

LICENSE AGREEMENT

COPY

This license agreement is made and entered into this 6th day of January, 1980, by and between SEATTLE COMPUTER PRODUCTS INC., a Washington Corporation (hereinafter referred to as SCP), and MICROSOFT, a Washington general partnership (hereinafter referred to as MS).

WHEREAS, MS desires to obtain non-exclusive rights to market the product defined in Paragraph 1, below, and

WHEREAS, SCP desires to supply MS with the same product under the terms and conditions hereinafter set forth,

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

1. PRODUCT:

The product is a single-user disk operating system with utilities for the 8086 microprocessor which has been named "86-DOS" by SCP. A description of the features of the product is contained in the SCP instruction manual titled "86-DOS Disk Operating System for the 8086 -- Version 0.3" dated 11-15-80 and in Exhibit A attached hereto which details some extended features. SCP shall also deliver to MS test programs for 86-DOS within thirty days of signing of this contract. SCP shall deliver test programs for the features outlined in Exhibit A along with the source and object code for those features. The term "product" as used here shall be deemed to include any improvements, extensions (except extensions which change 86-DOS into a multi-user or multi-tasking operating system) or modifications made by SCP to 86-DOS during the life of this License Agreement.

2. RIGHTS BEING LICENSED:

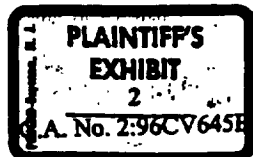
(a) 86-DOS OBJECT CODE TO END USERS: This License Agreement conveys to MS the right to distribute 86-DOS in object code form only to an unlimited number of end users, either directly or through retail stores. Such distribution does not include sales to OEMs (except as described in Paragraph 2(c), below), licensing for which is described below.

(b) 86-DOS OBJECT CODE TO OEMS (NO PER COPY ROYALTY): This License Agreement conveys to MS the right to sub-license 86-DOS in object code form to OEMs for unlimited distribution to end users. For each sub-license of this type sold by MS to an OEM, MS agrees to pay to SCP a royalty of \$10,000.

(c) 86-DOS OBJECT CODE TO OEMS (WITH PER COPY ROYALTY): This License Agreement conveys to MS the right to sub-license 86-DOS in object code form to OEMs for unlimited distribution to end users. For each sub-license of this type sold by MS to an OEM, MS agrees to pay to SCP an initial fee of \$1,000 plus a royalty of \$25 for each copy of 86-DOS licensed. Incidental sales of 86-DOS to any one OEM (right to use on up to 24 machines) shall be considered to be covered by the provisions of Paragraph 2(a), above.

(d) 86-DOS SOURCE CODE: This License Agreement conveys to MS the right to provide a copy of 86-DOS source code to any OEM sub-licensed for 86-DOS as described in Paragraph 2(b) and 2(c), above. For each OEM so provided a copy of 86-DOS source code, MS agrees to pay to SCP a royalty of \$5,000. The OEM purchaser of the 86-DOS source code shall have no distribution rights to this source code and may use it internal to its organization only.

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Attachment "2"

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(e) DERIVATIVE WORKS: This License Agreement conveys to MS and any of its OEM customers for whom MS has paid royalties to SCP and who have licenses for 86-DOS SOURCE CODE the right to prepare and have prepared Derivative Works based upon the product and distribute those Derivative Works in object code form only. A Derivative Work shall mean a work which is based upon the product such as a revision, modification, translation, abridgement, condensation, expansion, compilation, or any other form in which the product may be recast, transformed, or adapted, and which if prepared without authorization, would constitute a copyright infringement. MS shall not have the right to market Derivative Works without paying appropriate royalties as in Paragraphs (a), (b), (c) or (d) to SCP.

(f) SUBSIDIARIES: The Licenses granted in Paragraphs (b), (c), and (d), of this section include the right of MS and its OEM customers to grant licenses of or within the scope of rights and licenses granted to them, to their subsidiaries; and each licensed subsidiary shall have the right corresponding to license other subsidiaries. Such licensing shall not increase the amount due from MS to SCP.

(g) PATENTS: SCP further grants to MS and its sublicensees and customers a worldwide, royalty-free, irrevocable, and non-exclusive license under any patents owned or licensable by SCP at any time during the term of this Agreement: (1) to the extent necessary to exercise any right or license granted under this Section; and (2) to combine the product and or Derivative Works thereof with equipment.

3. PAYMENT:

MS will pay SCP \$10,000 upon signing of this agreement. Payment of the initial fee described in Paragraph 2(c), above, and royalties called for under this Agreement shall be due within 45 days of the date MS invoices their customer for the product for which the initial fee or royalty is due.

4. PRODUCT IMPROVEMENT:

SCP agrees to work in a diligent manner to improve and update 86-DOS in the next year with substantial effort being expended on this task during the next three months. Specifically, SCP agrees to make the improvements outlined in EXHIBIT A by February 1, 1981. SCP further agrees to cooperate with MS by providing limited help for any customizing MS may need to do for their customers of 86-DOS.

5. WARRANTY:

(a) SCP represents that the product is free from program error and meets the specifications called out in the instruction manual referenced in Paragraph 1 of this Agreement. If program errors are discovered by MS during the first year of this Agreement, SCP will use diligent effort to attempt to correct these errors within fifteen (15) days of the time they are documented to SCP by MS.

(b) If the program errors discovered by MS during the first year of this Agreement cannot be corrected within fifteen (15) days by SCP, then as MS's sole remedy, (1) the product may be retained by MS with an equitable adjustment in price as may be agreed by the parties, (2) the correction period may be extended as may be agreed by the parties, or (3) failing any agreement, MS shall be entitled to a return of 50% of the license fee described in Paragraph 3 upon MS's return to SCP of all copies of the product (including any copies which MS may have made) and upon delivery to SCP of a statement signed by one of MS's officers that MS has not retained any copies of the product.

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(c) MS may, by payment of \$1,000, on or before the first, second, or third anniversary of this agreement extend SCP's obligation to use due diligence to attempt to eliminate and supply corrections for such errors within fifteen (15) days.

(d) SCP further represents and warrants that no claim, whether or not embodied in an action past or present, of infringement of any copyright, patent, or other intellectual property right, or privacy or similar right, has been made or is pending against SCP, or to the best of their knowledge against other licensees, relative to the product. Each party shall promptly notify the other in the event it becomes aware of such a claim.

(e) The rights and remedies granted to MS under this Paragraph 5 constitute MS's sole and exclusive remedy against SCP, its officers, agents and employees for negligence, unexcusable delay, breach of warranty, express or implied, or for any default whatsoever relating to the condition of the product or SCP's duties to eliminate any program errors.

THE ABOVE IS A LIMITED WARRANTY AND THE ONLY WARRANTY MADE BY SCP. ANY AND ALL WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED. MS AGREES SCP SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES EVEN IF SCP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. TITLE, PATENT AND COPYRIGHT INDEMNIFICATION:

Subject to the limitations of this Paragraph 6,

(a) SCP represents and warrants that it has the full and complete right, title and interest in the product (including the right to grant the licenses and rights granted 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.

(b) SCP agrees to defend at its expense any suit against MS based upon a claim that SCP does not have sufficient right, title, and interest in the product as furnished by SCP to make this License Agreement, or that the product as furnished by SCP under this agreement infringes on a United States patent or United States copyright, and to pay the amount of any settlement of the costs and damages finally awarded after appeal, if any, in any such suit, provided (1) that SCP is notified promptly in writing of any notice or claim or of threatened or actual suit and (2) at SCP's request and expense SCP is given assistance for the defense of the same. MS shall have the right to approve or reject any settlement proposed by SCP which would result in a recovery exceeding the limitation of Paragraph 6(f).

(c) Following notice of a claim or of a threatened or actual suit, SCP may, without obligation to do so, procure for MS the right to continue to use the product as furnished or, without obligation to do so, may replace or modify the same to make it non-infringing. If SCP 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.

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(d) SCP shall have no liability for any claim of SCP's lack of right, title and interest to the product or any claim of copyright or patent infringement based upon MS's (1) use of other than the latest release of the product received from SCP if such claim would have been avoided by the use of such release, or (2) combination of an SCP program with a non-SCP program or data, if such claim would have been avoided by the exclusive use of an SCP product. For all claims and/or suits arising under this subparagraph, MS will indemnify SCP 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 MS.

(e) SCP shall have no obligation to MS 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. MS hereby releases and discharges SCP from any and all claims resulting from such use.

(f) SCP's liability to MS under any provisions of the License Agreement, including this Paragraph 6, or any transactions contemplated by the License Agreement shall be limited to the amounts actually paid by MS under Paragraph 3. SCP's limitation of liability is cumulative with all SCP's expenditures being aggregated to determine satisfaction of the limit. The existence of more than one claim or suit will not enlarge or extend the limit. MS releases SCP from all obligations (including those of Paragraph 6), liability, claims or demand in excess of the limitation. The parties acknowledge the other parts of the License Agreement rely upon the inclusion of this Paragraph 6(f) herein.

7. MARKETING AND NON-DISCLOSURE AGREEMENT:

(a) With the exception specified in 2(d) above, MS shall have the right to market the product in object code form only. Other than as authorized in Paragraph 2(d), neither MS nor its so licensed OEM customers shall reproduce, duplicate, copy or otherwise disclose, distribute or disseminate the product in source code form (code or listing) in any media except for their internal use. However, MS and its OEM customers licensed under Paragraph 2(d) shall be free to use and disclose to others without restriction all information in non-tangible form and any concepts, ideas, know-how, and techniques contained in the product in any way whatsoever.

(b) For the sales contemplated in Paragraph 2(a), MS agrees to obtain the written agreement of each of its marketing customers to the Non-Disclosure Agreement attached as Exhibit "B" or, a similar agreement of which SCP approves. For sales contemplated in Paragraphs 2(b), 2(c), and 2(d), MS agrees to sign sub-license agreements with restrictions on source code disclosure similar to those in this agreement, and further agrees to submit the language of this portion of any sub-license agreement for SCP's approval.

(c) MS's obligation under this Paragraph 7 shall survive any termination or expiration of the License Agreement and shall extend seven (7) years from the effective date of this Agreement.

8. LICENSE AND PROTECTION OF COPYRIGHTS AND PATENTS:

(a) MS will cause to appear on the product containers or labels and media a valid copyright notice.

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(b) Provided a valid copyright notice is affixed thereto, SCP grants MS the rights to reproduce, publish, and sell copies of part or all of the manuals and documentation furnished MS pursuant to this License Agreement, subject at all times to the limitations of Paragraph 7(a). MS may sub-license these rights to its OEM customers described in Paragraphs 2(b), and 2(c), above.

9. PROHIBITION AGAINST ASSIGNMENT AND SUBLICENSE:

This License Agreement shall not be assigned by MS without the written approval of SCP; provided, MS may assign this License Agreement to any purchaser of substantially all the assets of MS's software business. MS shall not sublicense its rights under this agreement to any other person or entity except as specifically authorized by this agreement.

10. TERM OF AGREEMENT:

This License Agreement shall be effective from the date a copy signed on behalf of MS is accepted by SCP at its Seattle, Washington, office until its termination in accordance with the terms of this License Agreement or December 31, 2055 which is earlier.

11. DEFAULT BY MS:

SCP may terminate this License Agreement by giving notice to MS: (a) if MS fails to perform or comply with this License Agreement or any provisions thereof, including failure to promptly pay any amount due under the provisions of Paragraphs 2 and 3; (b) if MS fails to strictly comply with the provisions of Paragraph 8; (c) if MS becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (d) if a petition under any foreign or United States Bankruptcy Act, as it now exists or as amended, is filed by MS; (e) if such a petition is filed by any third party or an application for a receiver of MS is made by anyone and such petition or application is not resolved favorably to MS within sixty (60) days. Termination shall be effective thirty (30) days following SCP's giving of notice to MS if the occurrence giving rise to the right of termination has not been cured. The rights and remedies of SCP provided in this Paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law in this Agreement.

12. OBLIGATIONS UPON TERMINATION:

(a) If the License Agreement is terminated, MS shall return all full or partial copies of the product in MS's possession or under its control to SCP within ten (10) days following the termination date, including any in-house copies MS may have produced.

(b) MS's customers and sub-licensees shall be permitted the continued and uninterrupted use of the product and any object code derived from the product provided MS has paid in full royalties to SCP for any such customer or sublicensee.

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(c) At the termination of this License Agreement MS will be deemed to have assigned, transferred and conveyed back to SCP all rights, equities, goodwill, titles, or other rights in and to the product, as it was delivered by SCP to MS. Termination under this provision shall not relieve MS of the obligations it has assumed under the License Agreement, including, without limitation, its obligations regarding the confidentiality of the product. From and after termination MS will not use internally nor employ the product as a part or portion of any product which MS may use, sell, assign, lease, license or transfer to any third parties.

(d) Termination of this License Agreement as a result of MS's default shall result in acceleration of MS's obligation to pay all sums MS contracted to pay under this License Agreement except for unearned royalties.

13. NOTICES AND REQUESTS:

All notices and requests in connection with this License 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:

MICROSOFT:

Microsoft
10600 NE 8th Street
Suite 819
Bellevue, WA 98004
Attn: William H. Gates

SCP

Seattle Computer Products
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.

14. CONTROLLING LAW:

This License Agreement shall be construed and controlled by the laws of the State of Washington and MS further consents to jurisdiction by the state and federal courts sitting in the State of Washington. Process may be served on MS by U.S. Mail, postage prepaid, certified or registered, return receipt requested, or by such other method as is authorized by the Washington Long Arm Statute.

15. MODIFICATION:

This License 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 MS and SCP by their duly authorized representatives.

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16. BINDING EFFECT:

Subject to the limitations hereinbefore expressed, this License Agreement will inure to the benefit of and be binding upon the parties, their successors, administrators, heirs and assigns.

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17. ACCEPTANCE:

This License Agreement is to be considered accepted by MS and SCP upon its execution. Following acceptance, SCP will promptly provide MS with the current 86-DOS source code and object code on diskettes along with the current 86-DOS documentation.

18. GENERAL:

(a) This License Agreement does not grant SCP any right to use the trademarks or trade names of MS or its OEM customers or the right to refer to MS or its customers in connection with any product promotion or publication of SCP relating to the product.

(b) This License Agreement shall in no way preclude either party of its OEMs from independently developing or acquiring materials and programs which are competitive, irrespective of their similarity, with the product or from making similar arrangements with others.

(c) Nothing in this License Agreement shall require MS to identify its customers to SCP. SCP shall have the right to have MS's outside auditors verify all royalties due to SCP. SCP can request that MS verify the legitimacy of any copy of the product discovered in use by a third party.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 6th day of January, 1988. All signed copies of this License Agreement shall be deemed originals.

Seattle Computer Products Inc.

Microsoft

Red Brodeur
By

William H. Gates
By

PRESIDENT
Its

PRESIDENT
Its

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EXHIBIT "A"

SCP DOS 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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