

MICROSOFT CORPORATION
NON-EXCLUSIVE DISTRIBUTION AGREEMENT
for
PACKAGED MS-DOS® (DOMESTIC USA VERSION)
FOR IBM® PERSONAL COMPUTER COMPATIBLES

SIGNED ORIGINAL

This Distribution Agreement ("Agreement") is made and entered into this 7th day of April, 1989 ("Effective Date"), by and between MICROSOFT CORPORATION, a Delaware corporation, with offices at 16011 NE 36th Way, Redmond, WA 98052-6399 (hereafter "MS"), and ZEOS International, Inc. a Minnesota corporation (hereafter "COMPANY").

The parties agree as follows:

1. DEFINITIONS. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "COMPANY" shall include any subsidiary of COMPANY, provided that COMPANY hereby guarantees its subsidiary's performance under this Agreement and the subsidiary agrees in writing with COMPANY to be bound by the terms of this Agreement. A "subsidiary" is a company 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.

(b) "Customer System" shall mean the computer hardware marketed or distributed by COMPANY.

(c) "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].

(d) "Product" or "Products" shall mean the then current Product release(s) of MS-DOS Packaged Product (Domestic USA Version) for IBM® Personal Computer Compatibles through release 4.99 in object code form as manufactured by MS and packaged in MS' standard packaging, including MS' standard documentation.

2. DISTRIBUTION LICENSE

(a) MS grants to COMPANY the nonexclusive right to distribute the Product directly or indirectly to end users, subject to the restrictions in Section 6. All rights not expressly granted are reserved by MS. COMPANY shall not alter or customize the Product except as expressly permitted herein.

(b) COMPANY's rights hereunder shall not extend to Product source code. COMPANY shall not reverse engineer, decompile or disassemble any Product.

3. PRICE

(a) COMPANY shall pay MS a per unit price of Sixty Dollars (US\$ 60.00) for each copy of the Product.

MSC 5008016
Highly Confidential

MICROSOFT LICENSE NO.

4934-9125

MS-PCA 1194047
CONFIDENTIAL

(b) All prices are FOB MS' shipping point and are exclusive of 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 COMPANY. MS, however, shall be responsible for all taxes based on its net income. COMPANY shall provide MS with a copy of its state resale exempt certificate with this Agreement when it is returned for signature by MS.

4. ACCEPTANCE AND LIMITED WARRANTY

(a) COMPANY shall be deemed to have accepted the Product unless it provides written notice of nonconformance as provided in Section 4(b). Conformance to the applicable MS written specification shall solely determine acceptability.

(b) MS warrants that the Product furnished hereunder will, at the time of shipment, be free from defects in materials and will conform to MS' applicable standard written specification. COMPANY's remedy and MS' obligation under this limited warranty shall be limited to, at MS' election, return of the Product for credit to COMPANY's account or replacement of any defective Product. This limited warranty applies only if:

(i) written notice of nonconformance is received by MS within thirty (30) days after shipment;

(ii) after MS' authorization, the nonconforming products are returned to MS, freight charges prepaid; and

(iii) after examination, MS determines to its satisfaction that the products are nonconforming. Any replacement shall not extend the original warranty period. This limited warranty shall not apply to Product which MS determines has been subject to misuse, neglect, improper installation, repair, alteration, or damage either by COMPANY or another.

(c) Product may be returned only in the event of a breach of the limited warranty in Section 4 or pursuant to Section 11. No other returns or exchanges will be allowed for any other reason.

(d) Neither the COMPANY nor any of its employees shall have any right to make any other representation, warranty, or promise, or give any instructions for the use of Product not contained on the Product label or container or authorized in writing by MS. MS makes no warranties as to items which are not manufactured by MS but included in or with the Product. To the extent permitted by its contract with the supplier for such included item, MS shall assign to COMPANY any rights it may have under such supplier's warranty.

THIS LIMITED WARRANTY MAY BE ASSERTED BY COMPANY ONLY AND NOT BY COMPANY'S CUSTOMERS, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON MS' PART. IN PARTICULAR, MS MAKES NO WARRANTY THAT THE PRODUCT WILL OPERATE PROPERLY ON THE CUSTOMER SYSTEM(S) IDENTIFIED IN EXHIBIT A. IN NO EVENT SHALL MS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

5. TITLE, PATENT AND COPYRIGHT INDEMNIFICATION

(a) MS represents and warrants that:

(i) it has sufficient right, title, and interest in each Product to enter into this Agreement;

(ii) the Products do not infringe upon any U.S. patent or U.S. copyright; and

(iii) the Products do not violate the trade secret rights of a third party.

MS agrees to indemnify, hold harmless, and defend COMPANY from and against any and all damages, costs, and expenses, including reasonable attorneys' fees, incurred in connection with a claim which, if true, would constitute a breach of the foregoing warranties (hereinafter "Infringement Claims"); provided MS is notified in writing within twenty (20) days from the date COMPANY knew or should have known of an Infringement Claim and has sole control over its defense or settlement, and COMPANY provides reasonable assistance in the defense of the same.

(b) Following written notification of an Infringement Claim, MS may, at its expense, without obligation to do so, procure for COMPANY the right to continue to market, use and have others use, the alleged infringing Product or, without obligation to do so, may replace or modify the Product to make it non-infringing. If MS elects to replace or modify the Product, such replacement shall meet substantially the specifications as provided or referenced in Section 1(c) and shall be subject to the acceptance provisions of Section 4.

(c) MS shall have no liability for any Infringement Claim based on COMPANY's

(i) use or distribution of any Product after MS' notice that COMPANY should cease use or distribution of such Product due to an Infringement Claim, or

(ii) combination of a Product with a non-MS program or data, if such Infringement Claim would have been avoided by the exclusive use of the Product. For all Infringement Claims arising under this Section 5(c), COMPANY agrees to indemnify and defend MS from and against all damages, costs and expenses, including reasonable attorneys' fees.

(d) MS shall have no obligation to COMPANY for any Infringement Claims made against COMPANY which arise from the use or distribution of a Product outside the geographical boundaries of the United States, Canada, Australia, Japan, the European Economic Community, Sweden, Norway, and Finland, and COMPANY hereby releases and discharges MS from any and all Infringement Claims resulting from such use.

6. DISTRIBUTION RESTRICTIONS

COMPANY shall market and distribute each Product only along with, and to end user purchasers of, COMPANY's Customer System(s). COMPANY shall require its distributors, dealers and others in its distribution channels to comply with the foregoing.

7. COPYRIGHT NOTICES; TRADEMARKS

(a) COMPANY shall market the Product only under the Product name Microsoft® MS-DOS®, and COMPANY agrees to use the trademark symbol "®" 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. COMPANY shall, upon request, provide MS samples of all literature, packaging, labels and labeling prepared by COMPANY which uses Product name(s). COMPANY agrees to maintain the high level of quality accorded products associated with and marketed by MS under MS' trademarks.

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

8. PROHIBITION AGAINST ASSIGNMENT AND SUBLICENSE

This Agreement, and any rights or obligations hereunder, shall not be assigned or sublicensed by COMPANY.

9. TERM OF AGREEMENT

Provided this Agreement has been properly executed by COMPANY and by an officer of MS, the term of this Agreement shall run for one (1) year from the Effective Date, unless terminated earlier as provided herein.

10. DEFAULT AND TERMINATION

(a) This Agreement may terminate if any of the following events of default occur:

(i) if either party materially fails to perform or comply with this Agreement or any provision hereof;

(ii) if either party makes an assignment in violation of Section 8;

(iii) if COMPANY becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors;

(iv) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by COMPANY; or

(v) if such a petition is filed by any third party, or an application for a receiver of COMPANY is made by anyone and such petition or application is not resolved favorably to COMPANY within sixty (60) days.

(b) Termination due to a breach of Section 6 shall be effective upon notice. In all other cases termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period. 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.

11. OBLIGATIONS UPON TERMINATION

(a) In the event this Agreement is terminated due to COMPANY's default, within ten (10) days after termination COMPANY shall return to MS all copies of each Product in COMPANY's possession or under its control.

(b) From and after termination or expiration, COMPANY shall not use internally nor employ any Product as part or portion of any product that COMPANY may use, sell, assign, lease, license, or transfer to third parties. COMPANY shall cease and desist from all use of any Product name(s) and associated trademark(s) and, upon request, deliver to MS or its authorized representatives or destroy all material upon which the Product name(s) and the associated trademarks appear.

(c) End user licenses properly granted pursuant to this Agreement and prior to termination of this Agreement shall not be diminished or abridged by termination of this Agreement.

(d) Sections 12, 14, 15, 16(a) and 16(b) shall survive termination of this Agreement.

12. LIMITATION OF LIABILITY AND REMEDY

(a) MS' liability to COMPANY under any provision of this Agreement, including Section 5, or any transaction contemplated by this Agreement shall be limited to one hundred percent (100%) of the amount having then actually been paid by COMPANY to MS under Section 13. MS' limitation of liability is cumulative with all MS' expenditures being aggregated to determine satisfaction of the limit. The existence of claims or suits against more than one Product licensed under this Agreement will not enlarge or extend the limit. COMPANY releases MS from all obligations, liability, claims or demands in excess of the limitation. The parties acknowledge that other parts of this Agreement rely upon the inclusion of this Section 12.

(b) The rights and remedies granted to COMPANY under Sections 4 and 5 constitute COMPANY's sole and exclusive remedy against MS, its officers, agents and employees for negligence, inexcusable delay, breach of warranty, express or implied, or for any default whatsoever relating to the condition of the Product or MS' duties to correct any deviations from specifications.

SECTIONS 4 and 5 CONTAIN THE ONLY WARRANTIES MADE BY MS. ANY AND ALL OTHER WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING THOSE FOR MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. IN PARTICULAR MS

MAKES NO WARRANTY THAT PACKAGED PRODUCT WILL OPERATE PROPERLY ON A CUSTOMER SYSTEM. COMPANY AGREES MS SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, ECONOMIC OR PUNITIVE DAMAGES EVEN IF MS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. PRODUCT ORDERS, PAYMENT AND SUPPORT

(a) Each COMPANY order must be in writing and for a minimum of fifty (50) copies of Product. Payment for such order shall:

(i) be made payable to the order of MS;

(ii) be in the amount of all monies due for such order;

(iii) clearly indicate the quantity, version number and media type of the Product being ordered; and

(iv) be received by MS within thirty (30) days after the date of Product shipment to COMPANY by MS.

A finance charge of one and one-half percent (1-1/2%) per month will be assessed on all amounts that are past due. Orders must be placed at least thirty (30) days prior to the requested shipment date. Requests to decrease an order or to delay shipment must be made in writing at least thirty (30) days in advance of the previously scheduled shipping date. If COMPANY cancels all or any part of any order, a cancellation fee equal to twenty-five percent (25%) of the price of the cancelled portion will be charged at MS' discretion.

(b) MS will ship the Products to the address indicated by COMPANY at the time the order is placed. COMPANY may maintain only one (1) shipping address. MS may select the carrier of its choice for Product shipments to COMPANY. In the event of Product shortages, MS shall have the right to allocate available supplies among its customers.

(c) COMPANY shall use reasonable efforts to support its end user customers of Packaged Product on Customer Systems and shall designate in Section 14 a customer support telephone number to provide COMPANY's end user customers commercially reasonable access to technical assistance. MS does not warrant and shall not be responsible for any incompatibility between the Product and COMPANY's Customer System(s).

14. NOTICES AND REQUESTS

All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are (i) deposited in the U.S. mails, postage prepaid, certified or registered, return receipt requested; or (ii) sent by overnight courier, charges prepaid, with a confirming fax; and addressed as follows:

NOTICES TO COMPANY:

ZEOS International LTD
530 Sth Ave NW Suite 1000
St. Paul, MN 55112

Attn:

Greg Herrick

Telephone:

(612) 633-4591

Fax:

612 -633-2310

COMPANY

Customer Support Telephone:

(612) 633-4591 x222

PRODUCT ORDERS:

MICROSOFT CORPORATION
16011 NE 36th Way
Redmond, WA 98073-9717

Attn: OEM Division

NOTICES TO MS:

MICROSOFT CORPORATION
16011 NE 36th Way
Redmond, WA 98073-9717

Attn: Director, OEM Sales

Copy: Law & Corporate Affairs
Fax: (206) 883-8101

or to such other address as the party to receive the notice or request so designates by written notice to the other.

15. CONTROLLING LAW; NO FRANCHISE

(a) This Agreement shall be construed and controlled by the laws of the State of Washington, and COMPANY consents to jurisdiction and venue in the state and federal courts sitting in the State of Washington. Process may be served on either party by U.S. Mail, postage prepaid, certified or registered, return receipt requested, or by such other method as is authorized by the Washington Long Arm Statute.

(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 in the Washington Franchise Investment Protection Act, RCW 19.100, as amended, or 16 CFR Section 436.2(a). The price and payment described in Sections 3 and 13 of this Agreement shall be construed as a royalty fee for the rights granted in Section 2 of this Agreement, and not as a franchise fee.

16. GENERAL

(a) Any Product which COMPANY licenses or acquires under this Agreement for or on behalf of the United States of America, its agencies and/or instrumentalities, is provided to COMPANY with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at 52.227-7013 of the DOD FAR. Contractor/manufacturer is Microsoft Corporation/16011 NE 36th Way/Box 97017/Redmond, WA 98073-9717.

(b) COMPANY hereby agrees that it does not intend to and will not knowingly, without the prior written consent, if required, of the office of Export Administration of the U.S. Department of Commerce, Washington D.C. 20230, export or reexport directly or indirectly any of the Products to Afghanistan, the Peoples Republic of China, or to any group Q, S, W, Y, or Z country specified in Supplement No. 1 to Section 770 of Export Administration Regulation issued by the U.S. Department of Commerce or to any other country to which such transmission is restricted by such regulations or applicable statutes.

(c) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications, including all previous agreements for the distribution of MS-DOS packaged product. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of COMPANY and MS by their respective duly authorized representatives.

(d) If either MS or COMPANY employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses.

(e) 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).

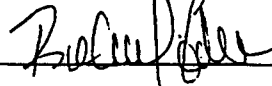
(f) No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.


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

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.

MICROSOFT CORPORATION

COMPANY

By 
Name (Print) Richard Fade
Title Director, OEM Sales
Date 5/5/89

By 
Name (Print) G.E. Herrick
Title Pres.
Date 4/2/89

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