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Date: January 13, 1992

To: Dick Williams
David Bradford
Steve Tucker
Andy Wightman
John Bromhead



From: Steve Maysonave

Re: IBM Status Report

We met in Boca Raton on January 8-10th to kick off the joint task force. IBM is using the code name Cougar to refer to this project and the proposed new relationship with Novell/DRI.

1. The task force work schedule outline is attached. The "joint" column refers to meetings between IBM and Novell. See attachment #1.
2. Attachment #2 is a summary of Reiswig's comments from the 12-18-91 meeting and serves as a good summary of what we are trying to accomplish by the end of January.
3. Attachment #3 lists specific actions from the 1-8 meeting.
4. Attachment #4 is a revised "term sheet" presented by IBM.
5. Attachment #5 is the proposed legal / contracts workplan.
6. Attachment #6 summarizes initial feedback on IBM's term sheet as viewed by David Bradford and me.

The following is a summary of the many pages of notes I took during the three days of meetings. Some of the meetings were attended only by John Bromhead and consequently I do not have notes on them. John's meetings alone with IBM dealt with the Panther PRD and IBM's responses to it.

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Plaintiff's Exhibit

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1. Registration: IBM does not include a registration card for DOS and they do not have any unique registration # or serial # for each copy of DOS.
2. DOS 5.0 Shipments: based on multiple conversations I have tried to piece together their shipment rates. I believe they were still shipping more DOS 3.3 and 4.01 than 5.0 until October or November with the exception of July, 1991. They shipped 118,800 DOS units in July and are averaging about 60,000 units per month now. I believe that these are US numbers and that they are probably shipping 2.5 to 3 million units annually.
3. Service / Support: their US call rate is averaging about 1,000 calls per month on DOS 5.0. This equates to about a 1.5% call rate. It costs IBM about \$160 to send out a corrective service disk (CSD). Initially on DOS 5.0 they were taking an average of 50 minutes per call. Now it is down to 30 minutes per call. All calls are done on a "call back" basis and the customer defines the severity level to be assigned to the problem.
4. WorkPlace Shell: IBM now is indicating that they can give us royalty free rights to both the "look and feel" of the shell as well as any code we want to use. I believe the only caveat is that it has to be used in a product marketed by IBM and Panther qualifies for this.
5. "Product" Definition: this is complicated. They obviously want to define "DOS" as broadly as possible and get royalty free rights for use on their HW. We need to discuss our negotiation strategy on this point.
6. Announcement: Bradford advised IBM that this Agreement would be considered "material" to Novell's business and thus we would have to announce an agreed upon set of information immediately after the contract signing.
7. IBM's Developers Assistance Program (DAP): as of 12/91 IBM claims to have approximately 3750 developers (including Novell and DRI) for OS/2. In their 32 bit expedite program, they claim 788 companies have committed to over 1,100 applications for delivery in 1992.
8. Packaging: IBM has an open mind about who will do the packaging in the beginning and who will do it in the future. It appears to simply be a cost, quality and on-time delivery decision.
9. Distribution: I think IBM is inclined to have us as the primary distribution agent for OEM and channel sales. Kim P. and Dave V. both did excellent jobs and further established our credibility. We need to close on this and clear up the methodology for IBM selling to OS/2 and PS/2 OEMs.

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10. Windows: IBM does not believe that they can make a successful business out of OEMing Windows. Apparently their royalties are tied to Microsoft's prices on Windows. The lower the ASP, the more IBM pays. If this is true, MS has them or anyone IBM were to authorize to represent them in a very tight box. No one was the least bit positive, it sounds like a lost cause. The good news is that they want to help us be compatible by working closely with us and providing detailed specs whenever needed.
11. The "Process": IBM wants as much of this wrung out in advance as possible. It involves everything from managing the development and test process, quality control, updating source files, reaching agreement on how to conduct a joint PRD process, how a PRD gets modified (changes in priorities, new function) and other related issues. Richard Dean (EDC) has a conference call set up with IBM for 1-14-92 and we are getting Jack Blount's organization involved so we can learn from their experiences.
12. Palmtop OS: IBM wants to know the details of our Palmtop strategy and wants to review our Merlin spec.

Most of the other issues (keeping developers uncontaminated, remedies for refusing to do requested work, marketing credits / commitments, etc.) are mentioned in one form or another in the attachments. We need to review these during our meetings on 1-15-92. I am working with Valentino and Garrison on the forecast information we need to give to IBM and the related information we need in order to finalize our negotiating positions.

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TASK FORCE ACTIVITIES - WORK SCHEDULE

IBM - COUGAR	JOINT	DRI
1/7 KICKOFF - CONF. CALL	1/8 - 1/10 BOCA (SUBSET OF TOPICS/ MEMBERS)	
1/9 REVIEW WORK PLANS W/LKT - BOCA VIA CONF. CALL HOOK-UP INDIVIDUAL WORK PLANS		
1/14 (PM), TASK FORCE		
1/15 (ALL DAY) REVIEW - BOCA		
1/16 (AM) UPDATES AS RQ'D BOCA	1/16 (PM) TASK FORCE REVIEW BOCA	
	1/17 (ALL DAY) TASK FORCE REVIEW AGENDA: JOINT REVIEW (BY WORK ITEM)	
	1/20 LKT, CRONAN, KALB, DAS/SGM... FINALIZE EXEC. SUMMARY & FLY TO PHOENIX	
	1/21 LRR/WILLIAMS EXEC. SUMMARY IN PHOENIX BY LKT/SGM & SELECTED OTHERS	
	- EXEC. REPORT RE: WORK ITEMS - IDENTIFY SLOW STOPPERS	
1/23, 1/24 TASK FORCE REVIEW BOCA - ALL DAY		
	1/27 (AM) FLY TO CA 1/27 (PM) FULL TASK FORCE REVIEW ↓ SANTA CLARA	
	1/29 FINAL SESSION & EXEC REPORT PREP	
	1/30 EXEC REVIEW - SANTA CLARA FINAL RECOMMENDATION: A. PRODUCT PLAN, INCLUDING SUPPORT, DISTRIBUTION, ETC. B. BUSINESS PROPOSAL T's & C's	

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ATTACHMENT

Reiswig summary comments from December 18, 1991 Boca Raton Meeting

AREAS REQUIRING MORE DETAILED WORK

A. PRODUCT-RELATED

1. PRODUCT PLAN
 - IBM needs to review DRI plan line items and priority list to agree on a plan content proposal.
 - IBM can then propose IBM's development contribution.
2. W/W ISV SUPPORT PLAN
 - to be defined by IBM
 - assume execution to be done by DRI
3. W/W OEM SUPPORT PLAN
 - to be defined by DRI
 - assume execution to be done by DRI

B. PROCESS

IBM to refine development process proposal from December 18, 1991 presentation with input from that discussion, e.g., include IBM as active development partner. Will better define IBM's business cycle "synch points", IBM's ship criteria, quality imperatives, etc.

C. DOS CUSTOMER SUPPORT PLAN

IBM to propose a "single point of contact" support structure (similar to DOS 5.0 today). Assume it will be jointly executed, depending on skill levels.

D. TERMS AND CONDITIONS

IBM will draft a contract, including distribution, using Novell MTA as model.

NOTE: there are three known areas of differences:

1. rights equivalent to ownership
2. how to market to OEM (agent vs. alternative)
3. definition of the DOS product (structure, API's, functional definition of DOS vs. "app function").

E. FINANCIALS

IBM will propose two models (with and without WIN).

F. DOS V

IBM action to respond to DRI request.

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IBM/DR MEETING WORK ITEMS FROM 1/8/92

- OLSON/MAYSONAVE: ESTABLISH PROCESS/TEST MTG. - WHERE & WHO
- BROMFIELD: PROVIDE OVERVIEW OF ROM PLANS
- CRONAN: DESCRIPTION OF WINDOWS RIGHTS
- MCDONALD/BROMFIELD: *Bromfield*
ANALYZE PANTHER PRODUCT REQUIREMENTS AGAINST
OS/2 FUNCTIONAL EQUIVALENCE COMPATIBILITY
- BROMFIELD/DRUCKER:
ESTABLISH SPECIFIC MODULES TO BE INCLUDED AS
CONTRACT DELIVERABLES
- STEWART/BROMFIELD: *720KB floppy*
720 INSTALL BASE - HOW BIG FROM IBM? HOW BIG
FROM NON-IBM BASE?
- BROMFIELD: TOTAL PACKAGING PLAN FOR NEXT RELEASE
- SAFFORD: ADD TO LEGAL DISCUSSION
-GUI CONSIDERATIONS
- COMPLETE -RIGHTS
-FINANCIALS
-CONTAMINATION
- MCDONALD/DRUCKER:
DEFINITION OF DOS FROM A DELIVERABLE STANDPOINT
(I.E., PALM TOPS, ROM DOS, DOS ITSELF)

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Attachment #4

IBM'S PROPOSAL - DRI BASE OPTION
(RESULT OF 12/18 MEETING)

PRODUCT DESCRIPTION

o DRI BASE PRODUCT(S)

- DRI BASED (TO CONTAIN: ENHANCEMENTS AND IBM REQUIREMENTS)

NEED TO ESTABLISH CLEAR REQUIREMENTS AND DEVELOPMENT PROCESS

INCLUDING:

- JUSTIFICATION FOR DRI REFUSAL TO RESPOND TO IBM REQUIREMENTS
- RIGHT OF FIRST REFUSAL/PAYMENT FOR IBM RESOURCE/DELIVERABLES

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PRODUCT DESCRIPTION (Cont'd)

GENERIC LOGO

- (ATTRIBUTION FOR IBM AND DRI/NOVELL)
- END USER LICENSE AGREEMENT

MULTIPLE PRODUCTS:

ROM BASE/PEN
5.0 FOLLOW-ON / OS/2 AFFINITY /
NETWARE AFFINITY

PRODUCT WOULD BE SUBJECT TO AGREED PROCESS FOR
SCHEDULES AND CONTENT

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OWNERSHIP/RIGHTS AND LICENSES

- o PRODUCT(S) OWNED BY DRI

- o DRI TO GRANT IBM RIGHTS EQUIVALENT TO OWNERSHIP - FOR ALL PRODUCT(S) AND ENHANCEMENTS DEVELOPED DURING THE DELIVERY PERIOD (INCLUDING BUNDLED OFFERINGS)
 - FULL-SOURCE AND OBJECT CODE
 - DOCUMENTATION
 - TOOLS, FONTS, TEST PLAN
 - NON-EXCLUSIVE, WORLDWIDE, IRREVOCABLE RIGHT AND LICENSE TO USE, EXECUTE, COPY, REPRODUCE, DISPLAY, PERFORM AND TO PREPARE AND OR HAVE PREPARED DERIVATIVE WORKS OF THE PRODUCT(S), DISTRIBUTE INTERNALLY AND/OR EXTERNALLY, SELL, LEASE OR OTHERWISE TRANSFER THE PRODUCT(S)
 - RIGHT TO SUBLICENSE AND AUTHORIZE OTHERS TO ANY OR ALL OF THESE RIGHTS
 - RIGHT TO DRI/NOVELL TRADEMARK/PRODUCT NAME
 - LICENSE APPLIES TO COPYRIGHT AND PATENTS
 - LICENSE TO PICTORIAL, GRAPHIC OR AUDIO/VISUAL WORKS

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OWNERSHIP/RIGHTS AND LICENSES (Cont'd)

o DRI SHALL GRANT TO IBM ONGOING SOURCE CODE/DOCUMENTATION ACCESS

o DELIVERY PERIOD

- FIVE YEARS - THEREAFTER AUTOMATIC RENEWAL ON YEARLY BASIS - UNLESS TWELVE MONTH NOTICE OF TERMINATION

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MARKETING RELATIONSHIP/FINANCIALS

(1) IBM SYSTEMS/CONTEMPORANEOUS SALE:

- . NEW SYSTEMS/SUBSETS
- . EXERCISE LICENSE RIGHTS
- . ROYALTY FREE LICENSE

(2) ADDITIONAL RETAIL SALES:

- . INCLUDES FULL PACKS AND UPGRADES
- . OLD IBM SYSTEMS (NOT PRELOADED)
- . NEW/OLD OEM SYSTEMS (NOT PRELOADED)
- . IBM AS DRI'S NON-EXCLUSIVE AGENT
 - DEMAND GENERATION ONLY
 - FULFILL THROUGH DRI/NOVELL
- . IBM TO RECEIVE A PERCENTAGE OF DRI REVENUE FOR ENDORSEMENT, MARKETING, ETC. . .

(3) OEM MARKET

- . BOTH IBM AND DRI PARTICIPATE
- . IBM AS DRI'S NON-EXCLUSIVE AGENT
- . IBM TO RECEIVE A PERCENTAGE OF DRI REVENUE

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ALL CASES

- NO CHARGE FOR:
 - . INTERNAL USE
 - . DEMO
 - . MARKETING PURPOSES
 - . EDUCATIONAL PURPOSES
 - . BACK UP COPIES

- FREEDOM OF ACTION - EITHER PARTY RETAINS FREEDOM TO DEVELOP OR ACQUIRE ~~COMPREHENSIVE~~ *Competitive* MATERIALS

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o TERMINATION

- TERMINATION FOR MATERIAL BREACH ONLY

o WARRANTY/INDEMNIFICATION

- DRI/IBM TO PROVIDE FULL WARRANTY AND INDEMNIFICATION
 - . NO CONFLICT OF INTEREST
 - . OWNERSHIP AND AUTHORITY
 - . CONFORMANCE TO SPEC
 - NO HARMFUL CODE

o SERVICE AND SUPPORT

- IBM TO BE END USER INTERFACE FOR SUPPORT DURING THE WARRANTY PERIOD
- IBM TO PROVIDE LEVEL 1 AND 2 SUPPORT

Development Terms
(DRI) TO PROVIDE FIX / CSD LEVEL 3 SUPPORT (source level change)

- IBM TO PROVIDE USERS WITH A FEE SERVICE OFFERING AFTER THE WARRANTY PERIOD

o ASSIGNMENT

- IBM SHALL HAVE THE RIGHT TO ASSIGN ANY AND ALL RIGHTS/OBLIGATIONS WITHOUT THE PRIOR DRI/NOVELL AGREEMENT

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COUGAR LEGAL/CONTRACTS WORKPLAN

PRESENT REVISED TERMS AND CONDITIONS	01/09
TERM SHEET INPUTS DUE: - FINANCE - MARKETING - SERVICE - STATEMENT OF WORK OUTLINE	01/14
UPDATE TERM SHEET	01/15
REVIEW TERM SHEET WITH TF	01/15
DELIVER TERM SHEET	01/16 (P.M.)
NEGOTIATING SESSION IN PHOENIX AT TERM SHEET LEVEL	01/20-01/21
EXECUTIVE REVIEW	01/21 (P.M.)
CREATE DRAFT AGREEMENT	01/22-01/24
REVIEW DRAFT WITH TF	01/24 (P.M.)
DELIVER DRAFT	01/25
FINAL NEGOTIATING SESSION IN SANTA CLARA	01/27-01/30
IBM INTERNAL APPROVALS	02/03-02/07
AGREEMENT EXECUTION	02/10

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01/08/92

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Attachment #6

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Additional Issues to be Addressed in
Novell/IBM DOS Term Sheet

I. - How can we legally create an environment for the creation of a new DOS Standard where IBM can freely contribute technology and knowhow to the DRI development effort

a. IBM employees could sign acknowledgment letter regarding DRI and agree to additional confidentiality provisions
Review IBM Employee Agreement

b. Proper Treatment of Source Code by both parties; What Source Code is exchanged; What Source Code cannot be exchanged

c. Possible limitations on Addsoft, Series, MultiSoft, Windows, OS/2 etc.

{ IBM security requirements on unannounced HW }
D. Create list of Machines & Code to be supplied by IBM

E. Identify IBM development personnel who will "team" with DRI people. What does teaming mean? Same facility? Will they move to the UK?

II. - Royalty Issues so as to ensure both sides are fairly compensated given their relative contributions

a. Novell wants its Royalty obligations back to IBM to be limited to a % of incremental sales which DRI achieves as a result of the relationship

b. Overtime the Royalty obligations should expire - look at from both sides

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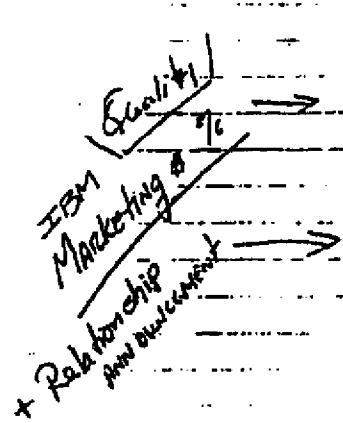
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Supplemental Term Sheet
(cont'd)

- c. As Novell creates new functionality (such as a new GUI, or incorporation of Peer-to-Peer Networking) into D.O.S. IBM should pay Royalty on new products and/or innovation
- d. Royalty Payments - When are they due? How frequently? Who pays whom for what?
- e. ~~That~~ Specify Record Keeping / Auditing Rigs

III What Attachments will be needed to the Contract?



- a. Development Schedule including milestones & Delivery Dates
- b. Product Specification, Performance Specifications, & Compatibility Requirements
- c. IBM Contribution outline - who, what, when, where, & how? Work for Hire?
- d. Initial Product Announcement/mkng Plan
- e. Training & Support Plan
- f. Manufacturing Outline
- g. International Mkng Plan & Implementation Schedule; i.e. ASIA/PAC. + EMEA;

IV who, where, how

- Miscellaneous Issues and Contract Clause
- a. IBM's Ongoing access to Source needs to be limited to specified purposes
 - b. Reciprocity in the Assignment Clause
 - c. What guarantees/Assurances will IBM give regarding sell of product?

Resigned.

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Supplemental Term Sheet
(cont'd)

- d. What happens if parties differ on specifications, quality, shipment dates.
 - e. Appointment of Executive Oversight team
 - f. Formality in change of schedules or specifications
 - g. Acceptance Testing - By whom; when
 - h. Progress Reporting Structure
 - i. Contracts Administration - Who's responsible
 - j. Should there be ^{one} Development ~~Project~~ ^{Site}
 - k. Limitation of Liability Section
 - l. Creation of Common API'S
 - m. Implementation of ^{GUI} OS/2 shell?
 - n. Assumption is a Worldwide Agreement for both parties; JAPAN?
 - o. Circumstances under which IBM can delay shipment or dictate specs. must be limited in some fashion; Timetable by which IBM must provide specification change requests etc.
 - p. Before agreeing to Royalty amounts & ways royalties flow, Novell needs data on PC Dos shipments etc.
- L: Promotional Bundles

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