

MICROSOFT CORPORATION DELIVERY SERVICE PARTNER
FULFILLMENT AND DISTRIBUTION AGREEMENT
(ROYALTY DSP)

548D-7038 dated January 1, 1997

with ACER AMERICA CORPORATION, a Corporation of California.

SIGNED
ORIGINAL

This Fulfillment and Distribution License Agreement (the "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 ACER AMERICA CORPORATION specified above ("ACER"). All rights granted by MS to ACER hereunder shall be exercised solely by ACER COMPONENTS DIVISION, A WHOLLY OWNED DIVISION OF ACER.

The parties agree as follows:

1. DEFINITIONS

The following terms shall have the following meanings:

- (a) "Authorized Replicator" shall mean MS or an entity licensed by MS to manufacture and fulfill ACER's orders for the Product. MS shall from time to time provide a list of such entities to ACER.
- (b) "OEM Customer(s)" shall mean, collectively, OEMs and other entities, if any, as may be identified by MS in Exhibit(s) C to the Agreement.
- (c) "Computer Hardware" shall mean a computer system or computer system component which meets the requirements of the OEM Distribution Agreement for a particular Product.
- (d) "Government Procedures" shall mean any and all government approvals, registrations, notice filings and other documentation or actions, if any, as may be necessary for ACER's performance under this Agreement.
- (e) "OEM(s)" shall mean original equipment manufacturer(s) and/or assembler(s) of Computer Hardware.
- (f) "OEM Distribution Agreement(s)" shall mean the license agreement(s) between MS and the OEM which shall govern the terms of use and distribution of Product by the OEM. OEM Distribution Agreement(s) may be in the form of break-the-seal agreements, signed agreement(s), or in such other form as MS may provide.
- (g) "Package" shall mean a container consisting of a single or multiple units of Product to which an OEM Distribution Agreement is attached or any other configuration as MS may provide.
- (h) "Product(s)" shall mean the copyrighted and/or patented MS products made available to ACER from an Authorized Replicator, including where applicable the specified user documentation. A current list of Products is set forth in the attached Exhibit(s) A which MS may revise from time to time upon notice.
- (i) "Royalty/Price List(s)" shall mean the list(s) of Products and corresponding royalty rate(s) and prices provided by MS. The current Royalty/Price Lists are provided in Exhibit(s) A to this Agreement.
- (j) "Principal Language Version(s)" shall mean the language version(s) listed in Exhibit E, as may be updated by MS from time to time on notice to ACER.
- (k) "Territory" shall mean the Territory specified in Exhibit E.

2. LICENSE GRANT AND CONDITIONS

- (a) MS grants to ACER the non-exclusive limited rights (i) to acquire Product from Authorized Replicators, and (ii) to fulfill orders only from and distribute Product(s) only directly to OEM Customer(s) located in the Territory pursuant to the applicable OEM Agreement.
- (b) ACER, in addition to distribution of Product Packages as specified in Section 6, and listed on Exhibit A, may install Products on, and distribute Products with, Computer Hardware which is distributed by ACER to OEM Customers only, provided ACER (i) complies with all terms and conditions of the applicable OEM Distribution Agreement with respect to Product distributed with Computer Hardware; (ii) obligates OEM Customers to comply with all terms and conditions of the applicable OEM Distribution Agreement (example, Attachment 1); and (iii) separately reports all such units of Product distributed with Computer Hardware to OEM Customers as part of ACER's monthly sales-out report to MS.
- (c) ACER agrees to comply with the additional provisions in Exhibits B, C, and D, as may be updated from time to time by MS upon notice. ACER further agrees to comply with the provisions of Exhibit Z, if any.
- (d) ACER acknowledges that MS may require the Authorized Replicator to refuse to fill orders for Product in quantities beyond those which, in MS' opinion, ACER will be able to distribute in compliance with the terms (including timely payment) of this Agreement. ACER further acknowledges that MS may suspend ACER's license rights hereunder and/or require Authorized Replicator to refuse to fill ACER's orders if ACER fails to comply with any provision of this Agreement or any other agreement between MS and ACER in which all rights granted to ACER are exercised solely by ACER COMPONENTS DIVISION.
- (e) MS reserves all rights not expressly granted herein.

3. SPECIFIC DUTIES OF ACER

- (a) ACER shall warehouse Product as necessary to timely and properly fulfill orders placed by OEM Customer(s). ACER shall maintain an order tracking system allowing complete tracking of sales-out information for shipments to each OEM Customer as set forth in the sales-out report format attached in Exhibit R or otherwise provided by MS. ACER shall have thirty (30) days from the date of MS' notice to implement changes in the sales-out report format.
- (b) Other than providing a ACER warranty to the OEM Customer with respect to Product materials, ACER shall have no right to make any representations or warranties for Product(s). ACER shall also make no representations or warranties whatsoever on behalf of or in the name of MS. ACER hereby agrees to indemnify and hold MS harmless from any expenses which MS may incur arising out of or resulting from any unauthorized warranty or unauthorized representation by ACER.

ACER shall comply with any requirements stated for OEM agreements and registration stated in Exhibit(s) D. Without limitation, if specified as required in Exhibit(s) D.

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Plaintiff's Exhibit

5841

Comes V. Microsoft

ACER 000712

provide the applicable OEM Distribution Agreement form to OEMs and/or collect the signed forms from OEMs.

(d) (i) With respect to any Product which is defective in materials and which is returned to ACER by an OEM Customer, ACER agrees to accept return of such defective Product, and at ACER's option, either issue a credit to the OEM Customer's account or replace any such defective Product in accordance with 3(d)(iii) below.

(ii) With respect to any Product which does not conform to the limited warranty in the OEM Distribution Agreement and which is returned to ACER by an OEM Customer, ACER agrees to accept return of such Product, if and as directed by MS. If so directed, ACER agrees to either, at MS' option, issue a credit to the OEM Customer's account or replace any such Product in accordance with 3(d)(iii) below.

(iii) In case ACER replaces Product in compliance with Sections 3(d)(i) and 3(d)(ii), ACER may only make replacement Product available to OEM Customers through an MS authorized fulfillment source or such other fulfillment mechanism as MS may provide at no charge to the OEM Customer, except for ACER's reasonable cost of materials and shipping and handling costs. ACER shall comply with MS' then current specifications for fulfillment of replacement Product. MS shall provide ACER from time to time with a list of fulfillment sources authorized by MS.

(e) ACER agrees to make commercially reasonable efforts to educate OEM Customers on MS license terms and conditions for Product acquired from ACER. Further, ACER agrees to provide support for MS' anti-piracy education and control efforts, including, without limitation, educating OEM Customers and others regarding MS OEM programs and distribution of anti-piracy literature and other information that MS may provide.

4. LIMITED WARRANTY

(a) The only warranties made by MS for the Product are those warranties provided in the OEM Distribution Agreement.

(b) MS makes no warranties as to defects in media or materials of Product not manufactured by MS. Such warranties, if any, shall be made by the Authorized Replicator that manufactured such Product.

(c) THE ABOVE REFERENCED LIMITED WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON MS' PART. THIS SECTION 4 (c) SHALL IN NO WAY DIMINISH MS' OBLIGATIONS SET FORTH IN SECTION 5.

5. COPYRIGHT, TRADEMARK AND TRADE SECRET INFRINGEMENT

(a) MS agrees to defend ACER 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 or trade secrets enforceable in any Included Jurisdictions (defined in Section 5(c), 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 ACER provides reasonable assistance in the defense of the same.

(b) MS shall have no liability for any infringement claim (including, without limitation, Indemnified Claims) based on ACER's (i) distribution, or use of any Product after MS' actual notice that ACER should cease distribution or use of such Product; or (ii) combination of a Product with a non-MS product, program or data; or (iii) adaptation or modification of any Product. For all claims described in this Section 5(b), ACER agrees to indemnify and defend MS from and against all damages, costs and expenses, including reasonable attorneys' fees.

(c) MS shall have no obligation to ACER for any infringement claim which arises outside the geographical boundaries of the United States, Canada, Australia, Japan, the European Union and Norway ("Included Jurisdictions").

6. LICENSE RESTRICTIONS

(a) ACER shall distribute Product Packages only in the form delivered to ACER by the Authorized Replicator. ACER shall not alter Products or Product Packages and shall not make, or cause to be made, copies of Product software or documentation. Except as specifically permitted by Section 2(b) and 3(d)(iii) above, ACER shall distribute Products to OEM Customers in unopened Packages as shipped by an Authorized Replicator.

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

(c) MS reserves the right to distribute Product directly to any OEM Customer at MS' sole discretion.

(d) ACER shall not deliver Product(s) to OEM Customers other than in accordance with the provisions set forth in this Agreement (including Exhibits).

(e) MS reserves the right to suspend or terminate an OEM Customer's authorization to acquire Product from ACER for any reason, in MS' sole discretion, including, without limitation, if such OEM Customer and/or any customer of such OEM Customer has violated an OEM Distribution Agreement or any intellectual property right of MS. ACER shall not distribute Product to any OEM Customer whose right to acquire Product has been suspended or terminated. MS may make available to ACER in an online or printed form, data concerning current or potential OEM Customers in the Territory. Such data shall be considered confidential and usage shall be strictly according to guidelines as provided by MS.

7. ORDER FULFILLMENT

ACER shall provide a telephone number (which shall be toll-free if such service is available), staffed with employees who shall provide full customer service, as relates to order fulfillment, during standard business hours on all business days. In addition, ACER shall maintain sufficient, properly functioning 24-hour fax lines.

8. COPYRIGHT NOTICES; TRADEMARKS

(a) ACER agrees to use the trademark symbol "®" or "™" in a superscript and clearly indicate MS' ownership of the trademark(s) whenever the Product name is first mentioned in any advertisement, brochure or in any other manner in connection with the Product.

ACER shall, upon request, provide MS samples of all literature prepared by ACER which uses Product name(s). ACER agrees to maintain the high level of quality accorded products associated with and marketed by MS under MS' trademarks.

(b) ACER shall undertake no action that will interfere with or diminish MS' rights, title and/or interest in such trademark(s), trade name(s), logo and/or Product name(s). ACER shall not, at any time, use any name or trademark confusingly similar to an MS trademark, trade name and/or Product name. ACER shall not use or display MS' logo(s) without MS' prior written permission.

(c) ACER hereby authorizes MS and its subsidiaries to publish ACER's name, trade names, trademarks, and logos in connection with ACER's participation in the Delivery Service Partner Program. MS and its subsidiaries shall not modify such names, trade names, trademarks and logos. ACER shall provide artwork for ACER's logos, in printed and/or electronic form, upon request from MS.

9. NONDISCLOSURE AGREEMENT

ACER shall keep confidential the terms and conditions of this Agreement (including Royalty/Price List(s)), OEM Customer registration information, and other non-public information and know-how disclosed to ACER by MS. However, ACER may disclose the terms and conditions of this Agreement in confidence or if required by law, judicial action or government agency to its immediate legal and financial consultants as required in the ordinary course of ACER's business.

10. PRICE, PAYMENT AND REPORTS

(a) (i) ACER agrees to pay to MS the applicable royalty as shown in the then current Royalty/Price List for each Package of Product shipped by ACER. Royalties exclude any charges by the Authorized Replicator for Packages ordered by ACER. MS reserves the right to modify such royalty rates and/or prices upon notice to ACER. Changes to the Royalty/Price List shall be effective as of the date specified on the Royalty/Price List.

(ii) If ACER distributes individual units of Product with Computer Hardware in accordance with Section 2(b), ACER shall report the per Package royalty on ACER's monthly royalty report for the month in which the Package is first opened by ACER.

(iii) Unless otherwise indicated by MS in the Royalty/Price List or by separate notice to ACER, if a Product is removed from the Royalty/Price List, ACER may, pursuant to the terms of this Agreement, distribute ACER's inventory of Product until the earlier of (A) ninety days after the Product is removed from the Royalty/Price List; or (B) the date of termination or expiration of this Agreement. ACER shall not place any new orders for such Product from Authorized Replicators, unless separately agreed in writing by MS. ACER shall report all such Product on ACER's monthly reports. The royalty rate for any such Product shall be as indicated on the last Royalty/Price List which included such Product.

(iv) ACER agrees to make payment, inventory and sales-out reports in the English language to MS for all copies of Product shipped by ACER during each calendar month. ACER shall provide hard copy and electronic reports in the form described in Exhibit R to this Agreement, or in such other form as MS may provide from time to time. ACER's reports shall be certified as complete and

correct and signed by a duly authorized representative. ACER shall submit such reports to MS within ten (10) days after the end of each calendar month, and ACER's final report within five (5) days of termination or expiration of this Agreement.

(v) In the event that ACER's monthly reports are not received by MS within the above-specified period, ACER authorizes MS to bill ACER, and ACER agrees to pay MS, for all Product in inventory and for all Product acquired based on reports submitted to MS by the Authorized Replicator(s) for the subject month. In such event and at MS' option, ACER shall pay MS based on reports submitted to MS by the Authorized Replicator(s) for all subsequent months during the term of this Agreement. MS' monthly billing of ACER based on reports submitted by the Authorized Replicator(s) shall not relieve ACER of any reporting or payment obligations under the Agreement.

(vi) ACER shall pay royalties to MS by the end of the month in which the monthly report is due. A one percent (1%) monthly finance charge will be assessed on all amounts that are past due, including receipts for foreign taxes withheld in accordance with Section 10(e). ACER shall pay charges from Authorized Replicator in accordance with the terms and conditions offered by Authorized Replicator. ACER's obligations to pay MS royalties and charges from Authorized Replicator are unconditional. Failure by ACER to meet payment terms or reporting requirements may result in a hold of all pending ACER orders or termination of this Agreement.

(b) ACER agrees to make reports and royalty payments to MS as specified in Exhibit N.

(c) Upon written notice to ACER, MS may require ACER to pay the Product royalties to an intermediary and/or upon delivery of Product to ACER.

(d) Royalties exclude any charges by Authorized Replicator for units of Product ordered by ACER. Royalties and prices also exclude any taxes, duties, fees, excises or tariffs imposed on any of ACER's activities in connection with this Agreement. Such charges, taxes, duties, fees, excises or tariffs, if any, shall be paid by ACER.

(e) In the event income taxes are required to be withheld by any non-U.S.A. government on payments to MS required hereunder, provided that ACER 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, ACER may deduct such taxes from the amount owed MS and shall pay them to the appropriate tax authority. ACER will make certain that any taxes withheld are minimized to the extent permitted by the applicable law.

(f) If ACER replaces returned Product in accordance with Section 3(d), no royalty shall accrue for replacement Product shipped, provided that such replacement Product is distributed in accordance with Section 3(d)(iii).

(g) If ACER issues a credit to an OEM Customer for returned Product in accordance with Section 3(d), ACER may claim a credit for the corresponding Product royalty on ACER's next royalty report.

(h) In addition to MS' other remedies, for each unit of Product(s) distributed by ACER in a manner inconsistent with the terms of this Agreement, MS may charge ACER an additional royalty equal to thirty percent (30%) of the highest royalty rate stated in Exhibit A for the Product. ACER shall pay such additional royalty within 30 days of receipt of MS' invoice.

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14 Cases, J.C.P. No. 98, CA
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Page

Microsoft Corporation Delivery Service Partner Fulfillment and Distribution Agreement dated January 1, 1997 between MICROSOFT CORPORATION and ACER AMERICA CORPORATION.

Agreement dated January 1, 1997 between MICROSOFT

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11. TERM

(a) Provided this Agreement has been properly executed by ACER and by an officer of MS, the term of this Agreement shall run from the Effective Date through June 30, 1997, unless terminated earlier pursuant to Section 12.

(b) Prior to the date all necessary Government Procedures related to this Agreement have been completed, ACER may not order or take delivery of any Product from an Authorized Replicator, and may not distribute any Product to OEM Customers. If ACER orders or takes delivery of any Product from an Authorized Replicator, or distributes any Product to OEM Customers, such action shall constitute a representation and warranty from ACER that all Government Procedures necessary to realize the purposes of this Agreement, if any, have been completed.

(c) Provided this Agreement is not terminated by ACER prior to the expiration date stated in Section 11(a) or by MS as a result of ACER's breach of the terms of the Agreement, this Agreement shall be automatically extended for a period of thirty (30) days from the date of termination or expiration for the limited purpose of allowing ACER to distribute inventory of Product ("Limited Purpose Extension"). During the Limited Purpose Extension subject to applicable terms and restrictions in the Agreement, ACER may distribute licensed Product(s) remaining in inventory as of the date of termination or expiration, provided, however, ACER shall not have rights to acquire Product(s) or any Product component(s) from an Authorized Replicator during the Limited Purpose Extension. ACER shall comply with all payment and reporting requirements of the Agreement for all Product distributed during the Limited Purpose Extension.

12. DEFAULT AND TERMINATION

(a) This Agreement may terminate effective upon receipt of notice due to a breach of Sections 2(a), 2(b), 6(a), 6(b), 6(d), 6(e), 9, 10(a), 10(b), 10(e), 15 or upon termination of any other agreement between the parties due to a party's default.

(b) Notwithstanding Section 12(a), MS or ACER may terminate this Agreement at any time, with or without cause, upon thirty (30) days prior notice.

(c) The rights and remedies of the parties provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

13. RIGHTS AND OBLIGATIONS UPON EXPIRATION OR TERMINATION

(a) Except as provided in Section 11(c), upon the expiration or termination of this Agreement, ACER shall cease distributing Product. MS shall not be liable for any costs associated with ACER's inventory of Product including any charges by the Authorized Replicator.

(b) Upon the expiration or termination of this Agreement, ACER shall return all Product inventory (except Product distributed in accordance with the provisions of Section 11(c)), papers, materials, and other property of MS held pursuant to this Agreement to either MS or its designee, and each party shall assist the other in effecting an orderly termination of the business affairs contemplated hereunder.

(c) Except as expressly provided in Section 11(c), upon termination or expiration of this Agreement, ACER shall cease distribution of Product and all of ACER's license rights herein shall cease. Sections 4, 5, 9, 14, 15, 16 and 17 of this Agreement shall survive termination or expiration of this Agreement.

14. LIMITATION OF LIABILITY

NEITHER MS NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE PRODUCTS WHICH ARE THE SUBJECT OF THIS AGREEMENT SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THE USE, DISTRIBUTION OR INABILITY TO USE OR DISTRIBUTE THE PRODUCT(S) EVEN IF MS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING EXCLUSION SHALL NOT APPLY TO ANY SUCH TYPES OF DAMAGES WHICH ARE INCLUDED IN ANY JUDGEMENT WHICH MICROSOFT IS OBLIGATED TO PAY UNDER SECTION 5. IN NO EVENT SHALL MS' LIABILITY UNDER THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT EXCEED THE ROYALTIES PAID BY ACER TO MS HEREUNDER.

15. RECORDS, AUDITS AND INSPECTIONS

(a) During the term of this Agreement and for three years thereafter, ACER shall maintain at its principal administrative facilities all appropriate books and records relating to performance of this Agreement. MS may cause an audit and/or inspection to be made of the applicable ACER records and facilities in order to verify statements issued by ACER and ACER's compliance with the terms of this Agreement. Any audit and/or inspection shall be conducted during regular business hours at ACER's 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).

(b) ACER shall provide the audit or inspection team with access to all records and/or facilities so that the team may complete a proper and thorough audit or inspection.

(c) Prompt adjustment shall be made to compensate for any errors or omissions disclosed by such audit or inspection. Any such audit shall be paid for by MS unless material discrepancies are disclosed. "Material" shall mean a breach of Section 2(a) or 6(a), or the lesser of Ten Thousand Dollars (US\$10,000.00) or five percent (5%) of the amount that was reported. If material discrepancies are disclosed, ACER agrees to pay MS for the costs associated with the audit. Further, ACER shall pay MS an additional royalty of twenty-five percent (25%) of the applicable royalty for each unit of Product ACER failed to report that is in excess of five percent (5%) of the number of units actually reported by ACER.

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16. NOTICES AND REQUESTS

(a) Notification of suspension or termination of an OEM Customer's authorization to acquire Product, modified Royalty/Price Lists, and changes to Exhibits B, C, D, E and R may be delivered, ~~at MS' option, by posting to MS DSP information website, when available.~~

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by electronic mail (email) to ACER at the email address listed in Exhibit N, and by letter notification to ACER at the address listed for notices in Exhibit N. All other notices and requests shall be delivered by written notice to the address(es) indicated 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).

(b) All notices, updates, authorizations, requests and other communications sent pursuant to this Agreement shall be deemed given: (i) if in written form, on the day they are (A) deposited in the U.S.A. mails, postage prepaid, certified or registered, return receipt requested, or (B) sent by air express courier, charges prepaid; (ii) if by facsimile transmission or email, on the day the facsimile or email was transmitted. ~~ACER shall check a web site location designated by MS for updated information periodically, including on the last day of each month.~~

John [unclear] initials *Page 59 '97*

17. CONTROLLING LAW; NO FRANCHISE; ATTORNEY'S FEES

(a) This Agreement shall be construed and controlled by the laws of the State of Washington, U.S.A., and ACER consents to jurisdiction and venue in the state and federal courts sitting in the State of Washington, U.S.A. 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) 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 as defined under the laws of the State of Washington.

(c) If either MS or ACER 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.

18. PROHIBITION AGAINST ASSIGNMENT AND SUBLICICENSE

This Agreement, and any rights or obligations hereunder, are personal and nontransferable. They shall not be assigned, sublicensed, or otherwise transferred (whether by contract or operation of law) without MS' prior written approval.

19. GENERAL

(a) 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. Except as expressly provided for updates to Exhibits, the Agreement shall not be modified except by a written agreement signed on behalf of ACER and MS by their respective duly authorized representatives. Submission of Product orders to Authorized Replicator(s) or distribution of Product after the effective date of any updates to the Exhibits shall constitute ACER's acceptance of such updates. Unless agreed to in a separate writing signed by both parties, 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.

(b) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the

remaining provisions shall remain in full force and effect. If this Agreement as it relates to any Product(s) licensed hereunder shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, or if this Agreement is terminated as to particular Product(s), this Agreement shall remain in full force and effect as to the remaining Product(s).

(c) 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.

(d) ACER acknowledges that the Products (including software, user manuals, technical data about the products, and services) acquired hereunder are subject to the export control laws and regulations of the United States of America, and any amendments thereof. ACER 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. As of August 30, 1996, restricted countries included, but were not necessarily limited to, Cuba, Iran, Iraq, Libya, North Korea, and Syria. ACER warrants and represents that neither the U.S.A. Bureau of Export Administration nor any other federal agency has suspended, revoked or denied ACER's export privileges.

(e) Any Product which ACER distributes or licenses to, or on behalf of, the United States of America, its agencies and/or instrumentalities, shall be provided by ACER with RESTRICTED RIGHTS in accordance with the OEM Distribution Agreement and/or the end user license agreement provided with the Product.

(f) The Section headings used in this Agreement and the attached Exhibits are intended for convenience only and shall not be deemed to supersede or modify any provisions.

(g) ACER shall, at its own expense, promptly obtain and arrange for the maintenance of Government Procedures. If any Government Procedures have not been completed by ACER within sixty (60) days of the Effective Date, MS may immediately terminate this Agreement by providing notice to ACER in accordance with Section 16.

(h) ACER acknowledges that ACER's rights to order Product hereunder is subject to credit approval by MS. Based on ACER's established credit worthiness and payment history, MS shall have the right to establish a credit limit for ACER's orders of Products hereunder and to require ACER to provide a third party guarantee, performance bond, letter of credit, or other security to ensure ACER's performance under this Agreement. MS reserves the right, upon periodic review of ACER's payment history and overall credit worthiness, to adjust such credit limit or security requirement on notice to ACER and/or to require payment of royalties in advance or on delivery of Product. ACER will provide, upon request from MS, periodic updated financial statements during the term of this Agreement.

20. PRIOR AGREEMENT

(a) As of its Effective Date, the Agreement shall supersede any prior Microsoft Corporation Delivery Service Partner Fulfillment and Distribution Agreement ("Prior Agreement") between MS and ACER for the same Territory.

(b) Provided ACER has complied with all terms and conditions, including payment, under the Prior Agreement, any distribution of Product in ACER's inventory as of the Effective Date which was

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acquired by ACER under the Prior Agreement, shall be in accordance with the terms and conditions of this Agreement.

21. EXHIBITS

The following Exhibits are part of this Agreement:

- Exhibit(s) A Products and Royalty/Price List(s)
- Exhibit (s) B Additional Provisions for Products
- Exhibit(s) C (if attached) Marketing and Promotional Programs
- Exhibit(s) D (if attached) OEM Registration Requirements

- Exhibit E Territory and Principal Language Version(s)
- Exhibit N Addresses
- Exhibit P (if attached) Promissory Note, Bond, or other Financial Guarantee Instrument
- Exhibit R Report Form(s)
- Exhibit Z (if attached) Additional Country/Region Provisions
- Attachment I OEM Distribution Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above. All signed copies of this Agreement shall be deemed originals. The individual signing on behalf of ACER below hereby represents and warrants that he or she has full authority to sign this Agreement and bind ACER to perform all duties and obligations contemplated by this Agreement. If ACER 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, ACER's seal or "chop" may be entered below ACER's signature block.

MICROSOFT CORPORATION
 By *[Signature]*
 Name (Print) Boris Mednicoff
OEM Group Manager
 Title Jan. 28, 1997
 Date

Acer America Corporation
 ACER *[Signature]*
 By Paul Su
 Name (Print) SR. Director
 Title Jan. 27 '97
 Date



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

**EXHIBIT A - GENERAL PRODUCTS
ROYALTY PRICE LIST
(Category 2A)**

ACER may order the following Products from an Authorized Replicator, on an if and as available basis. Product may not be available in all licensed language(s) and version(s). The stated royalties/prices exclude any charges by Authorized Replicator for units of Product ordered by ACER. A Product is not licensed in a given version unless a royalty/price is provided for such version in the Table below. The release of a new Royalty/Price List will serve as notification of Product and royalty/price changes.

SOFTWARE PRODUCT(S)	Per Package English Language Version(s) Royalty (US\$)	Per Package Principal Language Version(s) Royalty (US\$)	Product Group	Number of Units Per Package
Microsoft® MS-DOS® v. 6.22 with Enhanced Tools for MS-DOS	US\$135.00	US\$135.00	Standard	5
Microsoft® MS-DOS® v. 6.22 Plus Enhanced Tools & Windows® for Workgroups v. 3.11 (Concise Package)	US\$400.00	US\$400.00	Standard	5
Microsoft® Windows® 95	US\$410.00	US\$410.00	Standard	5
Microsoft® Windows® v. 3.1	US\$265.00	US\$265.00	Standard	5
Microsoft® Windows® for Workgroups v. 3.11	US\$265.00	US\$265.00	Standard	5
Microsoft® Windows NT® Workstation v. 4.0	US\$800.00	US\$875.00	Standard	5
Microsoft® Windows NT® Workstation v. 3.51	US\$925.00	US\$925.00	Standard	5
Microsoft® Works v. 3.0 for Windows®	US\$100.00	US\$100.00	Standard	5
Microsoft® Works v. 4.0 for Windows® 95	US\$100.00	US\$100.00	Standard	5
Microsoft® Windows® 95 & Microsoft® Plus! for Windows® 95	US\$460.00	US\$460.00	Standard	5

HARDWARE PRODUCT(S)	Per Package English Language Version(s) Price (US\$)	Per Package Principal Version(s) Price (US\$)	Product Group	Number of Units Per Package
Microsoft® Mouse v. 2.1a	US\$200.00	US\$200.00	Hardware	10
Microsoft® Natural® Keyboard v. 1.1	US\$275.00	US\$275.00	Hardware	5

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EXHIBIT A - SPECIALTY PRODUCTS

ROYALTY/PRICE LIST

(Category 2A)

ACER may order the following Products from an Authorized Replicator, on an if and as available basis. Product may not be available in all licensed language(s) and version(s). The stated royalties/prices exclude any charges by Authorized Replicator for units of Product ordered by ACER. A Product is not licensed in a given version unless a royalty/price is provided for such version in the Table below. The release of a new Royalty/Price List will serve as notification of Product and royalty/price changes.

PRODUCT	Per Package English Language Version(s) Royalty (US\$)	Per Package Principal Language Version(s) Royalty (US\$)	Product Group	Number of Units Per Package
Consumer Value Pak I - consists of the following: Microsoft® Works v. 4.0 for Windows® 95 Microsoft® Money v. 4.0 for Windows® 95 Microsoft® Scenes (Undersea) v. 1.0 Microsoft® Home CD Sampler	\$115.00	Not Available	Consumer Application	5
Consumer Value Pak II - consists of the following: Microsoft® Works v. 4.0 for Windows® 95 Microsoft® Money Home Banking Edition v. 5.0 for Windows® 95 Microsoft® Scenes (Undersea) v. 1.0 Microsoft® Home CD Sampler	\$115.00	\$115.00	Consumer Application	5
Microsoft® Home Collection - consists of the following: Microsoft® Works v. 4.0 for Windows® 95 Microsoft® Money Home Banking Edition v. 5.0 for Windows® 95 Magic School Bus Explores the Solar System v. 1.0 Microsoft® Greetings Workshop v. 1.0 Fury 3 Microsoft® Interactive CD Sampler	\$180.00	\$180.00	Consumer Application	5
Microsoft® Office 95 Professional with Small Business Pack	\$900.00	Not Available	Desktop Application	3
Microsoft® Windows NT® Server v. 3.51	Not Available	Not Available	Server	3
Microsoft® Windows NT® Server v. 4.0	Not Available	Not Available	Server	3
Microsoft® Windows NT® Server v. 4.0 Client Access License Pack	\$360.00	Not Available	Specialty	3

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Page 1

Microsoft Corporation Delivery Service Partner Fulfillment and Distribution Agreement dated January 1, 1997 between MIC CORPORATION and ACER AMERICA CORPORATION.

AAC 002155
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ACER 000719

EXHIBIT B - GENERAL PRODUCTS
ADDITIONAL PROVISIONS
 (Category 1, 2, 3)

The following additional provisions apply to Products listed in the Exhibit A - General Products, if and as indicated below.

STANDARD GROUP PRODUCTS:

- (a) From time to time MS may elect to include supplemental or instructional software programs as part of the CD version of Windows® 95 Product(s) without additional royalty. For example, MS plans to include the Microsoft Press® titles *Microsoft® Windows® 95 Starts Here* and/or *Microsoft® Windows® 95 How & Why* as part of the CD version of Czech, English, French, German, Japanese, Polish, Russian, and Spanish language edition(s) of Windows 95.
- (b) The Simplified Chinese language version of the Windows operating system Product is version 3.2. The Japanese language version of the MS-DOS operating system is version 6.2/V. The Japanese language version of Enhanced Tools for MS-DOS 6 is 1.0/V.

HARDWARE GROUP PRODUCTS:

- (a) Orders placed for Mouse Products may be fulfilled with Product Packages containing the immediately preceding version release (i.e., version 2.0a) of the Product until such time as the listed version is available in sufficient quantities to DSPs for distribution to the Territory.
- (b) The Authorized Replicator for the Hardware Group Products shall be Microsoft Corporation.
- (c) Until further notice, order processing and fulfillment services shall be provided by UPS Worldwide Logistics. Hardware Group Product orders and requests for return authorizations shall be made to the following address:

Continent/Region	Address:	Phone numbers	Fax numbers:
North America and Latin America	Microsoft Corporation c/o UPS Worldwide Logistics 9001 Sterling Street Irving, Texas 75063 U.S.A.	English: 1-800-877-6852 (USA/Canada) Spanish: (+1) (972) 915-6912	(+1) (972) 929 3607
Europe, Africa, India, and Middle East	Microsoft Corporation c/o UPS European Distribution Center De Dieze 17 5684 PR Best The Netherlands	(+31) +99 33 1660	(+31) 499 331659
Far East and Asia Pacific	Microsoft Corporation c/o UPS Worldwide Logistics Asia Ptd. Ltd. 19 Loyang Way #02-10 Singapore 508724	English: (+65) 542-9557 Cantonese: (+65) 542-5997 Mandarin: (+65) 542-6801 Japanese: (+65) 542-2712 Korean: (+65) 542-5993	(+65) 542-7385

- (d) Notwithstanding anything to the contrary contained in the Agreement, full payment of the price indicated in Exhibit A for Hardware Group Products shall be due on the date of order and paid in accordance with MS' invoice. Unless otherwise agreed to by MS, Product will not be distributed to ACER until full payment is received. ACER shall report all units distributed on ACER's monthly royalty reports (with \$0 royalty due) and sales-out reports.

Payments shall be made by wire transfer to:

MICROSOFT CORPORATION
 c/o Citibank N.A.
 399 Park Avenue
 New York, NY 10043
 ABA 021000089
 SWIFT Code: CITIUS33
 Account Number: #38468231
 Regarding: OEM Collections

or to such other address or account as MS may indicate by written notice.

- (e) Prices listed are FOB MS' shipping point and are exclusive of shipping charges, applicable sales 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 hereby. Such charges shall be paid by ACER.
- (f) Hardware Group Products may be returned in accordance with the provisions of Section 3(d) and of the Microsoft OEM Hardware Customer Service Guide, as may be updated by MS from time to time.

Rev. 10/25/96

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 Superior Court, San Francisco

EXHIBIT C
AFFILIATED DISTRIBUTORS

(a) "Affiliated Distributor" shall mean an affiliate of ACER listed in this Exhibit C (or subsequently added in accordance with its terms) which is (i) directly owned and controlled by ACER, but only so long as such ownership exists; or (ii) is under common ownership and control with ACER, but only so long as such common ownership and control exists; or (iii) is authorized by ACER to use ACER's name or otherwise represent itself either as ACER or a representative of ACER.

(b) ACER may distribute Product to Affiliated Distributor(s) and grant to Affiliated Distributor(s) pursuant to a contractual relation with ACER the limited right to distribute Product to OEM Customers, subject to all the terms and conditions set forth in the Agreement, including sales-out reporting requirements. Affiliated Distributor(s) may not acquire Product directly from Authorized Replicator(s). MS shall have the right to terminate any Affiliate Distributor's rights upon notice. Affiliate Distributor(s) right to distribute the Product shall terminate as of the date of termination or expiration of the Agreement, unless earlier terminated by MS.

(c) ACER hereby irrevocably and unconditionally guarantees each Affiliated Distributor(s) compliance with the terms and conditions of this Agreement. ACER agrees that it shall be jointly and severally liable with each Affiliated Distributor for any breach of the terms and conditions of the Agreement by an Affiliated Distributor. ACER agrees to make consolidated (i.e., on behalf of ACER and Affiliated Distributors) monthly reports and payments in accordance with all terms and conditions of the Agreement including Section 3, Section 10 and Exhibit R.

(d) Affiliated Distributors authorized to distribute Product under this Agreement are:

I. Name: _____ Address: _____ _____ _____ Telephone: _____ Fax: _____	- -	II. Name: _____ Address: _____ _____ _____ Telephone: _____ Fax: _____
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Superior Court, San Francisco

(e) ACER shall provide MS at least thirty (30) days prior written notice of the name and address of each additional Affiliated Distributor that ACER wishes to add to this Exhibit C. Additional Affiliated Distributors may not exercise any rights under this Agreement until MS approves such request in writing.

(f) Prior to exercising any distribution rights under this Agreement, each Affiliated Distributor whether listed above or subsequently approved by MS, shall execute and deliver to MS the Affiliated Distributor Agreement in the form below.

[To be printed on Affiliated Distributor letterhead.]
AFFILIATED DISTRIBUTOR AGREEMENT

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

Affiliated Distributor acknowledges that its agreement herein is a condition for Affiliated Distributor to exercise the right of distribution sub-licensed by ACER to Affiliated Distributor pursuant to the terms of the Agreement. Affiliated Distributor shall be jointly and severally liable to MS for all obligations related to Affiliated Distributor's exercise of distribution, including, but not limited to, the requirements concerning (i) distribution of Product only to OEM Customers, as defined in the Agreement, and (ii) full reporting of sales-out data. Affiliated Distributor(s)' right to distribute the Product shall terminate (i) upon notice from ACER or MS, or (ii) as of the date of termination or expiration of the Agreement, unless earlier terminated by ACER or MS.

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

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

 (Affiliated Distributor)

Signature _____ Title _____
 Name (Print) _____ Date _____

EXHIBIT C - COMPLIANT REPORTING DISCOUNT PROGRAM

(a) Provided ACER is not in breach of any of its obligations under this Agreement, ACER may earn the discount amount described below for each Package (multi-pack) of the listed Product(s) upon complying, to the satisfaction of MS, in the corresponding reporting period with the following:

Description of Activity	Per Package Discount Amount (US\$)	Product(s)
ACER supplies sales-out information to MS in full compliance with the Agreement, including Section 3(a), Section 10(a) and in the exact format provided in Exhibit R.	US\$10.00	Windows 95 Windows 95 & Plus!

(b) ACER shall separately indicate on its monthly royalty report the number of Packages of each Product distributed in compliance with this Exhibit C and shall identify the discount amount as the "Compliant Reporting Discount".

(c) In the event MS determines, in its sole discretion, that ACER has not accurately reported ACER's compliance with provision (a) of this Exhibit C, MS may invoice ACER for, and ACER shall promptly pay, an amount equal to the disallowed discount plus any applicable interest and late charges.

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Microsoft Corporation Delivery Service Partner Fulfillment and Distribution Agreement dated January 1, 1997 between MIC CORPORATION and ACER AMERICA CORPORATION.

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ACER 000722

EXHIBIT D - OEM AGREEMENT REGISTRATION REQUIREMENTS
ALL PRODUCTS
(Registration Database)

The following additional provisions apply to all Products licensed in Exhibit(s) A.

I. Definitions:

- A. "Registration Identification Number" or "RIN" shall mean a unique number issued by MS to identify an OEM Customer.
 - B. A "Registered Customer" shall mean an OEM Customer located in the Territory which has been assigned a RIN by MS.
 - C. "RIN Database" shall mean a database or hard copy list provided by MS to ACER in accordance with Section 6(e) which includes RINs for all Registered Customers
- II. ACER may distribute Product(s) only to Registered Customers which do not have a "De-authorized" status RIN in the then current RIN Database.
- III. OEM Customer(s) may request registration by calling 1-800-325-1233 and providing basic customer information. ACER may request registration on behalf of OEM Customer(s) by the same method. MS reserves the right to refuse registration to any entity.

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ACER 000723

EXHIBIT E
TERRITORY AND PRINCIPAL LANGUAGE VERSION(S)

(a) The Territory shall be within the geographic boundaries of the following:

United States of America and Canada

subject at all times to the export restrictions set forth in Section 19(d) of the Agreement.

If no countries are listed above, the Territory shall be the country in which ACER is incorporated as indicated on page 1 of the Agreement. Additional countries may be added to the Territory at MS' option upon written notice to ACER.

(b) The Principal Language Version(s) for the Agreement shall be the following language version(s):

Spanish and French

Additional languages may be added to the Principal Language Version(s) at MS' option upon written notice to ACER.

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Superior Court, San Francisco

Microsoft Corporation Delivery Service Partner Fulfillment and Distribution Agreement dated January 1, 1997 between MI
CORPORATION and ACER AMERICA CORPORATION.

AAC 002160
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ACER 000724

EXHIBIT N
ADDRESSES

ACER:

NOTICES:
ACER
2641 Orchard Parkway
San Jose, CA 95134

Attn: David Cho
Telephone: (408) 922-5068
Fax: (408) 432-0496

Email Address: david_cho@acer.com

BILL TO:
ACER
2641 Orchard Parkway
San Jose, CA 95134
Attn: Accounts Payable

SHIP TO:
ACER
2641 Orchard Parkway
San Jose, CA 95134

ACER Sales and Support Telephone: 1-800-SEE-ACER

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 (OEM Sales Matters)
Fax: +1-206-936-7329

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

Reports:

Royalty and Inventory Reports to:
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
U.S.A.
Attention: Oem Accounting Services
Fax: +1-206-936-5298

**Sales Out Reports and Copy of Royalty and
Inventory Reports to:**

Sales Out Report
Attn: Nathan Hoff
Email Address: dspell@microsoft.com

Royalty Report
Attention: OEM Sales Department - DSP
Fax: 206-936-7329
Email Address: christbo@microsoft.com

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

Payments:

If ACER is a U.S.A. or Canada based ACER,
payments shall be made by wire transfer to:
Microsoft Corporation
c/o First Interstate Bank of Washington
Seattle Main Branch
Seattle, Washington U.S.A.
ABA 125-000-286
SWIFT Code: FIWAUS66
Account #38468231
Regarding:
Microsoft OEM Collections

If ACER 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

or to such other address or account as MS may specify from time to time by email or other written notice. ACER 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.

**EXHIBIT B
REPORTS**

COMBINED INVENTORY AND ROYALTY PAYMENT REPORT FORM

Payment report for _____
 Microsoft Contract # _____
 Reporting Period: _____ to _____

PRODUCT 1: Product, Version Number, Language Version			
		Royalty Rate	Amount Due
Beginning Inventory	0		
Packages Received +	0		
Net Packages Shipped -	0 x	=	\$ -
Ending Inventory =	0		

PRODUCT 2: Product, Version Number, Language Version			
		Royalty Rate	Amount Due
Beginning Inventory	0		
Packages Received +	0		
Net Packages Shipped -	0 x	=	\$ -
Ending Inventory =	0		

PRODUCT 3: Product, Version Number, Language Version			
		Royalty Rate	Amount Due
Beginning Inventory	0		
Packages Received +	0		
Net Packages Shipped -	0 x	=	\$ -
Ending Inventory =	0		

PRODUCT 4: Product, Version Number, Language Version			
		Royalty Rate	Amount Due
Beginning Inventory	0		
Packages Received +	0		
Net Packages Shipped -	0 x	=	\$ -
Ending Inventory =	0		
Less _____ Discount		=	-
\$ _____ x Net Packages Shipped		=	-
Less _____ Discount		=	-
\$ _____ x Net Packages Shipped		=	-
Total Royalties Due for Product		=	-

Total Royalty Due \$ _____

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

(Signature) _____
 (Name Printed) _____
 Telephone Number: _____

(Title) _____
 (Date) _____

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 1-N Cases, J.C.P.P No. 496, CA
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EXHIBIT R (continued)

MONTHLY SALES OUT REPORTING FORMAT

ACER shall report data for units of each Product shipped to each OEM Customer during the reporting period in the order and format provided below or such updated format as MS may provide from time to time.

Field Name	Specification	Field Length
Sales Out	Required	"SO"
ACER ID	Required - 4-digit customer number	4 char
Microsoft OEM Customer Identifier	Required - RIN	20 char
Microsoft Product ID	Required - SKU - MS Product ID	30 char
Microsoft Product Description	Required - Product Description	45 char
OEM Customer Name	Required	30 char
Address 1	Required	30 char
Address 2	Optional	30 char
Address 3	Optional	30 char
City	Required	30 char
Postal Code	Required	10 char
Country	Required	20 char
OEM Customer Phone Number	Optional	20 char
OEM Customer Fax Number	Optional	20 char
Quantity	Required	8 numeric
Sales Price	Optional ex: X(X).XX***	9 (9).99
Reporting Month	Required	4 char
Transmission Date	Required	6 char
State/Province	Required	30 char

***Requested for market research purposes only.

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INSERT ANY APPLICABLE EXHIBIT Z HERE

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CORPORATION and ACER AMERICA CORPORATION.

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ACER 000728

Attachment 1

**MICROSOFT CORPORATION DISTRIBUTION AND PREINSTALLATION AGREEMENT
(FOR MANUFACTURERS AND ASSEMBLERS OF COMPUTER HARDWARE ONLY)
(Operating System Products)**

THIS IS A LEGAL AGREEMENT BETWEEN YOU ("COMPANY") AND MICROSOFT CORPORATION ("MS"). BY OPENING THE PRODUCT PACKAGE AND/OR USING THE PREINSTALLATION TOOLS INCLUDED WITH THE PRODUCT SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. THE PRODUCT ENCLOSED IN THE PACKAGE TO WHICH THIS AGREEMENT IS ATTACHED IS LICENSED FOR DISTRIBUTION ONLY BY MANUFACTURERS AND ASSEMBLERS OF COMPUTER HARDWARE ("OEMs"), AND ANY PREINSTALLATION TOOLS INCLUDED WITH THE PRODUCT SOFTWARE ARE LICENSED FOR USE ONLY BY SUCH OEMs. IF YOU ARE NOT AN OEM, OR IF YOU DO NOT AGREE TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT, THEN MICROSOFT IS UNWILLING TO GRANT A LICENSE TO YOU FOR THE ENCLOSED PRODUCT AND/OR PREINSTALLATION TOOLS, AS APPLICABLE. IN SUCH EVENT, YOU SHOULD PROMPTLY RETURN THE UNOPENED PRODUCT PACKAGE (INCLUDING ALL CONTENTS) TO THE SUPPLIER FROM WHICH YOU OBTAINED IT ("SUPPLIER") FOR A FULL REFUND.

1. PRODUCT

1.1 "Computer Hardware" shall be defined to be either: A) a motherboard; B) a hard disk; or C) an assembled computer system manufactured by or for COMPANY, if the enclosed MS product is Windows NT® Server or Windows NT® Workstation, the Computer Hardware shall be an assembled computer which includes, at a minimum, a motherboard with CPU, hard disk drive, power supply, and case.

1.2 MS hereby grants COMPANY a non-exclusive right to distribute one complete unit of the enclosed MS product(s) ("Product(s)") to an end-user purchaser of COMPANY's Computer Hardware as an item included inside the Computer Hardware package, and if the Computer Hardware is an assembled computer system, one copy of the Product software preinstalled on the hard disk of such Computer Hardware. COMPANY shall require all persons and entities in its distribution channels to comply with the foregoing restriction. Product and Product packaging may not be modified, altered, repackaged, reassembled or supplemented in any way.

1.3 If the Computer Hardware is an assembled computer system which includes a hard disk, COMPANY shall preinstall one copy of the Product software (using one unit of the Product) on the hard disk of each unit of Computer Hardware with which COMPANY distributes the Product. Such preinstallation shall be performed strictly in compliance with the Delivery Service Partner OEM Product Preinstallation Guide ("Preinstallation Guide") provided with the Product or made available separately through the Microsoft Delivery Service Partner program. COMPANY may not distribute the unit of Product used to perform such preinstallations. COMPANY shall maintain the confidentiality of the Preinstallation Guide and may not copy or distribute the Preinstallation Guide.

1.4 COMPANY shall not advertise or otherwise market the Product(s) as separate items, but shall clearly indicate in all marketing materials that the Product(s) are available only as an indivisible part of the Computer Hardware. COMPANY shall not publish or otherwise disclose separate prices for the Product(s), but shall price the Computer Hardware with the Product(s) as a single indivisible unit.

1.5 COMPANY shall not reverse engineer, decompile or disassemble the Product in whole or in part except as permitted by applicable law without the possibility of contractual waiver.

1.6 MS reserves all rights not expressly granted herein including without limitation, modification rights, translation rights, rental rights and rights to source code.

2. WARRANTY

2.1 MS makes no warranty as to defects in media or materials. Warranties with respect to media and materials, if any, may be made by Supplier. MS warrants to COMPANY that at the time of shipment, the MS Product will perform substantially in accordance with the Product documentation. COMPANY's sole remedy and Supplier's sole obligation under this warranty shall be limited to, at Supplier's election, refund or replacement of the Product. THIS WARRANTY MAY BE ASSERTED BY COMPANY ONLY AND NOT BY COMPANY'S CUSTOMERS.

2.2 SECTION 2.1 CONTAINS THE ONLY WARRANTIES MADE BY MS. ANY AND ALL OTHER WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING THOSE FOR NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, ARE EXPRESSLY EXCLUDED. COMPANY AGREES THAT SUPPLIER, MS OR THEIR SUPPLIERS SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, ECONOMIC OR PUNITIVE DAMAGES EVEN IF SUPPLIER, MS OR THEIR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

3. PRODUCT SUPPORT

COMPANY shall provide qualified support services for the Product. COMPANY's customer support service shall be at least as favorable to the end user as the terms under which COMPANY provides support for the Computer Hardware to end user. MS may at its discretion refer all related customer service and support inquiries to COMPANY. COMPANY's support phone number shall be conspicuously placed on the Product packaging and/or in the Computer Hardware user's manual.

4. INTELLECTUAL PROPERTY

The Product is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. COMPANY will not remove, alter or obscure any copyright, trademark or patent notices that appear on the Product or are contained in the Product software as delivered to COMPANY. COMPANY shall market the Product only under the Product name(s) and version number for such Product provided to COMPANY. COMPANY will use the appropriate trademark, product descriptor and trademark symbol (e.g., "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 other material 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 agrees that it shall not undertake any action that will interfere with or diminish MS' rights, title, or interest in such trademarks, nor will its use of such trademarks directly or indirectly create in or for COMPANY any right, title, or interest in such trademarks. Upon request, COMPANY will provide MS samples of all literature and other materials prepared by COMPANY which uses any of the Product names.

5. LIMITATION OF LIABILITY

MS shall have no liability whatsoever to COMPANY under any provision of this Agreement or any transaction contemplated by this Agreement and COMPANY hereby releases MS from any such liability.

6. MISCELLANEOUS

6.1 Any MS hardware accompanying the Product has been or will be at the time of shipment certified as a Class B computing device pursuant to the rules of the U.S.A. Federal Communications Commission ("FCC Rules"). Except as expressly set forth in the preceding sentence, MS makes no warranty or representation regarding compliance of the Product hardware with any FCC Rules or any other federal, state, or local laws or regulations, or the laws or regulations of any non-U.S. jurisdiction, relating to computing devices or products sold to the public. Without limiting the generality of the foregoing, the responsibility (if any) to test and/or to certify the Product hardware in conjunction with other equipment manufactured or sold by COMPANY shall be solely that of COMPANY.

6.2 Nothing in this Agreement shall establish or constitute a franchise, partnership, joint venture, agency, or contract of employment between the parties.

6.3 COMPANY agrees that it will not export or re-export Product to any country, person, firm, or end user in violation of export control laws and regulations of the