

From: Dan Neault
Sent: Friday, June 30, 2000 4:47 PM
To: Cory Van Arsdale (LCA); Steve Aeschbacher (LCA)
Subject: Mainsoft -- Attorney Client Privileged Communication

Signed contract from Mainsoft -- not requested by me -- let's see what Brian/Chris do...

-----Original Message-----
From: Redmond Fax Secretary
Sent: Friday, June 30, 2000 4:19 PM
To: Dan Neault
Subject: Received Fax from 4085441444

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Microsoft Corporation
3850 North First Street
San Jose, CA 95134
Phone: 408/544-1400
Fax: 408/544-1444

Fax

To: Dan Neault From: Jeff Miller
 Fax: 425 936-7329 Date: 6/30/00
 Phone: _____ Pages: 24
 Ref: _____ CC: _____

- Urgent For Review Please Comment Please Reply Please Recycle

Comments: Please sign and fax back today to accept.
Thanks,
JM

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DEVELOPMENT & LICENSE AGREEMENT

This Development & License Agreement (the "Agreement") is entered into and effective as of June 30, 2000 (the "Effective Date") by and between MICROSOFT CORPORATION, a Washington corporation located at One Microsoft Way, Redmond, WA 98052 ("Microsoft") and MAINSOFT CORPORATION, a California corporation located at 3850 North First Street, San Jose, California 95134 ("Mainsoft").

Recitals

Microsoft is the owner and/or authorized licensor of Internet Explorer and Windows Media Player client software technology.

Mainsoft is the authorized licensor of MainWin XDE, a software development kit under license from Microsoft providing certain Windows API to applications in a UNIX/X-Window system environment.

Microsoft and Mainsoft previously entered into a Consulting & License Agreement, effective March 19, 1997, under which Mainsoft (i) provided consulting services for porting Internet Explorer to certain UNIX platforms and integrating it with the "MainWin XDE Kit" and "Runtime" software (both as defined below) and (ii) provided Microsoft with a license to MainWin XDE Kit and Runtime software (the "Prior Agreement").

Microsoft and Mainsoft wish to enter into this Agreement to have Mainsoft provide support and consulting services with respect to (i) Microsoft's development of future versions of Internet Explorer for UNIX and (ii) Microsoft's development of a version of Windows Media Player for UNIX, including certain contributions from Mainsoft for Internet Explorer and Windows Media Player ("IE/U Contributions" and "WMP Contributions," respectively, as defined below) that may include changes to enhancements of the MainWin XDE Kit and/or Runtime and other Mainsoft technology.

The parties further wish to clarify licenses already granted under the Prior Agreement.

Mainsoft wishes to undertake the work set out here ("Project") under a mutual agreement ("Agreement").

Agreement

1. **DEFINITIONS**
- 1.1 "Changes" means modifications, extensions, translations or other Derivative Technology of technology created through Use of such technology.
- 1.2 "Confidential Information" means: (i) any trade secrets and/or other proprietary non-public information not generally known relating to either party's product plans, designs, costs, prices and product names, finances, technologies, marketing plans, business opportunities, personnel, research development or know-how; and (ii) the terms, conditions and existence of this Agreement. "Confidential Information" does not include information that: (A) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party; (B) is known and has been reduced to tangible form by the receiving party at the time of disclosure and is not subject to restriction; (C) is independently developed or learned by the receiving party; (D) is lawfully obtained from a third party that has the right to make such disclosure; or (E) is made generally available by the disclosing party without restriction on disclosure.

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- 1.3 "Deliverables" means IE/U Contributions and WMP/U Contributions, as more fully described in the Specifications.
- 1.4 "Derivative Technology" means: (i) for copyrightable or copyrighted material, any translation (including translation into other computer languages), portation, modification, correction, addition, extension, upgrade, improvement, compilation, abridgment or other form in which an existing work may be recast, transformed or adapted; (ii) for patentable or patented material, any improvement thereon; and (iii) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and/or trade secret.
- 1.5 "Distribute" means to reproduce, license, rent, lease, sell, offer to sell, broadcast, publicly display, publicly perform, transmit and otherwise distribute through any means or medium now existing or later developed.
- 1.6 "Error(s)" means defect(s) in a Deliverable which prevent it from performing in accordance with the Specifications and/or a Severity Level 1, 2 or 3 error, as such errors are defined in Exhibit B.
- 1.7 "FTE" or "Full-Time Equivalent" means a qualified development engineer working full-time for one (1) year or a number of engineers working full-time for an aggregate of one (1) year of work performed. For example, two (2) "FTEs" could mean two (2) engineers working for one (1) year or four (4) engineers working full-time for six (6) months.
- 1.8 "Independent Contractor" means a third party temporary employee, company or other entity under written agreement with a party to develop, complete, or assist with the development or completion of the Services or other obligations under this Agreement, where such written agreement is consistent with the terms and conditions of this Agreement including, but not limited to, Sections 4, 7 and 8.
- 1.9 "Internet Explorer" means Microsoft's client software technology primarily intended for browsing or otherwise interacting in any way with the Internet, including (i) Updates (ii) and any Microsoft or third party components or add-ons that Microsoft includes as part of the standard Windows operating system version of such client technology that add functionality to or supplement such client technology in any way that Microsoft includes as part of such client technology on one (1) or more Windows operating system platforms, including but not limited to Microsoft's Windows Media Player, NetMeeting and Windows Media Services, and MacroMedia's Shockwave software, and Microsoft or third party add-on filters and file viewers for applications such as for Microsoft Office. "Internet Explorer" does not include stand-alone, revenue-generating applications that are then marketed by Microsoft, or any vendor, on a stand-alone basis and not also included in Windows, such as currently is the case with Microsoft Word or Visual Basic. Potential Internet Explorer deliverables are as described in Exhibit D.
- 1.10 "IE/U" means a version of Internet Explorer ported by or for Microsoft specifically to one or more UNIX Platforms.
- 1.11 "IE/U Contributions" means Changes to Internet Explorer created by Mainsoft in accordance with the Specifications.
- 1.12 "Mainsoft Software" means (i) the MainWin XDE Kit, the Runtime and MainWin Test Software, and (ii) any Updates of the foregoing.
- 1.13 "MainWin Test Software" means software ported by Mainsoft to the UNIX Platforms that enables automated testing of software applications, as more fully described in Exhibit C.

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- 1.14 "MainWin XDE Kit" means the Mainsoft software development kit that provides certain Windows APIs to applications for the UNIX Platforms, as more fully described in Exhibit C.
- 1.15 "Runtime" means the dedicated library runtime software that is used to execute software for the Windows platform which has been ported using the MainWin XDE Kit, as more fully described in Exhibit C.
- 1.16 "Schedule" means the schedule(s) for completion of the Services, as set forth in the Specifications.
- 1.17 "Services" means any (i) design and development of the IE/U Contributions or WMP/U Contributions as specifically requested by Microsoft in accordance with the Specifications and (ii) delivery of the Deliverables.
- 1.18 "Specifications" means the specifications for the Services, attached to this Agreement as Exhibit A-"x" where x is the numerical designation for sequential descriptions of Services.
- 1.19 "Term" means the period commencing upon the Effective Date and ending three (3) years thereafter, unless earlier terminated in accordance with Section 10. The Term may be unilaterally extended by Microsoft for one (1) additional year provided Microsoft gives Mainsoft notice of such extension within thirty (30) days prior to the end of the then-current Term.
- 1.20 "UNIX Platform(s)" means the following UNIX operating system platforms and Updates thereof: SunSoft's Solaris (SPARC), Hewlett-Packard's HP-UX (PA-RISC), IBM's AIX (Power/RS6000), Silicon Graphics' IRIX, and Compaq's Tru64. For purposes of this agreement, "UNIX Platforms" also means any UNIX operating system platform that Mainsoft supports during the Term. Mainsoft is not automatically obligated to support a UNIX Platform for which it has otherwise ceased development. For example, if Mainsoft decides to cease supporting Silicon Graphics' IRIX, such platform will still be considered a "UNIX Platform," but Mainsoft will not be obligated to provide support under this Agreement unless the parties separately agree. If Mainsoft decides to generally cease offering support for a specific UNIX platform, Mainsoft will give Microsoft at least ninety (90) days written notice thereof.
- 1.21 "Updates" means all subsequent public releases of technology, including public maintenance releases, beta releases, error corrections, upgrades, enhancements, additions, improvements, extensions, modifications, successor versions, functionally equivalent replacements (including replacements with enhanced technologies), and substitutions thereof.
- 1.22 "Use" means to use, copy, edit, format, modify, translate and otherwise create Derivative Technology of software.
- 1.23 "Windows Media Player" means Microsoft's digital media client technology which Microsoft provides separately and/or is currently developing on multiple operating system platforms (including, but not limited to UNIX Platforms), as part of developer distributions, and as part of Microsoft operating system products (including, but not limited to, Windows 98, Windows Me and Windows 2000 and Updates thereof), and including any (i) Updates and (ii) Microsoft or third party add-ons, viewers, security technology or other features that add functionality to or supplement Windows Media Player in any way. "Windows Media Player" does not include stand-alone, revenue-generating applications that are then marketed by Microsoft, or any vendor, on a stand-alone basis and not also included in Windows, such as currently is the case with Microsoft Word or Visual Basic.
- 1.24 "WMP/U" means a version of Windows Media Player ported by or for Microsoft specifically to one or more UNIX Platforms.

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1.25 "WMP/U Contributions" means Changes to Windows Media Player created by Mainsoft in accordance with the Specifications.

2. DEVELOPMENT

2.1. Services.

(a) *Engineering Services.* Mainsoft will perform the Services pursuant to the Specifications. Mainsoft will provide FTEs to complete the Services in accordance with the fees set forth in Section 3.2. Mainsoft engineers shall perform the Services as directed by Microsoft - in each case a description of Services, Specification and Schedule will be prepared by and signed by the parties. As of the Effective Date, the parties anticipate that Mainsoft will provide Services to develop IE/U Contributions and/or WMP/U Contributions at an expected rate of six (6) FTEs in the first year of the Term, four (4) to six (6) FTEs in the second year of the Term, and two (2) to six (6) FTEs in the third year of the Term. The parties agree that during the first three years of the Term, Microsoft will pay Mainsoft for no less than twelve (12) FTE equivalents in total, regardless of the number of FTEs actually ordered by Microsoft; such payment obligation will survive the termination of this Agreement if terminated by Microsoft pursuant to Section 10.2. Should Microsoft so choose to terminate this Agreement under Section 10.2, and/or should Microsoft cancel the IE/U project for any reason, Microsoft may apply any "unused" FTEs toward any other services Microsoft may designate. If Microsoft extends the Term for an additional year, as of the Effective Date the parties anticipate that Mainsoft will provide Services to develop IE/U Contributions and/or WMP/U Contributions at an expected rate of zero (0) to six (6) FTEs in the fourth year of the Term. Mainsoft personnel performing the Services will be located as preferred by Mainsoft (e.g. at Mainsoft's Israel facilities), however, if Microsoft encounters difficulties with respect to any Services that could reasonably be due to choice of location, Microsoft may, at its discretion, be able to require relocation of such staff, in part or in full, to Redmond or other another reasonable location preferred by Microsoft without any additional cost to Microsoft. Microsoft shall have the right to have any Mainsoft engineer working at Microsoft's site replaced at Mainsoft's expense. If Microsoft requests that Mainsoft provide an engineer to temporarily stay in Redmond, Microsoft will reimburse Mainsoft for all prior approved related travel and up to two (2) weeks lodging expenses for such engineer. If Mainsoft requests such a temporarily assigned engineer, Mainsoft shall pay all such expenses.

(b) *Support.* During the Term, Mainsoft shall (i) provide engineering and Support Services at a level equal or greater to that provided by Mainsoft to best, current customer and (ii) deliver any and all Updates to the Mainsoft Software, on each UNIX Platform still generally supported by Mainsoft. Updates shall be considered part of the Mainsoft Software and licensed to Microsoft under Section 4.2.

2.2 Acceptance.

(a) For software code Deliverables, Microsoft will evaluate the beta and final version of each Deliverable and will submit a written acceptance or rejection to Mainsoft within ten (10) business days after Microsoft's receipt of the engineering prototype and beta versions and sixty (60) days after receipt of the final version of the Deliverable. Acceptance will be in writing, and Microsoft will not unreasonably withhold its acceptance. If Microsoft identifies Errors in each Deliverable prior to acceptance, then Mainsoft will correct such Errors within ten (10) business days following receipt of notice thereof during acceptance testing for the Prototype and Beta versions of

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each Deliverable and within the time specified in Exhibit B with respect to Errors discovered during acceptance testing for the Final Version of each Deliverable.

- (b) For documentation or report Deliverables, if any, Microsoft will evaluate each version of such Deliverable. In the event that it requires corrections, Microsoft will specify the corrections needed and Mainsoft will deliver an amended version of such documentation within five (5) business days.

- 2.3 Design Review & Specifications Changes. Mainsoft understands that there may be additions, deletions or other changes that may affect the Specifications at any time during the term of this Agreement. Upon notice of any such changes by Microsoft, Mainsoft and Microsoft will work together to make any necessary changes to the Specifications, and Mainsoft will alter the Services in order to accommodate any such changes to the Specifications.

3. PAYMENT FOR SERVICES

- 3.1 Upfront Payment. Microsoft will, within fifteen (15) days of the Effective Date, pay Mainsoft a non-refundable, upfront, fully paid-up fee of one million dollars (\$1,000,000). Such fee will be Microsoft's sole and exclusive license fee for the exercise of its rights under the assignments and licenses set forth in this Agreement. Further, to the extent surviving under the Prior Agreement, Microsoft does not owe any royalty or fee to Mainsoft for such surviving rights.
- 3.2 FTE Engineering Fees. Microsoft will pay Mainsoft for the Services as set forth in the applicable Schedule on a monthly basis. Microsoft will pay all proper invoices submitted pursuant to the foregoing within thirty (30) days of receipt. All payments shall be via wire transfer to the bank of Mainsoft's choosing.
- (a) The first twelve FTEs of Service requested by Microsoft and performed by Mainsoft will be billed at the rate of one hundred fifty thousand dollars (\$150,000) per FTE.
- (b) Subsequent FTEs of Service requested by Microsoft and performed by Mainsoft will be billed at the rate of two hundred forty thousand dollars (\$240,000) per FTE.
- 3.3 Prior Agreement Fees. Notwithstanding anything to the contrary in the Prior Agreement, Microsoft will not owe any further license fees for any licenses of Mainsoft Software under this Agreement.
- 3.4 No Further Royalties or Fees. Except as expressly provided in this Section 3, neither party shall owe the other any further royalties, fees or payments for the exercise of their rights under this Agreement.

4. RIGHTS

4.1 Rights From Microsoft.

- (a) No Implication of Mainsoft Ownership of Microsoft Technology. Mainsoft Software contains certain Microsoft technology licensed to Mainsoft under the Windows Agreement (as defined in Section 4.2(d)(1)). Notwithstanding anything to the contrary in this Agreement, including but not limited to this Section 4, any licenses by Mainsoft to Microsoft of any Mainsoft Software or assignment by Mainsoft to Microsoft to any Mainsoft Software Changes under this Agreement, including but not limited to the IE/U Contributions and/or the WMP/U Contributions, will not be construed as an explicit or implicit indication that Mainsoft owns the Microsoft technology contained within such Mainsoft Software except as may otherwise be expressly agreed by the parties pursuant to such separate agreement(s).

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- (b) *Internet Explorer Source & Object Code License.* During the Term, solely and to the extent provided by Microsoft under this agreement, Microsoft hereby grants to Mainsoft a royalty-free, non-exclusive, personal, non-transferable, non-assignable, right and license, to Use and make Changes to the source code and object code versions of IE/U and WMP/U solely for purposes of completing the Services.
- (1) Regardless of any separate license to Distribute IE/U and WMP/U, Mainsoft may not Distribute any Changes to IE/U and WMP/U created under this Agreement, in source or object code form, without Microsoft's prior, written consent.
 - (2) Only those Mainsoft personnel having a need to access the source code version of IE/U and WMP/U will be permitted such access.
 - (3) Unless otherwise designated by Microsoft at the time of delivery of any such source code, access to the source code version of IE/U and WMP/U shall only be at Microsoft's site and at Mainsoft's internal engineering network sites, and Mainsoft shall take steps to protect the security and the confidentiality of source code version of IE/U and WMP/U of the same sort it takes to protect its own like Confidential Information. Mainsoft shall obtain all necessary export licenses with respect to any export of IE/U and WMP/U source code to its sites outside of the United States.
- (4) Notwithstanding any license grant in this Section 4.1(b), Mainsoft may not Use IE/U and/or WMP/U for any purpose other than completing the Services. In particular Mainsoft may not use IE/U and/or WMP/U and/or any part thereof to modify or otherwise update in any way the Mainsoft Software. (c) *Ownership & Assignment of Specific Rights.*
- (1) Microsoft retains all right, title and interest in and to: (i) Internet Explorer, Windows Media Player, IE/U, WMP/U, IE/U Contributions, WMP/U Contributions and any Changes thereof made by or for either party (collectively, "IE/WMP Code"); and (ii) any Changes to any other Microsoft code which may be disclosed to or used by Mainsoft personnel as part of completion of the Services ("Other Microsoft Code").
 - (2) To the extent Mainsoft has created or contributed to any part of the IE/WMP Code or Other Microsoft Code as part of the Services, Mainsoft hereby assigns to Microsoft: (i) all right, title and interest in and to Changes to the Other Microsoft Code, (ii) all right, title and interest in and to any Changes to IE/WMP Code created by or for Mainsoft to the extent such Changes are not "Pre-Existing Mainsoft Code" (as defined below); and (iii) joint ownership without accounting in and to any pre-existing code, technology or other proprietary rights of Mainsoft solely to the extent contained in the Changes to IE/WMP Code created by or for Mainsoft as part of the Services ("Pre-Existing Mainsoft Code"). Collectively, the foregoing parts (i), (ii) and (iii) shall be called "Microsoft Code."
- (A) Any such assignments and joint ownership rights include, without limitation, the following: (i) any copyrights and equivalent rights throughout the world that Mainsoft may possess or acquire in the Microsoft Code, including all renewals and extensions of such rights that may be secured under the laws now or hereafter in force and effect in the United States of America or in any other country or countries; (ii) all or applicable joint rights in and to any inventions, ideas, designs, concepts, techniques, discoveries, or improvements, whether or not patentable, embodied in the Microsoft Code, including but not limited to all trade secrets, utility and

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design patent rights and equivalent rights in and to such inventions and designs throughout the world regardless of whether or not legal protection therefor is sought; and (iii) the right to prepare Derivative Technology or Changes of the Microsoft Code with rights to authorize others to do the same.

- (B) Subject to any joint ownership, Mainsoft hereby irrevocably transfers and assigns to Microsoft any and all "moral rights" that Mainsoft may have in the Microsoft Code, including any Changes thereof. Mainsoft also hereby forever waives and agrees never to assert any and all "moral rights" it may have in the Microsoft Code, including any Changes thereof.
 - (C) Mainsoft shall execute and deliver such instruments and take such other action as may be reasonably requested by Microsoft to protect Microsoft's rights in the Microsoft Code and to perfect the assignments effected by this Section 4.1(c), and assist Microsoft and its nominees in every proper way to secure, maintain, protect and defend for Microsoft's own benefit all such rights in the Microsoft Code in any and all countries.
- (3) The parties will use all reasonable efforts to coordinate in advance on any disclosure of Other Microsoft Code under this Agreement.
- (d) Upon Mainsoft's request, Microsoft shall provide Mainsoft, under Microsoft's standard terms and conditions, with a non-exclusive license to Distribute IE/U and WMP/U in object code form. As of the Effective Date, such standard terms and conditions do not require the payment of any license fees to Microsoft. If any such payment is required in the future, Microsoft will use reasonable efforts to provide Mainsoft with reasonable prior notice thereof.

4.2 Rights From Mainsoft

- (a) *Prior Agreement.* The licenses under the Prior Agreement to "Mainsoft Software," as defined in the Prior Agreement, are effective through the Effective Date of this Agreement. As of the Effective Date of this Agreement, such licenses are hereby deemed replaced by the licenses in this Agreement, and "Mainsoft Software," as defined in this Agreement, includes the "Mainsoft Software" as defined in the Prior Agreement. Licenses or assignments under the Prior Agreement that were not defined as "Mainsoft Software" in the Prior Agreement, including but not limited to the ActiveX SDK and DCOM Development, will not be affected.
- (b) *Runtime.* Mainsoft hereby grants to Microsoft a nonexclusive, worldwide, fully paid-up, perpetual, irrevocable, right and license: (i) to Use and make Changes to the source and object code versions of the Mainsoft Software, including the right to have the foregoing done by Independent Contractors, solely for purposes of developing IE/U and/or WMP/U, adapting or integrating the Runtime with IE/U and/or WMP/U, and correcting bugs or Errors; (ii) to Distribute and have Distributed, directly or indirectly, the Runtime, including Changes or Updates thereof, in object code form only, solely as part of or in conjunction with IE/U and/or WMP/U; and (iii) to sublicense the rights in the foregoing part (ii) to third parties, including the right to grant such further sublicenses to third parties. (c) *MainWin XDE Kit/MainWin Test Software License.* Mainsoft hereby grants to Microsoft a nonexclusive, worldwide, fully paid-up, perpetual, irrevocable, right and license to Use and make Changes to the source and object code versions of the MainWin XDE Kit and the MainWin Test Software, including the right to have the foregoing done by Independent Contractors solely for the benefit of Microsoft, for Microsoft's internal test and development purposes.

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Microsoft will have no right to Distribute or have Distributed the source or object code versions of the MainWin XDE Kit and/or the MainWin Test Software except as may otherwise be expressly agreed by the parties in a separate written agreement. Mainsoft is obligated to provide Microsoft with any Updates for the MainWin Test Software unless and only to the extent Mainsoft creates such Updates during the Term.

(d) *Ownership & Assignment of Specific Rights.*

(1) Except as licensed in this Agreement, Mainsoft retains all right, title and interest in and to (i) the Mainsoft Software and any Changes thereof created by or for either party but specifically excluding any Microsoft or other technology licensed by Microsoft to Mainsoft under the Microsoft Wise Program License Agreement For Specified Windows NT Libraries entered into by the parties effective as of August 25, 1998, as amended ("Windows Agreement") (collectively such Mainsoft Software and Changes thereof excluding Windows Agreement software in this Section 4.2(d)(1)(i) will be referred to as "Changed Mainsoft Software"); and (ii) any Changes to any other Mainsoft code (but specifically excluding any Microsoft or other technology licensed by Microsoft to Mainsoft under the Windows Agreement) which may be used or licensed in writing to Microsoft personnel as part of completion of the Services (part (ii) of this Section 4.2(d)(1) being referred to as "Other Mainsoft Code").

(2) To and only to the extent Microsoft has created or contributed to any part of the Changed Mainsoft Software or the Other Mainsoft Code in connection with the Services, Microsoft shall, subject to the license grants in Sections 4.2(b) and (c), own right, title and interest in and to any such Changes. In Microsoft's sole and absolute discretion, Microsoft may elect to provide such Changes to Mainsoft via assignment (as set forth immediately below) or license grant. If Microsoft so assigns such Changes to Mainsoft, Microsoft will assign to Mainsoft (i) all right, title and interest in and to any Changes to the Other Mainsoft Code; (ii) all right, title and interest in and to any Changes to the Changed Mainsoft Software created by or for Microsoft under this Agreement to the extent such Changes are not "Pre-Existing Microsoft Code" (as defined below); and (iii) joint ownership without accounting in and to any pre-existing code, technology or other proprietary rights of Microsoft solely and to the extent contained in the Changes to the Changed Mainsoft Software created by or for Microsoft in connection with the Services ("Pre-Existing Microsoft Code"). Collectively, the foregoing parts (i), (ii) and (iii) of this Section 4.2(d)(2) shall be called "New Mainsoft Software Code."

(A) Any such assignments and joint ownership rights include, without limitation, the following: (i) any copyrights and equivalent rights throughout the world that Microsoft may possess or acquire in the New Mainsoft Software Code, including all renewals and extensions of such rights that may be secured under the laws now or hereafter in force and effect in the United States of America or in any other country or countries; (ii) all or applicable joint rights in and to any inventions, ideas, designs, concepts, techniques, discoveries, or improvements, whether or not patentable, embodied in the New Mainsoft Software Code, including but not limited to all trade secrets, utility and design patent rights and equivalent rights in and to such inventions and designs throughout the world regardless of whether or not legal protection therefor is sought; and (iii) the right to prepare Derivative Technology or Changes of the New Mainsoft Software Code with rights to authorize others to do the same.

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- (B) Subject to any joint ownership, Microsoft hereby irrevocably transfers and assigns to Mainsoft any and all "moral rights" that Microsoft may have in the New Mainsoft Software Code, including any Changes thereof. Microsoft also hereby forever waives and agrees never to assert any and all "moral rights" it may have in the New Mainsoft Software Code, including any Changes thereof.
- (C) Microsoft shall execute and deliver such instruments and take such other action as may be reasonably requested by Mainsoft to protect Mainsoft's rights in the New Mainsoft Software Code and to perfect the assignments effected by this Section 4.2(d)(2), and assist Mainsoft and its nominees in every proper way to secure, maintain, protect and defend for Mainsoft's own benefit all such rights in the New Mainsoft Software Code in any and all countries.

4.3 **No Other Rights.** All license rights not expressly granted in this Agreement are reserved by the respective licensor.

5. PRESS RELEASES

Neither party will disclose or announce the terms, conditions or existence of this Agreement without the prior, written consent of the other party; provided, however, that Microsoft may from time to time, in its sole discretion, acknowledge Mainsoft's contribution to IE/U and WMP/U. After the execution of this Agreement, Mainsoft will issue a press release incorporating the text contained in Exhibit E. On or about the time of the next major release of Internet Explorer following the Effective Date, if such reasonably is appropriate to this end, the parties will publicly release a "success story" illustrating the successful development and commercialization of IE/U.

6. NO OBLIGATION/INDEPENDENT DEVELOPMENT

Notwithstanding any other provision of this Agreement, Microsoft will have no obligation to market, sell or otherwise distribute the Mainsoft Software, IE/U and/or WMP/U, either alone or in any Microsoft product. Except as provided in Section 7, nothing in this Agreement will be construed as restricting Microsoft's ability to acquire, license, develop, manufacture or distribute for itself, or have others acquire, license, develop, manufacture or distribute for Microsoft, similar technology performing the same or similar functions as the technology contemplated by this Agreement, or to market and distribute such similar technology in addition to, or in lieu of, the technology contemplated by this Agreement.

7. CONFIDENTIALITY

- 7.1 Each party will protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that such party uses to protect its own like information. Neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Neither party will disclose to third parties the other's Confidential Information without the prior written consent of the other party. Except as expressly provided in this Agreement, no ownership or license rights is granted in any Confidential Information.
- 7.2 The parties' obligations of confidentiality under this Agreement will not be construed to limit either party's right to independently develop or acquire products without use of the other party's Confidential Information. Further, either party will be free to use for any purpose the residuals resulting from access to or work with such Confidential Information, provided that such party will maintain the confidentiality of the Confidential Information as

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provided herein. The term "residuals" means information in non-tangible form, which may be retained by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. Neither party will have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing will not be deemed to grant to either party a license under the other party's copyrights or patents.

8. WARRANTIES

8.1 Mainsoft. Mainsoft warrants and represents that:

- (a) It has the full power to enter into this Agreement and make the assignments and license rights set forth herein;
- (b) It has not previously and will not grant any rights in the Deliverables and Mainsoft Software to any third party that are inconsistent with the rights granted to Microsoft herein;
- (c) The Deliverables and Mainsoft Software do not infringe any copyright, trade secret, or other proprietary right held by any third party;
- (d) The Deliverables and Mainsoft Software do not, to the best of Mainsoft's knowledge infringe any patent held by any third party; and
- (e) The Services shall be performed in a professional manner.

8.2 Microsoft. Microsoft warrants and represents that:

- (a) It has the full power to enter into this Agreement; and
- (b) Microsoft has not previously and will not enter into any agreements that are inconsistent with this Agreement or the rights granted by Microsoft hereunder;

9. INDEMNITY

9.1 Indemnity by Mainsoft.

- (a) Mainsoft shall, at its expense and Microsoft's request, defend any claim, action or proceeding brought against Microsoft, and Microsoft's subsidiaries, affiliates, directors, officers, employees, agents and independent contractors, that the Deliverables and Mainsoft Software (excluding that software licensed by Microsoft to Mainsoft under the Microsoft License Agreement for Windows Libraries dated 1997 (the "Windows Agreement")) infringes any patent, copyright, trade secret, trademark or other proprietary right of a third party ("Mainsoft Claim"), and Mainsoft will indemnify and hold Microsoft harmless from and against any costs, damages and fees reasonably incurred by Microsoft, including but not limited to reasonable fees of attorneys and other professionals, that are attributable to a Mainsoft Claim; provided, however, that Mainsoft's obligations under this Section 9.1 shall only extend to Mainsoft Claims arising in those countries for which Microsoft had indemnified Mainsoft under Section 8 of the Windows Agreement (the United States, Canada, Australia, Japan, E.C., Sweden, Norway and Finland). Microsoft shall: (i) provide Mainsoft reasonably prompt notice in writing of any such Mainsoft Claim and permit Mainsoft, to answer and defend such Mainsoft Claim; and (ii) provide Mainsoft information, assistance and authority, at Mainsoft's expense, to help Mainsoft to defend such Mainsoft Claim.
- (b) Microsoft shall have the right to employ separate counsel and participate in the defense of any such Mainsoft Claim. Mainsoft shall reimburse Microsoft upon demand for any payments made or loss suffered by it at any time after the date hereof, based upon the

judgment of any court of competent jurisdiction or pursuant to a bona fide compromise or, if approved by Mainsoft, a settlement of claims, demands, or actions, in respect to any damages related to any Mainsoft Claim under this Section 9.1.

9.2 Indemnity by Microsoft.

- (a) Microsoft shall, at its expense and Mainsoft's request, defend any claim, action or proceeding brought against Mainsoft, and Mainsoft's subsidiaries, affiliates, directors, officers, employees, agents and independent contractors, which, if true, would constitute a breach of a warranty by Microsoft in Section 8 ("Microsoft Claim"), and Microsoft will indemnify and hold Mainsoft harmless from and against any costs, damages and fees reasonably incurred by Mainsoft, including but not limited to reasonable fees of attorneys and other professionals, that are attributable to such Microsoft Claim. Mainsoft shall: (i) provide Microsoft reasonably prompt notice in writing of any such Microsoft Claim and permit Microsoft, to answer and defend such Microsoft Claim; and (ii) provide Microsoft information, assistance and authority, at Microsoft's expense, to help Microsoft to defend such Microsoft Claim.
- (b) Mainsoft shall have the right to employ separate counsel and participate in the defense of any such Microsoft Claim. Microsoft shall reimburse Mainsoft upon demand for any payments made or loss suffered by it at any time after the date hereof, based upon the judgment of any court of competent jurisdiction or pursuant to a bona fide compromise or, if approved by Microsoft, a settlement of claims, demands, or actions, in respect to any damages related to any Microsoft Claim under this Section 9.2.

9.3 Publicity. Neither party may settle any claim or action under this Section 9 on the other party's behalf without first obtaining the other party's written permission, which permission will not be unreasonably withheld. In the event Microsoft and Mainsoft agree to settle a Microsoft Claim or Mainsoft Claim, respectively, neither will publicize the settlement without first obtaining the other's written permission.

9.4 Duty to Correct By Mainsoft. Notwithstanding Section 9.1, should the Deliverables, Mainsoft Software or portion thereof be held to constitute an infringement and its use as contemplated by this Agreement be enjoined or be threatened to be enjoined, Mainsoft shall notify Microsoft and promptly, at Mainsoft's expense: (i) procure for Microsoft the right to continue to use the Mainsoft Software, Deliverables or portion thereof, as applicable, as licensed in this Agreement; or (ii) replace or modify the Mainsoft Software, Deliverables or portion thereof with a version that is non-infringing, provided that the replacement or modified version meets the Specifications to Microsoft's satisfaction. If (i) or (ii) are not available to Mainsoft, in addition to any damages or expenses reimbursed under Section 9.1, Mainsoft shall refund to Microsoft all amounts paid to Mainsoft by Microsoft under this Agreement for the technology that Microsoft is no longer able to utilize due to the infringement.

10. **TERMINATION**

10.1 Term. The term of this Agreement will commence as of the Effective Date and will continue until terminated as provided in this Section 10.

10.2 Termination by Microsoft.

- (a) Microsoft may terminate this Agreement for any reason upon thirty (30) days prior written notice.
- (b) Microsoft will have the right to cancel any Schedule with or without cause by providing Mainsoft written notice of such cancellation. Upon receipt of such notice, Mainsoft will discontinue all work thereunder. Microsoft will pay for all work

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performed by Mainsoft up until the date of receipt of the cancellation notice. In the event of cancellation of a Schedule, upon request by Microsoft, Mainsoft agrees to turn over to Microsoft all work in progress applicable to such Schedule within ten (10) days.

- 10.3 Termination By Either Party For Cause. Either party may suspend performance and/or terminate this Agreement immediately upon written notice at any time if:
- (a) The other party is in material breach of any material warranty, term, condition or covenant of this Agreement, other than those contained in Section 7, and fails to cure that breach within thirty (30) days after written notice thereof; or
 - (b) The other party is in material breach of Section 7.
- 10.4 Effect of Termination. In the event of termination or expiration of the Term of this Agreement for any reason, Sections 1, 3.3, 3.4, 5, 6, 7, 8, 9, 11 and 12 will survive such termination or expiration of the Term of this Agreement. In the event of termination or expiration of the Term of this Agreement for any reason, the license, assignment and joint ownership rights set forth in Sections 4.1(a), 4.1(c), 4.2 and 4.3, will survive such termination or expiration of the Term of this Agreement in perpetuity. Neither party will be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms.

11. LIMITATION OF LIABILITIES

- 11.1 NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.2 THIS PROVISION HAS NO APPLICATION TO SECTIONS 7 AND 9.

12. GENERAL

- 12.1 Notices. All notices and requests in connection with this Agreement will be deemed given as of the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as follows:

To Mainsoft:
 Mainsoft Corporation
 3850 North First Street
 San Jose, CA 95134
 Attention: Business Development
 Phone: (408) 544-1400
 Fax: (408) 544-1444

To Microsoft:
 Microsoft Corporation
 One Microsoft Way
 Redmond, WA 98052-6399
 Attention:
 Phone: (425) 882-8080
 Fax: (425) 936-7329

Copy to:
 General Counsel Associates
 1891 Landings Drive
 Mtn. View, CA 94043
 Attention: Joel Riff
 Fax: (650) 428-3901

Copy to:
 Microsoft Corporation
 One Microsoft Way
 Redmond, WA 98052-6399
 Attention: Law & Corporate Affairs
 Fax: (425) 936-7409

or to such other address as a party may designate pursuant to this notice provision.

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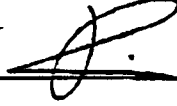
- 12.2 Independent Contractors. Mainsoft is an independent contractor for Microsoft, and nothing in this Agreement will be construed as creating an employer-employee relationship, a partnership, or a joint venture between the parties.
- 12.3 Taxes. In the event taxes are required to be withheld on payments made under this Agreement by any U.S. (state or federal) or foreign government, Microsoft may deduct such taxes from the amount owed Mainsoft and pay them to the appropriate taxing authority. Microsoft will in turn promptly secure and deliver to Mainsoft an official receipt for any taxes withheld. Microsoft will use reasonable efforts to minimize such taxes to the extent permissible under applicable law.
- 12.4 Governing Law. This Agreement will be governed by the laws of the State of Washington as though entered into between Washington residents and to be performed entirely within the State of Washington, and Mainsoft consents to jurisdiction and venue in the state and federal courts sitting in the State of Washington. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party will be entitled to recover its costs, including reasonable attorneys' fees.
- 12.5 Assignment. This Agreement will be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, that, for the first three (3) years of the Term, Mainsoft may not assign this Agreement, in whole or in part, without the prior written approval of Microsoft.
- 12.6 Construction. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.
- 12.7 Force Majeure. Should either party fail to perform any obligation hereunder due to circumstances beyond its reasonable control, performance of such obligation shall be excused for so long as such circumstances exist.
- 12.8 Entire Agreement. This Agreement does not constitute an offer by Microsoft and it will not be effective until signed by both parties. This Agreement constitutes the entire agreement between the parties with respect to the Services and all other subject matter hereof and merges all prior and contemporaneous communications. It will not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of Mainsoft and Microsoft by their respective duly authorized representatives.

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IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date written above.

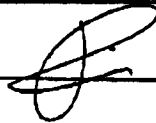
MICROSOFT CORPORATION	MAINSOFT CORPORATION
By:	By: 
Name (print):	Name (print): Yaacov Cohen
Title:	Title: President
Date: 6/30/00	Date: 6/30/00

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EXHIBIT A-__

**SPECIFICATIONS; SCHEDULE; AND
DESCRIPTION OF DELIVERABLES**

THE FOREGOING EXHIBIT A-__ IS AGREED TO AND ACCEPTED BY THE PARTIES:

MICROSOFT CORPORATION	MANSOFT CORPORATION
By:	By: 
Name (print):	Name (print): Yacov Cohen
Title:	Title: President
Date: 6/30/00	Date: 6/30/00

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EXHIBIT A-1

**SPECIFICATIONS; SCHEDULE; AND
DESCRIPTION OF DELIVERABLES**

Overview

This project plan describes work required to provide a QFE (Quick Fix Engineering) environment between Microsoft and Mainsoft. It may be updated from time-to-time by Microsoft to reflect changing business needs, but any adjustments to the Milestones shall be by mutual agreement of the parties.

Deliverables

Mainssoft will provide debugging and defect fixes on the following schedule according to priority of the issue as defined by Microsoft

- Priority 1: 1 week
- Priority 2: 2 weeks
- Priority 3: 30 days
- Priority 4: 90 days

Milestones

Milestones are relative to the submission date of the defect report

THE FOREGOING EXHIBIT A-1 IS AGREED TO AND ACCEPTED BY THE PARTIES:

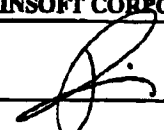
MICROSOFT CORPORATION	MAINSOFT CORPORATION
By:	By: 
Name (print):	Name (print): Yascov Cohen
Title:	Title: President
Date: 6/30/00	Date: 6/30/00

EXHIBIT A-2

**SPECIFICATIONS; SCHEDULE; AND
DESCRIPTION OF DELIVERABLES**

Overview

This project plan describes work required to provide a porting and maintenance environment for future product releases of the Internet Explorer by Microsoft. This is also a recurring schedule after the initial milestones. It may be updated from time-to-time by Microsoft to reflect changing business needs, but any adjustments to the Milestones shall be by mutual agreement of the parties.

Deliverables

(note that IE includes the OE product)

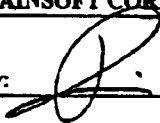
IE 5+ on Mainwin 3.4

- 1.1 Microsoft delivers preliminary test suite for Mainsoft.
- 1.2 Mainsoft ensures functional IE 5.0 drop builds at MS site on Mainwin 3.4
- 1.3 Mainsoft ensures functional IE 5.0 drop builds with integrated JVM support
- 1.4 Microsoft identifies and prioritizes bugs in IE 5.0 built at Microsoft
- 1.5 Mainsoft fixes all bugs in IE 5.0 and Mainwin 3.4 as identified by Microsoft

Initial Target Milestones

- 1.1 Microsoft 15 June 2000
- 1.2 Mainsoft 1 July 2000
- 1.3 Mainsoft 15 August 2000
- 1.4 Microsoft 1.2 + 30 days
- 1.5 Mainsoft 15 November 2000

THE FOREGOING EXHIBIT A-2 IS AGREED TO AND ACCEPTED BY THE PARTIES:

MICROSOFT CORPORATION	MAINSOFT CORPORATION
By:	By: 
Name (print):	Name (print): Yaacov Cohen
Title:	Title: President
Date: 6/30/00	Date: 6/30/00

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*Microsoft - IE/WMP Development & License Agreement***EXHIBIT B****MAINTENANCE PROBLEM SEVERITY AND RESOLUTIONS**

Severity	Criteria	Time Limit
1	Critical: Problem which prevents or seriously impairs the performance of substantially all major functions.	24 hours
2	Severe Impact: Problem which prevents or seriously impairs the performance of a major function.	3 days
3	Degraded Operation: Problem which disables or impairs the performance of a minor function.	2 weeks

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EXHIBIT C

DESCRIPTION OF MAINSOFT SOFTWARE

Description of the MainWin Library Product:

MainWin Library Product is a run-time library residing on an end-user's Licensed Platform system. This run-time library allows an end-user to run Adapted Windows-based applications on Licensed Platform systems.

Description of the MainWin SDK Product:

MainWin XDE (eXtended Development Environment) porting tools provide a solution for rehosting Windows source code on UNIX systems. These automated tools include an automated UNIX makefile generator; resource compiler; IDL compiler; and registry editor. MainWin XDE enables developers porting to UNIX platforms to take advantage of Windows NT features.

Both Motif and Windows 95 look are available through MainWin XDE. The Motif look is offered for those customers who prefer to preserve the UNIX experience. The Windows look is offered for those customers who wish to create a uniform look for their applications across all platforms.

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EXHIBIT D

DESCRIPTION OF POTENTIAL INTERNET EXPLORER DELIVERABLES

Internet Explorer (including Outlook Express):

The Internet Explorer project contains Win32, Win32/Unix, and Unix-specific source files, object files, and associated product and process documentation that form a technology used to browse local filesystems as well as web protocol-based sites accessed beyond the local filesystem.

The form of technology is comprised of, but not limited to, the following areas:

Component Area	Example Object File root name
Mainwin Additions	Libcomctl32
Trident Graphical Rendering Engine	Libmshhtml
IE UI/Shell	Libbrowseui, libshdocvw
Setup	Inetopl, libsetupapi, cabarc, regsetup, libadvpack
Startup	Startup, iexplorer, oexpress
Outlook Express	Oexpress, oecontacts, libwab32, libwldsp32
Internet Explorer Administration Kit	Libiedkcs32
Scripting (Java, Visual Basic, etc.)	Libvbscript, libjscript
WinInet/URLmon	libwininet, liburlmon
ActiveX Control Hosting	libmshhtml
Java	libmsjava
Security	Libschnt128, libschannel
Performance	Eatcpu, grind
User Experience	Libbrowseui, libshdocvw
XML/Databinding	Libmsxml, libtdc, libmsador15
Product Builds	GNUmakefile, enterdir
HTML Help	Iexplore.hlp

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EXHIBIT E
PRESS RELEASE

To be defined.

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