SIGNED
ORIGINAL

Cooperative Market Development and Support Agreement for Microsoft® Windows® ™ Desktop Operating System Products

This Market Development and Support Agreement ("Agreement") is made and entered into this 1st day of March, 1996 ("Effective Date") by and between MICROSOFT CORPORATION, a Corporation of Washington, U.S.A. ("Microsoft") and INTERNATIONAL BUSINESS MACHINES CORPORATION a Corporation of New York ("IBM").

Definitions

For purposes of this Agreement:

"Windows Products" shall mean Windows 3.11, Windows for Workgroups 3.11, Windows 9x, and Windows NT Workstation (x86).

"OEM Agreement" shall mean the then current OEM license agreement between Microsoft and IBM for Windows Products and, if applicable, other Microsoft products.

"Customer Systems" shall mean personal computers which are licensed for distribution and shipped with Windows Products under the OEM Agreement.

Milestone Activities

This Agreement defines a cooperative framework between Microsoft and IBM to expand the market for IBM's Customer Systems through investments in Windows related platform development, promotions and support improvements.

In consideration of IBM's successful accomplishment of the below described Milestone Activities, Microsoft is willing to offer IBM incentive discounts in the amounts stated below against royalties for Windows Products which are licensed under the OEM Agreement as more specifically described under the General Terms and Conditions below.

MICROSOFT LICENSE NO.
M001-6135

GOVERNMENT EXHIBIT
2176
PENGAD-Bayonne, N.J.

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Milestone Activities	Incentive Discounts
1. Expand the market for IBM's Customer Systems by developing new Customer Systems with advanced ease-of-use features based on Windows technologies. • All new IBM Customer System models manufactured and released (referred to by IBM as "Generally Available" or "GA") after August 1, 1996 that ship with Windows 9x shall meet the requirements outlined in the PC95 Hardware Design Guide for Microsoft Windows 95 AND the "Revised Requirements" as outlined in the Hardware Design Guide Supplement for Microsoft Windows 95 (collectively, "PC 95 HDG"). Representative Customer Systems (as configured for sale to end users) shall pass validation testing at Microsoft's Windows Hardware Quality Labs (WHQL). • All new IBM Customer System models released (referred to by IBM as "Generally Available" or "GA") after August 1, 1996 that ship with Windows NT Workstation Windows shall pass the Windows NT Workstation Hardware Compatibility Test ("HCT") and shall appear or shall be eligible to appear in the related Hardware Compatibility List.	$ 2.00
2. Expand the market for IBM's Customer Systems by developing new Customer Systems with next generation advanced ease-of-use features based on Windows technologies. All new IBM Customer Systems models released after August 1, 1996 that are shipped with Windows 95 shall meet the requirements in the PC95 HDG and shall implement any one of the following "Revised Recommendations" as outlined in the Hardware Design Guide Supplement for Microsoft Windows 95: • Advanced Power Management (APM) Version 1.2 • 28.8Kbs Unimodem/V compatible VoiceView capable modem • Full 16-bit audio (16 bit decode, 16 bit DMA)	$ 2.00
3. Ensure that customers of IBM's Customer Systems receive the benefits of the Windows "ready-to-run" experience with the most up-to-date versions of Windows Products. • Ensure that IBM's customers receive the most up-to-date Windows Product software available pre-installed on IBM's Customer Systems: IBM shall pre-install licensed Windows Products Version Releases, Update Releases, and Supplements as defined in the OEM Agreement, on all Customer Systems that are licensed for shipment with such Windows Products within 60 days of Microsoft's shipment of the corresponding OEM Preinstallation Kit ("OPK") and/or OPK supplement for such Release or Supplement, except: 1) when/if shipment of the OPK and/or OPK supplement from Microsoft occurs between September 1st and November 30th, in which case IBM shall begin preinstallation of the Release or Supplement no later than February 1st of the following year. 2) when an IBM customer specifically requests in writing that such Version Releases, Update Releases, and or Supplements not be pre-installed on IBM Customer Systems shipped to such customer. At a minimum, such IBM Customer Systems shall be pre-installed and shipped with the original version of Windows Product defined in the OEM Agreement	$ 2.00

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- Grow the market for IBM's Customer Systems in developing countries and ensure that users in such countries receive localized Windows Product that matches their native language. IBM shall pre-install all licensed localized Windows Products (if available) on all Customer Systems that are manufactured for shipment to China, Israel, Greece, Turkey, Eastern Europe, and the Middle East within sixty (60) days of Microsoft's shipment of the applicable localized version OPK to IBM, except where the end-user customer in any such country requests a different language. $ 1.00

4. To improve IBM's competitive advantage by ensuring the highest level of integration possible with Windows Products, IBM shall work closely with Microsoft as an active participant in the testing and development of Windows related tools and technologies by: $ 1.00

   - Attending the annual Windows Hardware Engineering Conference
   - Attending the Microsoft hosted OPK training course for Windows NT Workstation
   - Attending the Microsoft hosted OPK refresher course for Windows 95
   - Providing Microsoft with feedback and test results on Customer Systems no later than 30 days after IBM's receipt of the revised Systems Compatibility Test ("SCT") for Windows 95.
   - Testing all of the Windows Products BETA OPKs supplied to IBM and providing detailed written feedback to Microsoft thirty (30) days after receipt of such kits.

5. To improve and accelerate usability of Customer Systems that IBM delivers with Windows 9x and Windows NT Workstation, IBM shall preserve the standard Windows user interface. IBM shall engineer any enhanced "shell", "welcome" script, or other user interface modification(s) in compliance with the specification for Windows 9x shell enhancement (as provided by Microsoft). This requirement shall apply to all such Customer Systems manufactured no later than 90 days after Microsoft's shipment of the respective product OPKs that include an "HTML enabled" shell update. $ 1.00

6. To maximize the end user benefits behind IBM's Plug-n-Play Compatible Customer Systems, all add-in cards distributed by IBM with any of IBM's Windows 95 based Customer Systems shall be Windows 95 Plug-n-Play ("PnP") compliant as determined by WHQL on or before July 1, 1996. $ 2.00

7. As a means of improving customer satisfaction levels by broadening end user support alternatives, IBM shall publish the following on the IBM PC Company's home page and/or the IBM PC Company's "Brand" home page (e.g. "Aptiva," "Mobile," "Commercial Desktop") on the World Wide Web by July 1, 1996. Such home page(s) shall integrate seamlessly with Microsoft's web resources. $ 3.00

   - Universal Resource Locator ("URL") to Microsoft's website for support, information, and file download purposes as supplied by Microsoft.
   - URL to Microsoft's Internet Explorer update page as supplied by Microsoft.
   - The "Microsoft Internet Explorer" Logo.
   - IBM's support information as related to Microsoft's Windows Products. Specifically, end user access information (e.g. phone numbers), support policies, and other support related information (e.g., publication of IBM's "Top-10" Windows related questions and answers, etc.)

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8. Encourage repeat and replacement sales of IBM's Customer Systems by increasing end user satisfaction levels through improvements in the quality of IBM's end user support as follows: $ 1.00

- Employ on or before August 1, 1996, at least one active Microsoft Certified Professional for Windows 9x and/or Windows NT Workstation in the role of support engineer in its support organization and an additional engineer for every 100,000 units of annualized Windows Products shipped by IBM.
- Participate in Microsoft-developed "Train the Trainer" Windows NT Workstation support program and institute a Microsoft approved written plan for training IBM's support personnel by July 1, 1996

9. To aid end users in the identification, selection, and purchase of IBM's Windows compatible Customer Systems and components, IBM shall use the Windows Products related promotional logos defined by Microsoft in conjunction with such Customer Systems as follows:

- License (pursuant to a Windows Product Logo license) and display the applicable Windows Product Logo in IBM's Customer System print ads, marketing and sales materials $ 1.00
- License (pursuant to the Windows 95 Logo license) and display the "Designed For Windows 95" Logo on all IBM's Customer Systems shipped with Windows 95 by either: $ 1.00
  a) Attaching the Logo in sticker form to the Customer System chassis.
  b) Engraving or printing the Logo on the Customer System chassis.

10. To improve IBM's competitive advantage against OEMs that ship pirated operating system product and to promote IBM's legitimate operating system offerings through end user awareness programs, IBM shall commence the following on or before July 1, 1996: $ 3.00

- Utilize Microsoft's Genuine Product logo (artwork provided by Microsoft) in Customer System advertising, collateral, and other promotional materials.
- Ensure that all of IBM's advertised personal computer systems include an operating system as a standard component.
- Ensure that all of IBM's personal computer systems ship with an operating system when shipped to any of the following countries: India, Indonesia, Peoples' Republic of China, Russia and former Soviet Socialist Republics.
- Incorporate a URL on the IBM PC Company's home page and/or the IBM PC Company's "Brand" home page (e.g. "Aptiva," "Mobile," "Commercial Desktop") to the Business Software Alliance (BSA) Home Page.
- Notwithstanding anything to the contrary in this Section 10, IBM may:
  (a) distribute diskless personal computer systems (i.e. those which do not include hard drives) with an operating system included on a "recovery CD" distributed with such personal computer systems.
  (b) distribute "Ready to Configure" personal computer systems (i.e. those distributed without any software) without an operating system; provided that the total number of such shipments shall not exceed ten percent (10%) of IBM's annual shipments of personal computer systems.

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General Terms and Conditions

1. Confidentiality

IBM and Microsoft shall keep confidential all terms and conditions of this Agreement and all communications between IBM and Microsoft regarding the terms and conditions of this Agreement. However, IBM may disclose the terms and conditions of this Agreement as required by law upon prior notice to Microsoft, or in confidence to its immediate legal, advertising and financial consultants as required in the ordinary course of IBM's business. In the event of any breach of confidentiality by IBM, Microsoft may immediately terminate this Agreement in which case IBM shall not be entitled to any discounts or other consideration in exchange for its participation in the above described Milestone Activities, whether or not such Milestone Activities have been completed at the time of such termination.

2. Applicability of Incentive Discounts for Milestone Activities

a) Any incentive discounts earned under this Agreement shall apply to Microsoft's Windows Products which are licensed under the OEM Agreement on the Exhibit C entitled "Windows Desktop Family" and shipped between January 1, 1997 and December 31, 1997.

b) Except for the incentive discounts set forth in this Agreement, IBM shall not be entitled to any discounts or other consideration in exchange for its participation in the above Milestone Activities.

c) In the event of termination of the OEM Agreement, following such termination IBM shall not be entitled to any discounts or other consideration in exchange for its participation in the above described Milestone Activities, whether or not such Milestone Activities have been completed at the time of such termination.

d) In the event that Microsoft makes additional or alternate incentive discounts for market development activities for Microsoft Windows Products available to OEMs generally, Microsoft shall offer IBM the opportunity to earn such incentive discounts for Microsoft Windows Products.

3. Monitoring of Milestone Activities

IBM shall cooperate with Microsoft OEM Sales to monitor status of Milestone Activities. This cooperation will include providing Microsoft with periodic status reports and supporting information as may be requested by Microsoft, and Microsoft agrees to provide reasonably detailed written feedback (with suggested curative measures, if applicable) to the periodic status reports. IBM agrees to make a written progress report to Microsoft on November 30, 1996 stating the Milestone Activities accomplished and including supporting materials. Microsoft shall determine whether IBM has satisfactorily completed each Milestone Activity. In the event that Microsoft and IBM disagree as to whether IBM has satisfactorily completed any Milestone Activity, the parties shall each appoint a senior level executive to meet and attempt to resolve any such disagreement. Failing mutual resolution, Microsoft shall make a final binding determination as to whether IBM has satisfactorily completed any Milestone Activity. IBM agrees to keep records relating to completion of each Milestone Activity and will make such records available to Microsoft upon request.

4. Continuation of Milestone Activities

Except in those cases where the applicable Milestone Activity set forth above specifically requires the accomplishment of a single event (e.g. attending an event), all Milestone Activities are ongoing, and continuous performance until December 31, 1997 is required for successful accomplishment of all Milestone Activities. If IBM discontinues performance on any individual Milestone Activity the associated incentive discounts will be discontinued effective as of the date that performance has been discontinued.

5. No License Agreement Implied or Created

This Agreement does not create and is not intended to create a license for any Microsoft Products. Further, the incentive discounts described above shall be applicable only in the event Microsoft and IBM enter into a license agreement for Windows Products which includes an Exhibit C entitled "Windows Desktop Family".

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Such incentive discounts shall not be applied to any other products currently licensed or which may be licensed in the future from Microsoft, nor shall IBM be entitled to any other compensation or other consideration in exchange for its participation in the above described Milestone Activities.

6. Controlling Law and Attorneys' Fees

   a) This Agreement and all matters relating to this Agreement shall be construed and controlled by the laws as specified in the OEM Agreement, and IBM consents to jurisdiction in the state and federal courts as specified in the OEM Agreement. Process may be served on either party in the manner set forth in the OEM Agreement.

   b) If either Microsoft or IBM employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses, to the extent provided, if any, in the OEM Agreement.

7. Notices

   All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the time and in the manner specified in the OEM Agreement.

8. Miscellaneous

   a) Upon request by Microsoft, IBM agrees to provide Microsoft with up to two Customer Systems per year which Microsoft shall use for testing and evaluation purposes. Microsoft shall return the Customer Systems to IBM within thirty (30) days of completion of testing and evaluation.

   b) This Agreement, and any rights or obligations hereunder, shall not be assigned by IBM except to the extent, if any, assignment of the OEM Agreement is permitted under the terms of the OEM Agreement.

   c) This Agreement does not constitute an offer by Microsoft and it shall not be effective until signed by both parties. Upon execution by both parties, this Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. It shall not be modified except by a written agreement signed on behalf of IBM and Microsoft by their respective duly authorized representatives.

   d) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

   e) 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 WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above. All signed copies of this Agreement shall be deemed originals.

MICROSOFT CORPORATION	INTERNATIONAL BUSINESS MACHINES
Mark Baber	D. D. Romero
By (Signature)	By (Signature)
MARK BABER	D. D. ROMERO
Name (Print)	Name (Print)
OEM GROUP MANAGER	Manager, Microsoft Contracts & Operations
Title	Title
5/9/96	4/26/96
Date	Date

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