



JOINT DEVELOPMENT
AGREEMENT
BETWEEN
INTERNATIONAL BUSINESS
MACHINES CORPORATION
AND
MICROSOFT CORPORATION

48B/0145/2-1

IBM 02 0000002312

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Agreement dated as of June 10, 1985, 1
between INTERNATIONAL BUSINESS 2
MACHINES CORPORATION, a New York 3
Corporation having a place of 4
business at Boca Raton, Florida and 5
MICROSOFT, a Washington Corporation, 6
having its place of business at 7
Bellevue, Washington. 8

WHEREAS INTERNATIONAL BUSINESS MACHINES CORPORATION, hereinafter "IBM", and 10
MICROSOFT, hereinafter "MS", desire to establish a "JOINT DEVELOPMENT AGREE- 11
MENT", hereinafter "JDA" or "Agreement", in order to establish a working 12
relationship between IBM and MS for evaluating the feasibility of and/or 13
developing systems software products based upon IBM PC DOS and/or MS DOS, 14
including Linkers and Basic Interpreters, but excluding other languages; 15

WHEREAS, both parties understand that agreements covering other future projects 17
may be entered into between the parties in addition to this JDA; and 18

WHEREAS this JDA, when implemented with respect to specific projects to be 20
completed, by a Phase I Attachment or Phase II Document pursuant to the terms 21
of this JDA, allows for two (2) phases for each product to be considered for 22
review, if mutually agreed to, with Phase I consisting of a feasibility study 23
and Phase II consisting of actual product development. 24

NOW THEREFORE, IBM and MS agree as follows: 26

1.0 DEFINITIONS 28

As used in this Agreement, the Addenda and the Phase I Attachments and 30
Phase II Documents, the following definitions shall apply to capitalized 31
terms: 32

1.1. "Code" shall mean Joint Code, MS Code or IBM Code, or any combination 34
thereof, as generally defined below. "Source Code" shall mean Code 35
in source language form and "Object Code" shall mean Code in machine 36
language form. 37

1.1.1	"IBM Code", for purposes of this Agreement, shall mean	39
	computer programs which consist of any one or more of the	40
	following:	41
		42
	(a) pre-existing "adaptations" created by MS for IBM and	43
	Derivative Works thereof created by IBM pursuant to	44
	prior agreements between IBM and MS which are included	45
	by IBM in computer programs developed pursuant to the	46
	terms of this Agreement;	47
		48
	(b) any other computer programs supplied by IBM to MS	49
	pursuant to the terms of this Agreement;	50
		51
	(c) computer programs developed pursuant to this Agreement	52
	and specifically labeled IBM Code in a Phase II	53
	Document.	54
		55
1.1.2	"MS Code", for purposes of this Agreement, shall mean	56
	computer programs which consist of any one or more of the	57
	following:	58
		59
	(a) those pre-existing computer programs and Derivative	60
	Works thereof, owned by MS as specified in prior	61
	agreements between IBM and MS, which are included by	62
	MS in computer programs developed pursuant to the	63
	terms of this Agreement;	64
		65
	(b) any other computer programs supplied by MS to IBM	66
	pursuant to the terms of this Agreement;	67
		68
	(c) computer programs developed pursuant to this Agreement	69
	specifically labeled MS Code in a Phase II Document.	70
		71
1.1.3	"Joint Code", for purposes of this Agreement, shall mean	72
	any computer programs specifically labeled as Joint Code in	73

a Phase II Document and any other computer programs contained in the Final Code which are not specifically labeled as MS Code or IBM Code in a Phase II Document.	74 75 76 77
1.2 "Derivative Work" shall mean a work which is based upon Code and/or Documentation, such as a revision, modification, translation, abridgement, condensation, expansion, compilation or any other form in which such Code and/or Documentation may be recast, transformed or adapted, and which, if prepared without authorization of the owner(s) of such Code and/or Documentation, would constitute a copyright infringement.	78 79 80 81 82 83 84
1.3 "Documentation" shall mean documentation and supporting materials, provided by one party to the other pursuant to a Phase I Attachment or Phase II Document, excluding IBM Publications unless otherwise delivered as documentation, describing Code, or otherwise useful for demonstrating, designing, developing, testing, maintaining, marketing, and training with respect to the Code, and consisting of any one or more types of Documentation defined below:	85 86 87 88 89 90 91 92
1.3.1 "IBM Documentation", for purposes of this Agreement, shall mean Documentation which consists of one or more of the following:	93 94 95 96
(a) that pre-existing specific documentation owned by IBM pursuant to prior agreements with MS which is included by MS and/or IBM in Documentation developed pursuant to the terms of this Agreement;	97 98 99 100 101
(b) any other Documentation supplied by IBM to MS pursuant to the terms of this Agreement;	102 103 104
(c) Documentation developed hereunder which is specifically labeled IBM Documentation in a Phase II Document.	105 106 107

1.3.2	"MS Documentation", for purposes of this Agreement, shall mean Documentation which consists of one or more of the following:	108
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	(a) that pre-existing specific documentation owned by MS pursuant to prior agreements with IBM which is included by IBM and/or MS in Documentation developed pursuant to the terms of this Agreement;	112
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	(b) any other Documentation supplied by MS to IBM pursuant to the terms of this Agreement;	117
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		119
	(c) Documentation developed hereunder which is specifically labeled MS Documentation in a Phase II Document.	120
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1.3.3	"Joint Documentation", for purposes of this Agreement, shall mean any Documentation specifically labeled as Joint Documentation in a Phase II Document and any other Documentation contained in the Final Documentation which is not specifically labeled as MS Documentation or IBM Documentation in a Phase II Document.	123
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1.4	"Error" shall have the following meanings:	130
		131
1.4.1	An Error in the Code shall mean:	132
		133
	(a) A function or user interface which is omitted or does not operate as specified in a Phase II Document or as specified in Documentation provided to IBM by MS; or	134
		135
		136
		137
	(b) An error condition or user initiated action which causes the Code to give unforeseen and detrimental results or to cease functioning.	138
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1.4.2	An Error in the Documentation shall mean an error or omission in content or failure to adhere to the specifications contained in a Phase II Document.	142 143 144 145
1.4.3	Error Severity Levels are defined as follows: Errors shall be reasonably classified by IBM according to the following definitions for Severity Levels:	146 147 148 149
	(a) Severity Level I Error is an emergency condition which makes the performance or continued performance of any useful work impossible.	150 151 152 153
	(b) Severity Level II Error is a severely impacted condition which makes performance or continued performance of some or all functions difficult although some useful work can be accomplished.	154 155 156 157 158
	(c) Severity Level III Error is a limited problem condition which is less critical than a Severity Level I and II Error, but is an annoying defect which can be circumvented or avoided on a temporary basis by the intended user.	159 160 161 162 163 164
	(d) Severity Level IV Error is a minor Error which can be easily circumvented by the intended user.	165 166 167
1.5	"Final Code and Documentation" shall mean that Code and Documentation developed as a result of a Phase II Document, in accordance with the specifications of a Phase II Document, with all problems corrected, all functions complete, fully tested and ready for manufacture, and which has been accepted by IBM.	168 169 170 171 172 173
1.6	"IBM Publications," for purposes of this Agreement, shall mean documentation prepared outside the scope of this Agreement which consists of documents describing the use of, providing reference	174 175 176

material for, or otherwise describing IBM products, which IBM sells	177
or intends to sell to end users.	178
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1.7 "Preliminary Code and Documentation" shall mean that Code and Docu-	180
mentation provided to IBM by MS and/or by IBM to MS in accordance	181
with the specifications of a Phase II Document that is operational	182
and functionally complete but may not be fully tested or fully	183
edited.	184
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1.8 "Product" shall mean a system software product based upon IBM PC DOS	186
and/or MS DOS, and/or Linkers and Basic Interpreters, but otherwise	187
excluding languages.	188
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1.9 "Invention" shall mean any idea, design, concept, technique, inven-	190
tion, discovery, or improvement, whether or not patentable, made by	191
one or more employees of a party hereto or others whose services it	192
requires, or jointly by one or more employees of a party hereto or	193
others whose services it requires with one or more employees of the	194
other party hereto or others whose services it requires, during the	195
term of this Agreement and in the performance of activities set forth	196
in the Phase I Attachment(s) and Phase II Document(s) issued hereun-	197
der, provided that either the conception or reduction to practice	198
occurs during the term of this Agreement and in the performance of	199
the activities set forth in the Phase I Attachment(s) and Phase II	200
Document(s); <u>provided, however</u> , an Invention made jointly by one or	201
more employees of a party hereto or others whose services it requires	202
with one or more employees of the other party or others whose servic-	203
es it requires is referred to as a "Joint Invention".	204
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1.10 "Subsidiary" shall mean a corporation, company, or other entity more	206
than fifty percent (50%) of whose outstanding shares or securities	207
(representing the right, other than as affected by events of default,	208
to vote for the election of directors or other managing authority)	209
are, now or hereafter, owned or controlled, directly or indirectly,	210
by a party hereto, but such corporation, company, or other entity	211

shall be deemed to be a Subsidiary only so long as such ownership or control exists.	212 213 214
1.11 "Test Plan" shall mean a set of testing procedures to be created jointly and/or separately for each Phase II Document to demonstrate that the Code and Documentation meets the criteria established by such Phase II Document, which may include tests to determine:	215 216 217 218
(a) the identification of Errors;	219 220
(b) that the Code can be operated by its intended audience using only the supplied Documentation and Code;	221 222 223 224
(c) that the Code performs the functions specified in such Phase II Document;	225 226 227
(d) that the Documentation describes the functions performed by the Code;	228 229 230
(e) that the performance (throughput, execution, etc.) of the Code is satisfactory in the operating environment for which it is designed.	231 232 233 234
2.0 PROJECT DESCRIPTION(S)	235 236
2.1 Before commencing any Phase I activity, both IBM and MS shall have mutually identified a Product or set of Products for feasibility evaluation, whereupon, by agreement of IBM and MS, a Phase I Attachment, which shall incorporate by reference this Agreement, shall be executed by duly authorized representatives of the parties. Both parties shall participate and devote resources to the extent described in the appropriate Phase I Attachment to this Agreement, in order to define any proposed Phase II development project under consideration.	237 238 239 240 241 242 243 244 245 246

2.1.1	Each Phase I Attachment to this Agreement shall contain the applicable combination of the following:	247 248 249
(a)	a statement of the objectives of the feasibility study, the report(s) and/or other material(s) to be generated during the feasibility study (hereinafter "Output"), and the criteria for determining completion of the Phase I Attachment;	250 251 252 253 254 255
(b)	a division of responsibilities between IBM and MS;	256 257
(c)	a set period of the duration of this feasibility study;	258 259 260
(d)	an identification of the size of the study team;	261 262
(e)	payment terms, if any;	263 264
(f)	limitation of liability for the Phase I Attachment; and	265 266 267
(g)	any other information which both IBM and MS mutually agree to be required.	268 269 270
2.2	If both IBM and MS mutually agree to proceed with the development of the Product(s) studied in the Phase I Attachment, then a Phase II Document, which shall incorporate by reference this Agreement, shall be executed by duly authorized representatives of the parties. This Phase II Document shall provide for the development and licensing of Code and Documentation under the terms and conditions contained herein.	271 272 273 274 275 276 277 278
2.2.1	The Phase II Document(s) to this Agreement shall contain the applicable combinations of the following:	279 280 281

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(a)	a final version of the Product's technical specifications;	282
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(b)	a schedule of Code and Documentation deliverables;	284
(c)	financial terms;	285
(d)	Product development location (s);	286
(e)	a division of responsibilities between IBM and MS;	287
(f)	maintenance terms, if any;	288
(g)	a list of equipment to be provided pursuant to the terms of the existing Equipment Loan Agreement between IBM and MS;	289
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(h)	a statement specifying which Code and Documentation is MS Code and MS Documentation, which Code and Documentation is IBM Code and IBM Documentation, and which Code and Documentation is Joint Code and Joint Documentation. All other Code and Documentation not so specified shall be Joint Code and Joint Documentation;	292
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(i)	a list of that information to be provided by each party and that information which may not be disclosed to a third party in accordance with Subsection 4.8.2;	298
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(j)	acceptance terms;	301
(k)	payment terms for termination other than for material breach;	302
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(l)	limitation of liability for the Phase II Document; and	304
(m)	any additional terms and conditions which both IBM and MS mutually agree to be required.	305
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3.0	OWNERSHIP RIGHTS AND LICENSES	308
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3.1	With respect to each Phase I Attachment and unless otherwise stated in such Attachment:	310
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3.1.1	IBM and MS shall jointly own, without accounting, all Output of each Phase I Attachment to this Agreement. Each party agrees to make any assignments, licenses or other transfers necessary to effect such joint ownership.	313
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With respect to Phase I Output, to the extent such joint ownership is prevented by operation of law each party hereby grants to the other a non-exclusive, royalty-free, worldwide and irrevocable license to use, execute, perform, reproduce, prepare or have prepared Derivative Works based upon display, and sell, lease or otherwise transfer of possession or ownership of copies of, the Phase I Output and/or any Derivative Works thereof. Such license includes the right of each party to grant licenses, of or within the scope of the right and license granted to it herein, to others including its Subsidiaries and its and their distributors; and each licensed Subsidiary shall have the right correspondingly to license others including other Subsidiaries, and its distributors.	318 319 320 321 322 323 324 325 326 327 328 329 330 331 332
3.1.2 Neither IBM nor MS shall, with respect to a Phase I Attachment to this Agreement, become the joint owner of or, except to the extent and only for the period required to perform Phase I obligations, acquire a license to that Code and/or Documentation which the other party provides as a resource to fulfill the terms of said Phase I Attachment to this Agreement unless such Code and/or Documentation thereafter becomes part of a Phase I Output or such Code and/or Documentation was previously owned jointly or licensed to the other party.	333 334 335 336 337 338 339 340 341 342 343
3.2 With respect to each Phase II Document and unless otherwise stated in such Document:	344 345 346
3.2.1 With respect to Joint Code and Joint Documentation:	347 348
(a) IBM and MS shall jointly own, but without any obligation of accounting, Joint Code and Joint Documentation. Each party agrees to make such assignments,	349 350 351

licenses or other transfers as may be necessary to effect such joint ownership. 352
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(b) To the extent that such joint ownership cannot be effected by operation of law, each party hereby grants to the other a non-exclusive, royalty-free, worldwide and irrevocable license to use, execute, perform, reproduce, prepare or have prepared Derivative Works based upon display, and sell, lease or otherwise transfer of possession or ownership of copies of, the Joint Code and Joint Documentation and/or any Derivative Works thereof. Such license includes the right of each party to grant licenses, of or within the scope of the right and license granted to it herein, to third parties including its Subsidiaries and its and their distributors; and each licensed Subsidiary shall have the right correspondingly to license other third parties, including other Subsidiaries, and its distributors. 355
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(c) Each party ("the enforcing party") shall have the right to enforce its rights in the Joint Code and Joint Documentation, without any requirement of approval by the other party, after making a reasonable effort to notify the other party. Such other party: 372
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(i) upon such notification shall cooperate as regards reasonable requests for information necessary to prepare for the proposed enforcement activity (including, notwithstanding Subsection 16.13, information as to whether the party against whom enforcement is contemplated is licensed by the other party); 378
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(ii) shall have the right, but not the obligation, to	386
join or otherwise participate therein at its own	387
expense, but shall in any event be kept reason-	388
ably informed of such activity;	389
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(iii) if it does not join in any such enforcement	391
litigation brought by the enforcing party, shall,	392
if requested, assign its interest in the enforce-	393
ment cause of action (but not its interest in the	394
ownership of the rights claimed to be infringed)	395
to the enforcing party and shall not share in any	396
proceeds from such enforcement by the enforcing	397
party; and	398
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(iv) shall not be joined as a party without its	400
consent in any enforcement activity if it has	401
assigned its interest in the cause of action to	402
the enforcing party.	403
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The parties intend that, as between them, there shall be no	405
limitation on the individual exercise of rights other than	406
the above notification obligation in the case of enforcement.	407
	408
3.2.2 With respect to IBM Code and IBM Documentation:	409
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(a) Any newly created IBM Code and IBM Documentation shall	411
be exclusively owned by IBM. To the extent such IBM	412
Code and IBM Documentation may otherwise not be deemed	413
to be exclusively owned by IBM, MS hereby assigns to	414
IBM the ownership of copyright in IBM Code and IBM	415
Documentation created by MS for IBM pursuant to a	416
Phase II Document, and IBM shall have the right to	417
obtain and hold in its own name copyrights, registra-	418
tions and similar protection which may be available in	419
such IBM Code and IBM Documentation. MS agrees to	420

give IBM or its designee(s) all assistance reasonably 421
required to perfect such rights, including but not 422
limited to, the identification of such IBM Code and 423
IBM Documentation and the execution of any instruments 424
required to register copyrights. 425
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(b) MS grants to IBM, its Subsidiaries and its and their 427
customers a royalty-free, worldwide, nonexclusive, 428
irrevocable license under any patents which MS or its 429
Subsidiaries have the right to grant the license set 430
forth in this Subsection, during the term of this 431
Agreement, to the extent necessary: (i) to permit IBM 432
to make, have made, use, sell and otherwise transfer 433
of possession or ownership of program code which is 434
included in IBM Code, and/or Final Code and which is 435
provided to IBM or developed by MS hereunder; and (ii) 436
to permit the combination of such Code with equipment. 437
Such patent license, however, shall not extend to any 438
equipment itself. 439
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(c) IBM hereby grants to MS a non-exclusive, royalty-free, 441
worldwide and irrevocable license to use, execute, 442
perform, reproduce, prepare or have prepared Deriva- 443
tive Works based upon, display, and sell, lease or 444
otherwise transfer of possession or ownership of 445
copies of, the IBM Code and IBM Documentation con- 446
tained in the ~~Final~~ Code and Documentation and/or ^{with} 447
Derivative Works thereof. Such license includes the ^{the} 448
right of MS to grant licenses, of or within the scope 449
of the right and license granted to it herein, to 450
third parties, including its Subsidiaries and its and 451
their distributors; and each licensed Subsidiary shall 452
have the right correspondingly to license other third 453
parties, including other Subsidiaries, and its 454
distributors. 455
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- 3.2.3 With respect to MS Code and MS Documentation: 457
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- (a) Any newly created MS Code and MS Documentation shall 459
be exclusively owned by MS. To the extent such MS 460
Code and MS Documentation may otherwise not be deemed 461
to be exclusively owned by MS, IBM hereby assigns to 462
MS the ownership of copyright in MS Code and MS 463
Documentation created by IBM for MS pursuant to a 464
Phase II Document, and MS shall have the right to 465
obtain and hold in its own name copyrights, registra- 466
tions and similar protection which may be available in 467
such MS Code and MS Documentation. IBM agrees to give 468
MS or its designee(s) all assistance reasonably 469
required to perfect such rights, including but not 470
limited to, the identification of such MS Code and MS 471
Documentation and the execution of any instruments 472
required to register copyrights. 473
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- (b) IBM grants to MS, its Subsidiaries and its and their 475
customers a royalty-free, worldwide, nonexclusive, 476
irrevocable license under any patents which IBM or its 477
Subsidiaries have the right to grant the license set 478
forth below in this Subsection, during the term of 479
this Agreement, to the extent necessary: (i) to 480
permit MS to make, have made, use, sell and otherwise 481
transfer of possession or ownership of program code 482
which is included in MS Code and/or Final Code and 483
which is provided to MS or developed by IBM hereunder; 484
and (ii) to permit the combination of such Code with 485
equipment. Such patent license, however, shall not 486
extend to any equipment. 487
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- (c) MS hereby grants to IBM a non-exclusive, royalty-free 489
worldwide and irrevocable license to use, execute, 490
perform, reproduce, prepare or have prepared Derivative 491

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Works based upon, display, and sell, lease or otherwise 492
transfer of possession or ownership of copies of, the 493
MS Code and MS Documentation contained in the Final ~~Code~~ ^{with} 494
Code and Documentation and/or Derivative Works there ~~of~~ 495
of. Such license includes the right of IBM to grant 496
licenses, of or within the scope of the right and 497
license granted to it herein, to third parties, 498
including its Subsidiaries and its and their distribu- 499
tors; and each licensed Subsidiary shall have the 500
right correspondingly to license other third parties 501
including other Subsidiaries, and its distributors. 502

Notwithstanding the foregoing

3.2.4

With respect to that Code or Documentation provided by one 503
party to the other as a resource to fulfill the terms of a 504
Phase II Document which is not part of the product specifi- 505
cation in the Phase II Document, the other party shall not 506
become a joint owner of such Code or Documentation which is 507
not integrated into the Final Code and Documentation. To 508
the extent and only for the period required to perform such 509
Phase II activities, each party hereby grants to the other 510
a non-exclusive, royalty-free, worldwide and irrevocable 511
license to use, execute, perform, reproduce, prepare or 512
have prepared Derivative Works based upon, display and 513
sell, lease or otherwise transfer of possession or owner- 514
ship of copies of, such Code and Documentation which is not 515
integrated into the Final Code and Documentation. This 516
Subsection shall in no way effect ownership or licensing 517
rights of the parties created pursuant to prior agreements, 518
Phase I Attachments, or Phase II Documents. 519

3.2.5

Any changes, modifications and/or additions made hereunder 520
to IBM Code or IBM Documentation which are not integrated 521
into Final Code and Documentation shall be owned by IBM. 522
Any changes, modifications and/or additions made hereunder 523
to MS Code or MS Documentation which are not integrated 524
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into Final Code and Documentation shall be owned by MS.
Each party hereby grants to the other a non-exclusive,
royalty-free, worldwide and irrevocable license to use,
execute, perform, reproduce, prepare or have prepared
Derivative Works based upon, display and sell, lease or
otherwise transfer of possession or ownership of copies of,
such changes, modifications and/or additions.

4.0 DISCLOSURE OF INFORMATION

- 4.1 To the extent that any oral or written information and/or Code and Documentation of one party is provided to the other party for the purposes of and during the term of this Agreement, this Section supersedes any conflicting terms regarding the use and disclosure of IBM Confidential Information contained in the Confidential Disclosure Agreement (CDA) dated August 21, 1983, and all prior CDA's between the parties.
- 4.2 Each party shall be free to use and disclose for any purpose whatsoever any information provided for the purposes of this Agreement by the other party, except as otherwise provided in this Section.
- 4.3 For a period of ten (10) years from the date of receipt from the other party of the Code and Documentation identified in Subsection 3.2.4, each party shall use the same care and discretion to avoid disclosure, publication or dissemination of such Code and Documentation as such party employs with similar information of its own which it does not desire to publish, disclose or disseminate.
- 4.4 For a period of ten (10) years from the date of receipt of unannounced product information from the other party, neither party shall disclose to any third party such unannounced product of the other party except to the extent that such unannounced product is the product being developed under a Phase II Document. In the event such unannounced product is the product being developed pursuant to a

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Phase II Document, the disclosing party shall in no event identify	562
the unannounced product as being in any way associated with the other	563
party.	564
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4.5 For a period of ten (10) years from the date of receipt of Source	566
Code from the other party, neither party shall disclose to any third	567
party such Source Code of the other party unless such disclosure is	568
made in accordance with terms and conditions regarding confidentiali-	569
ty substantially similar to those contained in Addendum A to this	570
Agreement, entitled "SAMPLE CONFIDENTIAL DISCLOSURE AGREEMENT".	571
	572
4.6 During the period of this Agreement, each party shall use its best	573
efforts not to disclose to any third party the terms and conditions	574
of this Agreement and/or of any Phase I Attachments or Phase II	575
Documents hereto, without the prior written consent of the other	576
party, except to the extent required by governmental law, statute,	577
ordinance, administrative order, rule or regulation, or as may be	578
necessary to establish or assert its rights hereunder; provided,	579
however, to the extent a party wishes to disclose the terms of this	580
Agreement for reasons not requiring the other party's consent, such	581
disclosing party shall apply, where applicable, for confidentiality,	582
protective orders and the like.	583
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4.7 Subject to the terms of Subsections 4.6 and 16.14, MS shall not	585
disclose the existence of this Agreement to any third party.	586
	587
4.8 Notwithstanding anything to the contrary in this Section or in this	588
Agreement:	589
	590
4.8.1 During any period while a Phase I Attachment is in progress	591
and during a ninety (90) day period following its comple-	592
tion, neither party shall disclose to any third party the	593
Output of such Phase I Attachment without the prior written	594
consent of the other party;	595
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4.8.2	To the extent that any written information of one party is specifically identified in a Phase II Document as not being subject to disclosure by the other party, the disclosing party shall stamp such information "NOT SUBJECT TO DISCLOSURE" and the terms of such Phase II Document shall control over the terms of this Section;	597 598 599 600 601 602 603
4.8.3	Disclosure of information, Code or Documentation shall not be precluded if such disclosure is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; <u>provided</u> , <u>however</u> , that the party making the disclosure pursuant to the order shall first have given notice to the other party and made a reasonable effort to obtain a protective order requiring that the information and/or Code and Documentation so disclosed be used only for the purposes for which the order was issued;	604 605 606 607 608 609 610 611 612 613 614
4.8.4	The obligations regarding non-disclosure will not apply to any information that:	615 616 617
4.8.4.1	is already in the possession of the receiving party or any of its Subsidiaries without obligation of confidence;	618 619 620 621
4.8.4.2	is independently developed by the receiving party or any of its Subsidiaries;	622 623 624
4.8.4.3	is or becomes publicly available without breach of this Agreement;	625 626 627
4.8.4.4	is rightfully received by the receiving party from a third party without accompanying non-disclosure obligations;	628 629 630 631

4.8.4.5	is released for disclosure by the disclosing party with its written consent; or	632 633 634
4.8.4.6	is inherently disclosed in the use, lease, sale or other distribution of, or publicly available supporting documentation for, any present or future product or service by or for the receiving party or any of its Subsidiaries;	635 636 637 638 639 640
4.8.5	Both parties agree that the other party shall have complied with any non-disclosure obligations in this Agreement if such party has used the same care and discretion it uses with respect to its own information which it desires not to disclose;	641 642 643 644 645 646
4.8.6	Both IBM and MS shall be free to use any ideas, concepts, techniques or know-how contained in information, Code and/or Documentation provided by the other party for the purposes of this Agreement, Phase I Attachments, and Phase II Documents for the design, development, manufacture, maintenance, and/or marketing of any product(s) developed, subject to the statutory copyrights and patents of the other party; and	647 648 649 650 651 652 653 654 655
4.8.7	The receipt of any information, Code and/or Documentation under this Agreement shall not create any obligation in any way limiting or restricting the assignment and/or reassignment of employees of the receiving party.	656 657 658 659 660
5.0	INVENTION RIGHTS	661 662
5.1	Each Invention other than a Joint Invention, shall be the property of the party whose employees make the Invention (hereinafter "Owning Party"), subject to a license which the Owning Party hereby grants to the other party under each such Invention and any patent protection	663 664 665 666

obtained therefor. The Owing Party shall promptly make a complete written disclosure to the other party of each Invention actually submitted for patent consideration specifically pointing out the features or concepts which it believes to be new or different.

5.2 The Owing Party shall notify the other party promptly as to each country in which it elects to seek protection by obtaining patent rights, at its expense, and shall promptly provide the other party with a copy of each application so filed. Upon written request, the Owing Party will advise the other party of the status of any such application. If the Owing Party elects not to seek such protection on said Invention in any country or to seek such protection only in certain countries or that it intends to abandon the application, it shall notify the other party, and the other party shall have the right to seek such protection, at its expense, on said Inventions in any such country. If the Owing Party elects not to seek any such patent protection, the other party shall also have the right to publish such Invention after consultation with, and review by, the Owing Party. Title to all applications filed on said Invention and all patents issuing thereon shall vest in the Owing Party subject to a license under said patents hereby granted to the other party.

5.3 Joint Inventions shall be jointly owned, title to all patents issued thereon shall be jointly owned, all expenses incurred in obtaining and maintaining such patents, except as provided hereinafter, shall be equally shared and each party shall have the unrestricted right to license third parties thereunder without accounting. In the event that one party elects not to seek or maintain patent protection for any Joint Invention in any particular country or not to share equally in the expenses thereof with the other party, the other party shall have the right to seek or maintain such protection at its expense in such country and shall have full control over the prosecution and maintenance thereof even though title to any patent issuing therefrom shall be jointly owned.

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5.4	Each party shall give the other party all reasonable assistance in obtaining patent protection and in preparing and prosecuting any patent application filed by the other party, and shall cause to be executed assignments and all other instruments and documents as the other party may consider necessary or appropriate to carry out the intent of this Section 5.	702 703 704 705 706 707 708
5.5	All licenses granted to IBM and to MS under this Section 5 shall be worldwide, irrevocable, nonexclusive, nontransferable, and fully paid-up; shall include the right to make, have made, use, have used, lease, sell or otherwise transfer any apparatus, and to practice and have practiced any method. All such licenses shall include the right of the grantee to grant revocable or irrevocable sublicenses to its Subsidiaries, such sublicenses to include the right of the sublicensed Subsidiaries to correspondingly sublicense other Subsidiaries.	709 710 711 712 713 714 715 716 717
5.6	Nothing contained in this Agreement shall be deemed to grant either directly or by implication, estoppel, or otherwise, any license under patents or patent applications, arising out of any other inventions of either party, except as specifically provided hereunder.	718 719 720 721 722
6.0	IBM PROVIDED EQUIPMENT	723 724
6.1	IBM shall provide or has provided to MS at IBM's expense, hardware, software, documentation and related technical support materials specified in the Equipment Loan Agreement between IBM and MS dated May 12, 1983 and may provide additional hardware and software as is subsequently agreed to be required by MS for performance of its obligations under this Agreement and subsequently added to the Equipment Loan Agreement. IBM provided hardware, software, documentation and related technical support materials shall be for MS's use solely for the purposes of fulfilling the terms of a Phase I Attachment or Phase II Document (except for incidental, administrative or other activities with IBM's consent) and will be delivered by IBM to the locations specified in the Equipment Loan Agreement and in	725 726 727 728 729 730 731 732 733 734 735 736

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accordance with the time schedules included in the corresponding Attachment(s) and/or Document(s).	737 738 739
6.2 Title to the hardware and software documentation and related technical support materials so furnished by IBM shall remain with IBM. The terms and conditions governing the use of the hardware, software, documentation and related technical support materials loaned to MS are set forth in the Equipment Loan Agreement.	740 741 742 743 744 745
7.0 MS PROVIDED EQUIPMENT	746 747
7.1 MS shall provide to IBM at MS's expense, hardware, software, documentation and related technical support materials specified in an Equipment Loan Agreement between MS and IBM under the same terms as those contained in the Equipment Loan Agreement between IBM and MS dated May 12, 1983, unless otherwise agreed to by the parties, and may provide additional hardware and software as is subsequently agreed to be required by IBM for performance of its obligations under this Agreement and subsequently added to the Equipment Loan Agreement. MS provided hardware, software, documentation and related technical support materials shall be for IBM's use solely for the purposes of fulfilling the terms of a Phase I Attachment or Phase II Document (except for incidental, administrative or other activities with MS's consent) and will be delivered by MS to the locations specified in the Equipment Loan Agreement and in accordance with the time schedules included in the corresponding Attachment(s) and/or Document(s).	748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764
7.2 Title to the hardware and software documentation and related technical support materials so furnished by MS shall remain with MS. The terms and conditions governing the use of the hardware, software, documentation and related technical support materials loaned to IBM are set forth in the Equipment Loan Agreement.	765 766 767 768 769 770

8.0 ACCEPTANCE	771
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8.1 Acceptance terms for Phase II Code and Documentation shall be established by mutual agreement between IBM and MS, and shall be contained in each Phase II Document.	773
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9.0 MAINTENANCE TERMS	777
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9.1 Maintenance terms, if any, shall be specified in the applicable Phase II Document(s).	779
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10.0 PAYMENT AND ROYALTIES	782
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10.1 Payment obligations, if any, by IBM to MS or MS to IBM shall be as specified in the applicable Phase I Attachment(s) and Phase II Document(s).	784
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10.2 Royalty obligations, if any, by IBM to MS or MS to IBM shall be as specified in the applicable Phase II Document(s). To the extent they are not so specified, royalty obligations shall be deemed to be included in the payments made and/or services performed by the parties pursuant to the Phase II Document(s).	788
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10.3 Each party agrees, unless otherwise stated in a Phase II Document, to pay royalty obligations to any third party which result from such party's provision to the other party of, or development of, Code and Documentation pursuant to the terms of this Agreement.	794
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10.4 Notwithstanding anything to the contrary in any prior agreement between IBM and MS, the only obligation for any payments or royalties by either party for Final Code and Documentation for Products developed pursuant to a Phase II Document and Derivative Works thereof, shall be those set forth in this Section 10 and the applicable Phase II Document.	799
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11.0 COPYRIGHT

11.1 Any publication of the Code, Documentation and/or Derivative Works thereof by either party shall contain an appropriate copyright notice in the name of MS, IBM or other author in a manner to be determined by the publisher of such Code, Documentation and/or Derivative Works thereof. In each such case, the copyright notice shall be adequate to protect the ownership rights of both IBM and MS. However, in no event will MS include an IBM copyright notice in Code, Documentation and/or Derivative Works thereof which are marketed by MS or authorized by MS to be marketed to third parties.

11.2 If the Code and/or Documentation contained in the Final Code and Documentation have not been registered previously in the United States Copyright Office, MS hereby authorizes IBM or its designee to act as the agent of MS to so register such Code and/or Documentation or any portion thereof, as deemed appropriate by IBM in the name of MS. However, to the extent IBM so registers MS Source Code, IBM agrees to limit its disclosure and publication of MS Source Code to the minimum amount required by the United States Copyright Office to register MS Source Code. MS shall also perform all acts necessary to enable IBM to maintain and/or register such copyright, including, but not limited to, the execution of any necessary instruments and documents therefor.

12.0 TRADEMARK(S), TRADE NAME(S), AND PRODUCT NAME(S)

12.1 MS hereby grants IBM the right, without obligation, to use trademark(s), trade name(s) and/or other product name(s) in conjunction with the advertising and marketing of any product based on the MS Code and/or MS Documentation and on all Derivative Works of such product; provided, however, IBM shall modify any use of MS's trademark, in accordance with MS's reasonable objections.

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12.2 MS acknowledges that IBM has the right, but not the obligation, to	840
conduct trademark(s), trade name(s) or product name(s) searches for	841
the purpose of determining any problems that may be encountered by	842
IBM's use of MS's trademark(s), trade name(s) or product name(s). MS	843
shall use its best efforts to resolve to IBM's satisfaction all	844
problems identified by IBM resulting from such search.	845
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12.3 IBM hereby grants to MS the right, without obligation, to use the	847
product name(s) (unless such product name(s) are trade names, trade-	848
marks or service marks of IBM) used by IBM to identify the Code	849
and/or Documentation marketed by IBM, and Derivative Works thereof,	850
in conjunction with the advertising and marketing by MS of any MS	851
Product based on the IBM Code and/or IBM Documentation, and/or	✓ 852 A1
Derivative Works thereof; provided, however, MS shall modify any use	853
of IBM's product name(s) in accordance with IBM's reasonable objec-	854
tions. Except as specifically provided above, MS shall have no right	855
without the prior written approval of IBM to use IBM's trademark(s),	856
or trade name(s), or to refer to IBM or any of its Subsidiaries in	857
connection with MS's deliverables under this Agreement. Except to	858
the extent otherwise specified in a Phase I Attachment or Phase II	859
Document, nothing in this Agreement shall otherwise limit the right	860
of MS to represent that MS's products operate on IBM equipment and/or	861
are compatible with IBM's products provided that such is the case and	862
further provided that the reference to IBM is not misleading.	863
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13.0 WARRANTY	865
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13.1 MS represents and warrants to IBM that MS has full and exclusive	867
right, title and interest, and/or has sufficient right, title and	868
interest, including the right to grant all assignments, licenses and	869
other rights granted herein, in and to the MS Code and MS Documenta-	870
tion, and/or Derivative Works thereof contained in the Final Code and	✓ 871 A1
Documentation, in and to the portions of the Joint Code and Joint	✓ 872 A1
Documentation and/or Derivative Works thereof prepared by MS hereun-	873
der, and in and to the portions of the IBM Code and IBM Documentation	874

and/or Derivative Works thereof prepared by MS for IBM hereunder; and that the Code and Documentation (excluding Code and Documentation not prepared by MS) do not infringe any patent, copyright, trademark, trade name, or trade secret, of any third party. Such representations and warranties shall apply to each of the foregoing items at the time each such item is provided by MS to IBM, or developed by MS, in the performance of a Phase II Document.

13.2 MS further represents and warrants that no claim, whether or not embodied in an action past or present, of infringement of any patent, copyright, trademark, trade name, or trade secret, has been made or is pending against MS, or to MS's knowledge against other licensees of MS, relative to the portions of the MS Code, MS Documentation, IBM Code, IBM Documentation, Joint Code and Joint Documentation, and Derivative Works thereof, which are prepared by MS and which are contained in the Final Code and Documentation. Each party shall notify the other within such period of time which is reasonable under the circumstances, in writing, in the event it becomes aware of such a claim. Such representations and warranties shall apply to each of the foregoing items at the time each such item is provided by MS to IBM, or developed by MS, in the performance of a Phase II Document.

13.3 IBM represents and warrants to MS that IBM has full and exclusive right, title and interest, and/or has sufficient right, title and interest, including the right to grant all assignments, licenses and other rights granted herein, in and to the IBM Code and IBM Documentation, and/or Derivative Works thereof contained in the Final Code and Documentation, in and to the portions of the Joint Code and Joint Documentation and/or Derivative Works thereof prepared by IBM hereunder, and in and to the MS Code and MS Documentation and/or Derivative Works thereof prepared by IBM for MS hereunder; and that the Code and Documentation (excluding Code and Documentation not prepared by IBM) do not infringe any patent, copyright, trademark, trade name, or trade secret, of any third party. Such representations and warranties shall apply to each of the foregoing items at the time

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each such item is provided by IBM to MS, or developed by IBM, in the performance of a Phase II Document.	910 911 912
13.4 IBM further represents and warrants that no claim, whether or not embodied in an action past or present, of infringement of any patent, copyright, trademark, trade name, or trade secret, has been made or is pending against IBM, or to IBM's knowledge against other licensees of IBM, relative to the portions of the IBM Code, IBM Documentation, MS Code, MS Documentation, Joint Code and Joint Documentation, and Derivative Works thereof, which are prepared by IBM which are contained in the Final Code and Documentation. Each party shall notify the other within such period of time which is reasonable under the circumstances, in writing, in the event it becomes aware of such a claim. Such representations and warranties shall apply to each of the foregoing items at the time each such item is provided by IBM to MS, or developed by IBM, in the performance of a Phase II Document.	913 914 915 916 917 918 919 ✓920 A) 921 922 923 924 925 926
13.5 MS warrants that, with respect to Products developed pursuant to Phase II Document(s), MS is aware of no rights that MS's trademark(s), trade names and/or product name(s) infringe, and MS further warrants that no infringement charges have been made or are now pending in connection with MS's use of MS's trademark(s), trade names and/or product name(s).	927 928 929 930 931 932 933
14.0 INDEMNIFICATION	934 935
14.1 MS agrees to defend, at its expense, any suit, claim or the like against IBM, its Subsidiaries or Developers, and end users of IBM products to the extent such suit, claim or the like is based upon an assertion that MS does not have sufficient right, title and interest in the Code and Documentation to enter into, and/or convey rights and licenses required by, this Agreement, and/or that the MS Code and MS Documentation, contained in the Final Code and Documentation, or the portions of the IBM Code, IBM Documentation, Joint Code, Joint Documentation, and/or Derivative Works thereof which are prepared by	936 937 938 939 940 941 ✓942 A) 943 944

MS hereunder, infringe a patent, copyright, trademark, trade name, or 945
trade secret of a third party and MS will pay the amount of any 946
settlement or the costs, damages, and reasonable attorney's fees 947
finally awarded in any such suit, claim or the like provided, that: - 948
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(a) MS is notified promptly in writing of any notice of claim or of 950
threatened or actual suit; 951
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(b) MS has sole control of the defense of such suit, claim or the 953
like and related settlement negotiations; 954
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(c) IBM cooperates in the defense and settlement of such suit, claim 956
or the like at the expense of MS; and 957
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(d) Any such settlement shall contain no admission of IBM's liability 959
without the prior written approval of IBM. 960
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14.1.1 Following notice from IBM of a claim or of a threatened or 962
actual suit, to the extent based on the above, MS may at 963
its expense, without obligation to do so, procure for IBM 964
the right to continue to market, use and have others market 965
or use of the Final Code and Documentation, or MS may at *✓966 A1*
its expense, replace or modify the same to make it non- 967
infringing. If MS elects to replace or modify such Code 968
and/or Documentation, and/or Derivative Works thereof, such 969
replacement shall substantially meet the specifications 970
contained in the applicable Phase II Document. 971
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14.1.2 MS shall have no liability for any suit, claim or the like 973
against IBM, its Subsidiaries or Developers, or end users 974
of an IBM product, based upon a marketing or use by IBM or 975
its Subsidiaries of a Derivative Work of the MS Code and MS 976
Documentation included in the Final Code and Documentation, *✓977 A*
or of the IBM Code, IBM Documentation, Joint Code, Joint 978
Documentation, and/or Derivative Works thereof, prepared by 979

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or on behalf of IBM or its Subsidiaries by a party other 980
than MS, if such suit, claim or the like would have been 981
avoided by the sole use of the MS Code and MS Documentation 982
included in the Final Code and Documentation, or the sole $\sqrt{983A}$
use of the portions of the IBM Code, IBM Documentation, 984
Joint Code, Joint Documentation and/or Derivative Works 985
thereof, which are prepared by MS hereunder, from which the 986
Derivative Works were derived. For all suits, claims or 987
the like against MS or its Subsidiaries, to the extent 988
arising under this Subsection 14.1.2, IBM will indemnify MS 989
for all of its costs, damages, and reasonable attorneys' 990
fees finally awarded, provided however, that: 991
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(a) MS promptly notifies IBM in writing of the suit, claim 993
or the like; 994
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(b) IBM has sole control of the defense of such suit, 996
claim or the like and related settlement negotiations; 997
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(c) MS cooperates with IBM in the defense and settlement 999
of such suit, claim or the like at IBM's expense; and 1000
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(d) Any such settlement shall contain no admission of MS's 1002
liability without the written prior approval of MS. 1003
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Any such costs, damages, expenses and attorneys' fees shall 1005
not be payable until and unless there has been a final 1006
judgment adverse to MS and holding that only the Derivative 1007
Work prepared by or on behalf of IBM or its Subsidiaries, 1008
by a party other than MS, is infringing. 1009
1010
14.2 IBM agrees to defend, at its expense, any suit, claim or the like 1011
against MS, its Subsidiaries or Developers, and end users of MS 1012
products to the extent such suit, claim or the like is based upon an 1013
assertion that IBM does not have sufficient right, title and interest 1014

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in the Code and Documentation to enter into, and/or convey rights and licenses required by, this Agreement, and/or that the IBM Code and IBM Documentation contained in the Final Code and Documentation, or the portions of the MS Code, MS Documentation, Joint Code, Joint Documentation, and/or Derivative Works thereof, which are prepared by IBM hereunder, infringe a patent, copyright, trademark, trade name, or trade secret of a third party and IBM will pay the amount of any settlement or the costs, damages, and reasonable attorney's fees finally awarded in any such suit, claim or the like provided, that:	1015 1016 1017 ^A 1018 1019 1020 1021 1022 1023 1024
(a) IBM is notified promptly in writing of any notice of claim or of threatened or actual suit;	1025 1026 1027
(b) IBM has sole control of the defense of such suit, claim or the like and related settlement negotiations;	1028 1029 1030
(c) MS cooperates in the defense and settlement of such suit, claim or the like at the expense of IBM; and	1031 1032 1033
(d) Any such settlement shall contain no admission of MS's liability without the prior written approval of MS.	1034 1035 1036
14.2.1 Following notice from MS of a claim or of a threatened or actual suit, to the extent based on the above, IBM may at its expense, without obligation to do so, procure for MS the right to continue to market, use and have others market or use the Final Code and Documentation, or IBM may at its expense, replace or modify the same to make it non-infringing. If IBM elects to replace or modify such Code and/or Documentation, and/or Derivative Works thereof, such replacement shall substantially meet the specifications contained in the applicable Attachments.	1037 1038 1039 1040 1041 ^A 1042 1043 1044 1045 1046 1047
14.2.2 IBM shall have no liability for any suit, claim or the like against MS, its Subsidiaries or Developers, or end users of	1048 1049

an MS product, based upon a marketing or use by MS or its
Subsidiaries of a Derivative Work of the IBM Code and IBM
Documentation included in the Final Code and Documentation,
or of the MS Code, MS Documentation, Joint Code, Joint
Documentation, and/or Derivative Works thereof, prepared by
or on behalf of MS or its Subsidiaries by a party other
than IBM, if such suit, claim or the like would have been
avoided by the sole use of the IBM Code and IBM Documenta-
tion included in the Final Code and Documentation, or the
sole use of the portions of the MS Code, MS Documentation,
Joint Code, Joint Documentation and/or Derivative Works
thereof, which are prepared by IBM hereunder, from which
the Derivative Works were derived. For all suits, claims
or the like against IBM or its Subsidiaries, to the extent
arising under this Subsection 14.2.2, MS will indemnify IBM
for all of its costs, damages, and reasonable attorneys'
fees finally awarded, provided however, that:

(a) IBM promptly notifies MS in writing of the suit, claim
or the like;

(b) MS has sole control of the defense of such suit, claim
or the like and related settlement negotiations;

(c) IBM cooperates with MS in the defense and settlement
of such suit, claim or the like at MS's expense; and

(d) Any such settlement shall contain no admission of
IBM's liability without the written prior approval of
IBM.

Any such costs, damages, expenses and attorneys' fees shall
not be payable until and unless there has been a final
judgment adverse to IBM and holding that only the Deriva-

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tive Work prepared by or on behalf of MS or its Subsidiar- 1084
 ies, by a party other than IBM, is infringing. 1085
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14.3 MS shall, at its own expense, settle or defend and pay any damages, 1087
costs, reasonable attorney fees or fines resulting from any suits, 1088
claims or the like against IBM, IBM Subsidiaries or Developers, and 1089
end users of an IBM product by any third party to the extent such 1090
suits, claims or the like are based on the infringement or alleged 1091
infringement of the trademark rights, tradename(s), or product 1092
name(s) of such third party or for unfair competition resulting from 1093
the use of MS's trademark(s), trade name(s) or product name(s); 1094
provided, however, that: 1095
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 (a) MS is notified promptly in writing of any notice of claim or of 1097
 threatened or actual suit; 1098
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 (b) MS has sole control of the defense of such claim, suit or the 1100
 like and related settlement negotiations; 1101
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 (c) IBM cooperates in the defense and settlement of such claim, suit 1103
 or the like at the expense of MS and 1104
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 (d) Any such settlement shall contain no admission of IBM's liabili- 1106
 ty without the prior written approval of IBM. 1107
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In meeting its obligations hereunder, MS may, but shall not be 1109
obligated to, procure for IBM, IBM Subsidiaries, Developers, and end 1110
users the right to continue to use MS's trademark(s), trade name(s) 1111
or product name(s). 1112
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14.4 Neither party shall have any obligation to defend or indemnify the 1114
other, its Subsidiaries, and its or their customers or Developers for 1115
any claims of patent or copyright infringement made against the other 1116
which arise from the use, sale, lease, license or other disposition 1117
of the Code and Documentation outside the geographical boundaries of 1118

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the United States, Canada, Japan, New Zealand, Norway, Austria, 1119
Finland, Sweden, Israel, South Africa and the countries which belong 1120
to the European Economic Community (EEC). 1121

14.5 NEITHER PARTY SHALL BE LIABLE FOR LOST PROFITS OR INCIDENTAL, CONSE- 1122
QUENTIAL OR SIMILAR DAMAGES OF THE OTHER PARTY, ITS SUBSIDIARIES OR 1123
ANY THIRD PARTY IN CONNECTION WITH ANY CLAIM RELATED TO THE CODE AND 1124
DOCUMENTATION, OR ANY ATTACHMENT TO THIS AGREEMENT EVEN IF THE PARTY 1125
HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING 1126
THE FOREGOING EACH PARTY SHALL BE LIABLE TO THE OTHER FOR LOST 1127
PROFITS AND/OR INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES TO THE 1128
EXTENT THAT SUCH DAMAGES ARE INCLUDED IN A JUDGMENT OR SETTLEMENT 1129
REQUIRING INDEMNIFICATION FROM SUCH PARTY PURSUANT TO THIS SECTION. 1130
FURTHER, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, 1131
NEITHER PARTY SHALL BE LIABLE TO THE OTHER, IN ANY WAY WHATSOEVER, 1132
FOR AN AMOUNT GREATER THAN THE LIMITATION OF LIABILITY AMOUNT STATED 1133
IN EACH PHASE I ATTACHMENT AND PHASE II DOCUMENT FOR ANY SUITS, 1134
CLAIMS, DAMAGES, LOSSES OR THE LIKE ARISING OUT OF, OR IN CONNECTION 1135
WITH, EACH SUCH PHASE I ATTACHMENT OR PHASE II DOCUMENT. HOWEVER, 1136
THE LIMITATION OF LIABILITY AMOUNT STATED IN EACH SUCH PHASE I 1137
ATTACHMENT OR PHASE II DOCUMENT SHALL NOT APPLY TO ANY OBLIGATIONS OF 1138
EITHER PARTY TO MAKE PAYMENTS TO THE OTHER PARTY, AS SET FORTH IN THE 1139
SECTION ENTITLED "PAYMENT AND ROYALTIES." 1140
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15.0 TERM AND TERMINATION 1142

15.1 This Agreement shall be effective on the date this Agreement is duly 1143
executed by the parties and shall remain in force for five (5) years 1144
or until expiration of the last to expire copyright for the Code and 1145
Documentation prepared pursuant to a Phase II Document, whichever is 1146
later. However, both parties agree that no Phase I Attachment or 1147
Phase II Document executed after five (5) years have passed from due 1148
execution of this Agreement shall have any force and effect unless 1149
and until the parties have amended, in writing, this Section. 1150
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- 15.2 Each Phase I Attachment and Phase II Document shall be effective on the date executed by the parties and shall remain in force until expiration of this Agreement or until terminated in accordance with the terms of this Subsection 15.2, whichever is earlier.
- 15.2.1 Except as provided in Subsection 15.2.2 below, MS and IBM shall have the right to terminate any Phase I Attachment or Phase II Document only in the event of a material breach by the other party of its obligations under such Attachment and/or Document. Such termination shall be made by written notice and shall become effective forty-five (45) days after giving such notice, unless the defaulting party shall have corrected the breach prior thereto.
- 15.2.2 In addition, IBM may terminate a Phase II Document, at any point prior to acceptance of Final Code and Documentation, in whole or part, without cause upon ten (10) days written notice to MS. In such case, IBM's entire liability to MS shall be to pay MS for work completed through termination and the amount stated in such Phase II Document for IBM's termination other than for material breach by MS. This paragraph is inapplicable if IBM terminates for MS's material breach of its obligations under any Phase II Document or in conjunction with IBM's rejection of Code and Documentation.
- 15.2.3 In the event of any termination or expiration of an Attachment and/or Document in whole or in part:
- (a) The terms and conditions of this Agreement shall survive;
 - (b) The terms and conditions of any other Attachments and/or Documents shall survive and such portions of

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the Attachment and/or Document which are not terminated,	1188
if any;	1189
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(c) In the event of termination for material breach, with	1191
respect to the Attachment and/or Document, or portion	1192
of the Attachment and/or Document terminated, ownership	1193
rights and/or licenses to intellectual property with	1194
respect to any Phase I Output, or Phase II Code and/or	1195
Documentation incorporated in Final Code and Documenta-	✓1196 A
tion, as set forth in the "Ownership Rights and	✓1197 A
Licenses" Section of this Agreement shall survive and	1198
continue to bind the parties and their legal represen-	1199
tatives, successors and assigns; and any other obliga-	1200
tions that, by their nature, extend beyond termination	1201
of such Attachments and/or Documents, or portions of	1202
Attachments and/or Documents, shall survive according	1203
to their terms;	1204
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(d) With respect to any Attachment or Document terminated	1206
for reasons other than material breach, the provisions	1207
of Subsections 3.1, 3.2.1, and 3.2.4 shall survive in	1208
their entirety. In addition, the provisions of	1209
Subsections 3.2.2 and 3.2.3 shall survive only with	1210
respect to copies of Code and Documentation transferred	1211
to third parties for the purposes of evaluation and/or	1212
testing and for the purposes of internal use by the	1213
party licensed under such provisions. Further, the	1214
provisions regarding ownership, but not the licensing	1215
provisions, of Subsection 3.2.5 shall survive and, any	1216
other obligations, but not other licenses, that, by	1217
their nature, extend beyond such termination shall	1218
survive according to their terms.	1219
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(e) With respect to the Attachment and/or Document or	1221
portion of the Attachment and/or Document terminated,	1222

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both parties shall deliver to the other, and the other shall take possession of, an archival copy of all Code and Documentation and, with respect to Phase I, the output then in progress and both parties shall make any payments due the other, if any, pursuant to such Attachment and/or Document or portion of Attachment and/or Document so terminated, for the work satisfactorily performed up to the date of termination and, if applicable, the payment for termination other than for material breach, as set forth in Subsection 15.2.2; and

(f) In the event of termination for material breach, with respect to the Attachment and/or Document or portion of Attachment and/or Document terminated, the pro-rata share of any advance payments made by either party to the other to which the other is not entitled, as negotiated by the parties in good faith, shall be returned to the advancing party, taking into account the work completed, if any; and

(g) The terms of the Section entitled "Disclosure of Information" shall survive the termination of a Phase II Document until ten (10) years have expired from the effective date of such Phase II document.

As added by AMEND 1

16.0 GENERAL

16.1 In the event that MS desires to use the services of any third parties who are not employees of MS in its performance under this Agreement, MS shall provide IBM with written notice of the third parties identities and the tasks to be performed. If IBM does not object to the use of such third parties for the described tasks within twenty (20) days after receipt of such notice, MS may employ such third party for the described tasks, provided MS first obtains from such third party

a written agreement sufficient to enable MS to comply with all of its obligations under this Agreement and provided further that the written notice required hereunder is sent by MS to the address identified in, and in accordance with the terms of, Section 16.18 of this Agreement and identifies that it is sent pursuant to this Section 16.1. 1258
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16.2 Each party shall have full freedom and flexibility in its marketing effort of the sublicensing, sale or other transfer of the Code and Documentation produced pursuant to Phase II Document(s) (including, without limitation, whether to market or to discontinue marketing, its method of marketing, terms and conditions and pricing), and/or Derivative Works thereof. Neither party makes any guarantee or commitment hereby as to the success of such marketing effort, and both parties agree that the other party has no obligation whatsoever with respect to this Agreement other than as specifically provided in this Agreement. Notwithstanding the foregoing, MS agrees not to place the IBM copyright notice on any products marketed by MS. MS will, however, place its copyright notice on any such products in a manner sufficient to protect IBM's underlying copyright. 1265
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16.3 Except as provided with respect to copyright registration in the Section of this Agreement entitled "Copyright", nothing herein contained shall be deemed to authorize or empower either party or its Subsidiaries to act as an agent for the other party or to conduct business in the name of the other party. 1279
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16.4 Personnel supplied by MS to perform services for the purposes of this Agreement will be deemed employees of MS and will not for any purpose be considered employees or agents of IBM. MS assumes full responsibility for the actions of such personnel while performing services hereunder, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income and FICA taxes), worker's compensation, disability benefits, and the like. 1285
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16.5 Personnel supplied by IBM to perform services for the purposes of this Agreement will be deemed employees of IBM and will not for any purposes be considered employees or agents of MS. IBM assumes full responsibility for the actions of such of its personnel while performing services hereunder, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income and FICA taxes), worker's compensation, disability benefit, and the like.	1294 1295 1296 1297 1298 1299 1300 1301 1302
16.6 The titles of the Sections of this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.	1303 1304 1305
16.7 This Agreement shall in no way preclude either party from independently developing or acquiring materials and programs which are competitive, irrespective of their similarity, with the Code and Documentation or from making similar arrangements with others.	1306 1307 1308 1309 1310
16.8 Both parties represent and warrant that they have no outstanding agreements, assignments or encumbrances inconsistent with the provisions of this Agreement.	1311 1312 1313 1314
16.9 Neither party shall give or offer gifts or gratuities of any type to the employees of the other or to members of their families that are intended to improperly influence or may create the appearance of improperly influencing the relationship between IBM and MS.	1315 1316 1317 1318 1319
16.10 MS shall maintain comprehensive general liability insurance for claims for damages because of bodily injury (inclusive of death) and property damage caused by, or arising out of, acts or omissions of its employees. The minimum limits of such insurance shall be one hundred thousand dollars (\$100,000.00) for each accident because of bodily injury; and fifty thousand dollars (\$50,000.00) because of property damage for each accident. Certificate of such insurance shall be furnished to IBM at the commencement of this Agreement and at the renewal date of such insurance policy for as long as and	1320 1321 1322 1323 1324 1325 1326 1327 1328

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during the period that any obligations under the Phase I Attachments 1329
or Phase II Documents remain in effect. In no event shall the 1330
insurance be cancelled during such period without prior written 1331
notice to IBM by MS. This provision shall in no way act as a limita- 1332
tion of any MS liability with respect to the subject matter of the 1333
insurance, or otherwise. 1334
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16.11 This Agreement, along with all of its Phase I Attachments and Phase 1336
II Documents, may not be changed or amended in any manner without the 1337
duly authorized written consent of both parties. 1338
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16.12 There are incorporated into this Agreement the provisions of Execu- 1340
tive Order #11246 (as amended) of the President of the United States 1341
on Equal Employment Opportunity and the rules and regulations issued 1342
pursuant thereto. Each party represent that it will comply with this 1343
order and pertinent rules and regulations, unless exempted. 1344
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16.13 Except as otherwise specifically required for the purposes of Subsec- 1346
tion 3.2.1(e), nothing in this Agreement shall require either party 1347
or its Subsidiaries to identify its or their customers to the other. 1348
IBM may, at its option, identify the Code and Documentation, and/or 1349
Derivative Works thereof, as having been developed by MS and may use 1350
the name of MS in its advertising of the Code and Documentation and 1351
IBM products which incorporates the Code and Documentation; provided 1352
that IBM shall take reasonable steps to modify any such advertising 1353
if MS objects to the manner in which its name is used. However, MS 1354
shall have no right to identify the Code and Documentation, and/or 1355
Derivative Works thereof, as having been developed by IBM except with 1356
respect to such items which IBM is marketing. 1357
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16.14 At the time of or after the effective date of this Agreement, IBM 1359
agrees to review and consider requests by MS to issue MS press 1360
releases mentioning MS's involvement with this Agreement. The 1361
contents of such proposed release(s) shall be consistent with the 1362
provisions of the Section entitled "Disclosure of Information" and 1363

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IBM's practices concerning endorsements. IBM's approval will not be unreasonably withheld.	1364 1365 1366
16.15 Neither party shall sell, delegate, transfer or assign any right or obligation hereunder, except as expressly provided herein, without the prior written consent of the other party, which consent may be granted or withheld at the sole discretion of such other party. Any attempted act in derogation of the foregoing shall be null and void.	1367 1368 1369 1370 1371 1372
16.16 Both parties agree to comply, and do all the things necessary for each to comply with all applicable, Federal, State, and local laws, regulations and ordinances, including but not limited to the Regulations of the United States Department of Commerce relating to the Export of Technical Data, insofar as they relate to this Agreement. Both parties agree to obtain any required government documents and approvals prior to exporting any technical data disclosed or developed under this Agreement and any product to which such data relate.	1373 1374 1375 1376 1377 1378 1379 1380 1381
16.17 Except as otherwise specifically provided herein, any notice required or permitted to be made by or given to either party hereto pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to the receiving party by certified mail, postage prepaid, addressed to it at its address set forth below, or to such other address as it shall designate by written notice given to the other party:	1382 1383 1384 1385 1386 1387 1388 1389
In the case of IBM:	1390 1391
Boca Raton Area Counsel	1392
International Business Machines Corporation	1393
P. O. Box 1328	1394
Boca Raton, Florida 33432	1395 1396

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In the case of MS:	1397
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IBM Account Manager	1399
Microsoft, Inc.	1400
10700 Northup Way	1401
Bellevue, Washington 98004	1402
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16.18 MS agrees that for the purpose of compliance with the requirements of the Occupational Safety and Health Act of 1970, the services performed for IBM shall be deemed entirely within MS's responsibility. MS will notify IBM promptly, in writing, if a charge of non-compliance with the Act has been filed against MS in connection with services being performed on IBM-owned or leased premises.	1404
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16.19 If the performance of this Agreement or of any obligation hereunder is prevented, restricted or interfered with by reason of fire or other casualty or accident; strikes or labor disputes, inability to procure raw materials, equipment, power or supplies; war or other violence; any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency or intergovernmental body; or any other act or condition whatsoever beyond the reasonable control of the parties hereto the party so affected, upon giving notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference; provided that the party so affected shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall continue performance hereunder promptly whenever such causes are removed.	1411
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16.20 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. In the event that any provision shall be severed, the entire Agreement shall not fail on account	1426
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thereof, and the balance of this Agreement shall continue in full force and effect.	1432 1433 1434
16.21 IBM endeavors to provide a safe environment free from violence and threats of violence for all of its employees, customers and licensees to its premises. MS has taken or will take appropriate preventive steps to ensure that anyone directly or indirectly employed by MS who enters IBM premises does not have a background of violent behavior in the workplace and that such person is not employed by MS or MS' subcontractors to perform work on IBM premises.	1435 1436 1437 1438 1439 1440 1441 1442
16.22 Nothing in this Agreement shall be construed to create a partnership, joint venture, or other joint business entity between the parties hereto.	1443 1444 1445 1446
16.23 The terms and conditions of this Agreement shall supersede and replace any contrary terms contained in any prior agreement between MS and IBM regarding the disclosure of MS Code to the extent that any MS Code subject to such prior agreements is made applicable to this Agreement by a Phase II Document.	1447 1448 1449 1450 1451 1452
16.24 The foregoing provisions, Phase I Attachments, and Phase II Documents constitute the entire agreement concerning the subject matter hereof between the parties and shall supersede all prior agreements, oral or written, and all other communications between them relating to the subject matter hereof; <u>provided, however</u> , except to the extent expressly modified by the terms of this Agreement, the Confidential Disclosure Agreement dated August 21, 1983 and the Equipment Loan Agreement dated May 12, 1983 between the parties shall remain in full force and effect.	1453 1454 1455 1456 1457 1458 1459 1460 1461 1462
16.25 This Agreement shall be construed in accordance with the laws of the State of New York.	1463 1464 1465 1466

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed
as of the day and year first above written.

INTERNATIONAL BUSINESS
MACHINES CORPORATION

MICROSOFT

By: 
P. M. Harrington

By: 

Title: Manager, ES Software Contracts
and Licensing Procurement

Title: Chairman

Date: June 10, 1985

Date: June 10, 1985

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ADDENDUM A

SAMPLE CONFIDENTIAL DISCLOSURE AGREEMENT: DEVELOPER

AGREEMENT FOR PROVIDING SOURCE CODE TO DEVELOPERS

SUBJECT: CONFIDENTIAL DISCLOSURE AGREEMENT # _____

Dear _____:

(IBM or MS) (hereinafter called XYZ) may wish to obtain quotations from and to issue to _____ (hereinafter called Developer) XYZ Purchase Orders and to execute with Developer, associated agreements for various materials, services or software programs from time to time. In connection therewith, it may be necessary for XYZ to disclose to Developer confidential information of XYZ.

As a basis for such dealings, Developer is required to enter into this Agreement having the following terms and conditions:

1. XYZ may disclose XYZ Confidential Information to Developer either orally or in writing (including graphic material). When disclosed in writing, or other tangible form, the information will be labeled "XYZ Confidential". When disclosed orally, such information will be identified as "XYZ Confidential" at the time of disclosure with subsequent confirmation in writing referencing the date and type of information disclosed to Developer as a result of such oral disclosures.

XYZ's disclosure of Confidential Information may include disclosure(s) of Third Party source code (hereinafter called Third Party Source Code). Third Party and/or XYZ Source Code shall be labeled as such in addition to

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being labeled as and deemed to be XYZ Confidential Information as set forth above. 1517
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2. Developer shall hold in trust and confidence all XYZ Confidential Information including Third Party Source Code and shall not disclose such information to any third party. Furthermore, Developer shall not use such XYZ Confidential Information for any purpose other than to prepare a response to any XYZ Request For Quotation or to perform work for XYZ as may subsequently be ordered. Developer shall not disclose or use such information for any purpose other than those stated above until such time as the information becomes publicly known through no fault of Developer's. 1520
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3. Except for the specific purposes contemplated by this Agreement, it is to be understood that by disclosing XYZ Confidential Information to Developer, XYZ and any Third Party do not grant any express or implied license or other right to Developer under patents, copyrights or other proprietary rights of XYZ or the Third Party. 1529
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4. XYZ Confidential Information shall also include all information identified as confidential and disclosed by XYZ to Developer which pertains to XYZ's past, present, or future research, development or business activities. 1535
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5. Developer shall not disclose XYZ Confidential Information to subcontractors nor subcontract any part of the work covered by Purchase Orders issued by XYZ without first obtaining written consent from XYZ. 1539
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6. Developer's obligations regarding XYZ Confidential Information shall not apply to information which was already known to Developer prior to disclosure of it to Developer by XYZ, which is or becomes publicly available through no fault of Developer's, which is rightfully received by Developer from third parties without accompanying secrecy obligations, which is independently developed by Developer or which is approved in writing by XYZ for Developer to release. 1543
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7. Developer shall disclose XYZ's Confidential Information only to Developer's employees having a need-to-know and shall segregate such information at all times from the materials of third parties so as to prevent any commingling. 1551
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8. Developer shall maintain a written agreement with each of Developer's employees sufficient to enable Developer to comply with the terms of this Agreement. 1556
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9. Developer shall secure XYZ documents, items of work in process, work products, and any other items that embody XYZ Confidential Information in locked files or areas providing restricted access to prevent its unauthorized disclosure. 1560
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10. Developer shall maintain adequate procedures to prevent loss of any materials containing XYZ confidential Information. In the event of any loss, Developer shall notify XYZ immediately. 1565
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11. Developer agrees to maintain one hundred percent (100%) accountability of material and equipment consigned to Developer by XYZ and will promptly notify XYZ of loss or damage of any items consigned. 1569
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12. Developer shall return to XYZ all Confidential Information upon request. 1573
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13. XYZ does not wish to receive confidential information of Developer or any third party and XYZ will be free to reproduce, distribute to third parties, and otherwise use any information furnished to XYZ by Developer. Any information provided to XYZ shall not be deemed confidential. 1575
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14. This Agreement shall begin on _____ and terminate on _____ provided, however, that either party shall have the right to terminate this Agreement upon ten (10) days' prior written notice. 1580
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15. The provisions of this Agreement shall survive and continue after expiration or termination of the Agreement with respect to any XYZ Confidential Information disclosed to or obtained by Developer prior to the date of such expiration or termination or disclosed to or obtained by Developer subsequent thereto under any Purchase Orders in effect on such date of expiration or termination. 1584
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16. XYZ shall have the right to visit periodically, using reasonable business practices, Developer's premises and conduct a review of the compliance with the terms of this Agreement. 1591
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17. Upon execution of this Agreement, Developer shall promptly notify XYZ in writing of Developer's authorized representative who will coordinate the receipt and maintenance of all XYZ Confidential Information sent to Developer. Developer shall promptly notify XYZ in writing of any change of such authorized representative. 1595
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If the above terms and conditions are acceptable to Developer, an authorized representative is requested to indicate acceptance thereof by signing and returning two (2) copies of this Agreement, retaining one (1) copy for file.

Very truly yours,

XYZ

Accepted and Agreed to:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

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WHEREAS, International Business Machines Corporation, a New York Corporation (hereinafter referred to as "IBM") and Microsoft Corporation, having its place of business in Redmond, Washington (hereinafter referred to as "MS") have entered into a "Joint Development Agreement," dated June 10, 1985, Agreement number A-MS-424, as amended (hereinafter referred to as "JDA"), in order to develop computer code and documentation; and

WHEREAS, IBM and MS have entered into Phase II Document Number one (1), dated August 6, 1985, (as amended November 12, 1986); and

WHEREAS, IBM and MS wish to amend said JDA and Phase II Document:

NOW THEREFORE, IBM and MS agree to amend said Phase II Document Number one (1) dated October 2, 1987, as amended in this Amendment Number two (2) as follows:

Section 5.1.1.2 (a) (iii) shall be deleted and replaced with the following:

"(iii) upgrades to existing licensees which contain changes or enhancements in function, performance or connectivity; provided that upgrades offered to existing licensees of an IBM CP/DOS Product Offering which contain non-IBM Unique code described in subsequent Phase II Document CP/DOS Product Specifications, e.g., CP/DOS 1.2 or CP/DOS 1.3, shall bear a royalty at fifty per cent (50%) of the rate designated in this Section; further; further provided that such upgrades must be provided on a replacement basis with return or destruction of the replaced copies certified by the licensee."

Section 5.1.1.2 (c) shall be amended by the insertion of the additional clause following the words "third party." in line 19:

"...third party; and further provided that if IBM elects such lower price, then the payments which MS makes to IBM under Section 5.1.2.1 and 5.1.2.2 shall be reduced by a percentage equivalent to the reduction in Section 5.1.1.2 payments obtained by IBM."

Section 5.1.2.1 (a) (iii) shall be deleted and replaced with the following:

"(iii) upgrade copies to existing licensees which contain changes or enhancements in function, performance or connectivity; provided that upgrades offered to existing licensees of an MS CP/DOS Product Offering which contain non-MS Unique code contained in subsequent Phase II Documents CP/DOS Product Specifications. e.g., CP/DOS 1.2 or CP/DOS 1.3, shall bear a royalty at fifty per cent (50%) of the rate otherwise designated in this Section; further provided that such upgrades must be provided on a replacement basis with return or destruction of the replaced copies certified by the licensee."

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Section 5.1.3.1 shall be amended as follows:

The fourth line of Section 5.1.3.1 shall now read:

"during the period described in Section"

The sixth line of Section 5.1.3.1 shall now read:

"other no payments under those Sections."

The rest of Section 5.1.3.1 coming after the foregoing sixth line shall be deleted in its entirety.

Section 5.5 shall be deleted in its entirety.

Section 11.1.2 shall be amended as follows:

The last line of Section 11.1.2 shall read as follows:

"and 5.7 herein."

Section 11.2.1 shall be amended as follows:

The thirteenth line of Section 11.2.1 shall read as follows:

"make payment to IBM hereunder."

The rest of Section 11.2.1 coming after the foregoing thirteenth line shall be deleted in its entirety.

Section 12.1 shall be amended as follows:

The tenth line of Section 12.1 shall be as follows:

"provided in Section 5.1.1.2, 5.1.2.1 and 5.1.2.2 of this Agreement."

Subsection 13.1.1.6 shall be deleted and shall be replaced by the following:

13.1.1.6 Program Selector; (2.20 of 3.2 [Outline B] and 7.1.21 of 7.1 [Outline B])

IBM/Microsoft
Agreement # A-MS-424
Dated: April 27, 1987

Subsection 13.1.2.3 shall be amended to read as follows:

13.1.2.3 MKCOUNTRY (12.3)

Appendix III shall be deleted in its entirety.

All other terms of the foregoing Agreement shall remain in effect and continue to bind the parties.

AGREED TO:

INTERNATIONAL BUSINESS
MACHINES CORPORATION

By: *Walt Tanis*

Walt Tanis

Title: *Manager Software
Contracts*

Date: *11/16/87*

MICROSOFT CORPORATION

By: *Steven A. Ballmer*

Title: *Vice President*

Date: *11/26/87*

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BM CONFIDENTIAL
APPENDIX III

SER/PAR AT Serial/Parallel Adapter
DMF Data Migration Facility
MUSIC Music Facility
INTMOD 300/1200 Internal Modem
OEMMOD OEM Modem

Test Phases

I Both IBM Originator
M Both MS Originator

Agng

PW1OP	Prog Only	001	Sev1 Answered
PW1LO	Prog Only	005	Sev1 Built
PW1BU	Prog Only	007	Sev1 Tested
PW2OP	Prog Only	003	Sev2 Answered
PW2LO	Prog Only	009	Sev2 Built
PW2BU	Prog Only	011	Sev2 Tested
PW3OP	Prog Only	010	Sev3 Answered
PW3AN	Prog Only	011	Sev3 Closed
PW4OP	Prog Only	010	Sev4 Answered
PW4AN	Prog Only	011	Sev4 Closed

Close Codes

CAN	Prog Only	Cancelled
DOC	Prog Only	Publication Error
DUP	Prog Only	Duplicate of another OPATS problem
MCH	Prog Only	Machine/Microcode
PER	Prog Only	Programming Error
PRS	Prog Only	Permanent Restriction
RET	Prog Only	Returned
SUG	Prog Only	Suggestion
TRS	Prog Only	Temporary Restriction
UNR	Prog Only	Unable to reproduce
USE	Prog Only	User Error

Reason Codes

A	Both	Fix Error (defective Fix)
B	Both	Prior Release Error
C	Both	Current Release Error

Defect Codes

Those codes beginning with 'D' are related to publications and need not be used by MS.

LA	Prog Only	Passed Data Area
LB	Prog Only	Control Block
LE	Prog Only	External Linkage Call

OPATS Utilization

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IBM CONFIDENTIAL
APPENDIX III

LF	Prog Only	RAS
LH	Prog Only	Performance/Storage or Specified Criteria
LK	Prog Only	Return Code / Applicable Messages
LM	Prog Only	Process Management
LS	Prog Only	Product Standards
LT	Prog Only	Test and Branch
LW	Prog Only	Register Usage
LG	Prog Only	Logic (Other than A,B,E,K,T,W)
MN	Prog Only	Micro Programming
DA	Doc Only	Incomplete
DF	Doc Only	Factual Error
DL	Doc Only	Unclear
DR	Doc Only	Missing
DS	Doc Only	Contradictory / Conflicting
DV	Doc Only	Not Retrievable
FL	Prog Only	Fix Logic
FA	Prog Only	Fix Application
FD	Prog Only	Fix Documentation

KEYWORD CONVENTIONS

OPATS provides a base of CP/DOS keywords in the various customization areas (e.g., component, symptom, level, etc.). Some additional keyword standards will be used within free form text entries (e.g., problem description, solution, etc.):

RCxxx - Return code (without leading zeros)
NRCxxx - Negative return code (without leading zeros)

EXCHANGE OF MATERIALS

1. Disclosure of IBM Confidential Information shall be handled pursuant to Section 10 of the Phase II Document Number One (1), as amended.
2. Electronic transfers will be via VM or EMAIL.
3. Hardcopy transfers will be via express shipment (e.g., Airborne).
4. Each item requiring return upon problem completion must be clearly marked as such.
5. Items not requiring return should be disposed of (via appropriate confidential procedures) by the party in possession.

OPATS Utilization

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COMMUNICATIONS AND CONTACTS

IBM Contacts

APAR Control
IBM Corporation
Internal ZIP 3804
P.O. Box 1328
Boca Raton, FL 33429-1328

- Hardcopy material deliveries
- Hardcopy material returns

Contact = Ron Smith
Telephone = (305) 241-6681
VM ID = APARCTL
EMAIL = RONS

- Electronic material deliveries
- Electronic material returns
- Test status notification
- Test status inquiries
- Backup for other Boca contacts

Contact = Dick Hand
Telephone = (305) 241-6750
VM ID = APARDEV
EMAIL = To be added

- Problem status inquiries

Contact = Art Donegan
Telephone = (305) 241-6101
VM ID = ADONEGAN
EMAIL = ARTD

- Build status inquiries

MS Contacts

MS contact information will be supplied to IBM in the same format as IBM contact information on or before the date MS approves this document.

PRE-FINAL ACCEPTANCE EXCEPTIONS

Prior to Final Acceptance of a CP/DOS Release, the following exceptions to this CP/DOS Maintenance Process will be in effect:

1. Rather than using the OPATS customization data described herein, the existing (development cycle) OPATS customization data will be used.

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2. Rather than Correcting only Severity 1 and 2 Defects, 'reasonable' efforts will be made to Correct all severities.
3. During this period, the existing (System Test) build cycle will be used.

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WHEREAS, International Business Machines Corporation, a New York Corporation (hereinafter referred to as "IBM") and Microsoft Corporation, having its place of business in Redmond, Washington (hereinafter referred to as "MS") have entered into a "Joint Development Agreement" dated June 10, 1985, Agreement number A-MS-424, as amended (hereinafter referred to as "JDA"), in order to develop computer code and documentation; and

WHEREAS, IBM and MS have entered into Phase II Document Number One (1), dated August 6, 1985, as amended November 12, 1986; and

WHEREAS, IBM and MS agree to amend said JDA and Phase II Document:

NOW, THEREFORE, IBM and MS agree to amend said Phase II Document Number One (1), dated August 6, 1985, as amended in this Amendment Number Three (3) as follows:

Section 8.0 shall be deleted in its entirety and replaced with the following:

- 8.1 MS and IBM each represents and warrants that the portion of CP/DOS Version 1.1 which that party has developed will be free from Error and will meet the specification as described in the Section entitled "FINAL FUNCTIONAL SPECIFICATION FOR CP/DOS VERSION 1.1," as amended by DCR's, herein.
- 8.2 Both parties agree that they shall have the capabilities in place to honor their maintenance responsibilities as specified in Appendix III entitled "CP/DOS Maintenance Process" on October 14, 1987. These responsibilities shall begin on October 14, 1987 and run for a period of three (3) years and six (6) months after the date of the earlier of the general availability of IBM Product Offering Version 1.1, or MS Product Offering Version 1.1. Maintenance shall be provided by the parties at no additional charge.
- 8.3 All code created to provide corrections to Errors shall become part of the Joint Code created pursuant to this Phase II Document; provided, however, that any Code created to provide corrections to Errors in IBM Unique Code or MS Unique Code shall become IBM Unique Code or MS Unique Code respectively.

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8.4 IBM recognizes that MS will be licensing the MS Product Offering 1.1 to third parties. MS is free to disclose PTM's, as defined in Appendix III, to third parties; provided, however, that such disclosures to third parties will contain no reference to IBM therein. In addition, unless mutually agreed to by representatives of IBM and MS in writing, each party warrants that any PTM's submitted to the other party shall contain no Confidential Information of any third party. For purposes of this paragraph, Confidential Information shall mean all information identified by a third party as confidential and disclosed to either party which pertains to a third party's past, present or future research, development or business activities.

All other terms of the foregoing Agreement shall remain in effect and continue to bind the parties.

AGREED TO:

INTERNATIONAL BUSINESS
MACHINES CORPORATION

MICROSOFT CORPORATION

By: *J.M. DeLeon*

By: *Steven A. Ballmer*

Title: ESD Site Procurement Manager

Title: Vice President

Date: 10-14-87

Date: 11/9/87

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