

AGREEMENT

- among -

JOSEPH ABRAMS, JOGRAFCO, INC., and LAWRENCE J. SCHOENBERG

- relating to -

AGS COMPUTERS, INC.

GREENBAUM, WOLFF & ERNST  
ATTORNEYS AT LAW  
285 MADISON AVENUE  
NEW YORK, N. Y. 10017

AGREEMENT made this            day of December,  
1966, among JOSEPH ABRAMS of 26 Rynda Road, South Orange,  
New Jersey (hereinafter referred to as "Abrams"), JOGRAFCO,  
INC., a New York corporation, of 21 East 40th Street,  
New York, New York (hereinafter referred to as "Jografco")  
and LAWRENCE J. SCHOENBERG of 248 Holly Glen Lane, Berkeley  
Heights, New Jersey (hereinafter referred to as "Schoenberg").

W I T N E S S E T H :

WHEREAS, the parties desire to organize a  
corporation upon the terms hereinafter set forth and to  
promote their mutual interests and the best interest of  
such corporation by imposing certain restrictions and ob-  
ligations upon themselves, the corporation and the shares  
of stock of the corporation to be acquired by each of them,

NOW, THEREFORE, it is agreed by and among the  
parties hereto as follows:

1. The parties shall forthwith form a corporation  
pursuant to the provisions of the Business Corporation Law

of New York to be known as "AGS Computers, Inc.",  
(hereinafter referred to as the "Corporation").

2. The Corporation shall be organized so as  
to provide for the following:

(a) The duration of the Corporation shall  
be perpetual.

(b) The number of directors shall be three.

(c) The authorized capital stock shall be  
20,000 shares of common stock of the par value of \$1.00  
each.

(d) The purposes of the Corporation shall  
include the rendering of management consulting services  
in the field of electronic data processing including the  
furnishing of computer programming services and other  
assistance in the installation and operation of electronic  
data processing equipment.

(e) The principal place of business of  
the Corporation shall be in the County, City and State  
of New York.

3. Upon incorporation the common stock of the Corporation shall be issued as follows:

(a) To Abrams 250 shares of common stock for which Abrams shall pay the Corporation the sum of \$2,500 in cash or by certified check;

(b) To Jografco 250 shares of common stock for which Jografco shall pay the Corporation the sum of \$2,500 in cash or by certified check;

(c) To Schoenberg 250 shares of common stock for which Schoenberg shall pay the Corporation the sum of \$2,500 in cash or by certified check.

4. It is expressly understood and agreed that the Corporation shall not assume any debts or obligations of any of the parties hereto or of any other person, firm or corporation with which any of them is now or shall heretofore have been associated. Each of the parties represents to the others that he or it is free to enter into this agreement, that the obligations assumed hereunder will not conflict with any prior agreement and that none is involved in any litigation or proceedings the results of which

would affect the business and operation of the Corporation in any way except only that Schoenberg has informed Abrams and Jografco that he and Applied Analytics, Inc., a New York corporation controlled by him, are defendants in an action pending in the Supreme Court of the State of New York by Automation Sciences, Inc., Data Temp, Inc., Roger W. Adair and Harold Rosenberg, as plaintiffs, seeking, among other things, specific performance of an agreement dated November 12, 1965 among certain of the parties to the aforesaid litigation. Schoenberg hereby indemnifies and agrees to hold harmless Abrams, Jografco and the Corporation from and against any and all liability or expense, including counsel fees, incurred or arising from any claim, action or proceeding made or brought against any of them by or on behalf of any of the plaintiff corporations or individuals in the said pending litigation on account of anything arising from the organization or operation of the Corporation or because of their association hereunder with Schoenberg. In order to secure the foregoing indemnity Schoenberg shall simultaneously with the execution of this agreement deposit with

a mutually agreeable person, firm or corporation the sum of \$1,500 which shall be applied by such escrowee to the payment of counsel fees and disbursements, if any, incurred by Abrams, Jografco and the Corporation, or any of them, in the defense of any claim, action or proceeding made or brought against them as aforesaid. Upon furnishing the Corporation with satisfactory evidence of the final conclusion of the said pending litigation whether by settlement or otherwise the escrow deposit or such part as shall then remain shall be returned to Schoenberg. Neither the escrow deposit made hereunder nor its application in accordance with the provisions hereof shall limit or otherwise affect the indemnity given by Schoenberg to Abrams, Jografco and the Corporation in this paragraph 4.

5. It is the intention of the parties that the Corporation shall commence business immediately on its organization. Each of the parties shall thereupon devote such efforts as may be required to enable the Corporation to begin operating as fully and promptly as possible and will to the extent feasible secure for it

all available business opportunities. It is understood that Schoenberg will complete the contract on which he is engaged at the date hereof and that accordingly he shall not be required to render his services to the Corporation on a full-time basis prior to January 1, 1967, provided, however, that all contracts for his services which may be hereafter secured shall be for the benefit of the Corporation.

6. The parties shall vote their stock so as to provide for the following:

(a) The directors shall be Joseph Abrams, Lawrence J. Schoenberg and Rosalie Graf.

(b) The officers shall be:

President	-	Lawrence J. Schoenberg
Secretary and Treasurer	-	Joseph Abrams

(c) All corporate checks shall be signed by any two of the following persons: Joseph Abrams, Lawrence J. Schoenberg and Peter G. Graf.

(d) The Corporation shall employ Schoenberg as President of the Corporation at an annual salary of

\$15,000 payable in equal monthly installments for so long as Schoenberg shall be available to perform his duties provided, however, that such annual salary shall be <sup>increase proportionately from \$15,000 to \$20,000 if an increase from \$15,000 to \$20,000</sup> ~~be~~ <sup>to</sup> \$20,000 if the gross profits of the Corporation shall ~~equal or exceed~~ such amount for the twelve months beginning January 1, 1967.

In determining the amount of gross profits of the Corporation for the purposes of the preceding sentence there shall be allowed as a deduction the sum of \$7,500 representing one-half the basic annual salary of \$15,000 payable to Schoenberg hereunder. After January 1, 1968 Schoenberg shall receive such compensation from the Corporation as may hereafter be agreed.

(e) The Corporation shall employ Abrams as Sales Manager of the Corporation at a salary to be agreed upon at such time as he shall be free to render his services to the Corporation on a full-time basis. Prior to such time it is understood and agreed that he will devote as large a portion of his time as he is able to consistent with his present commitments and shall receive therefor such compensation from the Corporation as may hereafter be agreed.

(f) The By-Laws of the Corporation shall provide that no meeting of the Board of Directors shall



be held unless all the directors of the Corporation shall be present. Provision shall also be made in the By-Laws that any vacancy in the office of director shall be filled only by the stockholders.

7. Upon the formation of the Corporation the firm of Joseph Graf & Co., will be retained as accountants to the Corporation and shall, in addition, furnish such general business advice as may be required. It is understood that Joseph Graf & Co., by a member of its firm, shall to the extent feasible also take an active part in the business of the Corporation it being understood, however, that in no event shall it, any member of its firm or any entity associated with it be required to participate therein on a full-time basis. For all of the services to be rendered by it Joseph Graf & Co., shall receive such compensation from the Corporation as may hereafter be agreed.

8. It is understood and agreed that no corporate action shall be taken to change the capital of the Corporation or to issue any shares of the capital stock of the Corporation, whether originally or newly

authorized, or to borrow, directly or indirectly, any funds from any of the parties hereto without the prior written consent of all the parties.

9. None of the parties shall sell, assign, transfer, pledge, encumber or otherwise dispose of any shares of stock of the Corporation except in accordance with the following provisions:

(a) The party desiring to sell, assign, transfer, pledge, encumber or otherwise dispose of any such shares must first obtain the written consent of the other parties.

(b) In the absence of such written consent the party intending to sell, assign, transfer, pledge, encumber or otherwise dispose of any such shares (hereinafter sometimes called an "Offeror") shall give to the Corporation and the other parties written notice of such intention which notice shall constitute an offer to sell to the Corporation all of his or its shares upon the terms and conditions hereinafter provided and the Corporation shall be obligated to purchase all such shares.

10. On the death of an individual party hereto the estate of the deceased party (such estate being hereinafter sometimes also referred to as an "Offeror") shall be obligated to offer for sale to the Corporation all shares of stock of the Corporation owned by the decedent upon the terms and conditions hereinafter provided and the Corporation shall be obligated to purchase all such shares.

11. The offers provided for in paragraphs 9 and 10 hereof shall be deemed to have been made and accepted on the expiration of ten (10) days after the giving of notice of an intention to sell or ten (10) days after the appointment of a personal representative of the estate of the deceased party, as the case may be, provided, however, that in the event that no personal representative shall have been appointed within thirty (30) days following the death of such person the offer provided for in the preceding paragraph shall be deemed to have been made and accepted upon the expiration of the said thirty (30) day period.

12. The purchase price per share for all shares of stock to be purchased and sold pursuant to this agreement shall in the case of each of the parties be as follows:

(a) The price which the parties shall from time to time specify in a writing signed by them and filed with the Secretary of the Corporation, or

(b) If at the date of the event giving rise to the purchase and sale of shares provided for in this agreement such joint specification of price shall have taken place more than six (6) months previously then the price at which shares shall be purchased and sold hereunder shall be the greater of either

(i) a sum equal to forty-five percent (45%) of the gross sales of the Corporation for the twelve months following the month in which the event giving rise to the purchase and sale occurs, or

(ii) a sum equal to one-third (1/3rd) of the net profits of the Corporation

for the aforesaid twelve month  
period  
(iii) Book value *AGS*  
divided by the number of shares of stock of the Corporation  
then outstanding.

(c) For the purposes of subparagraph (b)  
hereof:

(i) There shall be taken into  
account in determining the gross sales or net  
profits of the Corporation all amounts to be  
received by the Corporation in respect of sales  
made or services rendered by it regardless of  
whether the amount therefor shall have then  
been billed or if billed whether such amount  
shall have been then collected.

(ii) There shall not be deducted  
in determining the net profits of the Corporation  
any amounts in respect of officers' salaries and  
amounts incurred for business entertainment and  
similar expenses.

13. In the event of the purchase and sale

of shares of stock of the Corporation in accordance with the provisions hereof:

(a) The purchaser shall have the right to specify the time and place of closing by written notice to the Offeror provided, however, that the closing shall be in the City of New York and on a date not more than thirty (30) days subsequent to the acceptance of the offer to sell the shares of stock as herein provided.

(b) The purchase price of all such shares purchased pursuant hereto shall be paid as follows:

(i) An amount equal to fifty percent (50%) thereof shall be paid at the closing in cash or by certified check; and

(ii) An amount equal to twenty-five percent (25%) thereof shall be payable six (6) months after the date of closing; and

(iii) The balance of the total purchase price of all such shares as determined under whichever of subparagraphs (a) or (b) of paragraph 12 shall be applicable shall be paid fifteen (15) months after the date of closing.

(c) In the event that the purchase price of the shares shall be determined in accordance with the provisions of paragraph 12(b) hereof the amount of the payments to be made under subparagraphs (b)(i) and (ii) hereof shall be computed by making reasonable estimates of the gross sales and net profits of the Corporation having regard to all the circumstances.

(d) At the closing the certificates representing the shares to be sold hereunder shall be delivered to the purchaser duly endorsed in blank or accompanied by an appropriate transfer instrument endorsed in blank with all necessary tax stamps affixed. If the Offeror shall be an estate there shall also be delivered to the purchaser a certificate evidencing the appointment of the legal representative of the estate together with an appropriate estate tax waiver. There shall also be delivered to the Corporation at such closing the resignation of the Offeror, or its nominee, as director, officer or employee of the Corporation.

(e) If the Corporation shall not have

sufficient surplus to enable it to purchase the shares of stock of an Offeror in accordance with the provisions hereof and if the purchase cannot lawfully be carried out by a reduction of capital or other corporate action then the remaining or surviving parties shall have the right but not the obligation to purchase proportionately on the same terms and conditions all or such portion of the shares as the Corporation shall be precluded from acquiring provided that if any one of the parties shall fail to purchase the number of shares to which he or it is thereby entitled the remaining party may elect to purchase such shares and provided, further, that in no event shall the Offeror be obligated to sell less than all his or its shares. If all the shares of the Offeror shall not be purchased in accordance with the provisions of this agreement the Offeror shall be free to dispose of such shares as he may elect.

14. All certificates representing the shares of stock of the Corporation to be issued in accordance with the provisions hereof shall be stamped with the following legend:

"The shares of stock represented by this certificate are subject to the restrictions contained in a certain agreement dated the 12<sup>th</sup> day of December, 1966, among the Stockholders of the Corporation and the Corporation, a copy of which agreement is on file with the Secretary of the Corporation, to all of which restrictions the holder hereof, by acceptance of this certificate, assents."



15. If any person or other entity shall at any time acquire from the Corporation any shares of its stock such person or entity shall be bound by all the terms and provisions of this agreement as fully as though a party hereto.

16. (a) Whenever any action or decision is required of the parties hereto as such or as stockholders of the Corporation such action or decision shall in the case of Jografco, Inc., be taken or made by Peter G. Graf or in the event of his death, disability or unavailability by such person as shall be designated by it in writing.

(b) In the event of the merger, consolidation or dissolution of Jografco, Inc., Peter G. Graf shall have the right to acquire from it all its shares of stock in the Corporation pursuant to arrangements between them and upon such acquisition shall for the purposes of this agreement including paragraph 10 hereof thereafter hold such shares as an individual party hereto.

17. The parties shall cause the Corporation upon its formation to become a party to this agreement.

18. None of the parties hereto shall so long as he or it is a stockholder of the Corporation engage, directly or indirectly, as owner, stockholder, director, officer, employee, partner, consultant or otherwise in any activity competitive with any business of the Corporation, or any subsidiary thereof, as then conducted or so far as known to him or it to be then under active consideration as a business to be conducted by the Corporation, or any subsidiary thereof, or be or become associated with or financially interested in, directly or indirectly, any person engaged in any activity competitive with the business of the Corporation as aforesaid. Nothing contained in this paragraph 18 shall (i) preclude any of the parties from continuing to hold or from hereafter acquiring not more than five percent (5%) of the issued and outstanding shares of any corporation the shares of which are listed on any national security exchange or actively traded "over-the-counter" or (ii) preclude Schoenberg from holding shares in any of the corporations referred to in paragraph 4 hereof provided, however, he shall not be actively engaged as an employee or otherwise in the business of any of them.

19. The parties understand and agree that the remedy at law for the breach by any of them of the terms and provisions hereof will be inadequate, and the other parties hereto shall accordingly be entitled to specific performance or other equitable relief in addition to and not exclusive of any other remedies that may be available.

20. The parties agree that in any dispute or controversy arising out of, in connection with, or relating to this agreement, or the breach thereof, which dispute or controversy cannot be resolved by mutual consent, they shall submit the same to arbitration before a single arbitrator agreeable to such parties. If such parties cannot agree on such a single arbitrator within five (5) days after arbitration has been requested in writing the arbitration shall proceed in the City of New York under the rules then obtaining of the American Arbitration Association. The award shall be rendered in such form that judgment may be entered thereon in the highest court of any forum, state or federal, having jurisdiction.

21. All offers, acceptances and notices hereunder shall be in writing and shall be made or given by mailing the same by certified mail addressed to the Corporation and to the party or parties at the last known address of each. All such offers, acceptances and notices shall be deemed to have been made or given on the date of such mailing.

22. This agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, personal representatives, successors and assigns, and upon the Corporation, its successors and assigns, and shall be further binding upon each and every person or other entity to whom any shares of stock in the Corporation is transferred in violation of any of the provisions of this agreement, and upon the heirs, personal representatives, successors and assigns of any such person or entity.

23. This agreement contains the entire understanding and agreement among the parties. There are no

representations, warranties, promises or understandings other than those herein expressly set forth.

24. The invalidity or unenforceability of any particular provision of this agreement shall not affect the other provisions hereof, and this agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

25. No waiver or modification of any of the terms of this agreement shall be valid unless in writing. No waiver of a breach of any provision hereof or a default under any provision hereof shall be deemed a waiver of such provision or of any subsequent breach or default of any kind or nature.

26. This agreement shall be interpreted and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have

executed this agreement the day and year first above  
written.

Joseph Abrams  
Joseph Abrams

JOGRAFCO, INC.  
By: [Signature]

Lawrence J. Schoenberg  
Lawrence J. Schoenberg

Accepted and Agreed to:

December 12, 1966

AGS COMPUTERS, INC.

By: Lawrence J. Schoenberg

