MEMORANDUM

DATE: October 21, 1996

TO: M Jacobson

FROM: S Kovar

SUBJECT: Microsoft Internet Explorer Agreement

As you know, it was absolutely critical to Prodigy's business that Prodigy obtain Microsoft's agreement to include the Prodigy Internet service icon in the Online Services Desktop folder which appears in Windows 95 This was essential in order to remain competitive Accordingly, Prodigy entered into a Promotion and Distribution Agreement with Microsoft dated September 19, 1996, in which Prodigy was granted a royalty-free license to use and distribute Microsoft Internet Explorer as part of the client software for Prodigy Internet, and Microsoft agreed to include the Prodigy Internet service client icon in the Windows 95 Online Services Desktop Folder and Program Folder in exchange for payment by Prodigy of a bounty fee for new members that enrolled via the desktop folders

There were many objectionable provisions in the original draft of the Agreement which Microsoft forwarded to Prodigy Consequently, we requested numerous changes to the Microsoft draft But on most major issues Microsoft was not willing to negotiate For example

- The original draft contained a provision that imposes on Prodigy an overall limitation of fifteen 15% on the number of competitive browsers that Prodigy may ship during the term of the Agreement Prodigy requested that this section be deleted or substantially modified Microsoft refused

- The referral fee that Prodigy must pay Microsoft for new subscribers who sign up for Prodigy Internet via the desktop folder is $35 per new subscriber, reduced to $20 per new subscriber but only if Prodigy also implements other Microsoft products and technologies For example, if Prodigy implements Microsoft's ActiveX controls in the Prodigy Internet home page, the referral fee is reduced by $5, if Prodigy uses Microsoft's Windows NT and Microsoft's Internet Information Server as the platform for Prodigy's web site that hosts the home page or offers Microsoft's Internet Information Server as one of the platforms for Prodigy's web hosting services, the referral fee is reduced by another $5, and if Prodigy uses Microsoft's FrontPage server extensions on Prodigy's web hosting service, the referral fee is reduced by another $5 Prodigy requested that the fee schedule be modified so as not to be based on the implementation of other Microsoft technologies Microsoft refused to revise the fee schedule

- The original draft contained a provision requiring Prodigy to design the Prodigy Internet service around Microsoft IE technology by using new extensions and improvements available

Prodigy Confidential

in versions of Internet Explorer in 60% or more of Prodigy's sites Prodigy requested that this section be deleted While Microsoft agreed to make a minor revision, Microsoft refused to delete this section

- The original draft contained a provision that prohibited Prodigy from including any links on the Prodigy Internet service to any browsers other than Microsoft IE We asked that this provision be deleted Microsoft refused, however, it was willing to agree to allow Prodigy to provide a link to a browser other than IE "solely at a single Service location or Prodigy Site" and such link had to be "substantially minimized "

- The original draft contained a provision that permitted Prodigy to distribute browsers other than Microsoft IE to its distributors or corporate customers but only after Prodigy used all reasonable efforts to minimize association of "Prodigy" with such browser and only after first promoting Microsoft IE to such customers Prodigy requested that this provision be deleted or modified Microsoft refused to delete or modify the section

- There are a number of minor changes which were requested by Prodigy that were refused by Microsoft For example, Microsoft refused to negotiate the Governing Law provision that not only provides that the Agreement will be governed by the law of the State of Washington, but also that Prodigy consents to jurisdiction and venue in the state and federal courts sitting in the State of Washington

Therefore, while Prodigy voluntarily entered into this agreement with Microsoft, it had no choice but to accept an agreement with a number of extremely objectionable provisions