

PLAINTIFF'S
EXHIBIT
88
Comes v. Microsoft



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MS 0027369
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PLAINTIFF'S
EXHIBIT
1354
C.A. No. 2:96CV645B

MS-PCA 1194889
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Amendment "N" (14)

Effective Date: 5/1/89

Products: Academic Edition Excel 2.1 Packaged Product
Academic Edition Word, 4.0, 5.X Packaged Product

Summary of Changes:

Exhibit 16 (Academic Edition Excel 2.1 & future versions)

Term: 6 months with 1, three month optional extension.

Royalty Provisions: ZDS to pay MS \$113 (60% of SRP) per copy for sales to higher education accounts. Restricted to ZDS's authorized educational on-campus resellers, i.e., book stores, microcomputer centers, etc. ZDS also to sticker box stating it is intended for use only with ZDS machines. Can only be sold with a newly purchased ZDS system. Bill of Materials, \$28.50 to be paid Net 30. Royalty of \$84.50 to be paid and reported quarterly.

ZDS to provide rolling 3 month forecast.

Minimum order quantity 100 Units, order multiple 50. Product once shipped, not returnable.

Limited Warranty.

Exhibit 17 (Academic Edition Word, 4.0 & 5.X)

Term: 6 months with 1, three month optional extension.

Royalty Provisions: ZDS to pay MS \$81 (60% of SRP) per copy for sales to higher education accounts. Restricted to ZDS's authorized educational on-campus resellers, i.e., book stores, microcomputer centers, etc. ZDS also to sticker box stating it is intended for use only with ZDS machines. Can only be sold with a newly purchased ZDS system. Bill of Materials, \$18 to be paid Net 30. Royalty of \$63 to be paid and reported quarterly.

ZDS to provide rolling 3 month forecast.

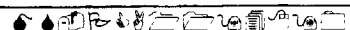
Minimum order quantity 100 Units, order multiple 50. Product once shipped, not returnable.

Limited Warranty.

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Amendment # 14

SIGNED COPY "N"

LICENSE OR ADDENDUM SUMMARY SHEET

AMENDMENT

DATE: 5/20/89

ACCOUNT MANAGER: Kelly Wood

OEM COMPANY: Zenith Data Systems

DATE OF AGREEMENT: 5/1/89

AGREEMENT: 1307-7224

EFFECTIVE DATE OF AGREEMENT: May 1, 1989

MS PRODUCT(S):

Academic Edition Excel 2.1 Packaged Product
Academic Edition Word, 4.0, 5.X Packaged Product

STANDARD: NON-STANDARD: X YEARLY COMMITMENT \$ N/A

SUMMARIZE ALL CHANGES:

Exhibit 16 (Academic Edition Excel, 2.1 & future versions)

Term: 6 months with 1, three month optional extension.

Royalty Provisions: Zenith to pay MS \$113 (60% of SRP) per copy to higher education accounts. Restricted to Zenith's authorized educational on-campus re-sellers, i.e., book stores, microcomputer centers, etc... Zenith also to sticker box stating it is intended for use only with Zenith machines. Can only be sold with a new purchased Zenith system. Bill of Materials, \$28.50 to be paid Net 30. Royalty of \$84.50 to be paid and reported quarterly.

Zenith to provide rolling 3 month forecast.

Minimum order quantity 100 Units, order multiple 50. Product once shipped, not returnable.

Limited Warranty. Applicable language taken from boiler plate.

Exhibit 17 (Academic Edition Word, 4.0 & 5.X)

Term: 6 months with 1, three month optional extension.

Royalty Provisions: Zenith to pay MS \$81 (60% of SRP) per copy to higher education accounts. Restricted to Zenith's authorized educational on-campus re-sellers, i.e., book stores, microcomputer centers, etc... Zenith also to sticker box stating it is intended for use only with Zenith machines. Can only be sold with a newly purchased Zenith system. Bill of Materials, \$18 to be paid Net 30. Royalty of \$63 to be paid and reported quarterly.

Zenith to provide rolling 3 month forecast.

Minimum order quantity 100 Units, order multiple 50. Product once shipped, not returnable.

Limited Warranty. Applicable language taken from boiler plate.

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- 1) ACCOUNT MANAGER: Verify that all pages have been proofread.
X [Signature]
- 2) LEGAL: (If necessary) - DATE: _____ FROM LEGAL DATE: _____
X [Signature] (add new summary sheet)
- 3) SALES MANAGER: Approve all changes and business terms.
X [Signature] 5/21/89
- 4) LICENSE ADMINISTRATOR: Prepare for Executive Review
X _____
- 5) TO DIRECTOR SALES/OEM - DATE: 5/21/89 APPROVED: X [Signature]
- 6) TO JON SHIRLEY - DATE: _____
- 7) MS-SIGNED - DATE: _____

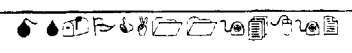
↓
Joachim, SON,

These two amendments
are intended to help "burn up"
Zenith's prepaids (\$4m).
IN both cases Zenith pays
MS COBS. richard
(This will help Zenith's revenue
(our revenue from Zenith) F490.

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Amendment #14

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Amendment
to the License Agreement
Between
ZENITH DATA SYSTEMS CORPORATION and MICROSOFT CORPORATION
Dated September 1, 1987, Contract No. 1307-7224

This is an Amendment to the License Agreement between MICROSOFT CORPORATION ("MS") and ZENITH DATA SYSTEMS CORPORATION ("COMPANY") dated September 1, 1987 ("Agreement"), made and entered into this 1st day of May, 1989. The Effective Date of this amendment shall be May 1, 1989.

NOW, THEREFORE, the parties agree to modify the Agreement as follows:

1) Add Exhibits C16 and C17.

2) In the event of inconsistencies between the Agreement and this Amendment, the terms and conditions of the Amendment shall be controlling.

IN WITNESS WHEREOF, the parties have executed this amendment to the License Agreement as of the date set forth above. All signed copies of this Amendment to the License Agreement shall be deemed originals. This Amendment shall be effective upon execution on behalf of COMPANY by its duly authorized representative and accepted by MS at its Redmond, Washington office.

MICROSOFT CORPORATION

ZENITH DATA SYSTEMS CORPORATION

By [Signature]

By [Signature]

Jon A. Shirley
Name (Print)

John P. Frank
Name (Print)

Title

President
Title

5/15/89
Date

5/15/89
Date

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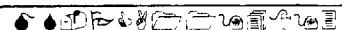


EXHIBIT C16 (PER COPY)

PRODUCT : Microsoft Excel for Windows, Academic Edition 3.5, No. 065-351

VERSION NO : 2.10 and future versions

PRODUCT DELIVERABLE:

- (a) Product above as packaged by Microsoft for the Education Channel.

PRODUCT SPECIFICATIONS :

The Product will have features as specified in the above-referenced Product documentation.

DISTRIBUTION REQUIREMENTS and TERM OF AMENDMENT

(a) COMPANY agrees to pay MS the per unit Product royalty and Bill of Materials cost components as described below, for every sale of Product with a COMPANY system to Higher Education accounts for six months from the Effective Date. PRODUCT shall only be ordered by COMPANY's resellers, one for one for every system ordered for resale to the Zenith Higher Education account Channel. COMPANY agrees to notify its resellers that PRODUCT SOLD UNDER THIS AMENDMENT IS NOT MEANT TO BE DISTRIBUTED ON ANY SYSTEM GOING TO ANY OTHER CHANNEL. Additionally, COMPANY shall affix a sticker to Product stating it is meant to be used only on COMPANY's system. COMPANY shall, at its option, extend the term for one three (3) month period. Provided this Amendment has been properly executed by COMPANY and by an officer of MS, this Amendment shall be effective from the Effective Date first set forth above until the later of: (a) six (6) months from the Effective Date; or (b) six (6) months from MS' notice to COMPANY that Product is first available for shipment under this Amendment. In the event of termination or expiration of the Agreement prior to the termination or expiration of this Amendment, this Amendment including numbered sections of the Agreement incorporated by reference shall survive.

PAYMENT AND REPORTING REQUIREMENTS :

(a) The total price for each unit shall be One hundred Thirteen dollars (US\$113.00) and shall consist of a Bill of Materials cost of Twenty Eight Dollars fifty cents (US\$28.50) plus a per unit royalty cost of Eighty four Dollars fifty cents (US\$84.50.) Payment terms for the Bill of Materials cost component shall be net thirty (30) days from date of invoice. The royalties shall be applied to every copy of Product purchased pursuant to the terms as described in (a) above. These royalties shall be recoupable against any prepaid royalties accrued in the Agreement whether or not the Agreement terminates or expires, and shall be reported on COMPANY's quarterly report. COMPANY agrees to make quarterly royalty reports and payments to MS within 45 days after the end of such quarterly period ending on March 31, June 30, September 30 and December 31, commencing with the quarterly period during which this Amendment first becomes effective. Such report shall specify the number of CUSTOMER SYSTEM(s) sold with Product to the Channel as specified in (a) above, during that calendar quarter. At the point where prepaid royalties are reduced to Zero (US\$0.00), total payment shall be One hundred Thirteen dollars (US\$113.00) and shall be due and payable net thirty (30) days from the date of invoice.

PRODUCT ORDERS/SHIPMENT SCHEDULES

(a) COMPANY shall provide to MS, on a monthly basis, a written three (3) month forecast of its anticipated Product orders. COMPANY must place a written purchase order, sent to the address specified for that purpose in Section 14, for a minimum of 100 hundred (100) units of Product(s) at least 90 days prior to the requested shipment date. All orders must be in multiples of fifty (50) units. Each order must include a written shipment schedule which shall be subject to MS' approval. Order

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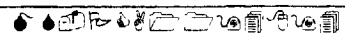


Exhibit C16
(Continued)

modifications must be transmitted in writing to MS at least fifteen (15) days in advance of the requested shipping date. COMPANY shall pay actual and reasonable restocking fees if any, if cancellation occurs within 30 days of scheduled shipment. MS will deliver product to COMPANY packed so as to protect it from damage in transit.

(b) Orders will be processed and shipped after receipt of this signed amendment and COMPANY's duly authorized purchase order.

(c) All prices are FOB MS' shipping point and are exclusive of applicable sale or use taxes or other taxes, import and export fees, duties or tariffs, and any other taxes, duties or fees of any kind which may be levied in connection with the transactions covered herein. Such charges shall be paid by COMPANY, or in lieu thereof COMPANY shall provide an exemption certificate acceptable to MS and the applicable authority. MS, however, shall be responsible for all taxes based upon its personal property ownership or gross or net income.

(d) Freight, handling, and insurance charges are not included in the Product prices.

(e) Product once shipped by MS shall not be returnable by COMPANY except as provided herein.

(f) MS shall inform COMPANY by written notice, sent to the address specified in Section 14, of new version releases two months prior to the release of new versions of product.

VARIATIONS TO SHIPPING/PRICING TERMS:

Any variation to the shipping/pricing terms and conditions contained herein shall be established through mutual consent and shall be indicated on COMPANY's duly authorized purchase order, subject to MS' acceptance. Shipment by MS shall constitute acceptance of COMPANY's purchase order.

LIMITED WARRANTY:

MS warrants that the software furnished hereunder will, at the time of shipment, be free from defects in materials and workmanship and will perform substantially in conformance with MS' applicable standard written specifications for a period of ninety (90) days following the "breaking-the-seal" of MS Product. COMPANY's remedy and MS' obligation under this warranty shall be limited to, at MS' election, return of the Product for Purchase Credit to COMPANY's account or replacement of any defective Product with identical (non-defective) Product. This warranty applies only if: (i) written notice of non-conformance hereunder is received by MS from COMPANY within thirty (30) days after COMPANY's discovery of the defect(s) or non-conformity(ies) within the warranty period; (ii) after MS authorization, the non-conforming Products are returned to MS; and (iii) after examination, MS determines to its satisfaction that the Products are non-conforming. No replacement shall extend the original warranty period. This warranty shall not apply to Products which MS determines have been subject to misuse, neglect, improper installation, repair, alteration, or damage by Company. This limited warranty may be asserted by COMPANY only and not by COMPANY's customers.

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COPYRIGHT MICROSOFT CORPORATION, 1989. All rights reserved.

PRODUCT NAME AND ASSOCIATED TRADEMARK: Microsoft Excel[®] Academic Edition

Exhibit to the License Agreement dated September 1, 1987, between MICROSOFT CORPORATION and ZENITH DATA SYSTEMS CORPORATION.

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EXHIBIT C17 (PER COPY)

PRODUCT : Microsoft Word 3.5*, No. 034-395

VERSION NO : 4.0, 5.X

PRODUCT DELIVERABLE :

- (a) Product above as packaged by Microsoft for the Education Channel.

PRODUCT SPECIFICATIONS :

The Product will have features as specified in the above-referenced Product documentation.

DISTRIBUTION REQUIREMENTS and TERM OF AMENDMENT

(a) COMPANY agrees to pay MS the per unit Product royalty and Bill of Materials cost components as described below, for every sale of Product with a COMPANY system to Higher Education accounts for six months from the Effective Date. PRODUCT shall only be ordered by COMPANY's resellers, one for one for every system ordered for resale to the Zenith Higher Education account Channel. COMPANY agrees to notify its resellers that PRODUCT SOLD UNDER THIS AMENDMENT IS NOT MEANT TO BE DISTRIBUTED ON ANY SYSTEM GOING TO ANY OTHER CHANNEL. Additionally, COMPANY shall affix a sticker to Product stating it is meant to be used only on COMPANY's system. COMPANY shall, at its option, extend the term for one three (3) month period. Provided this Amendment has been properly executed by COMPANY and by an officer of MS, this Amendment shall be effective from the Effective Date first set forth above until the later of: (a) six (6) months from the Effective Date; or (b) six (6) months from MS' notice to COMPANY that Product is first available for shipment under this Amendment. In the event of termination or expiration of the Agreement prior to the termination or expiration of this Amendment, this Amendment including numbered sections of the Agreement incorporated by reference shall survive.

PAYMENT AND REPORTING REQUIREMENTS :

(a) The total price for each unit shall be Eighty one Dollars (\$US81.00) and shall consist of a Bill of Materials cost of Eighteen Dollars (\$US18.00) plus a per unit royalty cost of sixty-three Dollars (\$US63.00). Payment terms for the Bill of Materials cost component shall be net thirty (30) days from the date of invoice. The royalties shall be applied to every copy of Product purchased pursuant to the terms as described in (a) above. These royalties shall be recoupable against any prepaid royalties accrued in the Agreement whether or not the Agreement terminates or expires and shall be reported on COMPANY's quarterly report. COMPANY agrees to make quarterly royalty reports and payments to MS within 45 days after the end of such quarterly period ending on March 31, June 30, September 30 and December 31, commencing with the quarterly period during which this Amendment first becomes effective. Such report shall specify the number of CUSTOMER SYSTEM(s) sold with product to the Channel as specified in (a) above, during that calendar quarter. At the point where prepaid royalties are reduced to Zero (US \$0.00), total payment shall be Eighty one Dollars (US\$81.00) and shall be due and payable net thirty (30) days from the date of invoice.

PRODUCT ORDERS/SHIPMENT SCHEDULES

(a) COMPANY shall provide to MS, on a monthly basis, a written three (3) month forecast of its anticipated Product orders. COMPANY must place a written purchase order, sent to the address specified for that purpose in Section 14, for a minimum of 100 hundred (100) units of Product(s) at least 90 days prior to the requested shipment date. All orders must be in multiples of fifty (50) units.

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Exhibit C17
(Continued)

Each order must include a written shipment schedule which shall be subject to MS' approval. Order modifications must be transmitted in writing to MS at least fifteen (15) days in advance of the requested shipping date. COMPANY shall pay actual and reasonable restocking fees if any, if cancellation occurs within 30 days of scheduled shipment. MS will deliver product to COMPANY packed so as to protect it from damage in transit.

(b) Orders will be processed and shipped after receipt of this signed amendment and COMPANY's duly authorized purchase order.

(c) All prices are FOB MS' shipping point and are exclusive of applicable sale or use taxes or other taxes, import and export fees, duties or tariffs, and any other taxes, duties or fees of any kind which may be levied in connection with the transactions covered herein. Such charges shall be paid by COMPANY, or in lieu thereof COMPANY shall provide an exemption certificate acceptable to MS and the applicable authority. MS, however, shall be responsible for all taxes based upon its personal property ownership or gross or net income.

(d) Freight, handling, and insurance charges are not included in the Product prices.

(e) Product once shipped by MS shall not be returnable by COMPANY except as provided herein.

(f) MS shall inform COMPANY by written notice, sent to the address specified in Section 14, of new version releases two months prior to the release of new versions of product.

VARIATIONS TO SHIPPING/PRICING TERMS:

Any variation to the shipping/pricing terms and conditions contained herein shall be established through mutual consent and shall be indicated on COMPANY's duly authorized purchase order, subject to MS' acceptance. Shipment by MS shall constitute acceptance of COMPANY's purchase order.

LIMITED WARRANTY:

MS warrants that the software furnished hereunder will, at the time of shipment, be free from defects in materials and workmanship and will perform substantially in conformance with MS' applicable standard written specifications for a period of ninety (90) days following the "breaking-the-seal" of MS Product. COMPANY's remedy and MS' obligation under this warranty shall be limited to, at MS' election, return of the Product for Purchase Credit to COMPANY's account or replacement of any defective Product with identical (non-defective) Product. This warranty applies only if: (i) written notice of non-conformance hereunder is received by MS from COMPANY within thirty (30) days after the earlier of COMPANY's discovery of the defect(s) or non-conformity(ies) within the warranty period or termination of this Amendment; (ii) after MS authorization, the non-conforming Products are returned to MS; and (iii) after examination, MS determines to its satisfaction that the Products are non-conforming. No replacement shall extend the original warranty period. This warranty shall not apply to Products which MS determines have been subject to misuse, neglect, improper installation, repair, alteration, or damage by Company. This limited warranty may be asserted by COMPANY only and not by COMPANY's customers.

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PRODUCT NAME AND ASSOCIATED TRADEMARK: Microsoft Word^R Academic Edition

Exhibit to the License Agreement dated September 1, 1987, between MICROSOFT CORPORATION and ZENITH DATA SYSTEMS CORPORATION.

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