

11-18-2002  
102283378

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof

1. Name of conveying party(ies):  
MICROSOFT CORPORATION

- Individual(s)
- General Partnership
- Corporation-State
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: 2/15/02

2. Name and address of receiving party(ies)

Name: VR-1 ENTERTAINMNET, INC.

Internal Address:

Street Address: 5775 FLATIRON PARKWAY, #210

City: BOULDER State: CO Zip: 80301

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State DELAWARE
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) 78/044,046

B. Trademark Registration No.(s)

Additional number(s) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: KATHLEEN S. HERBERT

Internal Address: FAEGRE & BENSON LLP

Street Address: 1900 FIFTEENTH STREET

City: BOULDER State: CO Zip: 80302

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

03-1725

DO NOT USE THIS SPACE

Signature.

KATHLEEN S. HERBERT  
Name of Person Signing

*Kathleen S. Herbert*  
Signature

10-25-02  
Date

8

Total number of pages including cover sheet, attachments, and document:

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

11/15/2002 LMJELLER 00000215 031725 78044046

01 FC:0521 40.00 CH

TRADEMARK  
REEL: 2618 FRAME: 0647

**ORIGINAL**

**AMENDMENT TO THE  
SOFTWARE DEVELOPMENT AND PUBLISHING AGREEMENT  
BETWEEN  
MICROSOFT CORPORATION  
AND  
CIRCADENCE CORPORATION**

This Amendment amends and is governed by the SOFTWARE DEVELOPMENT AND PUBLISHING AGREEMENT between MICROSOFT CORPORATION ("Microsoft") and CIRCADENCE CORPORATION, effective September 26, 2000 (the "Agreement"). The Effective Date of this Amendment is January 30, 2002.

The parties agree as follows:

**1. DEVELOPER**

- 1.1 The parties acknowledge that after March, 2001, and prior to the Effective Date of this Amendment, Circadence Corporation transferred certain of its assets, including the Agreement, to a newly formed wholly-owned subsidiary named VR-1 Entertainment, Inc. ("Developer"). After such transfer, Circadence Corporation sold the stock of Developer to an affiliate of Pacific Century CyberWorks Japan Co., Ltd., a Japanese stock corporation.
- 1.2 Developer represents and warrants that it is authorized to execute this Amendment and meet and perform all obligations and responsibilities specified in the Agreement and this Amendment.

**2. PRODUCT DEVELOPMENT**

- 2.1 Pursuant to the Agreement, Developer is currently developing the Product entitled "Nightcaster," formerly code named "Destiny," for operation on the Console. Under the terms of the Agreement, such Product, excluding the Product Code as defined in the Agreement, is a "work made for hire" and Microsoft owns all right, title and interest in such Product. The parties agree that for purposes of this Amendment, "Product" means the final approved version of the Product as provided pursuant to Section 4.1 of the Agreement (there being no add-ons, sequels, ports or variations of such final approved version developed to date).
- 2.2 As of the Effective Date of this Amendment, Milestone 11 has been delivered by Developer and accepted by Microsoft in accordance with the terms of the Agreement.
- 2.3 Developer will continue development and Error correction on the Product pursuant to the Agreement until such time as Microsoft submits written acceptance of the final version of the Product pursuant to Section 4 of the Agreement (such Product, the "Accepted Product").

**3. TRANSFER AND ASSIGNMENT**

- 3.1 Retroactive to and effective as of January 1, 2002, in consideration for and subject to the rights and obligations of the parties specified herein, Microsoft hereby transfers Microsoft's right, title and interest in the Product Content as contained in the Product to Developer, subject to the license, royalties and development responsibilities and restrictions specified herein. Developer acknowledges and agrees that the license, royalties and development responsibilities and restrictions applicable to Microsoft Content, Microsoft Software, Xbox Software Development Kit and Third Party Materials shall remain in force and affect regarding the Product Content, as specified in the Agreement. As part of such transfer of Microsoft's rights in the Product Content, Microsoft agrees to assign to Developer the pending trademarks and the applications thereof in the countries indicated as specified in the attached Exhibit A. Developer receives no rights in any Microsoft or Xbox trademarks.

3.2 Developer acknowledges and agrees that the fee due Microsoft for such transfer and assignment as specified in Section 3.1 ("Transfer Fee") is four hundred fifty thousand dollars (\$450,000). In lieu of this transfer fee cash payment due by Developer, the Developer will not require Microsoft to make a cash payment in the amount of two hundred thousand dollars (\$200,000) for Milestone 9 as provided in Exhibit B to the Agreement or payment of an additional two hundred and fifty thousand dollars (\$250,000) for additional services agreed upon by the parties and rendered to Microsoft for Milestone 10.

3.3 Developer will continue to provide Microsoft with bug fixes and consultation for the Product pursuant to the Agreement. Developer remains obligated to provide Microsoft with localizations of the Product as specified in the Agreement.

#### 4. LICENSE GRANT TO MICROSOFT

4.1 In consideration of the transfer of Microsoft's right, title and interest in the Product Content as contained in the Product to Developer, Developer grants to Microsoft the following rights to the Product throughout the world:

4.1.1 The sole, exclusive and irrevocable right (i) to reproduce, translate, publish, manufacture, display, transmit, publicly perform, distribute, directly or indirectly, and sell or license, the Product for use exclusively on and/or by use of the Console by any means and any media without restriction or limitation, including but not limited to use through the Internet; (ii) the right to distribute new components (e.g., characters, levels, spells) for the Product, that are created during development of the Product, or after commercial release of the Product that supplement or add new features or content to the Product, or other components of the Product separate from the Product, for use exclusively on and/or by use of the Console; and (iii) all other related rights in such Product and all constituent elements therefore including, without limitations, rights under copyright and trademark law and publicity, privacy and moral rights which may be necessary to exploit the rights set forth in clauses (i) and (ii) above, such rights being restricted, however, to exploitation of the Product for use exclusively on and/or by use of the Console (collectively the "Exclusive Publishing Rights").

4.1.2 The non-exclusive right (i) to advertise, promote, publicize and market the Product by any means, in any and all media and in any and all languages without any restrictions or limitations, and (ii) to reproduce, translate, publish, manufacture, display, transmit, distribute, directly or indirectly, and sell or license, newsletters, strategy guides, and similar items in support of the Product (collectively, the "Nonexclusive Publishing Rights").

The Nonexclusive Publishing Rights and the Exclusive Publishing Rights are collectively referred to herein as the "Publishing Rights".

4.2 Microsoft may authorize third parties to exercise any and all Publishing Rights, including without limitation, by way of sublicenses to further third parties.

4.3 Microsoft's Publishing Rights granted herein are exclusive as to use of the Product (including sequels and/or add-ons to the Product) on or by use of the Console, meaning that other than its license grant to Microsoft herein, Developer shall not itself develop, create, market, or distribute the Product (including sequels and/or add-ons to the Product) or license or otherwise grant any other party the right to do the same, for use on or by use of the Console.

4.4 Developer grants Microsoft the Publishing Rights to the Product for so long as Microsoft commercially distributes the Product as defined in this Agreement. Microsoft shall be deemed to have ceased commercial distribution of the Product upon the happening of either of the following events (a) Microsoft conveys its Publishing Rights in the Product back to Developer pursuant to a written document as executed by the General Manager of the Microsoft Games Group; or (b) delisting of the Product from Microsoft's published product availability lists.

4.5 Except for the waiver of Milestone fees as specified herein, Section 6 of the Agreement specifying the royalties payable to Developer by Microsoft and applicable payment terms shall apply with respect to the Product for use on the Console as licensed to Microsoft hereunder.

## 5. DEVELOPMENT OF PORTS AND/OR SEQUELS

5.1 In consideration of the rights granted herein, Microsoft and Developer agree that Developer may port the Product to operate on the Nintendo Gameboy Advance system (such Product, the "Gameboy Product"), and will not port or otherwise modify the Product to operate on personal computers or any other video game system, including but not limited to Sony and Nintendo video game products. All such porting activity shall be at Developer's sole risk and expense. Except as otherwise provided herein for the Gameboy Product and Product Sequels below, Developer shall not develop or authorize or allow others to develop a version of the Product to operate on or with any other operating system or video game system.

5.2 In the event Developer wishes to develop one or more Sequels to the Product (each such Product, a "Product Sequel"), Developer shall first develop such Product Sequel(s) for use on the Console (each, a "Console Product Sequel"), provided the initial Console Product Sequel shall not be commercially released prior to October 31, 2002. As used herein, "Sequels" shall mean a subsequent product developed for operation on the Console (or other video game systems, as provided below) which extends upon the title, themes or characters of the Product and adds new game play, background or strategy to the Product. Developer will be required to enter into a separate Publisher Licensing Agreement with Microsoft in order to develop any Console Product Sequel or other game for use on the Console.

5.3 Developer may develop Product Sequels for use on other video game systems provided such Product Sequels for use on other video game systems shall not be commercially released or otherwise distributed to the public earlier than five (5) months after the same Console Product Sequel is commercially released, except as provided in Section 5.4.

5.4 In the event Developer or Developer's subsidiary does not receive approval from Microsoft to enter into a Publisher Licensing Agreement with Microsoft to develop the Console Product Sequel and other games for use on the Console by October 31, 2002, Developer may develop and distribute Product Sequel(s) for use on other video game systems, provided however that no such Product Sequel(s) for use on other video game systems may be commercially released or otherwise publicly distributed earlier than March 31, 2003.

## 6. PAYMENTS AND AUDIT RIGHTS

6.1 In the event Developer develops and distributes the Gameboy Product and/or Console Product Sequel(s) (collectively, "Developer Products"), Developer shall pay Microsoft an "Earned Royalty" of six percent (6%) of Net Receipts from each Developer Product. As used in this Section, "Net Receipts" shall mean the fees, or other sums received by Developer from the distribution of Developer Products, less returns, rebates, applicable freight and taxes.

6.1.1 For purposes of determining Net Receipts from Developer Products, if (i) Developer receives an indivisible price for two or more Developer or third party products, including one or more Developer Product(s), or (ii) Developer distributes one or more Developer Product(s) as part of a "package deal" or promotion with one or more other products such that the price for one or more Developer Product(s) is discounted, then the indivisible price or the price for all products in the "package" or promotion shall be allocated among the products involved (including all Developer Product) in proportion to their standard list prices.

6.1.2 In the event that Developer desires to distribute one or more Developer Product(s) in any manner allowed pursuant to the terms of this Amendment for which Net Receipts are indeterminate or otherwise not clearly identifiable, Developer and Microsoft shall negotiate in advance the appropriate Earned Royalty therefore. To the extent possible, such calculation shall approximate the Earned Royalty rates identified in this Amendment.

6.2 Developer shall pay Earned Royalties to Microsoft for the Developer Products according to the following terms:

- (i) Within forty five (45) days after the end of each calendar quarter with respect to which Developer owes Microsoft any royalty, Developer shall furnish Microsoft with a statement, together with payments for any amount shown thereby due to Microsoft. The statement shall be based upon Net Receipts for the quarter then ended, and shall contain information sufficient to discern how the royalty payment was computed. In the event no royalty is payable to Microsoft (but sales of Developer Product(s) have occurred) Developer shall furnish Microsoft with a statement similar to the royalty statement, which shall contain information sufficient to discern Net Receipts and "Reserve Balance" as identified in Section 6.2(ii) below.
- (ii) Developer shall be entitled to withhold from all Earned Royalties otherwise payable hereunder a reasonable Reserve Balance, made in good faith, against anticipated returns of the Developer Product(s) distributed, which Reserve Balance shall not exceed fifteen percent (15%) of all amounts due hereunder for the three (3) most recent calendar quarters.

6.3 Developer agrees to keep all proper records and books of account and all proper entries therein relating to the manufacture, distribution and sale of Developer Products, and Developer's Net Receipts therefrom.

6.3.1 Microsoft may cause an audit to be made, at its expense, of Developer's applicable records in order to verify statements rendered hereunder. Any such audit shall be conducted only by an independent certified public accountant (other than on a contingency fee basis) after prior written notice to Developer, and shall be conducted during regular business hours at Developer's offices; and in such a manner as not to interfere with Developer's normal business activities. In no event shall an audit with respect to any royalty statement commence later than eighteen (18) months from the date of the statement involved, nor shall the audits be made hereunder more frequently than once annually, nor shall the records supporting any statements be audited more than once. The results of any such audit shall be subject to the nondisclosure obligations set forth in the Agreement. Developer shall pay interest on all overdue amounts at the rate of 12% per annum from the due date until paid and, in the event that such audit discloses an underpayment to Microsoft in excess of 5% of any amount due, Developer shall pay Microsoft's reasonable third party costs and expenses of such audit.

6.3.2 In the event that Microsoft makes any claim against Developer with respect to such audit, Microsoft hereby agrees to make available to Developer, upon request, its records and reports pertaining to the audit and any such records and reports prepared for Microsoft by its accountant(s).

## 7. INDEMNIFICATION

- 7.1 Developer hereby agrees to indemnify, pay the defense costs of, and hold Microsoft harmless from any and all claims, demands, costs, liabilities, losses, expenses and damages (including attorneys' fees, costs, and expert witnesses' fees) arising out of or in connection with (a) any claim that Developer Products and/or Product Sequels violate any copyright, trade secret, trademark, patent or other proprietary right of any third party; or (b) any claim which, taking the claimant's allegations to be true, would result in a breach by Developer of any of Developer's warranties and covenants set forth in the Agreement.
- 7.2 If any action shall be brought against Microsoft in respect to which indemnity may be sought from the Developer pursuant to the provisions of this Section, Microsoft shall promptly notify Developer in writing, specifying the nature of the action and the total monetary amount sought or other such relief as is sought therein. Microsoft shall cooperate with Developer in all reasonable respects in connection with the defense of any such action. Developer may, upon written notice thereof to Microsoft, undertake to conduct all proceedings or negotiations in connection therewith, assume the defense thereof, and if it so undertakes, it shall also undertake all other required steps or proceedings to settle or defend any such action, including the employment of counsel and payment of all expenses in connection with such settlement or defense. Microsoft shall have the right to employ separate counsel and participate in the defense thereof solely at its expense. Developer shall reimburse Microsoft on demand for any payments made or loss suffered by it at any time after the date hereof, based upon the final and non-appealable judgment of any court of competent jurisdiction or pursuant to a bona fide and final compromise or settlement of claims, demands or actions, in respect to any damages to which the foregoing relates.
- 7.3 The provisions of this Section 7 shall survive any termination or expiration of this Amendment or the Agreement.


8. OTHER TERMS

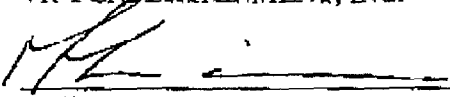
8.1 Section 3.7 of the Agreement is hereby deleted in its entirety.

Other than the modifications and additional terms as specified herein, the terms and conditions of the Agreement remain in full force and effect.

MICROSOFT CORPORATION

VR-1 ENTERTAINMENT, INC.

  
\_\_\_\_\_

  
\_\_\_\_\_

By (Sign)

By (Sign)

Ed Fries  
\_\_\_\_\_

MIKE LOMAS  
\_\_\_\_\_

Name (Print)

Name (Print)

VP  
\_\_\_\_\_

EVP  
\_\_\_\_\_

Title

Title

2/15/02

2/15/02

**EXHIBIT A**  
**PENDING TRADEMARKS**

Country	Mark	Class	Status	Filing Date	Appl. No.
Argentina	NIGHTCASTER	009	Pending	7/17/2001	2,345,951
Australia	NIGHTCASTER	009	Pending	7/13/2001	882,521
Brazil	NIGHTCASTER	009	Pending	7/17/2001	823,592,561
Canada	NIGHTCASTER	009	Pending	7/17/2001	1,109,651
European Community	NIGHTCASTER	009	Pending	7/13/2001	2,299,071
Japan	NIGHTCASTER	009	Pending	7/17/2001	2001-65,620
Korea	NIGHTCASTER	009	Pending	7/16/2001	2001-31,114
Mexico	NIGHTCASTER	009	Pending	7/19/2001	497,150
Switzerland	NIGHTCASTER	009	Pending	7/18/2001	7,121/2001
Taiwan	NIGHTCASTER	009	Pending	7/13/2001	90,028,960
United States	NIGHTCASTER	009	Pending	1/19/2001	78/044,046