

PLAINTIFF'S
EXHIBIT
4429
Comes v. Microsoft

AMENDMENT NO. 7

Amendment Date: September 30, 1993

to the

LICENSE AGREEMENT

Between

MICROSOFT CORPORATION
a Delaware, U.S.A. Corporation

and

ZEOS INTERNATIONAL, LTD.
a Corporation of Minnesota

Agreement Effective Date: April 1, 1990

Microsoft Contract No. 4934-0130

PLAINTIFF'S
EXHIBIT
1308
C.A. No. 2:96CV645B

MSC 5007878
Highly Confidential

04/26/93 LE930960.003

10/01/93 32450009.DOC

MS-PCA 1194007
CONFIDENTIAL

This Amendment ("Amendment") is made and entered into this 30th day of September, 1993 and shall amend the above-referenced License Agreement ("Agreement") between MICROSOFT CORPORATION ("MS") and ZEOS INTERNATIONAL, LTD. ("COMPANY") dated April 1, 1990.

I. The following Sections 1, 2, 3, 4, and 6 shall replace the corresponding provisions of the Agreement with respect to all Product identified in the applicable Exhibit(s) C as "Authorized Replication Product" and/or "MED Product", but shall not modify or amend such Sections with respect to other Products.

1. DEFINITIONS

(a) "COMPANY Subsidiary" shall mean a company listed in Exhibit X attached hereto, in which, on a class by class basis, more than fifty percent (50%) of the stock entitled to vote for the election of directors is owned or controlled by COMPANY, but only so long as such ownership or control exists. COMPANY hereby guarantees each of its COMPANY Subsidiaries' performance under this Agreement. COMPANY shall provide MS not less than thirty (30) days prior written notice, in accordance with the NOTICES AND REQUESTS Section of the Agreement, of the name and address of each additional COMPANY Subsidiary that COMPANY wishes to add to Exhibit X. The addition to Exhibit X of any such additional COMPANY Subsidiaries shall be deemed accepted by MS unless MS sends written notice of rejection to COMPANY within thirty (30) days of MS' receipt of COMPANY's written request.

(b) "Customer System" shall mean the single user computer system product(s) described in the Exhibit(s) M.

(c) "TAP" shall mean MS' then standard technical assistance procedures offered to OEMs, consisting of confidential technical know-how and including, if available where COMPANY is located, the then standard product support service offered to OEMs ("OnLine").

(d) "Product" or "Products" shall mean the copyrighted and/or patented MS software products described in the attached Exhibit(s) C (including MED Product and Authorized Replication Product), including where applicable the specified user documentation. "Product software" or "Product documentation" shall mean the software or documentation components of the Product, respectively.

(e) "MED Product" shall mean Product in the "Easy Distribution Package" form, produced in accordance with MS' specifications, and available from an Authorized Distributor.

(f) "Product Release" shall mean a release of Product which is designated by MS in its sole discretion as a change in the digit(s) to the left of the decimal point in the Product version number [(x).xx].

(g) "Version Release" shall mean a release of Product which is designated by MS in its sole discretion as a change in the tenths digit in the Product version number [x.(x)x].

(h) "Authorized Replication Product" shall mean Product, produced in accordance with MS' specifications, and available for purchase from an Authorized Replicator.

(i) "Authorized Replicator" shall mean a third party approved by MS which may reproduce and manufacture Product for COMPANY. MS shall provide COMPANY with a list of Authorized Replicators and shall notify COMPANY from time to time of changes to this list.

(j) "Authorized Distributor" shall mean a third party approved by MS from which COMPANY may purchase MED Product. MS shall provide COMPANY with a list of Authorized Distributors and shall notify COMPANY from time to time of changes to this list.

(k) "Associated Product Materials" shall mean materials available from an Authorized Replicator. The Associated Product Materials may include a certificate of authenticity, an end user license agreement, a MS product registration card, and/or other materials.

2. LICENSE GRANT

(a) MS grants to COMPANY, subject to the terms and conditions in this Agreement, and in particular in Section 6, the following non-exclusive, worldwide license rights:

(i) to reproduce and install no more than one (1) copy of Product software on each Customer System hard disk or Read Only Memory ("ROM");

(ii) to distribute directly or indirectly and license copies of the Product (reproduced as per Section 2(a)(i) and/or acquired from Authorized Replicator or Authorized Distributor) in object code form to end users; and

(iii) to grant to COMPANY Subsidiaries all rights granted to COMPANY in Sections 2(a)(i) and 2(a)(ii).

(b) Except as necessary to install Product software, as permitted under Section 2(a)(i), COMPANY may not reproduce Product. Product software (in diskette form) and Product documentation (in hard copy form) shall be available to COMPANY only from an Authorized Distributor and/or Authorized Replicator.

(c) COMPANY acknowledges that MS may require Authorized Distributor and/or Authorized Replicator to refuse to fill COMPANY's orders if COMPANY fails to comply with any provision of this Agreement.

(d) COMPANY shall not modify or substitute Product documentation without MS' prior written permission. However, COMPANY, at its option, may distribute supplemental Product documentation in conjunction with the Product, provided that COMPANY's supplemental documentation is consistent with Product documentation provided by MS.

(e) COMPANY's license shall extend to, and each Product shall be deemed to include, any Update Releases and Version Releases that COMPANY accepts under Section 4 and elects to distribute under this Agreement. Royalties for new Version Releases may be increased in accordance with the applicable Exhibit C. COMPANY's license hereunder shall not extend to Product Releases.

(f) COMPANY's rights hereunder shall not extend to Product source code unless Exhibit S1 is attached and executed.

(g) All rights not expressly granted, including without limitation translation rights, are reserved by MS.

(h) MS agrees to negotiate in good faith with COMPANY to license Product Releases and other products not available to COMPANY under this Agreement at MS' then applicable price(s), terms and conditions.

3. PRICE AND PAYMENT

(a) COMPANY agrees to pay MS the amount(s) and within the times stated in this Section 3, Exhibit B and Exhibit(s) C. COMPANY's obligation to pay such amounts is unconditional except as is otherwise expressly stated to the contrary herein.

(b) Prices stated are exclusive of any federal, state, municipal or other governmental taxes (including foreign tax withholding except as provided in Section 3(c), duties, licenses, fees, excises or tariffs now or hereafter imposed on COMPANY's or COMPANY Subsidiaries' production, storage, licensing, sale, transportation, import, export or use of a Product or on any intercompany charges between COMPANY and COMPANY Subsidiaries. Such charges shall be paid by COMPANY, or in lieu thereof, COMPANY shall provide a resale or exemption certificate acceptable to MS and the applicable domestic state and local authorities. MS, however, shall be responsible for all taxes based upon its personal property ownership and gross or net income.

(c) In the event COMPANY is based outside the U.S. and income taxes are required to be withheld by any foreign government on payments required hereunder, on such withholding taxes as will enable MS to claim and receive a U.S. Foreign Tax Credit, COMPANY may deduct such taxes from the amount owed MS and pay them to the appropriate tax authority; provided, however, that COMPANY shall promptly secure and deliver to MS an official receipt for any such taxes withheld or other documents necessary to enable MS to claim a U.S. Foreign Tax Credit. COMPANY will make certain that any taxes withheld are minimized to the extent possible under applicable law.

(d) Except where otherwise provided, COMPANY agrees to make consolidated (i.e. on behalf of COMPANY and COMPANY Subsidiaries which exercise rights under this Agreement) quarterly reports and payments to MS within thirty (30) days after the end of each calendar quarter, and thirty (30) days after termination or expiration for the final full or partial quarter. COMPANY's quarterly report shall provide the information described in the applicable Exhibit C for each Product licensed hereunder, and shall be signed by a duly authorized representative of COMPANY. COMPANY shall submit quarterly reports even if no royalties or other amounts are due for such quarter. COMPANY shall use the royalty reporting form attached as Exhibit R or other form as MS may provide from time to time. A finance charge of one and one-half percent (1-1/2%) per month will be assessed on all amounts that are past due, including receipts for foreign taxes withheld.

(e) No royalty shall accrue to MS for Product (i) used by COMPANY solely for testing systems; (ii) shipped as replacement copies for copies found to be defective in materials, manufacture, or reproduction; (iii) used for demonstrations to prospective customers, provided such demonstration copies shall be clearly marked "For Demonstration Purposes Only" and shall not to exceed one hundred (100) copies per Product; or (iv) provided as back-up copies to end users by COMPANY under Section 6(d). COMPANY shall pay any applicable charges from the Authorized Distributor or Authorized Replicator for such copies of Product.

(f) COMPANY shall provide MS with a copy of its U.S. state resale exempt certificate, if applicable, with this Agreement when it is returned for signature by MS.

(g) If COMPANY is a U.S. based company, payments and royalty reports shall be made to:

MICROSOFT CORPORATION
P.O. Box 84808
Seattle, WA 98124-6108

If COMPANY is based outside the U.S., COMPANY agrees to make such payments and royalty reports as follows:

Payment by wire transfer to:

Citibank N.A.
399 Park Avenue
New York, NY 10043
USA
ABA 021000089

Royalty reports to:

MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
USA
ATTN: OEM Finance

Regarding:
Microsoft International OEM Collections
Account #38468231

or to such other address or account as MS may specify from time to time. COMPANY agrees to specify the MS invoice number, if any, with respect to which payment is made.

4. ACCEPTANCE AND LIMITED WARRANTY

(a) With respect to Product Deliverables defined on the applicable Exhibit C provided to COMPANY by MS:

(i) Within thirty (30) days after the later of COMPANY's execution of this Agreement or MS' delivery to COMPANY of each Product licensed hereunder, COMPANY shall either accept such Product or report deviations from specifications in writing. COMPANY is not required to accept or reject test versions of a Product (e.g., Alpha or Beta test versions). Conformance to specifications as referenced in the applicable Exhibit C shall solely determine acceptability. If COMPANY does not report deviations from Product specifications within the thirty (30) day period, or if COMPANY ships the Product to a customer for revenue, COMPANY shall be deemed to have accepted the Product.

(ii) If COMPANY reports any deviations from Product specifications prior to acceptance, then MS shall have sixty (60) days to correct such deviations. Upon delivery of a corrected release of Product to COMPANY, COMPANY shall have thirty (30) days in which to re-evaluate the corrected release for conformance to specifications as provided in Section 4(a). If any deviations from specifications reported before acceptance are not eliminated in the sixty (60) day correction period, then as COMPANY's sole remedy (A) the Product may be retained at an equitable adjustment in price as may be agreed by the parties, or (B) the correction period may be extended as may be agreed by the parties, or (C) failing any agreement, COMPANY may reject the Product, and provided that COMPANY has rejected the first version of each released Product licensed under this Agreement, then COMPANY shall be entitled to a refund of one hundred percent (100%) of the payment due on signing as specified in Exhibit B and this Agreement shall immediately terminate. COMPANY shall not have the right to a refund of prepaid royalties, or to terminate this Agreement, if it has accepted any release of any Product under this Agreement.

(iii) MS represents that each Product meets the specifications referenced in the applicable Exhibit C. If COMPANY reports any deviations from specifications in a Product following acceptance and during the term of this Agreement, then as COMPANY's sole remedy MS agrees to use reasonable efforts to correct such deviations. COMPANY's notice of any deviations from Product specifications shall be made using the OnLine system or the notice provisions of Section 15. MS' obligations under this Section (iii) as to a particular release of a Product shall cease ninety (90) days after delivery to COMPANY of any subsequent release of Product which conforms to specifications as provided in Section 4(a).

(b) Authorized Distributor and/or Authorized Replicator, as applicable, shall provide warranty(ies), if any, for copies of Product provided to COMPANY by such Authorized Distributor and/or Authorized Replicator.

(c) If any Product licensed hereunder has not yet been released by MS, MS shall have no liability for failure to deliver such Product by any particular date or within the term of this Agreement. COMPANY shall not distribute for revenue any release of a Product until MS gives its written approval of such distribution by its OEMs generally.

(d) Except as expressly provided, this Agreement does not include technical support to COMPANY. Such support may be available pursuant to a separate agreement.

6. LICENSE RESTRICTIONS

(a) COMPANY shall distribute Product(s) only with those Customer System(s) listed on Exhibit C for the particular Product(s) and only inside the Customer System package. COMPANY shall not remove or modify the package contents of MED Product, Authorized Replication Product or Associated Product Materials. COMPANY shall comply with the additional provisions, if any, provided in Exhibit(s) C with respect to Product. COMPANY shall (i) contractually obligate (e.g. by contract, invoice or other written instrument) all distributors, dealers and others in its entire distribution channels to comply with the foregoing, (ii) deliver copies of such contracts (or relevant portions thereof) to MS upon request, (iii) discontinue distribution of Product to any such distributor, dealer or other in its distribution channel which does not comply with the foregoing, and (iv) cooperate with MS in investigating instances of distribution of Product which does not comply with the foregoing.

(b) COMPANY shall not reverse engineer, decompile or disassemble any Product, except that in the European Community, COMPANY shall have the limited right to decompile the Product solely to the extent permitted by the terms and conditions of Article 6 of the European Community's Directive for the Legal Protection of Computer Programs, OJL 122/42 (17 May 1991), and only in jurisdictions which have adopted the same terms and conditions by legislation implementing the Directive.

(c) COMPANY shall distribute and license the use of Product to end users only pursuant to its end user license agreement ("EULA"). COMPANY's EULA may be a "break-the-seal" end user license agreement or a signed end user license agreement. COMPANY's EULA shall conform substantially to the Sample License Agreement attached as Exhibit A, except that it shall be adapted as commercially reasonable for any foreign jurisdiction in which COMPANY markets or distributes the Product.

(d) Where Product software is installed on the Customer System's hard disk or ROM, COMPANY shall:

(i) package the Product so that a notice placed over either the Customer System power switch in the "off" position or the power inlet connector informs the end user that turning on the Customer System indicates acceptance of the terms of the EULA; and

(ii) either (A) include a single copy of Product documentation, as purchased from the Authorized Distributor or Authorized Replicator, in COMPANY's Customer System package; or (B) include an Associated Product Materials packet, as purchased from an Authorized Replicator, in COMPANY's Customer System package and make the Product documentation available to COMPANY's end user purchasers as a mail order fulfillment item directly from COMPANY. Product documentation shall not be available through any other COMPANY distribution channel.

(e) COMPANY shall market each release of Product only under the version number assigned by MS to such release.

(f) COMPANY shall provide to its end user customers commercially reasonable access to Product technical assistance and shall prominently display its customer support telephone number in Customer System documentation and on each copy of the Product (except MED) package.


- II. Effective January 1, 1994, Exhibit C3 is hereby deleted from the Agreement.
- III. The attached Exhibit C7 is hereby added to the Agreement.
- IV. The attached Exhibit M is included herein for reference and shall supersede the existing Exhibit M.
- V. The attached Exhibit X is hereby added to the Agreement.
- VI. Except as provided herein, all terms of the Agreement shall remain in full force and effect. In the event of inconsistencies between the Agreement and this Amendment, the terms and conditions of the Amendment shall be controlling.


This Amendment shall be null and void unless signed by COMPANY and returned to MS by October 15, 1993.

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 does not constitute an offer by MS. This Amendment shall be effective upon execution on behalf of COMPANY and MS by their duly authorized representatives.

MICROSOFT CORPORATION

ZEOS INTERNATIONAL, LTD.

By 
 STEVEN M. WELLS
 Name (Print)
 DIRECTOR
 Title
 10/12/93
 Date

By 
 James F. Ticknor
 Name (Print)
 VP Manufacturing & Materials
 Title
 October 8, 1993
 Date

Date of Issue: September 30, 1993

08/26/93 LE930960.003

10/01/93 32450009.DOC

EXHIBIT C7 (SYSTEM COMMITMENT)

PRODUCT NAME: Microsoft® Windows™ for Workgroups

VERSION NO. 3.11

PRODUCT TYPE: Authorized Replication Product or MED Product

LANGUAGE VERSION(S): English, German, French, Spanish, Italian, Portuguese, Dutch, Swedish, Chinese (if and as available from the Authorized Replicator or Authorized Distributor, as applicable).

PRODUCT DELIVERABLE AND PRODUCT SPECIFICATION: OEM Distribution Kit consisting of Product in object code form and pre-installation utilities. Single copy of Product documentation for support purposes only. The Product will have the features as specified in the Product documentation.

ROYALTY PAYMENTS AND REPORTING REQUIREMENTS:

(a) COMPANY agrees to pay MS a royalty, at the applicable rate set forth below, multiplied by the number of full or partial Customer System(s) shipped or placed in use by or for COMPANY during the term of this Agreement, except those Customer Systems shipped with Microsoft Windows or Microsoft Windows for Workgroups version 3.1 or lower prior to January 1, 1994.

<u>Customer System</u>	<u>Royalty Rate (US\$)</u>
Exhibit M	\$30.50

NOTE: The above royalty is exclusive of any charges by the Authorized Distributor or Authorized Replicator, as applicable, for copies of Product ordered by COMPANY.

(b) If COMPANY licenses or distributes a non-English language version of the Product, then, in addition to the royalty payable in Section (a) above, COMPANY agrees to pay MS a royalty of (US\$4.00) multiplied by the number of full or partial copies of such non-English version(s) of the Product licensed or distributed by or for COMPANY during the term of this Agreement.

(c) COMPANY's report shall specify the number of Customer System(s) shipped or placed in use by or for COMPANY during that calendar quarter and the number of copies of Product for each language version licensed or distributed by or for COMPANY during that calendar quarter. COMPANY shall furnish this statement for each Customer System identified in Exhibit M and shall report for each Customer System separately and by language version of Product. In the event that no Customer System(s) are shipped or placed in use by or for COMPANY during a calendar quarter and no copies of Product are licensed or distributed by or for COMPANY during such calendar quarter, COMPANY shall indicate this on the royalty report.

ROYALTIES FOR NEW VERSION RELEASES: MS may elect to increase the per system royalty applicable to new Version Releases, which royalty shall apply to succeeding releases until changed hereunder or by agreement of the parties. The maximum per system royalty for a new Version Release shall be determined as follows: $\text{Maximum royalty} = R + (R \cdot N \cdot 1.5\%)$, where R is the initial per system royalty described above and N is the number of months (rounded to the nearest whole number) that have elapsed from the Effective Date until MS delivers the new Version Release.

EXHIBIT C7 (SYSTEM COMMITMENT)

(Continued)

ADDITIONAL PROVISIONS:

(a) COMPANY's rights to distribute versions of Microsoft Windows and Windows for Workgroups numbered lower than 3.11 under any previous Exhibit to this Agreement, if applicable, shall terminate effective the earlier of: (i) termination or expiration of this Agreement, or (ii) December 31, 1993. From the Effective Date through such date, COMPANY may ship a single copy of either: (i) the Product licensed on this Exhibit C, or (ii) a version of Microsoft Windows or Windows for Workgroups numbered 3.1 or lower (if licensed), but not more than one such Product, with each Customer System.

(b) Effective July 1, 1993, COMPANY shall not be required to pay the per system royalties under this Exhibit for Customer Systems purchased by the Federal Government, directly or indirectly, on Government bids that do not request the Product (such Customer Systems shall be referred to herein as "Exempted Systems"). On these Government bid orders, only those Customer Systems associated with a specific federal government bid may be licensed for Product. If Product is shipped on any Customer System on a particular bid COMPANY shall pay the Product royalty for all systems on that particular bid. COMPANY will separately identify the quantity of Exempted Systems on each quarterly royalty report due to MS by specific Government bid number.

Exhibit to the License Agreement dated April 1, 1990, between MICROSOFT CORPORATION and ZEOS INTERNATIONAL, LTD.

EXHIBIT M

COMPANY'S CUSTOMER SYSTEMS

For purposes of this Agreement, COMPANY's Customer Systems shall be defined to be the following single user/single CPU computer system products:

Customer Systems:

All COMPANY's current and future computer systems that utilize a single one of the following Intel microprocessors, or non-Intel microprocessors that execute the same instruction sets:

80386 Family

80486 Family

Pentium

Exhibit to the License Agreement dated April 1, 1990, between MICROSOFT CORPORATION and ZEOS INTERNATIONAL, LTD.

EXHIBIT X

NAMES AND LOCATIONS OF COMPANY SUBSIDIARIES

COMPANY Subsidiaries authorized to exercise rights under this Agreement are:

- I. Name: Zeos Information Systems Incorporated
Address: 1301 Industrial Road
Minneapolis, MN 55413
Telephone: (612) 362-1500
Fax: (612) 362-1501
- II. Name: PC Tech, Inc.
Address: 907 North 6th Street
Lake City, MN 55041
Telephone: (612) 345-4555
Fax: (612) 345-5514
- III. Name: Occidental Computer Corporation
Address: 1301 Industrial Boulevard
Minneapolis, MN 55413
Telephone: (612) 623-9614
- IV. Name: Zeos International Canada, Ltd.
Address: 1301 Industrial Boulevard
Minneapolis, MN 55413
Telephone: (612) 623-9614
- V. Name: Zeos International Foreign Sales Corporation
Registered Address: Ernst & Young Building
Bay Street
St. Michael, Barbados
- Mailing Address: P.O. Box 261
Bridgetown, Barbados

Exhibit to the License Agreement dated April 1, 1990, between MICROSOFT CORPORATION and ZEOS INTERNATIONAL, LTD.