

Microsoft will be responsible for development of all operating system products, add-ons, and work under this agreement. A team of less than 20 IBM development people will be located at Microsoft and integrated into Microsoft's operating system development group. The IBM people will work under the direction of Microsoft management with the sole objective of creating these operating system products, add-ons, and work. For each project Microsoft will target two IBM hardware configurations to be determined by IBM as implementation targets for its Operating System products, add-ons and work. IBM will have no derivative works rights in operating system products add-ons, and work except additional device drivers without pre-consent from Microsoft.

Overall management direction for operating system products, add-ons, and work will come from a management board comprised of a senior Microsoft person and a senior IBM person. They may have a very small staff (<12) to assist them. The Management Board will decide how to manage the delivery of products and support releases from MS to IBM approve product plans and schedules, and determine overall staffing levels and budgets for operating system products, add-ons, and work. Disagreements between the Management Board will be taken to an IBM/Microsoft Executive Board comprised of the IBM Group Executive for Personal Systems and the Chairman of Microsoft. If they cannot resolve the disagreements, the agreement may be terminated without cause as specified here.

Development costs are defined as all imputed Microsoft costs in creating the product including but not limited to costs of code, documentation, localized versions, translations, tutorials, product names, trademarks, testing, research, product specification and acquisition of appropriate third party license rights. Microsoft development costs will be the sum of personnel costs and direct third party costs (license fees, trademark filings, contractor fees, outside market research, etc.) Personnel costs will be computed by multiplying man-years involved in operating system products, add-ons and work by \$120,000 (adjusted annually for inflation). IBM Development Costs are personnel costs for its team at Microsoft.

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The Management Board will approve an IBM and Microsoft Development budget annually and consider changes at other times as appropriate. As long as IBM and Microsoft development costs are within 10% of budget, IBM and Microsoft will share total development costs equally. Each company will have sole responsibility for variances >10%. These variances will not affect license rights. IBM and Microsoft will also share equally any development costs for device drivers which IBM chooses to do unilaterally which Microsoft chooses to license. In addition, Microsoft and IBM will share equally any development costs associated with derivative works done by IBM (required Microsoft approval) which Microsoft chooses to license.

IBM will pay Microsoft quarterly its share of Microsoft development costs net of IBM development costs on any year in which IBM's profitability from operating system products, add-ons and work (net of IBM's share of development costs) is x% (where x is below 20%) Microsoft will reimburse IBM (20 - x)% of its net development cost payments to Microsoft up to a maximum of 20%.

If either Microsoft or IBM terminates the agreement without cause, Development Cost budgets will be frozen for the time from BR to termination at their level pre-BR. In addition, Microsoft will make deliveries of all products, add-ons and work quarterly and as soon as Microsoft makes such deliveries to any third party.

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