limitation, MS does not authorize COMPANY, and MS reserves its exclusive right, to distribute the Product separately from Customer Systems; any such unauthorized distribution by COMPANY shall constitute a violation of this Agreement and MS' distribution right under applicable law. COMPANY acknowledges that MS (and/or its suppliers, if applicable) shall retain all copyright, patent, moral, trademark, title and other proprietary and intellectual property in the Product software, Product Deliverables and components thereof, in whole or in part in any form.

3. PAYMENT AND REPORTING.

- (a) (i) COMPANY hereby agrees to pay MS for each Period: (A) the minimum commitment amounts for the Period as set forth in Exhibit B; and (B) the amount by which cumulative royalties during a Period exceed minimum commitments amounts for that Period.
- (ii) Minimum commitment and royalty payments made in one Period may not be applied to minimum commitment payment obligations in another Period.
- (iii) The amount by which cumulative royalties during a Period exceed minimum commitment amounts then payable for the same Period shall be calculated as of the end of each Reporting Period and the excess amount shall be referred to as "Excess Royalties". Excess Royalties shall be paid to MS in accordance with Section 3(e). Excess Royalties shall be applied to reduce future minimum commitment payment(s) payable during the Period in which such Excess Royalties accrue.
- (iv) To the extent that cumulative minimum commitment payments during a Period exceed cumulative royalties for such Period, such excess shall be known as "prepaid royalties" and shall be recoupable against future royalties only during the Initial Term of this Agreement and only for the Product(s) licensed herein. Prepaid royalties are not recoupable against payments made to Authorized Replicator.
- (v) Once COMPANY has accepted and distributed any release of Product pursuant to Section 4, minimum commitment payments are not refundable.
- (b) (i) Royalties exclude any charges by Authorized Replicator for units of Product or AFM ordered by COMPANY. Royalties also exclude any taxes, duties, fees, excises or tariffs imposed on any of COMPANY's or COMPANY's Subsidiaries' activities in connection with this Agreement. Such charges, taxes, duties, fees, excises or tariffs, if any, shall be paid by COMPANY. In

the event COMPANY fails to accrue any royalties due MS under this Agreement prior to termination or expiration, MS may charge COMPANY an administrative fee in the amount of Ten Thousand Dollars (US\$10,000.00).

(ii) For Product(s) specified in the applicable Exhibit C as licensed on a "per system" basis, COMPANY agrees to pay MS the royalty set forth in the applicable Exhibit C for each Customer System distributed or placed in use by or for COMPANY. For Product(s) specified in the applicable Exhibit C as licensed on a "per copy" basis, COMPANY agrees to pay MS the royalty rates set forth in the applicable Exhibit C for each unit of Product licensed or distributed by COMPANY.

(iii) In addition, COMPANY agrees to pay MS the Localization Additional Royalty specified in Exhibit(s) C for each unit of non-U.S.A. English version of Product distributed or placed in use by COMPANY.

(iv) 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 (1) copy of Product software in addition to one (1) 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. Any Customer System licensed on a per system basis for more than one Update Release or Version Release of a Product, but distributed without Product, shall bear the base royalty for the most recent Release of Product licensed.

(v) If, at any time, MS becomes aware of any distribution of Product in violation of the Agreement, without limiting MS' remedies, COMPANY shall pay MS the highest royalty in Exhibit C applicable to such Product and MS may charge COMPANY for each such unit of Product, an additional royalty equal to thirty percent (30%) of the highest royalty for the Product(s). COMPANY shall pay any such royalties within thirty (30) days of receipt of MS' invoice.

(c) In the event income taxes are required to be withheld by any non-U.S.A. government on payments to MS required hereunder, and provided that COMPANY promptly delivers to MS an official receipt for any such taxes withheld or other 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) (i) For each Product identified as Type I in Exhibit C, COMPANY agrees that the following additional payment provisions shall apply:

(A) MS shall invoice COMPANY each month for Product royalties based on reports from MS authorized third party service provider(s) (e.g., Authorized Replicators or other service provider(s)) concerning shipments of such Product(s) to or on behalf of COMPANY. MS' billing of COMPANY, based on reports from third party service provider(s), shall not relieve COMPANY of any payment obligations under the Agreement.

(B) If in any calendar month (1) COMPANY identifies any discrepancies in MS' invoice(s) received during such month, or (2) COMPANY distributes Customer Systems licensed for

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ACER AMERICA CORPORATION. This document was created by ZH document #0030700002-9

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any Product(s) on a "per system" basis without such Product(s), COMPANY shall submit a consolidated (i.e., on behalf of COMPANY and COMPANY Subsidiaries) report to MS as specified in Exhibit N within fifteen (15) days after the end of such month, and fifteen (15) days after termination or expiration for the final full or partial month. Any such reports shall be in the format specified by MS from time to time and shall designate the number of each Customer System licensed on a per system basis distributed without Product, together with the name and version number(s) of the licensed Product(s) and/or specific details of any discrepancy. MS will invoice COMPANY for any additional royalties due or, subject to MS' verification, credit COMPANY's account after review of any such report(s).

(C) If, upon termination or expiration of the Agreement, COMPANY has inventory of any licensed Product(s), COMPANY shall submit a report detailing such Product(s) in inventory including the number of units, name(s), version number(s), and other information as MS may request.

(D) After COMPANY submits the inventory report described in subsection (C) above and provided COMPANY has complied with all terms and conditions of the Agreement, including without limitation Section 11, the following shall apply. Those royalties corresponding only to that portion of Product inventory consisting of the latest available Product Release and for which a royalty previously had been paid to MS and for which COMPANY's payments constituted Excess Royalties will be credited by MS to COMPANY's account, after deduction, by setoff or otherwise, of any outstanding amounts or obligations due to MS.

(E) MS may inspect COMPANY's premises, books and records to verify COMPANY's credit request in subsections (C) and (D) above. COMPANY shall provide such additional documentation as MS may reasonably request to support and verify such request.

(F) If COMPANY has inventory of Product(s) acquired under another OEM license agreement and for which COMPANY has not paid a royalty to MS as of the Effective Date of this Agreement, COMPANY shall submit a report indicating the number of such units in inventory within thirty (30) days of the Effective Date of this Agreement. In the event that MS and COMPANY agree that COMPANY may distribute such units under this Agreement, MS shall invoice COMPANY at the royalty rate in this Agreement for such Product(s). COMPANY shall pay such royalties within thirty (30) days of the date of MS' invoice. COMPANY shall thereafter be deemed licensed to distribute such Product(s) under the terms of this Agreement.

(ii) For each Product identified as Type II in Exhibit(s) C, COMPANY agrees that the following additional payment provisions shall apply:

(A) COMPANY agrees to make consolidated (i.e., on behalf of COMPANY and COMPANY Subsidiaries) quarterly royalty reports 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. MS shall invoice COMPANY for Product royalties.

(B) In the event that COMPANY's quarterly report is not received by MS within the above-specified thirty (30) 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 quarter and, at MS' option, for all subsequent quarters during the term of this Agreement. MS' quarterly billing of COMPANY based on reports submitted by Authorized Replicator(s) shall not relieve COMPANY of any reporting or payment obligations under the Agreement.

(C) COMPANY's report 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'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 and shall specify royalties for each Product and language version described in Exhibit(s) C.

(D) If, upon termination or expiration of the Agreement, COMPANY has inventory of any licensed Product, COMPANY shall submit a report detailing Product in inventory including the number of units, name, version number(s), and other information as MS may request.

(iii) Any Product for which a billing Type is not specified in Exhibit C shall be deemed to be a Type II Product.

(e) COMPANY agrees to make consolidated (i.e., on behalf of COMPANY and COMPANY Subsidiaries) Excess Royalty payments to MS as specified in Exhibit N within thirty (30) days of the date of MS' invoice. Each minimum commitment amount shall be payable on the date specified in Exhibit B and COMPANY shall remit payment to MS as specified in Exhibit N within thirty (30) days of MS' invoice for each such amount. A one and one-half percent (1.5%) monthly finance charge will be assessed on all amounts that are past due, including receipts for foreign taxes withheld.

(f) (i) Only one (1) royalty shall accrue for each licensed Customer System shipped with one (1) copy of Preinstalled Product Software and one (1) copy of Product software on external media as set forth in Section 2(a)(ii) (A) and (B).

(ii) No royalty shall accrue to MS for a commercially reasonable number of units of Product software (A) used by COMPANY solely for testing systems or for demonstration of Customer Systems if clearly marked "For Demonstration Purposes Only" (not to exceed one hundred (100) copies per Product); or (B) shipped to replace copies defective in media or reproduction, provided that such replacement copies are distributed in accordance with Section 2(d) above at no charge to the end user, except for COMPANY's reasonable cost of materials and shipping and handling costs.

(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.

(h) COMPANY will provide MS with COMPANY's current credit and financial information if and as MS may reasonably request.

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 substantially to the Product end user documentation.

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PROTECTIVE ORDER Microsoft
IV Case, J.C.P.P. No. 406, CA
Superior Court, San Francisco

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(i) If Product software fails to conform substantially to the Product end user documentation, 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 from end user documentation ("Deviations") to MS in writing. If COMPANY reports any Deviations 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 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 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 any language version of a Product until MS delivers Product Deliverables to COMPANY identified by MS as final Product Deliverables and MS advises its OEM customers generally that Customer Systems may be distributed with such release of language version of Product.

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 Claims") 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. If COMPANY ceases distribution of an alleged infringing Product or Mark as provided for in this provision and as a result would suffer a material adverse impact on sales or distribution of Customer Systems licensed under this Agreement, COMPANY shall have the right to terminate this Agreement upon notice to MS. In such event, COMPANY shall be relieved of its obligation to pay minimum commitment amounts accruing after the date COMPANY terminates this Agreement, and COMPANY shall be entitled to a refund or credit (at COMPANY's option) for "prepaid royalties" that COMPANY accumulated in connection with minimum commitment payments made under this Agreement.

(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 any other 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.

(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, and Norway ("Included Jurisdictions").

6. ADDITIONAL RESTRICTIONS.

(a) COMPANY shall (i) contractually obligate (e.g., by contract, invoice or other written instrument) all distributors, dealers and others in its entire distribution channels to comply with Section 2(c); (ii) deliver copies of such contracts (or relevant portions thereof) to MS upon request; (iii) promptly discontinue distribution of Product to any such distributor, dealer or other in its distribution channel which does not comply with Section 2(c); and (iv) cooperate with MS in investigating instances of distribution of Product which does not comply with Section 2(c).

(b) (i) COMPANY shall acquire all components of each unit of Product to be distributed with a Customer System (i.e., APM, Product end user documentation, and Product software on external media, as applicable) from a single Authorized Replicator and in a single package or stock keeping unit. Provided, however, this shall not preclude COMPANY from acquiring separate units of Product from multiple Authorized Replicators.

(ii) All orders placed with Authorized Replicators, and payments to the Authorized Replicators, shall be made by COMPANY or COMPANY Subsidiaries. Shipments by Authorized Replicators may be delivered only to locations owned or controlled by COMPANY, COMPANY Subsidiaries or, if applicable, Third-Party Installers, as defined in Exhibit I. COMPANY hereby certifies that all addresses to which COMPANY or COMPANY Subsidiaries request Product delivered shall comply with the foregoing requirement.

(c) 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 and the applicable warranty in its entirety before taking such action.

(d) (i) This Agreement does not include technical support by MS to COMPANY, its distributors, dealers or end users. Technical support may be available from MS or an MS subsidiary pursuant to a separate agreement.

(ii) COMPANY agrees to provide end user support for the Product(s) 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, but which in no event shall be less than commercially reasonable end user support. COMPANY further agrees to provide end users with telephone customer support and to prominently display its customer support telephone number for such assistance in or on Customer System documentation.

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PROTECTIVE ORDER Microsoft
IN Cases, J.C.P.P. No. 468, CA
Superior Court, San Francisco

(c) COMPANY shall not advertise or otherwise market the Product(s) as separate items, but shall clearly indicate in all marketing materials relating to the Product(s) and Customer System(s) that the Product(s) are available only as part of a Customer System. COMPANY shall not publish or otherwise mark a separate price for the Product(s).

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.

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(f).

9. TERM OF AGREEMENT.

(a) The term of this Agreement shall run from the Effective Date until September 30, 1999, unless terminated earlier pursuant to Section 9(b), below.

(b) COMPANY may, at its option, terminate this Agreement as of either September 30, 1998 or March 31, 1999, by providing thirty (30) days prior written notice to MS. If COMPANY chooses to terminate this Agreement as provided in the preceding sentence, COMPANY shall be relieved of its obligation to pay minimum commitment amounts that accrue after the date this Agreement is terminated.

10. DEFAULT AND TERMINATION.

(a) The non-defaulting party may terminate this Agreement 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, is afforded protection from creditors under 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 default or continuing default by COMPANY under any other agreement between COMPANY and MS.

(b) Termination due to breach of Sections 2, 6(c), 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 default 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: (i) at MS' direction, either (A) deliver to MS, (B) deliver to a third party authorized by MS for destruction at COMPANY's expense, or (C) destroy, at COMPANY's expense, all units of Product and all Product Deliverables; and (ii) provide written notice to MS signed by an officer or director certifying that COMPANY has fulfilled the applicable 11(a)(i) requirement. COMPANY and each COMPANY Subsidiary may, however, retain thirty (30) units of each Product for support purposes only. Except as expressly provided in Section 3(d), there shall be no refund, credit, or adjustment for amounts paid for Product(s) returned to MS in accordance with this Section 11(a).

(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 through the earlier of (i) the next immediate date at which COMPANY may terminate the Agreement pursuant to Section 9(b), or (ii) the date the Agreement expires or is terminated, including all minimum commitment payments as described in Exhibit B which accrue as of or before the date of such termination or expiration.

(c) Upon termination or expiration of this Agreement, all of COMPANY's license rights herein shall cease and COMPANY shall cease all distribution of Product. Sections 5, 12, 13, 14, 15 and 16 of this Agreement and Section S1(d) of Exhibit 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 Sections 4 and 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 any and all claims arising in connection with the Product(s) or the Product Deliverables, including but not limited to claims regarding MS' duties to correct any Deviations, MS' delivery of Product(s) or Product Deliverables, or indemnification or contribution from MS with respect to any

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infringement of the rights of a third party, whether arising under statutory or common law or otherwise.

(c) SECTION 4 CONTAINS THE ONLY WARRANTIES MADE BY MS. ANY AND ALL OTHER WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING THOSE FOR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY, 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) which occurs during the Immunity Period (as defined below) on account of the manufacture, use, sale or distribution of:

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

2) Future releases of the Product(s), or replacement or successor product(s) 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 COMPANY's 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.

This Agreement, and all non-public information and know how disclosed between the parties pursuant to or in connection with this Agreement, shall be governed by the terms and conditions of the Microsoft Corporation Non-Disclosure Agreement (Standard Reciprocal) dated January 4, 1993 between MS and COMPANY, MS Contract No. 5486-3015.

14. AUDITS AND INSPECTIONS.

(a) During the term of this Agreement and for one (1) year thereafter, 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 acquired, distributed or otherwise disposed of by or for COMPANY, 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, during the term of this Agreement and for one (1) year thereafter 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 COMPANY's and/or COMPANY's Subsidiaries' records and facilities.

(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 Twenty-Five Thousand Dollars (US\$25,000.00) 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 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 shall be 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 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.

17. GENERAL.

(a) 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. COMPANY specifically agrees not to export or re-export Product (i) to any country to which the U.S.A. embargoes or

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restricts the export of goods or services, which as of December 31, 1996 includes, but not necessarily limited to: Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria, or to any national of any such country who COMPANY knows intends to transmit or transport the product(s) back to such country; (ii) to any end-user who COMPANY knows will utilize Product in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any end-user who has been prohibited from participating in U.S.A. export transactions by any federal agency of the U.S.A. government.

(b) 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.

(c) 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.

(d) 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 Product(s), as applicable, shall remain in full force and effect.

(e) 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.

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

(g) 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.

18. EXHIBITS.

The following Exhibits are part of this Agreement:

Exhibit A	Sample End User License Agreement
Exhibit B	Minimum Commitment Payments
Exhibit(s) C	Product and Customer Systems
Exhibit D	Brand Names and Trademarks
Exhibit F	Supplement Rights
Exhibit I (if attached)	Company Use of Third Party Installers
Exhibit L	Language Version Key
Exhibit N	Addresses

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

The terms of the Exhibit(s) shall supersede any inconsistent terms contained in this Agreement.

19. TRANSFER 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, MS and COMPANY previously agreed to permit COMPANY to carry over certain prepaid royalties from the Office License to the Microsoft OEM License Agreement with Minimum Commitment Payments dated August 1, 1995, Microsoft Contract No. A009-5257 (the "Consumer Applications License"), but later rescinded such agreement to transfer prepaid royalties to the Consumer Applications License; and

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

Now, therefore, the parties hereby agree as follows:

(a) 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, but only if and to the extent such prepaid royalties have not been recouped and are not recoupable under any other OEM license between the parties, including without limitation, the Consumer Applications License. It is agreed by MS and COMPANY that this prepaid royalty balance is \$2,309,825.00.

(b) Any prepaid royalties carried over to this Agreement pursuant to this provision (i) may be recouped directly against actual earned royalties due MS for the Custom Value Pack #1 referenced in Exhibit C1 (or for a successor Value Pack that consists of a subsequent Product Release of the same set of component Products), and (ii) shall be applied at the rate of Seven Dollars (US\$7.00) for each Customer System licensed for such Value Pack. In royalty reports submitted by COMPANY, COMPANY shall report the full amount of all royalties due for such Product Value Pack and will reflect and separately indicate such claimed recoupment amounts as may be provided in this section 19. MS shall make the appropriate accounting entries to comply with this provision.

(c) Prepaid royalties carried over to this Agreement and applied against current or future Product royalties shall not offset or reduce COMPANY's obligation to make minimum commitment payments in the amounts set forth in Exhibit B.

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IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the date set forth above. All signed copies of this Agreement shall be deemed originals. Each individual signing on behalf of COMPANY below hereby represents and warrants that he or she has full authority to sign this Agreement and bind COMPANY to perform all duties and obligations contemplated by this Agreement. If COMPANY is located in a jurisdiction in which a corporate seal or "chop" is commonly used as an instrument of agreement execution, in addition to the individual signature provided below, COMPANY's seal or "chop" should be entered below COMPANY's signature block.

MICROSOFT CORPORATION

By (Signature)

John Jenkins
John Jenkins

Name (Print)

Director Int'l OEM Sales

Title

JUN 18 1997

Date

ACER AMERICA CORPORATION

By (Signature)

Robert C. Olstad
Robert C. Olstad

Name (Print)

Director PM

Title

June 16, 1997

Date

COMPANY's seal or "chop"

NOTICE:

This is an OEM distribution license. Product can only be distributed with a Customer System, as specified in Section 2.

EXHIBIT A - SAMPLE END USER LICENSE AGREEMENT

IMPORTANT—READ CAREFULLY: This End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and the manufacturer ("PC Manufacturer" or "Manufacturer") of the computer system or computer system component ("HARDWARE") with which you acquired the Microsoft software product(s) identified above or on the Product Identification Card accompanying this EULA ("SOFTWARE PRODUCT" or "SOFTWARE"). If the SOFTWARE PRODUCT is not accompanied by a new computer system or computer system component, you may not use or copy the SOFTWARE PRODUCT. The SOFTWARE PRODUCT includes computer software, the associated media, any Microsoft hardware accompanying the computer software, any printed materials, and any "online" or electronic documentation. By installing, copying or otherwise using the SOFTWARE PRODUCT, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, Manufacturer and Microsoft Corporation ("Microsoft") are unwilling to license the SOFTWARE PRODUCT to you. In such event, you may not use or copy the SOFTWARE PRODUCT, and you should promptly contact Manufacturer for instructions on return of the product(s) for a refund.

SOFTWARE PRODUCT LICENSE

The SOFTWARE PRODUCT is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The SOFTWARE PRODUCT is licensed, not sold. The term "COMPUTER" as used herein shall mean the HARDWARE, if the HARDWARE is a computer system, or the computer system with which the HARDWARE operates, if the HARDWARE is a computer system component.

1. GRANT OF LICENSE. This EULA grants you the following rights:

- **Software Installation and Use.** Except as otherwise expressly provided in Section 1 of this EULA, you may only install and use one copy of the SOFTWARE PRODUCT on the COMPUTER.
- **SQL Server, Workstation System Installation and Use.** If the SOFTWARE PRODUCT is SQL Server, Workstation System, the following applies to your installation and use of the SOFTWARE PRODUCT subject to the restrictions set forth in Section 2. For each Processor Version (defined below) supplied, the SOFTWARE PRODUCT consists of "Server Software", "Client Software", and "Development Tool" components. You may install and use one copy of one Processor Version of the Server Software component only on the COMPUTER. You may install the Client Software and Development Tool components of the SOFTWARE PRODUCT, regardless of Processor Version, on any number of your computers, provided there is only one copy of each Processor Version of each such component in use at any time.
- **Network Services.** Except as may otherwise be provided below, if the SOFTWARE PRODUCT documentation indicates that the SOFTWARE PRODUCT includes functionality that enables the COMPUTER to share resources over a network with other computers or workstations, any number of computers or workstations may access or otherwise utilize the basic network services of SOFTWARE PRODUCT on the COMPUTER. The basic network services are more fully described in the printed materials accompanying the SOFTWARE PRODUCT and include file and print services and peer Web services.
- **Storage/Network Use.** You may also store or install a copy of the computer software portion of the SOFTWARE PRODUCT on the COMPUTER to allow your other computers to use the SOFTWARE PRODUCT over an internal network, and distribute the SOFTWARE PRODUCT to your other computers over an internal network. However, you must acquire and dedicate a license for the SOFTWARE PRODUCT on each computer on which the SOFTWARE PRODUCT is used or to which it is distributed. A license for the SOFTWARE PRODUCT may not be shared or used concurrently on different computers.
- **Back-up Copy.** If PC Manufacturer has not included a back-up copy of the SOFTWARE PRODUCT with the COMPUTER, you may make a single back-up copy of the computer software portion of the SOFTWARE PRODUCT. You may use the back-up copy solely for archival purposes. **Back-up Utility.** If the SOFTWARE PRODUCT includes a Microsoft back-up utility you may use it to make the single back-up copy described. After the single back-up copy is made, the backup utility will be permanently disabled.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.

- **Speech Recognition.** If the SOFTWARE PRODUCT includes a speech recognition component, it should be understood by you that speech recognition is inherently a statistical process; that recognition errors are inherent in the process of speech recognition; that it is your responsibility to provide for handling such errors and to monitor the speech recognition process and correct any errors. Neither Manufacturer or its suppliers shall be liable for any damages arising out of errors in the speech recognition process.
- **Application Sharing with NetMeeting™ Conferencing Software.** The SOFTWARE PRODUCT may contain technology that enables applications to be shared between two or more computers, even if an application is installed on only one of the computers. You may use this technology with all Microsoft products only for multi-party conferences. For non-Microsoft applications, you should consult the accompanying license agreement or contact the licensor to determine whether application sharing is permitted by the licensor. You must comply with all applicable laws regarding the use of the SOFTWARE PRODUCT.
- **SQL Server, Workstation System.** If the SOFTWARE PRODUCT is SQL Server, Workstation System the following applies to your use of the SOFTWARE PRODUCT. **Open Data Services.** The Open Data Services component of the Server Software is licensed only for use with SQL Server and SQL Server extended stored procedures, and for developing and testing Open Data Services-based software applications. Any other use of the Open Data Services component, such as for general operation of (i) stand-alone gateways, or (ii) custom Open Data Services-based applications, requires a separate license even if they are run on the same computer as SQL Server. **Run-Time Software.** You have a limited nonexclusive, royalty-free right to reproduce and distribute those DB-Library, Net-Library and ODBC files included in Microsoft SQL Server which are required for run-time execution of compiled applications ("Run-Time Files") in conjunction with and as a part of your application software product that is created using the Microsoft SQL Server Software ("Application"), provided that: (a) you comply

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with the export restrictions in Section 6; (b) you do not use Microsoft's name, logo, or trademarks to market your Application; (c) you include a valid copyright notice in your Application; (d) if your Application contains ODBC files, (i) your Application must operate in conjunction with Microsoft SQL Server, and (ii) you agree to distribute all ODBC components specified in the README file in conjunction with your Application; (e) you do not charge separately for the Run-Time Files; (f) you do not modify the Run-Time Files; and (g) you agree to indemnify, hold harmless, and defend Microsoft, Manufacturer, and their suppliers from and against any claims or lawsuits, including attorneys' fees, that arise or result from the use or distribution of your Application. You shall display any patent or proprietary notices on each copy of your Application(s) that contains Run-Time Files, if an as required in the documentation or other materials provided with the SOFTWARE PRODUCT, or subsequently provided to you by Microsoft or Manufacturer.

- **Note On JAVA Support.** The SOFTWARE PRODUCT may contain support for programs written in JAVA. JAVA technology is not fault tolerant and is not designed, manufactured, or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of JAVA technology could lead directly to death, personal injury, or severe physical or environmental damage.
 - **Multiple Processor Version Selection.** The CD or diskette(s) on which the SOFTWARE PRODUCT resides may contain several copies of the SOFTWARE PRODUCT, each of which is compatible with a different microprocessor architecture, such as the x86 architecture or various RISC architectures ("Processor Version(s)"). You may install and use only one copy of one Processor Version of the SOFTWARE PRODUCT on the COMPUTER.
 - **Language Version Selection.** Manufacturer may have elected to provide you with a selection of language versions for one or more of the Microsoft software products licensed under this EULA. If the SOFTWARE PRODUCT is included in more than one language version, you are licensed to use only one of the language versions provided. As part of the setup process for the SOFTWARE PRODUCT you will be given a one-time option to select a language version. Upon selection, the language version selected by you will be set up on the COMPUTER, and the language version(s) not selected by you will be automatically and permanently deleted from the hard disk of the COMPUTER.
 - **Limitations on Reverse Engineering, Decompilation and Disassembly.** You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.
 - **Separation of Components.** The SOFTWARE PRODUCT is licensed as a single product. Its component parts may not be separated for use on more than one computer.
 - **Single COMPUTER.** The SOFTWARE PRODUCT is licensed with the HARDWARE as a single integrated product. The SOFTWARE PRODUCT may only be used with the HARDWARE as set forth in this EULA.
 - **Single EULA.** The package for the SOFTWARE PRODUCT may contain multiple versions of this EULA, such as multiple translations and/or multiple media versions (e.g., in the user documentation and in the software). In this case, you are only licensed to use one (1) copy of the SOFTWARE PRODUCT.
 - **Rental.** You may not rent, lease, or lend the SOFTWARE PRODUCT.
 - **Software Transfer.** You may permanently transfer all of your rights under this EULA only as part of a sale or transfer of the HARDWARE, provided you retain no copies, you transfer all of the SOFTWARE PRODUCT (including all component parts, the media and printed materials, any upgrades, this EULA and, if applicable, the Certificate(s) of Authenticity), and the recipient agrees to the terms of this EULA. If the SOFTWARE PRODUCT is an upgrade, any transfer must include all prior versions of the SOFTWARE PRODUCT.
 - **Termination.** Without prejudice to any other rights, Microsoft or Manufacturer may terminate your right to use the SOFTWARE PRODUCT under this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the SOFTWARE PRODUCT and all of its component parts.
3. **UPGRADES.** If the SOFTWARE PRODUCT is labeled as an upgrade, you must be properly licensed to use a product identified by Microsoft or Manufacturer as being eligible for the upgrade in order to use the SOFTWARE PRODUCT ("Eligible Product"). For the purpose of upgrade products only, "HARDWARE" shall mean the computer system or computer system component with which you received the Eligible Product. A SOFTWARE PRODUCT labeled as an upgrade replaces and/or supplements the Eligible Product which came with the HARDWARE. You may use the resulting upgraded product only in accordance with the terms of this EULA and only with the HARDWARE.
4. **COPYRIGHT.** All title and copyrights in and to the SOFTWARE PRODUCT (including but not limited to any images, photographs, animations, video, audio, music, text and "applets," incorporated into the SOFTWARE PRODUCT), the accompanying printed materials, and any copies of the SOFTWARE PRODUCT, are owned by Microsoft or its suppliers. You may not copy the printed materials accompanying the SOFTWARE PRODUCT. All rights not specifically granted under this EULA are reserved by Microsoft.
5. **SOFTWARE MEDIA.** You may receive the SOFTWARE PRODUCT in more than one medium. Regardless of the type or size of medium you receive, you may use only one medium that is appropriate for the COMPUTER. You may not use or install the other medium on another computer. You may not loan, rent, lease, or otherwise transfer the other medium to another user, except as part of the permanent transfer (as provided above) of the SOFTWARE PRODUCT.
6. **EXPORT RESTRICTIONS.** You agree that neither you nor your customers intend to or will, directly or indirectly, export or transmit (i) the SOFTWARE PRODUCT or related documentation and technical data, or (ii) your Application, as described above in Section 2, developed with SQL Server software, or process, or service that is the direct product of the SOFTWARE PRODUCT to any country to which such export or transmission is restricted by any applicable U.S. regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the U.S. Department of Commerce, or such other governmental entity as may have jurisdiction over such export or

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transmission.

If SOFTWARE PRODUCT is labeled "North America Only Version" above, on the Product Identification Card, or on the SOFTWARE PRODUCT packaging or other written materials, then the following applies: The SOFTWARE PRODUCT is intended for distribution only in the United States and Canada. Export of the SOFTWARE PRODUCT from the United States is regulated by the International Traffic in Arms Regulations (ITAR, 22 CFR 120-130) of the U.S. State Department, Office of Defense Trade Controls. A State Department license is required to export the SOFTWARE PRODUCT outside the United States or Canada. You agree that you will not directly or indirectly, export or re-export the SOFTWARE PRODUCT (or portions thereof) to any country, other than Canada, or to any person, entity or end user subject to U.S. export restrictions without first obtaining a State Department export license. You warrant and represent that neither the U.S. State Department Office of Defense Trade Controls nor any other U.S. federal agency has suspended, revoked or denied your export privileges.

7. **PRODUCT SUPPORT.** Product support for the SOFTWARE PRODUCT is not provided by Microsoft or its subsidiaries. For product support, please refer to Manufacturer's support number provided in the documentation for the HARDWARE. Should you have any questions concerning this EULA, or if you desire to contact Manufacturer for any other reason, please refer to the address provided in the documentation for the HARDWARE.

FOR THE LIMITED WARRANTIES AND SPECIAL PROVISIONS PERTAINING TO YOUR PARTICULAR JURISDICTION, PLEASE REFER TO THE WARRANTIES INCLUDED BELOW OR PROVIDED WITH THE SOFTWARE PRODUCT PRINTED MATERIALS.

APPENDIX
WARRANTY AND SPECIAL PROVISIONS
FOR
THE UNITED STATES OF AMERICA AND ANY OTHER COUNTRY

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, special, incidental, consequential, 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

U.S. GOVERNMENT RESTRICTED RIGHTS. The SOFTWARE PRODUCT 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.

If you acquired the SOFTWARE in the United States of America, this Software License Agreement and Warranty are governed by the laws of the State of Washington, U.S.A. If you acquired the SOFTWARE outside the United States of America, local law may apply.

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PROTECTIVE ORDER Microsoft
F-V Cases, J.C.P.P. No. 401, CA
Superior Court, San Francisco

12

CONFIDENTIAL

Microsoft OEM License Agreement with Minimum Commitment Payments dated July 1, 1997, between MICROSOFT CORPORATION and ACER AMERICA CORPORATION. This document was created by document #0030700002-9.

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ACER 000741

EXHIBIT B
MINIMUM COMMITMENT PAYMENTS

First Period of This Agreement

Date	Payment Amount (US\$)	Cumulative Amount of Payments for Period (US\$)
Signing of this Agreement (payment due upon signing), i.e. July 1, 1997	\$90,000.00	\$90,000.00
October 1, 1997 ("FIRST PAYMENT DATE")	\$90,000.00	\$180,000.00
3 months after the FIRST PAYMENT DATE, i.e., January 1, 1998	\$180,000.00	\$360,000.00
6 months after the FIRST PAYMENT DATE, i.e., April 1, 1998	\$180,000.00	\$540,000.00
9 months after the FIRST PAYMENT DATE, i.e., July 1, 1998	\$180,000.00	\$720,000.00
12 months after the FIRST PAYMENT DATE, i.e., October 1, 1998	\$180,000.00	\$900,000.00
15 months after the FIRST PAYMENT DATE, i.e., January 1, 1999	\$180,000.00	\$1,080,000.00
18 months after the FIRST PAYMENT DATE, i.e., April 1, 1999	\$180,000.00	\$1,260,000.00
21 months after the FIRST PAYMENT DATE, i.e., July 1, 1999	\$180,000.00	\$1,440,000.00
Total First Period Minimum Commitment	\$1,440,000.00	\$1,440,000.00

CONFIDENTIAL

Microsoft OEM License Agreement with Minimum Commitment Payments dated July 1, 1997, between MICROSOFT CORPORATION and ACER AMERICA CORPORATION. This document was created by  document #9030700002-9

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Superior Court, San Francisco

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EXHIBIT C1
APPLICATION PRODUCTS
PRODUCT TABLE

Product Name and Version	Language Version(s) **	Applicable Additional Provisions	Per System Royalty *	Per Copy Royalty *	Billing Type
Custom Value Pack #1 Consists of: A. Encarta® Encyclopedia Version 1997, and B. Works for Windows® 95 Version 4.0, and C. Money 97 Home Banking Edition Version 5.0 (North America Only Version), and D. Interactive CD Sampler Version 5.1	EN	(a), (b), (d), (e), (f), (g), (i), (q), (r), (s)	US\$15.00	US\$N/A	Type II

* A Product is not licensed hereunder unless royalty rate(s) are indicated in the Product table and the Product is indicated as licensed for one or more Customer Systems in the Customer System table of this Exhibit C.

** Language Version Key: Please refer to the Language Version Key in Exhibit L for explanation of Language Version codes. Localized versions are licensed on an if and as available basis.

*** Billing Type: Type I - based on third party reports, Type II - based on COMPANY royalty reports, as specifically set forth in Section 3(d) of the Agreement.

ADDITIONAL PROVISIONS KEY

(Note: Since certain Additional Provisions not applicable to licensed Product(s) may not appear, section lettering may not be consecutive.)

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

- (1) The royalty rate(s) specified above require pre-installation of the Product. COMPANY shall preinstall the Product software solely in accordance with the installation instructions set forth in the Preinstallation Guide², which is included in the preinstallation kit portion of the Product Deliverables. COMPANY may use the information, tools, and materials contained in the OPK solely to preinstall the Product software in accordance with the Preinstallation Guide and for no other purpose. Other than as specified in the Preinstallation Guide, COMPANY shall not modify the Product software, nor delete or remove any features or functionality without the prior written approval of MS in each instance.
- (2) Except as otherwise expressly provided in this Exhibit C for an individual licensed Product or Value Pack, COMPANY must distribute Product documentation with each Customer System distributed with Product software. A COA must be affixed to or accompany each copy of Product documentation that is distributed inside the Customer System package. Company must distribute only one (1) copy of Product documentation with each Product version distributed.
- (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.
- (4) Unless otherwise indicated in this subsection, COMPANY may distribute Product(s) only within the geographical boundaries of the country in which COMPANY is located as indicated by COMPANY's Notices address in Exhibit N. Notwithstanding anything to the contrary in this subsection, if COMPANY is located in Canada or the U.S.A. as indicated by COMPANY's Notices address in Exhibit N, COMPANY may distribute Product(s) only within the geographical boundaries of the United States and Canada, and if COMPANY is located in a member country of the European Union or the European Free Trade Association as indicated by COMPANY's Notices address in Exhibit N, COMPANY may distribute Product(s) only within the geographical boundaries of the member countries of the European Union and the European Free Trade Association.

- (5) 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.
- (6) The royalty rate(s) specified above for Product(s) are based on COMPANY's agreement as follows: 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's front packaging in point of purchase materials, print advertising, packaging, and marketing collateral.
- (b) 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. Information on licensing any of the components separately may be obtained from the MS Account Manager assigned to COMPANY.
- (d) In addition to the required Customer System components specified in the Customer System definition in Section 1(d) of this Agreement, Customer Systems distributed with this Product must include a CD-ROM drive and audio capabilities.
- (e) (1) The Interactive CD Sampler includes trial versions, demonstration versions, and/or online promotional materials for MS applications products.
- (2) The software in localized editions of games Products may be in English.
- (f) (1) Products which are labeled "North America Only Version" may only be distributed within the U.S.A. and Canada. If Product is labeled "North America Only Version" on the Product packaging or other written materials, then the following applies: The Product is intended for distribution only in the United States and Canada. At the time of this Agreement export of the Product from the United States is regulated by the International Traffic in Arms Regulations (ITAR, 22 CFR 120-130) of the U.S. State Department Office of Defense Trade Controls. A State Department license is required to export the Product outside of the United States or Canada. COMPANY agrees that it will not directly or indirectly, export or re-export the Product (or portions thereof) to any country, other than Canada or to any person, entity or end user subject to U.S. Export restrictions without first obtaining a State Department export license. You warrant and represent that neither the U.S. State Department Office of Defense Trade Controls nor any other U.S. federal agency has suspended, revoked or denied your export privileges. Effective January 1, 1997, the U.S. government will transfer export jurisdiction of the Product to the Export Administration Regulations (EAR, 15 CFR 730-799) of the U.S. Commerce Department Bureau of Export Administration. COMPANY acknowledges that the transfer of jurisdiction may have no effect on the export control of the Product and that the restrictions of this paragraph will remain unchanged.
- (2) Additionally, COMPANY acknowledges that it has received and understood MS' then-current version of the "Encryption Product(s) Export Restrictions Notice" which applies to this Product.
- (g) (1) Notwithstanding anything to the contrary in Section 7(c) of the Agreement, COMPANY's use of the Product or Product family Logo shall be subject to the restrictions and guidelines described in the Logo Guidelines for such Logo provided by MS.
- (2) The royalty rate(s) specified above for Product(s) are based on COMPANY's Agreement, according to the restrictions and guidelines contained in the Logo Guidelines, to place the Product or Product family Logo on all point of purchase materials, print advertising, packaging, and marketing collateral that include those Customer Systems distributed with Product(s).
- (j) Custom Value Pack products must be ordered from the Authorized Replicator by the special product number which will be provided by MS after the Agreement or Amendment is executed by both parties.
- (q) For this Product, COMPANY may distribute Product documentation either inside the Customer System package or directly through COMPANY's customer service fulfillment group. A COA must be affixed to or accompany each copy of Product documentation that is distributed inside the Customer System package. COMPANY may distribute only one (1) copy of Product documentation with each Product version distributed.
- (r) Notwithstanding any provision in the Agreement to the contrary, COMPANY may, but is not be obligated to, include a MS product registration card or a product CD front liner or back liner as components of this Product or APM for this Product.
- (s) Notwithstanding Section 2(k) of the Agreement to the contrary, the license for this Value Pack also shall include a license for a successor Value Pack ("Successor Value Pack") that includes the next Product Release ("Next Product Release") of the same set of component Products if and as made generally available for licensing in the direct royalty OEM channel by MS. COMPANY acknowledges that availability and terms and conditions relating to the licensing of the Next Product Release of the component Products are not available at the time this Agreement was prepared. Accordingly, COMPANY agrees that the license for the Successor Value Pack shall be subject to such standard terms and conditions as MS shall provide to COMPANY, and upon request by MS, COMPANY shall execute an amendment to this Agreement to formalize such

terms and conditions prior to distribution of the Successor Value Pack. In royalty reports submitted to MS, COMPANY shall separately identify distribution of the Successor Value Pack from distribution of the current Value Pack.

CUSTOMER SYSTEMS

COMPANY's Customer Systems shall be the assembled computer systems described in the table below which (i) are configured for use only by a single user; and (ii) include at least a CPU, a motherboard, a power supply, and a case. For each Product which COMPANY chooses to license for distribution with the listed Customer System, the letter "s" or "c" in the relevant box indicates whether COMPANY is licensing the Product on a "per system" or "per copy" basis, respectively. New models may be added by agreement of the parties.

At COMPANY's option, for purposes of administrative convenience, COMPANY may designate models by "all models" or by "model line" or "series", (e.g., "Jaguar model line", "Jaguar Pro series", "Jaguar Pro 750 model line", "Jaguar Pro 950 series", etc.). Customer Systems defined by "all models" shall include all current and future models that meet the description specified in the table (e.g., "All models which include a CD-ROM drive, 500 Mb or larger hard disk drive, and sound card.") and utilize the listed microprocessor(s). Customer Systems defined by model line or series shall include all current and future models which include the designated model line or series name, (e.g., "Jaguar Pro model line" includes Jaguar Pro, Jaguar Pro 950, Jaguar Pro S, etc.; "Jaguar series" includes Jaguar, Jaguar Pro, Jaguar Pro 950, Jaguar S400, etc.; "Jaguar Pro 950 series" includes Jaguar Pro 950, Jaguar Pro 955, etc.).

CUSTOMER SYSTEM TABLE

Product Number Key: 1. Custom Value Pack #1 (EN)

Royalty Basis Key: C = per copy; S = per system; if Product box is blank, such Product is not licensed for distribution with the listed Customer System.

Model Name/Model Number	Processor	Product 1	Product 2	Product 3	Product 4	Product 5	Product 6	Product 7
Aspire Series (Models 1150-1199)	Intel 486, Pentium, or compatible	S						
Aspire Series (Models 1200-1289)	Intel 486, Pentium, or compatible	S						
Aspire Series (Models 2150-2199)	Intel 486, Pentium, or compatible	S						
Aspire Series (Models 2250-2299)	Intel 486, Pentium, or compatible	S						

COMPANY hereby represents and warrants that the names and numbers indicated in the Model Name or Model Number column in the table above accurately denote the actual designation used by COMPANY to identify the listed models (on the Customer System case and in COMPANY's internal books and records).

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**ATTACHMENT 1 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) For purposes of this Attachment, "Alternate MS OS" shall mean either (i) Windows for Workgroups, (ii) MS-DOS and Windows, (iii) MS-DOS and Windows for Workgroups, (iv) Windows, or (v) MS-DOS. Notwithstanding anything to the contrary contained in Section 2(a)(ii) or 2(e) of the Agreement, for Customer Systems which include a CD-ROM drive in the Customer System package and on which Product software for either Windows 95 or an Alternate MS OS licensed in accordance with this Agreement is preinstalled on the Customer System hard disk as the sole operating system, COMPANY may distribute, on an encrypted CD-ROM disk, backup images of all licensed software which is rightfully distributed by COMPANY preinstalled on the hard disk of the Customer System ("Recovery CD"). 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"). The Recovery CD may include backup images of (i) MS products for which COMPANY has a valid license from MS for such Customer System; and (ii) any non-MS products that COMPANY distributes preinstalled on the hard disk of the Customer System pursuant to a valid license.

(c) If the Products licensed for and distributed with the Customer System include MS-DOS® or Windows® 95, the Support Utility diskette may also include a single copy of each of the following files in order that such diskette shall be "bootable": command.com; io.sys; msdos.sys, and, for Customer Systems with Windows 95, drvspace.bin ("Boot Files").

(d) MS' authorization to distribute the Recovery CD and Boot Files 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, or directly to licensed end users from COMPANY's customer service fulfillment group to replace a copy of the Recovery CD and Support Utility originally distributed with a licensed Customer System that is (A) defective in media or reproduction, or (B) lost by such licensed end user. COMPANY may distribute no more than one (1) replacement copy of the Recovery CD and Support Utility to an end user per licensed Customer System.

(8) The Recovery CD and Support Utility may be replicated only by an Authorized Replicator.

(9) If the Recovery CD includes Windows 95, COMPANY shall also include with each Customer System distributed with the Recovery CD, a single copy of the "Windows 95 CD" from the Authorized Replicator. The Windows 95 CD includes Windows 95 Product software and other software and information in a form specified by MS for distribution in connection with the Recovery CD. COMPANY shall not include the Windows 95 backup disk utility (MSCSD) with any Customer System distributed with the Recovery CD.

(10) 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.

(11) 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 or Boot Files before the date MS provides written notice to COMPANY approving distribution of such Recovery CD and Support Utility.

(e) MS shall have the right to terminate or restrict COMPANY's rights to distribute a Recovery CD and/or Boot Files 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 and/or Boot Files may be distributed, or by Customer System configuration.

(f) 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.

(g) Provided COMPANY complies with all of the requirements stated above, COMPANY may distribute the Recovery CD and Support Utility without payment of additional royalties to MS.

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v. Casper, L.C.P.P. No. 408, CA
Superior Court, San Francisco

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EXHIBIT D
BRAND NAMES AND TRADEMARKS

COMPANY AND COMPANY SUBSIDIARIES 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 must be listed below:

Brand Names & Trademarks

1.

THIRD PARTY BRAND NAMES AND TRADEMARKS

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, trademarks and model names used for the Customer Systems by a third party must be listed below. Certain Products may not be marketed or distributed under any third party brand names or trademarks. Such Products are indicated in the applicable Exhibit(s) C.

Brand Names & Trademarks

Customer System

Model Name Used by Third Party

EXHIBIT F
SUPPLEMENT RIGHTS

The purpose of this Exhibit is to set forth additional license rights and related restrictions which may apply to Supplement(s) as may be provided by MS from time to time. The actual additional license rights and related restrictions for each Supplement shall be identified in the "Supplement Addendum" for each such Supplement. The license rights shall be royalty-free and, except as specified in the applicable Supplement Addendum, shall be subject to the terms and conditions of the Agreement. COMPANY's license rights to Supplement(s) shall expire the earlier of: (i) termination or expiration of COMPANY's license rights to the Product to which the Supplement corresponds, or (ii) termination or expiration of the Agreement.

1. "Reproduction Rights", if granted, shall mean:

(a) Reproduce, in accordance with specifications provided by MS, the Supplement software in object code form on external media (i.e. diskette or CD-ROM) and end user documentation for the Supplement, if any.

(b) Reproduce Product names and Product trademarks on packaging, labels, and end user documentation for the Supplement subject to the following restrictions:

(i) COMPANY's labeling and packaging for the Supplement shall clearly indicate that the Supplement is a supplement to and/or replacement of the Product provided by COMPANY for use on COMPANY's Computer Systems;

(ii) COMPANY will cause to appear on the container and labels of Supplement the copyright, trademark and patent notice(s), as they appear on the applicable release of Product Deliverables; and

(iii) 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 more prominently than the name "Microsoft".

2. "Distribution on External Media with Customer Systems Rights", if granted, shall mean:

(a) Distribute one (1) copy of the Supplement software, reproduced in accordance with the reproduction rights granted for such Supplement, with each of COMPANY's licensed Customer Systems to be distributed with Product, subject to the following conditions:

(i) COMPANY shall include with each copy of the Supplement a EULA addendum which shall be substantially similar to the sample addendum attached hereto as Attachment 1, except that it shall be adapted as may be required by the laws of any non-USA jurisdiction in which COMPANY distributes the Supplement.

3. "Distribution to Existing End Users Rights", if granted, shall mean:

(a) Distribute one (1) copy of the Supplement software, as acquired from an Authorized Replicator if available, or reproduced in accordance with the reproduction rights, if any, granted for such Supplement, to licensed end users of COMPANY's Customer Systems originally distributed with the Product, subject to the following conditions:

(i) The Supplement shall be distributed directly from COMPANY or an MS-authorized fulfillment source;

(ii) COMPANY shall include with each copy of the Supplement a EULA addendum which shall be substantially similar to the sample addendum attached hereto as Attachment 1, except that it shall be adapted as may be required by the laws of any non-USA jurisdiction in which COMPANY distributes the Supplement; and

(iii) COMPANY shall offer the Supplement at no charge except that COMPANY may charge its reasonable cost of materials and shipping and handling costs.

4. "Distribution via Bulletin Boards Rights", if granted, shall mean:

(a) Post and maintain the object code version of the Supplement on COMPANY's point to point communication link by modem (not Internet) bulletin board corner(s) ("BBS") for distribution to end users of COMPANY's Customer Systems originally distributed with Product, subject to the following conditions:

(i) COMPANY shall ensure that each copy of the Supplement includes a EULA addendum which is substantially similar to the sample addendum attached hereto as Attachment 1, except that it shall be adapted as may be required by the laws of any non-USA jurisdiction in which COMPANY distributes the Supplement; and

(ii) COMPANY shall offer the Supplement at no charge to end users.

5. "Distribution via Internet Link Rights", if granted, shall mean:

(a) Create and maintain a link on COMPANY's Internet home page(s) to MS' copy of the Supplement on MS' Internet home page(s), at the Universe Resource Locator(s) listed in the Supplement Addendum.

6. "Distribution via Internet Page Rights", if granted, shall mean:

(a) Post and maintain the object code version of the Supplement on COMPANY's home page(s) on the Internet for distribution to end users of COMPANY's Customer Systems originally distributed with Product, subject to the following conditions:

(i) COMPANY shall include with each copy of the Supplement a EULA addendum which is substantially similar to the sample addendum attached hereto as Attachment 1, except that it shall be adapted as may be required by the laws of any non-USA jurisdiction in which the Supplement is distributed; and

(ii) COMPANY shall offer the Supplement at no charge to end users.

7. "Other Rights", if granted, and restrictions shall be as set forth in the applicable Supplement Addendum.

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Superior Court, San Francisco

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ATTACHMENT I TO EXHIBIT F

ADDENDUM TO THE MICROSOFT SOFTWARE LICENSE AGREEMENT
FOR _____

IMPORTANT READ THIS FIRST. By using the software files (the "Software") provided with this Addendum, you are agreeing to be bound by the following terms. If you do not agree to be bound by these terms, you may not use the Software.

The Software is provided for the sole purpose of replacing or supplementing certain portions of a licensed copy of the above listed Microsoft software product ("ORIGINAL PRODUCT"). Upon installation, the Software files become a part of the ORIGINAL PRODUCT and are subject to the same warranty and license terms and conditions as the ORIGINAL PRODUCT. If you do not have a valid license to use the ORIGINAL PRODUCT, you may not use the Software. Any other use of the Software is prohibited.

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IN CASES, J.C.P.P. No. 405, CA
Superior Court, San Francisco

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**EXHIBIT L
LANGUAGE VERSIONS KEY**

The codes listed in the table below are used to describe the corresponding language version for licensed language version(s) in Exhibit C, unless an alternate language key is provided in the Exhibit C.

Afrikaans	AF
Arabic	AR
Arabic, French	YD
Bahasa	IN
Basque	EU
Hungarian	BG
Catalan	CA
Chinese - Simplified	XT
Chinese - Traditional	ZH
Croatian	YX
Czech	CS
Danish	DA
Dutch	NL
Eastern European (English)	YL
English (USA)	EN
English (UK)	XZ
English (Australian)	XA
English (Canadian)	XV
Estonian	ET
Farsi	FA
Finnish	FI
French	FR
French (Canadian)	XD
Galician	GL
German	DE
Greek	EL
Hebrew	IW
Hungarian	HU
Italian	IT
Japanese	JA
Korean	KO
Latvian	LV
Lithuanian	LT
Norwegian	NO
Polish	PL
Portuguese	PT
Portuguese (Brazilian)	XC
Romanian	RO
Russian	RU
Serbian	SR
Singhalese	SI

Slovak	SK
Slovenian	SL
Spanish	ES
Spanish (Latin American)	XX
Swedish	SV
Thai	TH
Turkish	TR
Vietnamese	VI

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Superior Court, San Francisco

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ACER 000750

EXHIBIT N: ADDRESSES

COMPANY:

NOTICES:
ACER AMERICA CORPORATION
2641 Orchard Parkway
San Jose, California U.S.A. 95134

Attn.: Mike Culver, General Manager
Telephone: 408-433-3646
Fax: 408-922-2939

BILL TO:
ACER AMERICA CORPORATION
2641 Orchard Parkway
San Jose, California United States 95134

Attn.: Accounts Payable

SHIP TO:
ACER AMERICA CORPORATION
2641 Orchard Parkway
San Jose, California 95134

Attn.: Ricardo Correa, Product Mgr.

COMPANY Support
Telephone No.: 800-445-6495

Royalty reports shall be made to:

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
U.S.A.
Attention: OEM Finance
Fax: +1-206-936-5298

or to such other address as MS may specify from time to time.

If COMPANY is a U.S.A. or Canada based company,
payments shall be made by wire transfer to:

Microsoft Corporation
c/o NationsBank of Texas, N.A.
1401 Elm Street
Dallas, Texas
U.S.A.
ABA 11100001-2
SWIFT Code: NBKUS44DAL
Account # 3750771783

Regarding:
Microsoft OEM #844500 Collections

or to such other address or account as MS may specify from time to time. COMPANY agrees to ensure that the regarding line stated above, the MS license agreement number for the Agreement, and the MS invoice number, if any, are specified on each wire transfer payment made pursuant to the Agreement.

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: +1-206-936-7129

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

Reports:

Payments:

If COMPANY is based outside the U.S.A. and Canada,
payments shall be made by wire transfer to:

Microsoft Corporation
c/o Citibank N.A.
399 Park Avenue
New York, NY 10043
U.S.A.
ABA 021000089
SWIFT Code: CITIUS33
Account # 38468231

Regarding:
Microsoft International OEM Collections

EXHIBIT R
ROYALTY REPORT

COMPANY NAME: _____
 LICENSE #: _____
 REPORTING PERIOD: _____
 REPORT DUE: _____

Customer System		Prod.1	Prod.2	Prod.3	Prod.4	Prod.5	Prod.6	Prod.7
Model Name or Model Number	Product Units / Royalty Type							
1	"Per System" units							
	"Per Copy" units							
2	"Per System" units							
	"Per Copy" units							
3	"Per System" units							
	"Per Copy" units							
4	"Per System" units							
	"Per Copy" units							
5	"Per System" units							
	"Per Copy" units							
6	"Per System" units							
	"Per Copy" units							
7	"Per System" units							
	"Per Copy" units							
8	"Per System" units							
	"Per Copy" units							
9	"Per System" units							
	"Per Copy" units							
10	"Per System" units							
	"Per Copy" units							
SUMMARY								
Total Units	"Per System" units	0	0	0	0	0	0	0
	"Per Copy" units	0	0	0	0	0	0	0

Enter the number of localized version units shipped for each Microsoft Product

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EXHIBIT B (Continued)

Dollar Recap

Product 1									
<i>"Per System" Activity</i>				<i>"Per Copy" Activity</i>					
<u>Units</u>	<u>Royalty</u>	<u>Quantity</u>	<u>Amount Due</u>	<u>Units</u>	<u>Royalty</u>	<u>Quantity</u>	<u>Amount Due</u>		
1 to	0	\$0.00	0	\$0.00	1 to	0	\$0.00	0	\$0.00
		\$0.00					\$0.00		
+		\$0.00	0		+		\$0.00	0	
<i>Localized Version Activity</i>									
	<u>Royalty</u>	<u>Quantity</u>	<u>Amount Due</u>						
	\$0.00	0	\$0.00	Product Total				\$0.00	

Product 2									
<i>"Per System" Activity</i>				<i>"Per Copy" Activity</i>					
<u>Units</u>	<u>Royalty</u>	<u>Quantity</u>	<u>Amount Due</u>	<u>Units</u>	<u>Royalty</u>	<u>Quantity</u>	<u>Amount Due</u>		
1 to	0	\$0.00	0	\$0.00	1 to	0	\$0.00	0	\$0.00
		\$0.00					\$0.00		
+		\$0.00	0		+		\$0.00	0	
<i>Localized Version Activity</i>									
	<u>Royalty</u>	<u>Quantity</u>	<u>Amount Due</u>						
	\$0.00	0	\$0.00	Product Total				\$0.00	

Please send report to:
 Microsoft Corporation
 OEM Accounting Services
 FAX: (1) 206-936-5298

Total Reported	\$0.00
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The undersigned hereby certifies that he/she is duly authorized by COMPANY to complete this report, that the title listed below is his/her true and correct title, and that this report is complete and correct.

Report completed by:

_____ Signature	_____ Date
_____ Print name and title	_____ Telephone Number

EXHIBIT X
COMPANY SUBSIDIARIES

COMPANY Subsidiaries authorized to exercise rights under this Agreement are:

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. Additional COMPANY Subsidiaries may not exercise any rights under this Agreement until MS approves such request in writing. Each COMPANY Subsidiary, whether listed above or subsequently approved by MS, 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 printed on COMPANY Subsidiary's 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 ACER AMERICA CORPORATION, a corporation of California, United States Of America ("COMPANY") pursuant to that certain License Agreement #0030700002 between MS and COMPANY dated July 1, 1997 (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

SIGNED ORIGINAL

AMENDMENT NUMBER 2

Amendment Date: January 1, 1998

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: July 1, 1997

MICROSOFT LICENSE # 5030700002

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. Exhibit C1 of the Agreement is hereby amended and replaced with the attached Exhibit C1.
- 2. Section 19 is amended in its entirety and as amended shall read as follows:

19. TRANSFER OF PREPAID ROYALTIES FROM OTHER AGREEMENTS

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, MS and COMPANY previously agreed to permit COMPANY to carry over certain prepaid royalties from the Office License to the Microsoft OEM License Agreement with Minimum Commitment Payments dated August 1, 1995, Microsoft Contract No. A009-5257 (the "Consumer Applications License"), but later rescinded such agreement to transfer prepaid royalties to the Consumer Applications License; and

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

Whereas, COMPANY also desires to transfer and carry over prepaid royalties from the Consumer Applications License to this Agreement, and Microsoft is willing to do so on the terms and conditions set forth below:

Now, therefore, the parties hereby agree as follows:

(a) 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, but only if and to the extent such prepaid royalties have not been recouped and are not recoupable under any other OEM license between the parties, including without limitation, the Consumer Applications License. It is agreed by MS and COMPANY that this prepaid royalty balance is \$2,309,825.00.

(b) If as of the date the Consumer Applications License expires or is terminated, COMPANY has paid MS all amounts due in accordance with, and has otherwise complied with, the terms and conditions specified in, the Consumer Applications License, as amended, effective as of the date of such expiration or termination of the Consumer Applications License, an amount equal to the difference of i) minimum commitment payments made by COMPANY pursuant to Exhibit B of the Consumer Applications License, minus ii) the amount of said minimum commitment payments determined to represent royalties in accordance with the Consumer Applications License, shall be carried over and transferred to this Agreement as prepaid royalties, but only if and to the extent such prepaid royalties have not been recouped and are not recoupable under any other OEM license between the parties.

(c) Any prepaid royalties carried over to this Agreement pursuant to either subsection (a) or (b) above, (i) may be recouped directly against actual earned royalties due MS for either Custom Value Pack #1 or Custom Value Pack #2 referenced in Exhibit C1 at the rate of Seven Dollars (US\$7.00) for each Customer System licensed for such Value Pack (if licensed on a "per system" royalty basis) or for each copy of such Value Pack (if licensed on a "per copy" royalty basis), and (ii) may be recouped directly against actual earned royalties due MS for Custom Value Pack #3 referenced in Exhibit C1 at the rate of Four Dollars (US\$4.00) for each Customer System licensed for such Product (if licensed on a "per system" royalty basis) or for each copy of such Product (if licensed on a "per copy" royalty basis). In royalty reports submitted by COMPANY, COMPANY shall report the full amount of all

Clarify with Legal →

royalties due for such Value Pack or Product and will reflect and separately indicate such claimed recoupment amounts as may be provided in this section 19. MS shall make the appropriate accounting entries to comply with this provision.

(d) Prepaid royalties carried over to this Agreement and applied against current or future Product royalties shall not offset or reduce COMPANY's obligation to make minimum commitment payments in the amounts set forth in Exhibit B.

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

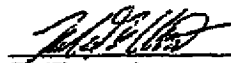

By (Signature)

Barry Spector
Name (Printed)

Regional Manager
Title

December 12, 1997
Date

ACER AMERICA CORPORATION


By (Signature)

Robert C. Distel
Name (Printed)

Director, Marketing
Title

12/11/97
Date

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Superior Court, San Francisco

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EXHIBIT C1
APPLICATION PRODUCTS
PRODUCT TABLE

Product Name and Version	Language Version(s) **	Applicable Additional Provisions	Per System Royalty *	Per Copy Royalty *	Billing Type
1. Custom Value Pack #1 Consists of: A. Encarta® Encyclopedia 1997, and B. Works Version 4.0 for Windows® 95, and C. Money 97 Version 5.0 Home Banking Edition (North America Only Version), and D. Interactive CD Sampler Version 5.1	EN	(a), (b), (d), (e), (f), (g), (i), (j), (r)	US\$N/A	US\$15.00	Type II
2. Custom Value Pack #2 Consists of: A. Encarta® Encyclopedia 1998 (Concise Edition), and B. Works Version 4.5 for Windows® 95, and C. Money 98 (North America Only Version)	EN	(a), (b), (d), (f), (g), (i), (j), (r), (u)	US\$N/A	US\$15.00	Type II
3. Custom Value Pack #3 Consists of: A. Works Version 4.5 for Windows® 95, and B. Money 98 (North America Only Version)	EN	(a), (b), (d), (f), (g), (i), (j), (r), (u)	US\$N/A	US\$8.00	Type II

* A Product is not licensed hereunder unless royalty rate(s) are indicated in the Product table and the Product is indicated as licensed for one or more Customer Systems in the Customer System table of this Exhibit C.

** Language Version Key: Please refer to the Language Version Key in Exhibit L for explanation of Language Version codes.

Localized versions are licensed on an if and as available basis.

*** Billing Type: Type I - based on third party reports, Type II - based on COMPANY royalty reports, as specifically set forth in Section 3(d) of the Agreement.

ADDITIONAL PROVISIONS KEY

(Note: Since certain Additional Provisions not applicable to licensed Product(s) may not appear, section lettering may not be consecutive.)

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

(I) The royalty rate(s) specified above require pre-installation of the Product. COMPANY shall preinstall the Product software solely in accordance with the installation instructions set forth in the Preinstallation Guide", which is included in the preinstallation kit portion of the Product Deliverables. COMPANY may use the information, tools, and materials contained in the OPK solely to preinstall the Product software in accordance with

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the Preinstallation Guide and for no other purpose. Other than as specified in the Preinstallation Guide, COMPANY shall not modify the Product software, nor delete or remove any features or functionality without the prior written approval of MS in each instance.

(2) Except as otherwise expressly provided in this Exhibit C for an individual licensed Product or Value Pack, COMPANY must distribute Product documentation with each Customer System distributed with Product software. A COA must be affixed to or accompany each copy of Product documentation that is distributed inside the Customer System package. Company must distribute only one (1) copy of Product documentation with each Product version distributed.

(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.

(4) Unless otherwise indicated in this subsection, COMPANY may distribute Product(s) only within the geographical boundaries of the country in which COMPANY is located as indicated by COMPANY's Notices address in Exhibit N. Notwithstanding anything to the contrary in this subsection, if COMPANY is located in Canada or the U.S.A. as indicated by COMPANY's Notices address in Exhibit N, COMPANY may distribute Product(s) only within the geographical boundaries of the United States and Canada, and if COMPANY is located in a member country of the European Union or the European Free Trade Association as indicated by COMPANY's Notices address in Exhibit N, COMPANY may distribute Product(s) only within the geographical boundaries of the member countries of the European Union and the European Free Trade Association.

(5) 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)(5) 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.

(6) The royalty rates(s) specified above for Product(s) are based on COMPANY's agreement as follows: 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's front packaging in point of purchase materials, print advertising, packaging, and marketing collateral.

(b) 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. Information on licensing any of the components separately may be obtained from the MS Account Manager assigned to COMPANY.

(d) In addition to the required Customer System components specified in the Customer System definition in Section 1(d) of this Agreement, Customer Systems distributed with this Product must include a CD-ROM drive and audio capabilities.

(e) (i) The Interactive CD Sampler includes trial versions, demonstration versions, and/or online promotional materials for MS applications products.

(2) The software in localized editions of games Products may be in English.

(f) (1) Products which are labeled "North America Only Version" may only be distributed within the U.S.A. and Canada. If Product is labeled "North America Only Version" on the Product packaging or other written materials, then the following applies: The Product is intended for distribution only in the United States and Canada. At the time of this Agreement export of the Product from the United States is regulated under "EI Controls" of the Export Administration Regulations (EAR, 15 CFR 730-799) of the U.S. Commerce Department, Bureau of Export Administration (BXA). A Commerce Department export license is required to export the Product outside of the United States or Canada. COMPANY agrees that it will not, directly or indirectly, export or re-export the Product (or portions thereof) to any country other than Canada, or to any person, entity or end user subject to U.S. Export restrictions without first obtaining a Commerce Department export license. You warrant and represent that neither

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the Commerce Department, Bureau of Export Administration nor any other U.S. federal agency has suspended, revoked or denied your export privileges.

(2) Additionally, COMPANY acknowledges that it has received and understood MS' then-current version of the "Notice to Licensees of Microsoft Export Restricted Products" which applies to this Product.

(g) (1) Notwithstanding anything to the contrary in Section 7(c) of the Agreement, COMPANY's use of the Product or Product family Logo shall be subject to the restrictions and guidelines described in the Logo Guidelines for such Logo provided by MS.

(2) The royalty rate(s) specified above for Product(s) are based on COMPANY's Agreement, according to the restrictions and guidelines contained in the Logo Guidelines, to place the Product or Product family Logo on all point of purchase materials, print advertising, packaging, and marketing collateral that include those Customer Systems distributed with Product(s).

(i) Custom Value Pack products must be ordered from the Authorized Replicator by the special product number which will be provided by MS after the Agreement or Amendment is executed by both parties.

(q) For this Product, COMPANY may distribute Product documentation either inside the Customer System package or directly through COMPANY's customer service fulfillment group. A COA must be affixed to or accompany each copy of Product documentation that is distributed inside the Customer System package. COMPANY may distribute only one (1) copy of Product documentation with each Product version distributed.

(r) Notwithstanding any provision in the Agreement to the contrary, COMPANY may, but is not obligated to, include a MS product registration card or a product CD front liner or back liner as components of this Product or APM for this Product. If MS determines distribution of a printed copy of third party proprietary notices or disclaimers is necessary or advisable to meet MS' contractual obligations to third party licensors of content or software code contained in this Product, upon MS request, COMPANY shall include a printed copy of such proprietary notices in a commercially reasonable manner and within a commercially reasonable time frame under the circumstances as then exist.

(u) COMPANY agrees that the licenses for Value Pack #2 and for Works Version 4.5 for Windows 95 shall be subject to such additional standard terms and conditions, if any, as MS shall advise COMPANY, and upon request by MS prior to November 15, 1997, COMPANY shall execute an amendment to the Agreement to formalize such terms and conditions.

CUSTOMER SYSTEMS

COMPANY's Customer Systems shall be the assembled computer systems described in the table below which (i) are configured for use only by a single user; and (ii) include at least a CPU, a motherboard, a power supply, and a case. For each Product which COMPANY chooses to license for distribution with the listed Customer System, the letter "s" or "c" in the relevant box indicates whether COMPANY is licensing the Product on a "per system" or "per copy" basis, respectively. New models may be added by agreement of the parties.

At COMPANY's option, for purposes of administrative convenience, COMPANY may designate models by "all models" or by "model line" or "series", (e.g., "Jaguar model line", "Jaguar Pro series", "Jaguar Pro 750 model line", "Jaguar Pro 950 series", etc.). Customer Systems defined by "all models" shall include all current and future models that meet the description specified in the table (e.g., "All models which include a CD-ROM drive, 500 Mb or larger hard disk drive, and sound card.") and utilize the listed microprocessor(s). Customer Systems defined by model line or series shall include all current and future models which include the designated model line or series name, (e.g., "Jaguar Pro model line" includes Jaguar Pro, Jaguar Pro 950, Jaguar Pro S, etc.; "Jaguar series" includes Jaguar, Jaguar Pro, Jaguar Pro 950, Jaguar S400, etc.; "Jaguar Pro 950 series" includes Jaguar Pro 950, Jaguar Pro 955, etc.).

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CUSTOMER SYSTEM TABLE

Product Number Key: 1. Custom Value Pack #1 (EN); 2. Custom Value Pack #2 (EN); 3. Custom Value Pack #3 (EN)
Royalty Basis Key: C = per copy; S = per system; if Product box is blank, such Product is not licensed for distribution with the listed Customer System.

Model Name/Model Number	Processor	Product 1	Product 2	Product 3	Product 4	Product 5	Product 6
All Acer Aspire Models	Intel Pentium, Pentium II, or compatible	C	C	C			

COMPANY hereby represents and warrants that the names and numbers indicated in the Model Name or Model Number column in the table above accurately denote the actual designation used by COMPANY to identify the listed models (on the Customer System case and in COMPANY's internal books and records).

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