

Curtis Hom

To: Pekka Niikonen; Bess Janjic; Lynette Leong
Cc: Sally Nguyen; Ted Hannum; Victoria Savacool; Curtis Hom
Subject: APPROVED OEM-SIGNED: Acer America (A009-4223) New Consumer Apps

**Privilege Material
Redacted**

From: Pekka Niikonen
To: Victoria Savacool
Cc: Curtis Hom; Sally Nguyen; Ted Hannum
Subject: Acer consumer apps agreement
Date: Monday, January 23, 1995 6:04PM

Hi,

Ted made some changes to this agreement after the discussions with Acer. I talked today with Mary Tai from Acer America and we decided to go back to the version that we had before my child care leave. This is because we wanted to get this signed asap and work on those other changes later (Acer doesn't currently have effective license in place since they have all expired).

I'll fax this version to Mary Tai tonight and will fedex her two hard copies tomorrow.

<<File Attachment: ACAMCONS.DOC>>

I expect we will have this signed by Acer by Wednesday or Thursday and I will then work on the following issues from there and include them with the amendment:

- increase min.commitment from 50k units to 75-100k units (and probably lower prices for Encarta/Works)
- include a MM title bundle for soundcard only as multimedia upgrade kit (this was approved by Bengt) with a special language in the agreement about displaying a prominent written notice identifying each MS product bundled with such system
- add Acer's new note book models to bundle with Works

thanks,
-pekka

Microsoft
License or Addendum Summary Sheet

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APR 04 1995

LICENSE ADMIN

Date	Account Manager
March 29, 1995	Pekka Niikkonen
OEM Company	Date of Agreement
Acer America Corporation	March 15, 1995
MS Product(s)	Agreement Number
MS Office 4.2 for Windows Standard Version (diskette, English)	A009-5089
Standard Agreement?	Commitment
Yes () No (X)	US\$12,687,500 (see the details below)

Overview:

With this agreement Acer licenses a diskette version of MS Office (Standard, English) with 50,000 or 100,000 unit annual minimum commitment at \$175 or \$140 royalty per unit, respectively, see the details below. Acer can ship these systems (some models in AcerPower and AcerNote Series) only through their direct sales and their distributor channel to corporate accounts and directly to end-users in some cases. The retail channel is explicitly excluded from this deal. Acer has to ship the Office systems with documentation (Acer can optionally exclude the Visual Basic manual) and without diskettes. The diskettes may be provided as fulfillment by Acer. Office must be pre-installed on a hard drive (systems without hard drives may not be shipped with Office). The term & royalty: Effective date March 15, trial period 2 months. Then at Acer's option per Acer's request extended for 10 months if agreed between MS and Acer. Royalty for the 1st 2mo is \$175 at \$1,460,000 minimum commitment. After that, for the last 10 months, if agreement will be extended, at Acer's option the royalty will be \$175 at 50k units (total \$8,750,000/year) or \$140 at 100k units (total \$12,687,000/year) minimum commitment. MS has to have a right to terminate this agreement with 30 day notice if we determine in good faith that continued distribution of the Product will cause a conflict with our retail channel. Acer has to sign an agreement between Acer and its distributors to comply with same provisions.

Summary of Changes:

- Section 3(f) (ii) added in the end: or defective media (including hard disk drives) for copies of Product software previously licensed under this Agreement.
- Section 3(f) (iii): changed the number of allowed demonstration copies to prospective customers from 50 to 100.
- Section 5(c) added: provided COMPANY is notified promptly in writing of an Infringement Claim and has sole control over its defense or settlement, and MS provides reasonable assistance in the defense of the same.
- Section 6(a)(iv) replaced with 'Notwithstanding anything to the contrary contained in Section 2(a) of this Agreement, in lieu of Product software acquired from an Authorized Replicator, COMPANY may distribute a single backup copy of Preinstalled Product Software on a CD-ROM disc reproduced by COMPANY ("Backup CD") which may be used in conjunction with COMPANY's dedicated user support program ("Acer CPR"). The Backup CD may include backup copies of non-MS products that are distributed by COMPANY preinstalled on the hard disk of the Customer System. The Acer CPR support program shall include a BIOS check to verify that the computer system to which Product files will be downloaded from the Backup CD is a COMPANY Customer System. Product files on the Backup CD shall be encrypted such that the Product files cannot be downloaded or used without decryption using Acer CPR utilities. The Backup CD shall indicate that it is for hard drive recovery only, and the label of the Backup CD shall include the clear and indelible notation, "May be used only with Acer Computer Systems. May not function on other Computer Systems." The Acer CPR manual shall clearly indicate that the Backup CD is for hard drive recovery only on designated Acer computer systems. The Acer CPR support program shall include a pop-up or splash screen that informs the end-user that (i) the software is provided only for purpose of restoring files to the Acer computer system with which the Backup CD originally was provided, and (ii) the Product(s) contained on the Backup CD are subject to the terms of the EULA(s). The end user shall be required to affirmatively accept the terms of the EULA in order to

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proceed with using the Backup CD... except as expressly provided above in this subsection, if COMPANY distributes the Product(s) software on media other than preinstalled on the Customer System hard disk or in ROM, COMPANY shall distribute the Product(s) software on separate media (e.g., separate diskettes, CD-ROM disc, etc.) from non-MS products.

- Section 6(d) replaced 'and' with 'or'
- Section 9. The term of the agreement is divided in two sections because of the 2 month trial period:
 - (a) The term of this Agreement shall run from the Effective Date until May 31, 1995, unless extended or terminated earlier by the parties in accordance with applicable provisions of this Agreement.

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

- Section 11(a): changed the number of copies allowed for support purposes after termination from 1 to 10.
- 13 added: Notwithstanding the foregoing, COMPANY shall have no obligation under this section 13 with respect to any information that COMPANY can conclusively establish: (i) is or subsequently becomes generally publicly available without COMPANY's breach of any obligation owed MS; (ii) became rightfully known to COMPANY prior to MS' disclosure of such information to COMPANY; or (iii) is independently developed by COMPANY without use or access to confidential information or materials.
- Section 16, added (b) and the original becomes (a), needed a definition for the word 'receipt' because it is used in additional provisions: and (b) shall be deemed received as of the date of actual receipt by the party to which such notice, authorization, or request is given.
- The additional provisions key (c) in Exhibit C1:
 - (c) Notwithstanding any provision in the Agreement to the contrary, the following provisions shall apply to this Product (Office for Windows®):

(i) This Product may be distributed with licensed Customer Systems marketed under the Acer brand name ("Office Customer System") only directly to end user customers by COMPANY, i.e., the "Acer Direct Response Channel," or to business end user customers by COMPANY's distributors, value added resellers, system integrators, corporate account resellers, mail order companies and other companies that do not display computer systems for sale predominately to the general public (collectively, "Acer Distributors"), i.e., the "Acer Distributor Channel." COMPANY acknowledges and agrees that Office Customer Systems may not be distributed with this Product through any of the following channel segment customers of COMPANY as defined in International Data Corporation's "US PC Distribution Channels Forecast, 1994-1998" (IDC #9544): (A) Computer Specialty Retailers, (B) Computer Superstores, (C) Mass Merchants, (D) Consumer Electronic Retailers, (E) Office Product Dealers, or (F) Others (e.g., distributors that sell directly to end users and liquidators, home shopping networks and on-line buying services).

(ii) COMPANY shall not distribute any computer hardware and software combination that is identical to an Office Customer System except for absence of the Product unless such combination is designated with a different model number. COMPANY acknowledges and agrees that MS may impose additional restrictions on the distribution of this Product at any time upon written notice to COMPANY.

(iii) COMPANY shall provide Preinstalled Product Software on all hard drives of Customer Systems with which COMPANY distributes Product. In addition to Preinstalled Product Software, COMPANY may provide one (1) additional copy of Product software only either (A) as included on a Backup CD in accordance with Section 6(a)(iv), or (B) as a fulfillment item to end user purchasers of such Customer Systems for use as a backup copy of the Product.

(iv) COMPANY shall provide a copy of the related Product documentation with all Customer Systems with which COMPANY distributes Product, provided however, COMPANY may exclude Product documentation relating to the "Visual Basic" component of this Product.

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

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

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

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

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

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

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

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

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

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

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

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

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

<p>ACCOUNT MANAGER Verify that all pages have been proofread</p> <p>X _____ Date: _____</p>	<p>LEGAL If necessary</p> <p>X <u>Chen</u> 4/12 Date: <u>4/12/95</u></p> <p><i>See attached amount for background</i></p>
<p>SALES MANAGER Approve all changes and business terms</p> <p>X _____ Date: _____</p>	<p>LICENSE ADMINISTRATOR Prepare for executive review</p> <p>X _____ Date: _____</p>

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SALES DIRECTOR <i>[Signature]</i> Date: 4/27/95	To MS Executive for [unclear] X _____ Date: _____
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