TECHNOLOGY AGREEMENT

Dated as of August 5, 1997

Between

Apple Computer, Inc.

and

Microsoft Corporation

GOVERNMENT EXHIBIT 1167

TECHNOLOGY AGREEMENT

This TECHNOLOGY AGREEMENT ("Agreement") is made as of this 5th day of August, 1997 (the "Effective Date"), by and between Apple Computer, Inc., a California corporation ("Apple"), and Microsoft Corporation, a Washington corporation ("Microsoft").

RECITALS

WHEREAS, Apple and Microsoft are entering into a Preferred Stock Purchase Agreement and a Patent Cross License Agreement concurrently herewith; and

WHEREAS, Apple and Microsoft wish to set forth certain additional understandings relating to software technology;

NOW, THEREFORE, in consideration of the good and valuable consideration provided in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.**

1.1 "Internet Explorer" shall mean Microsoft's internet client software distributed free of charge by Microsoft which is comprised of Internet Explorer, Outlook Express, Microsoft's Java Virtual Machine and JIT with associated class libraries, Internet Setup Kit and Internet Fonts. This will include all libraries, components, documentation, help, content and configuration files included with the free version of Microsoft Internet Explorer.

1.2 "Macintosh APIs" shall mean current and future application programming interfaces for the Macintosh operating system, any new versions thereof or any successors thereto (e.g. Mac OS 8). Such Macintosh APIs shall at all times be specified by Apple in its sole discretion.

1.3 "Macintosh Computers" shall mean systems or devices that use current or future Macintosh APIs which are substantially upward binary compatible with Mac OS 8 and which include sufficient resources to run Microsoft Office for the Macintosh.

1.4 "Major Release" shall mean a release of Microsoft Office that contains substantial new functionality or enhancements. By way of example and not limitation, Microsoft Office 97 is a "Major Release," as will be any other release containing substantial new functionality or enhancements, whether such release is characterized by an increase in version number to the right or left of a decimal point or otherwise.

1.5 "Microsoft Office" shall mean the office productivity desktop application bundles marketed by Microsoft, which are currently known as Microsoft Office Standard Edition, comprised of Microsoft Word, Excel and Powerpoint. The term "Microsoft Office" shall not be deemed to include any individual application of the productivity application bundle when and as marketed by Microsoft on a stand-alone basis.

1.6 "Microsoft Office for Macintosh" shall mean a version of Microsoft Office designed to run on Macintosh Computers.

1.7 "Term" shall have the meaning set forth in Section 6.1 below.

2. Microsoft Office for Macintosh Availability.

2.1 Microsoft Office for Macintosh Availability. Throughout the Term, Microsoft shall make Microsoft Office for Macintosh generally commercially available through appropriate Microsoft distribution channels worldwide (i.e., generally those channels through which similar product categories are distributed by Microsoft). In particular, and without limitation of the foregoing, during the Term Microsoft shall:

(a) Commercially release the same number of Major Releases of Microsoft Office for Macintosh as are released for Microsoft Office for Windows with features consistent with Microsoft Office for Windows.

(b) Use its best efforts to make the first version of Microsoft Office for Macintosh Computers generally commercially available prior to February 15, 1998. The first version of Microsoft Office for Macintosh made generally commercially available hereunder shall be marketed under the name and mark "Microsoft Office 98 for Macintosh." Microsoft shall have the right to market such version under a different name and mark with the prior written approval of Apple, which approval shall not be unreasonably withheld.

(c) Ensure that all releases of Microsoft Office for Macintosh will be localized for at least the English (UK, International and USA), French, German, Japanese and Spanish languages.

(d) Provide Apple and its wholly owned subsidiaries worldwide with a fully paid up right and license to make unlimited copies of and use Microsoft Office for Macintosh for internal use only throughout Apple pursuant to the terms of its then current End User License Agreement. Such license shall apply for all versions of Microsoft Office for Macintosh that Microsoft makes available during the Term. Such license does not include external contractors or affiliated entities other than wholly owned subsidiaries. Termination of this Agreement shall not affect Apple's rights under this Section 2.1(d) with respect to versions of Microsoft Office for Macintosh Microsoft delivers during the Term.

2.2 Macintosh API Information. Apple shall provide Microsoft with technical information regarding the Macintosh APIs at the same time and in the same manner that Apple provides such information to any other independent software application developer, so that Microsoft can timely develop releases of Microsoft Office for Macintosh.

2.3 Exception. Microsoft's obligations under Section 2.1 above shall be subject to the following:

(a) Section 2.2 (but only to the extent of any delay caused by Apple's failure to comply with such Section);

(b) Section 6.2; and

(c) If at the end of either of (i) three (3) years from the Effective Date or (ii) four (4) years from the Effective Date (each, respectively, a "Lookback Date"), Apple and its authorized licensees have not sold at least three million five hundred thousand (3,500,000) Macintosh Computers during the four (4) full calendar quarters immediately preceding the applicable Lookback Date, then in such event, Microsoft may elect, upon written notice given to Apple within ten (10) days following its receipt of the Report (as defined below), to cease future development and releases of Microsoft Office for Macintosh. In such event Microsoft will provide technical and customer support for the then most current released version of Microsoft Office for Macintosh for the duration of the Term, and neither party shall have any further obligations under Section 3 below from and after the date of such notice. Within twenty (20) business days following each Lookback Date, Apple will provide Microsoft with a report (the "Report") setting forth the number of Macintosh Computers sold by Apple and its authorized licensees during the immediately preceding four (4) full calendar quarters. Apple shall keep all necessary books and records related to each such Report. Not more than once in any calendar year, Apple shall allow an independent public accountant named by Microsoft, who shall not be compensated in whole or in part on a contingency basis and shall be bound to keep all information confidential, to conduct an audit or audits, upon written notice from Microsoft, of the relevant books and records of Apple as necessary to confirm any Report. The auditor's report shall be limited to a statement of the methodology and factual assumptions on which the auditor's report was made, and a confirmation or not of the number reported in the applicable Report. The auditor will provide Apple with a copy of any report it prepares, without charge. Audit costs shall be borne by Microsoft. Audits shall not interfere unreasonably with Apple's business activities and shall be conducted at Apple's facilities.

2.4 Announcement. Microsoft shall publicly announce its commitments under this Section 2 as set forth in Section 9.1.

3. Internet Explorer.

3.1 Bundling. For so long as Microsoft is in compliance with Section 2.1 above and has not elected to cease future development and releases of Microsoft Office for Macintosh under the circumstances permitted under Section 2.3 above, Apple shall bundle the most current version of Microsoft's Internet Explorer for Macintosh provided by Microsoft to Apple under Section 3.4 below with all system software releases for Macintosh Computers ("Mac OS") sold by Apple. During such period, Apple will ship Internet Explorer for Macintosh bundled in all units of Mac OS system software Apple ships to distributors, subject to Apple's contractual limitations with such distributors. While Apple may bundle browsers other than Internet Explorer with such Mac OS system software releases, Apple will make Internet Explorer for Macintosh the default selection in the choice of all included internet browsers (i.e., when the use invokes the "browse the internet" or equivalent icon, the Mac OS will launch Internet Explorer for Macintosh). The user or system administrator may choose a different internet browser as the

default browser at any time. Any other internet browsers bundled in the Mac OS system software sold by Apple shall be placed in folders in the software as released. For purposes of this Section 3.1, Microsoft shall not be deemed to be out of compliance with Section 2.1 during any cure period under Section 6.2. Apple will not be proactive or initiate actions to encourage users to swap out Internet Explorer for Macintosh.

Initial user registration for selecting an internet service provider using Internet Explorer for Macintosh will be provided by Microsoft's referral server, if available at the time of Apple's initial shipment of Internet Explorer for Macintosh and if the performance of such referral server is competitive with that provided by Apple's then-current service. In the event that Microsoft's referral server is not available for Apple's initial shipment of Internet Explorer for Macintosh, then Apple shall thereafter use such server at such time as such server is available and competitive, and incorporation of such server is reasonably practicable. Apple may use Microsoft's Internet Startup Kit or modify its existing sign-up application to work with the selected referral server.

Apple will use reasonable efforts to ensure that parties having a license to reproduce and market the Mac OS abide by the terms and conditions of this Section 3.1, if permissible under existing licenses. At such time as Apple enters into any new licenses for the reproduction and marketing of such Mac OS system software, Apple shall give such licensees the right to bundle and shall use reasonable efforts to encourage such licensees to bundle Internet Explorer for Macintosh. Apple shall have no obligation to offer such licensees financial or other consideration in connection with such efforts.

3.2 Marketing. For so long as Apple is bundling Internet Explorer for the Macintosh, Apple will display the Internet Explorer logo on all Apple-controlled web pages where any browser logo is displayed. Such display shall be in accordance with Microsoft's reasonable trademark guidelines for use of such logo, which shall not include any requirement of particular placement on the web page. In addition, for so long as Apple is bundling Internet Explorer for the Macintosh, Apple will encourage its employees to use Microsoft Internet Explorer for Macintosh for all Apple-sponsored events and will not promote another browser to its employees.

3.3 Announcement. Apple shall publicly announce its commitments under this Section 3 as set forth in Section 9.1.

3.4 Availability; Functionality. Throughout the Term, Microsoft shall provide Apple (at no charge to Apple) and make generally available current and future versions of Internet Explorer that are compatible with the Macintosh APIs ("Internet Explorer for Macintosh"). Upon delivery by Microsoft to Apple of any such version of Internet Explorer, Apple shall use its best efforts to modify its Mac OS systems software to incorporate such version in a commercially practicable amount of time.

In the event that at any time during the Term Microsoft makes available a version of Internet Explorer for Macintosh having enhanced features or functionality greater than that provided by the version of Internet Explorer for Macintosh provided to Apple under this Section,

whether such version is provided to users free of charge or for consideration, and Microsoft does not make such version available to Apple hereunder on the terms set forth herein, then in such event Apple shall be relieved of its obligation to make Internet Explorer for Macintosh the default browser under Section 3.1 above, but Apple shall continue to have its bundling obligations under the first two sentences of Section 3.1 above.

Internet Explorer for Macintosh will be competitive with other internet browsers in the industry, with support for all widely accepted internet standards and features, except those features that are technically feasible only on Windows or that uniquely exploit Windows' capabilities. Apple's sole and exclusive remedy for a breach of the preceding sentence shall be that Apple shall be relieved of its obligations under Sections 3.1 and 3.2 above.

Microsoft will use good faith efforts to promptly provide user interface customization to Internet Explorer for Macintosh (including without limitation by providing buttons linking to Apple web sites) as requested by Apple from time to time.

3.5 Macintosh API Information. Apple shall provide Microsoft with technical information regarding the Macintosh APIs at the same time and in the same manner that Apple provides such information to any other independent software application developer, so that Microsoft can timely develop releases of Internet Explorer for Macintosh.

3.6 Grant of License. Microsoft hereby grants to Apple a fully paid up, worldwide, non-exclusive, royalty-free right and license, with the worldwide right to grant and authorize sublicenses, during the Term to use (but not modify or edit to create a subset), display, perform, reproduce, have reproduced, sublicense and distribute all versions of Internet Explorer for Macintosh delivered to it by Microsoft under the terms of this Agreement. Apple shall have the right to sublicense such right and license to its subsidiaries and its and their OEMs. Such right shall be subject to terms and conditions (including representations, warranties and indemnification by Microsoft) for distribution of Internet Explorer set forth in the Master Software Development, Bundling and Distribution Agreement dated May 30, 1997, as modified by this Agreement (the "Bundling Agreement"). The Bundling Agreement is attached as Exhibit A hereto. Apple's distribution of Internet Explorer for Macintosh shall be as part of a Bundle, as defined in the Bundling Agreement. Termination of this Agreement shall not affect sublicenses Apple grants to end users under this Section 3.6 during the Term.

3.7 Other Operating Systems. Except with respect to eMate and Newton products, in the event that Apple at any time during the Term hereof decides to ship an internet browser in products which have operating systems other than Mac OS, Apple shall give Microsoft prompt notice of such determination, along with a statement of the characteristics of the applicable operating system, any customization requirements, and a schedule. Microsoft shall thereafter have a period of thirty (30) days in which to respond to Apple as to whether it can produce a competitive internet browser with such characteristics on such schedule. At the end of such period, Microsoft shall offer to Apple its proposal for meeting such requirements and schedule. Apple shall in good faith determine whether such proposal meets Apple's requirements. If it does, then such Microsoft internet browser shall become the default internet browser for such product, and it shall be bundled and distributed by Apple on the terms set forth herein.

Otherwise, Apple shall be free to adopt any other browser for such product. Any assignee of Apple's rights and obligations under this Agreement (whether by operation of law or otherwise) shall not be bound by this provision except with respect to any product that is shipping on the effective date of any such assignment and successor products thereto shipped under the Apple brand.

3.8 Java. Apple and Microsoft will announce in accordance with Section 9.1 that they have entered into cooperative development of runtime support for programming languages with the intention of enhancing compatibility between their respective virtual machines and runtimes and extending them in some similar directions for Java and other languages.

4. Limitation of Liability.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO BREACH OR FAILURE TO PERFORM UNDER THIS AGREEMENT, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. Termination of Certain Agreements.

5.1 Termination. Apple Computer BV and Microsoft are parties to that certain Microsoft OEM License Agreement dated August 1, 1996 (the "OEM Agreement"). The OEM Agreement and all outstanding purchase orders issued under the OEM Agreement are hereby terminated as of the date hereof, and shall hereafter be of no further force or effect except for provisions set forth as surviving termination herein or therein. Apple acknowledges and agrees that, pursuant to Section 11(c) of the OEM Agreement, Apple Computer BV's license rights have ceased and Apple Computer BV shall cease all distribution of Product, as defined therein (version 4.2.1b of Microsoft Office). Microsoft agrees that it will reimburse Apple Computer BV for expenses incurred by it in returning to Microsoft, units of Product and associated documentation, if any, in its possession as of the date of termination. Apple represents that it has obtained Apple Computer BV's consent to such termination.

5.2 Release. Except with respect to both parties' obligations with respect to this Section 5, each party, on behalf of itself and its subsidiaries as of the date of this Agreement hereby fully and forever releases and discharges the other party, its subsidiaries as of the date hereof, from any and all damages, liability, suits, claims, and causes of action of any kind arising out of the OEM Agreement, whether known or unknown, suspected or unsuspected ("Released Claims"). The parties hereto expressly acknowledge and agree that this Agreement fully and finally releases and forever resolves the Released Claims, including those that are unknown, unanticipated or unsuspected or that may hereafter arise as a result of the discovery of new and/or additional facts, and each of the parties expressly waive all rights under Section 1542 of the Civil Code of California, which the parties each acknowledge they have read and understood and which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE

TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Each of the parties also expressly waives all rights under any other statutes, legal decisions or common law principles of similar effect.

5.3 Minimum Commitment Amounts. Microsoft acknowledges and agrees that Apple (and Apple Computer BV) have made payments in the amount of $23,076,924 of minimum commitment amounts (as such term is used in the OEM Agreement) as advance royalty payments under the OEM Agreement. The sum set forth in the immediately preceding sentence, plus an agreed-upon reduction in payment to Apple under the Patent Cross License Agreement, equals $30,000,000.

5.4 Pre-Paid Balance. As of the date hereof, Apple has made minimum commitment payments and otherwise provided consideration to Microsoft equal to $12,600,000 in excess of per unit royalties for Preinstalled Product Software under the OEM Agreement, equal to payment for 84,000 copies of Preinstalled Product Software at $150 per copy.

5.5 Credit. Microsoft acknowledges and agrees that Apple shall have the right from and after the date hereof to receive without charge or royalty licenses for 84,000 copies of the versions of Microsoft Office for Microsoft Office for Macintosh made available under Section 2.1 above, including without limitation Microsoft Office 98 for Macintosh. Apple shall publish and distribute such copies under the terms of written OEM arrangements for Europe which shall be reasonable and consistent with Microsoft's practices for OEM distribution; provided, however, that to the extent that such agreements only license the publishing and distribution of 84,000 copies, such agreements shall not contain price or minimum quantity provisions.

6. Term and Termination.

6.1 Term. The term of this Agreement shall be the period commencing on the date hereof and continuing for five (5) years thereafter unless earlier terminated in accordance with the provisions of Section 6.2 below (the "Term").

6.2 Termination. Notwithstanding the foregoing Section 6.1, either party shall have the right to terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure that breach within sixty (60) days after receiving written notice of the breach, except as otherwise provided in Section 6.3.

6.3 Survival. The following provisions will survive termination of this Agreement: Sections 1 (Definitions), the last sentence of Section 2.1(d), the last sentence of Section 3.6, Section 5 (Termination of Certain Agreements), Section 6 (Term and Termination), Section 8 (Dispute Resolution), and Section 9 (General).

7. **Assignment.**

Neither party shall have the right to assign its rights or delegate its obligations hereunder, except that this Agreement shall be assigned in its entirety, in connection with (a) a transfer of more than fifty percent (50%) of its outstanding securities that are entitled to vote in the election of directors by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger, consolidation or tender offer, but excluding any such transaction which solely effects a change of domicile), or (b) a sale of all or substantially all of its assets related to the subject matter hereof; provided that Apple shall remain obligated to perform, jointly and severally with its assignee, all of its obligations under this Agreement. This Agreement shall inure to the benefit of the parties' permitted assigns. Notwithstanding anything to the contrary contained herein, the parties' rights and obligations under Section 3.7 above shall be assignable or delegable only as set forth therein.

8. **Dispute Resolution.**

8.1 Negotiation. The parties shall make a good faith attempt to resolve any dispute or claim arising out of or related to this Agreement through negotiation. In the event that either party hereto believes that the other party has failed to operate in accordance with this Agreement, such party shall give written notice of such failure to the other party. Such written notice shall describe the basis for such contention in reasonable detail. Within fifteen (15) days after such written notice is given by any party, the Chief Financial Officers of each of the parties shall meet and make a good faith attempt to resolve such dispute or claim. Such good faith attempt shall continue for fifteen (15) days after the date of the written notice.

8.2 Mediation. In the event that any dispute or claim arising out of or related to this Agreement is not settled by the parties within the fifteen (15) day negotiation period set forth above, then the parties will attempt in good faith to resolve such dispute or claim in accordance with the American Arbitration Association Commercial Mediation Rules. The location of the mediation shall be in King's County, Washington, if initiated by Apple, and in Santa Clara County, California, if initiated by Microsoft. The mediation shall be held within thirty (30) days of the end of the fifteen (15) day negotiation period for a period no longer than two (2) days. Nothing herein, however, shall prohibit either party from exercising its rights pursuant to Section 6 or initiating court proceedings if such party would be substantially prejudiced by a failure to act during the time that such good faith efforts are being made to resolve the dispute or claim through negotiation or mediation; however, the negotiation and mediation efforts shall continue contemporaneously with any such court proceeding. The costs of mediation shall be shared equally by the parties to the mediation. A settlement reached by mediation shall only be binding on the parties if it is mutually agreeable and voluntarily signed by both parties.

8.3 Governing Law and Court Proceedings. This Agreement shall be subject to and governed in all respects by the statutes and laws of the State of New York without regard to the conflicts of laws principles thereof. The Superior Court of King County and/or the United States District Court residing in Seattle shall have exclusive jurisdiction and venue over all controversies in connection herewith initiated by Apple. The Superior Court of Santa Clara County, California and/or the United States District Court residing in San Jose shall have

exclusive jurisdiction and venue over all controversies in connection herewith initiated by Microsoft. Each party hereby irrevocably consents to such exclusive and personal jurisdiction and venue. The parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief as necessary, without breach of this Section 8.3.

9. **General.**

9.1 Announcement. The parties anticipate that they will make an announcement concerning this Agreement, the Preferred Stock Purchase Agreement and the Patent Cross License Agreement on August 6, 1997 at the MacWorld Expo in Boston, Massachusetts. At that time, the parties will issue a mutually agreeable press release concerning this Agreement, the Common Stock Purchase Agreement and the Patent Cross License Agreement.

9.2 Entire Agreement; Amendment. This Agreement constitutes the final, complete and exclusive agreement and understanding between the parties hereto and integrates all prior discussions between them related to the subject matter hereof. Neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought.

9.3 Notices. Any notice or other communication given under this Agreement shall be sufficient if in writing and sent by registered or certified mail, return receipt requested, postage prepaid, to a party at its address set forth below (or at such other address as shall be designated for such purpose by such party in a written notice to the other party hereto):

if to Apple, to it at:

Apple Computer, Inc.
1 Infinite Loop
Cupertino, CA 95014
Attention: Chief Financial Officer

with a copy addressed as set forth above but to the attention of: the General Counsel.

with a copy to:

Larry W. Sonsini
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94306

if to Microsoft, to it at:

Microsoft Corporation
One Microsoft Way
Building 8
North Office 2211
Redmond, WA 98052
Attention: Chief Financial Officer

with a copy addressed as set forth above but to the attention of: the General Counsel.

All such notices and communications shall be effective when received by the addressee.

9.5 Force Majeure. Neither party will be responsible for any failure to perform its obligations under this Agreement due to causes beyond its reasonable control, including but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods or accidents.

9.6 Waiver. The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind.

9.7 Headings. The headings to the Sections and Subsections of this Agreement are included merely for convenience of reference and shall not affect the meaning of the language included therein.

9.8 Independent Contractors. The parties acknowledge and agree that they are dealing with each other hereunder as independent contractors. Nothing contained in this Agreement shall be interpreted as constituting either party the joint venturer, employee or partner of the other party or as conferring upon either party the power of authority to bind the other party in any transaction with third parties.

9.9 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restriction of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No party shall be deemed to be in breach of this Agreement by reason of compliance with any applicable law or order.

9.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, shall be deemed to be an original. Notwithstanding the foregoing, the parties shall deliver original execution copies of this Agreement to one another as soon as practicable following execution thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized officers as of the date aforesaid.

APPLE COMPUTER, INC.

By: _____
Name: John B. Douglas, III
Title: Senior Vice President

MICROSOFT CORPORATION

By: _____
Name: Greg Maffei
Title: Chief Financial Officer

Exhibit A: Bundling Agreement