

AGREEMENT OF SALE

ORIGINAL

THIS AGREEMENT is made and entered into this 27th day of July, 1981, by and between SEATTLE COMPUTER PRODUCTS, INC., a Washington corporation (hereinafter referred to as "Seller"), and MICROSOFT, INC., a Washington corporation (hereinafter referred to as "Buyer").

WHEREAS, Buyer desires to purchase all of Seller's rights in the product defined in Paragraph 1 below, and

WHEREAS, Seller desires to sell to Buyer all of its rights to the same product under the terms and conditions set forth in this Agreement,

NOW, THEREFORE, for and in consideration of the mutual promises contained herein IT IS AGREED as follows:

1. Product

The Product consists of all versions, presently existing and as may be developed by either party in the future, single-user and multi-user, of the disk operating system with utilities which Seller has developed or may develop for use on the 8086 microprocessor. Seller has named the Product "86-DOS." A description of the features of the Product is contained in Seller's instruction manual entitled "86-DOS Disk Operating System for the 8086 -- Version 0.3" dated November 15, 1980, and additional features are described in the attached Exhibit "A". The Product also includes all source code and object code relating thereto, and all instruction and technical manuals relating thereto.

2. Sale

Seller hereby sells and Buyer hereby purchases any and all right, title, and interest which Seller now has or which it may obtain in the future to the Product defined in Paragraph 1 above. Included in the rights sold to Buyer are the exclusive rights to use, reproduce, amend, update, license, and/or sell the Product in any form or media to any party.

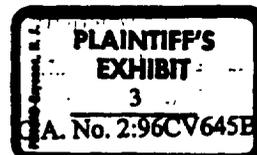
3. License to Seller

In partial consideration for this sale, Buyer hereby grants to Seller a world-wide, non-exclusive and royalty-free license to market the Product on the terms and conditions listed in the following subsections:

3.1. Seller's licensing rights: Seller shall have the right to grant licenses to use the Product to

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purchasers of hardware manufactured by Seller, whether such purchasers are end-users, dealers, OEMs, or another type of purchaser. Seller shall only license the use of the Product to purchasers of its hardware, and shall provide to each licensee only a single copy of the Product per CPU purchased by such licensee.

3.2. Object code only: Seller's right to license the Product to purchasers of its hardware shall relate only to the Product in object form. Seller shall not disclose the Product's source code, in whole or in part, to anyone after the date of this license.

3.3. Copyright notice: All copies of the Product and related manuals that Seller delivers to its licensees shall have a copyright notice on both the product containers or labels and in the media.

4. Updates

After the execution of this Agreement, both Seller and Buyer may continue to work to develop updates and enhancements for the Product. Any and all updates and enhancements developed by Buyer shall be the sole property of Buyer, but Buyer agrees that such updates and enhancements (and related manuals) shall automatically be licensed to Seller without charge, upon the same terms and conditions as are outlined in Paragraph 3 above. Any and all updates and enhancements of the Product developed by Seller after the date of this Agreement shall be deemed to be a part of the Product purchased by Buyer hereunder, and Seller shall deliver to Buyer copies of all source codes and related documentation pertaining to such updates and enhancements. As between Seller and Buyer, Buyer shall be deemed to be the owner of all such updates and enhancements developed by Seller, but Buyer agrees to grant to Seller a royalty-free license to use such updates and enhancements upon the same terms and conditions as are outlined in Paragraph 3 above. Buyer shall not be liable to Seller for any costs which Seller may incur in developing such updates and enhancements; provided, however, that if Seller develops a multi-user version of the Product, Buyer agrees to reimburse Seller for one-half (1/2) of Seller's out-of-pocket costs incurred in the development of such multi-user version.

5. Title, Patent, and Copyright Indemnification

Subject to the limitations of this Paragraph 5:

5.1. Seller represents and warrants that it has the full and complete right, title and interest in the Product (including the right to sell the Product as contemplated

herein), and that the Product does not infringe any copyright, or other intellectual property right (including without limitation, trade secret), or privacy or similar right, of a third party.

5.2. Seller agrees to defend at its expense any suit against Buyer based upon a claim that Seller does not have sufficient right, title, and interest in the Product to make this Agreement of Sale, or that the Product as furnished by Seller hereunder infringes on a United States patent or United States copyright, and to pay the amount of any settlement or the costs and damages finally awarded after appeal, if any, in any such suit, provided (1) that Seller is notified promptly in writing of any notice of claim and/or threatened or actual suit and (2) at Seller's request and expense Seller is given assistance for the defense of the same. Buyer shall have the right to approve or reject any settlement proposed by Seller which would result in a recovery exceeding the limitation of Paragraph 5.6.

5.3. Following notice of a claim or of a threatened or actual suit, Seller may, without obligation to do so, procure for Buyer uncontested title to the Product as furnished or, without obligation to do so, may replace or modify the same to make it non-infringing. If Seller elects to replace or modify the Product, such replacement shall cause the Product to substantially meet the specifications referenced in Paragraph 1 of this Agreement.

5.4. Seller shall have no liability for any claim of Seller's lack of right, title and interest to the Product or any claim of copyright or patent infringement based upon Buyer's (1) use of other than a version of the Product as received from Seller if such claim would have been avoided by the use of such version, or (2) combination of the Product with a non-Seller program or data, if such claim would have been avoided by the exclusive use of the Product. For all claims and/or suits which, pursuant to this subparagraph are not Seller's responsibility, Buyer will indemnify Seller for all of its costs, damages, expenses and attorney's fees. Any such costs, damages, expenses and attorney's fees shall not be payable until and unless there has been a final judgment adverse to Buyer.

5.5. Seller shall have no liability to Buyer for any claims made against it which arise from the use, sale, license or other disposition of the Product outside the geographical boundaries of the United States, the current members of the European Economic Community, and Japan.

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Buyer hereby releases and discharges Seller from any and all claims resulting from such use.

5.6. Seller's liability to Buyer under any provision of this Agreement of Sale, including this Paragraph 5, or any transactions contemplated by this Agreement shall be limited to the amounts actually paid by Buyer under Paragraph 6. The existence of more than one claim or suit will not enlarge or extend the limit.

6. Consideration

In consideration of Seller's agreement to sell the Product to Buyer, Buyer agrees to pay or provide to Seller the following:

6.1. Cash: Buyer shall pay to Seller cash in the amount of \$50,000 upon the execution of this Agreement.

6.2. License to Seller: Buyer shall grant to Seller of the license described in Paragraph 3 above.

6.3. Licenses for other products of Buyer: Buyer has developed or is in the process of developing the following high level languages for use with the 8086 microprocessor, (hereinafter referred to as the "Languages"):

BASIC-86
Fortran-86
Pascal-86
Cobol-86
BASIC Compiler for 8086
MACRO-86

Buyer agrees to grant to Seller licenses allowing Seller to market the Languages upon the following terms and conditions:

6.3.1. Standard license terms: Seller's right to obtain a license for any of the Languages shall arise at such time as Buyer decides to offer such Language to other customers. Seller's license for each Language shall become effective upon the execution of Buyer's standard License Agreement, as it may be amended from time to time. Seller must agree to all terms contained in such standard License Agreement except to the extent that this Paragraph 6.3 conflicts with those terms, in which case these provisions shall govern.

6.3.2. Operating systems: Pursuant to the licenses authorized by this Paragraph 6.3, the

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Languages shall be provided to Seller to run on both 86-DOS and CP/M-86, if Buyer offers them on both operating systems. If Buyer offers any or all of the Languages only on one of the above operating systems, then Buyer shall be required to provide Seller with the Language on only the one operating system for which the Language is available.

6.3.3. Seller's right to sublicense: The licenses granted by Buyer in this Paragraph 6.3 shall give Seller the right to sublicense the use of the Languages to purchasers of its hardware, whether such purchasers are end-users, dealers, OEMs or another type of purchaser. Seller shall have the right to sublicense the Languages in object form only, shall be required to obtain from its licensees a non-disclosure agreement in a form substantially similar to the attached Exhibit "B", and shall deliver to each licensee only a single copy of each Language per each Seller-manufactured 8086 CPU purchased by such licensee.

6.3.4. Price of language licenses: The licenses for the Languages shall be royalty licenses. At the time of execution of the License Agreement for each Language, no downpayment or prepaid royalties shall be due. Royalty payment liability shall arise each time Seller sublicenses a Language to one of its purchasers. The number of "units" in the following tables is determined by adding together all copies of every Language sublicensed to purchasers. The royalty rates are as follows:

A. Single-User Versions of Languages

<u>Cumulative Number of Units Sublicensed (all Languages combined)</u>	<u>Royalty Rate</u>
1 to 125 units	\$ 100 per unit
126 to 350 units	80 per unit
351 to 600 units	60 per unit
601 to 1,300 units	45 per unit
1,301 to 4,000 units	25 per unit
4,001 and above	20 per unit

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B. Multi-User Versions of Languages

<u>Cumulative Number of Units Sublicensed (all Languages combined)</u>	<u>Royalty Rate</u>
1 to 65 units	\$ 200 per unit
66 to 175 units	160 per unit
176 to 300 units	120 per unit
301 to 650 units	90 per unit
651 to 2,000 units	50 per unit
2,001 and above	40 per unit

A royalty will be due to Buyer for each machine licensed to use one of the Languages. If two Languages are used on one machine (for example, BASIC-86 and BASIC Compiler), then royalties will be due for two units.

6.3.5. Payment of royalties: Payment of the royalties listed in the immediately preceding paragraph shall be made within sixty (60) days of the date of Seller's invoice to its licensee.

6.3.6. Updates: Seller will receive all updates to the Languages free of charge. All such updates will be provided to Seller on the same basis as they are provided to Buyer's other customers.

7. Injunctive Relief

Buyer and Seller agree that a breach by Seller of the non-disclosure and copyright provisions of this Agreement will cause injury to Buyer which could not be compensated for by monetary damages alone, and the parties therefore agree that Buyer may also seek injunctive relief to prevent or stop any such breaches.

8. Prior Agreements Superceded

This Agreement of Sale supercedes any and all prior agreements between the parties, whether written or oral, including without limitation the License Agreement dated January 6, 1981. No further payments are due to Seller under the January 6, 1981 License Agreement.

9. Notices and Requests

All notices and requests in connection with this Agreement shall be deemed given as of the day they are deposited in the U.S. mails, postage prepaid, certified or registered, return receipt requested, and addressed as follows:

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BUYER: Microsoft, Inc.
10800 NE 8th Street
Suite 819
Bellevue, WA 98004
Attn: William H. Gates

SELLER: Seattle Computer Products, Inc.
1114 Industry Drive
Seattle, WA 98188
Attn: Rod Brock

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

10. Controlling Law

This Agreement shall be construed and controlled by the laws of the State of Washington.

11. Modification

This Agreement constitutes 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 dated even herewith or subsequent hereto signed on behalf of Buyer and Seller by their duly authorized representatives.

12. Binding Effect

This Agreement will inure to the benefit of and be binding upon the parties, their successors, administrators, heirs and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 27th day of July, 1981. All signed copies of this Agreement shall be deemed originals.

MICROSOFT, INC.

By



Paul G. Allen, Vice President

SEATTLE COMPUTER PRODUCTS, INC.

By



Rod Brock, President

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EXHIBIT "A"

SCPDDS Modifications

1. Directory expanded to include date.
2. Date above to be input by user upon startup.
3. Date above to be accessible and thus set/reset thru BASIC.
4. Editor modified to
 - A. Ability to abort an edit of a line and of an edit session.
 - B. Ability to page thru and edit a program that is too large for memory.
5. Updated and expanded documentation for all OS interfaces.
6. SUBMIT facility comparable to CP/M.
7. Support of disk blocking/deblocking (Jan 15).

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EXHIBIT "B"

REGISTRATION - NON-DISCLOSURE AGREEMENT
86-DOS (TM) DISK OPERATING SYSTEM

Party _____

Address _____

City _____ State _____ Zip _____

Equipment on which software will be used _____

The party above named and below signed agrees that it is receiving a copy of the above named software for use on a single computer only, as designated on this registration form. The party agrees to fill out and mail this registration form to MS before making use of the software. The party agrees to make no copies of the reference software except for the purpose of backup for the above specified computer and to strictly safeguard the original software and backup copies against disclosure to persons not specifically authorized by MS. The party further agrees that unauthorized copying or disclosure of this software will cause great damage to MS and Seattle Computer Products and that this damage is far greater than the value of the copies involved.

Date _____

Signed _____

Title _____

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