

IBM MS Windows Desktop Family Agreement

Description

Royalty Grids:

1. Increase in royalties

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Explanation: Windows 95 royalty increases even though our volumes are increasing.

***Price increase is unjustifiable. Microsoft will take back to cases that the IBM volume is increasing, but Microsoft has increased their price on Win95 and win 3.1

1-A. Royalty assumes Win 3.11 or W/FW will ship with MS DOS (vs. PC DOS)

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Explanation: Per MS we are free to substitute PC DOS for MS DOS but we will not get a royalty reduction to reflect that MS DOS is not included. If we pay the higher WDF royalty the volumes can be aggregated toward monthly volume commitment. We have option of licensing Win 3.11 and W/FW individually at a lower royalty, but the volumes won't count toward monthly volume commitment.

Selection: Clarify in contract that MS DOS is not a requirement for WDF. Negotiate for lower royalty as part of WDF with volumes counting toward monthly volume commitment.

2. PC DOS shipments counting toward monthly volume commitment.

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***Microsoft will ask to have the ms dos and tools excluded, and second royalty reduction and volume aggregation

Explanation: PC DOS counts toward monthly volume commitment if shipped with Win 3.11 or W/FW under \$62 royalty.

Selection: Move for grid as follows:

	Per System Royalty	Per Copy Royalty	Non-English Add'l
a. Windows 95	\$62.00	\$72.75	\$6.00
b. Windows 3.11	43.50	50.50	6.00
c. Windows for Workgroups 3.11	43.50	50.50	6.00
d. Windows NT Workstation	127.00	147.75	12.00

(Version 3.11 and 4.X if and when available on x86/Pentium compatible platforms only)

Add MS DOS if needed.



- What's in Enhanced Tools ship with MS DOS? CL
- The tools always required with MS DOS.
***Double space and word editor
- 4. Language version "EN" in royalty grid. CL C
Selection: Change to "EN and all languages as made available by MS"
- *** Language will change
- 5. Royalties do not include MDA reductions. CL
Explanation: Royalties will be reduced by \$14.50 (MDA-95 Reduction) until 12/31/96. Beginning on 1/1/97, royalties will be reduced by the MDA-96 Reduction (potential \$20).
- 6. Need volume/price for lower than 250k/month. CL
*** Wolf will ask for @20 to be applied now and not January of 1996.
Explanation: Monthly Volume Commitment
Royalty 250k \$62.50
500k \$61.75
- ****Wolf will give price quote
- Subsections 2-5 (W/W, Windows 3.11, MS DOS, Enhanced Tools):
- 7. Were these intended to: S
a. Discourage us from shipping Win 3.11 or W/W with PC DOS?
b. Does it modify the existing MS DOS license terms?
Selection: See # 11 below.
****Wolf will ask for ms dos to be excluded from 1a and 1b
- 8. Volumes should count toward monthly volume commitments. S
Selection: Structure grid as in # 2 above, with all volumes being aggregated toward monthly volume commitment.
- 9. NT Workstation (latest version) royalties S
Explanation: We received a volume/price grid for NT 3.51 from MS that had lower royalties at lower volumes.
Royalty Rate: \$105
Annual Volume: 50,000
Annual \$ Amount: \$ 5,250,000
Initial Payment Amount: \$ 250,000
Term: 1 year

MS-PCA 7209600

\$100	100,000	\$10,000,000	\$ 500,000	1 year
\$ 90	200,000	\$22,500,000	\$1,000,000	1 year

Solution: Negotiate for a lower royalty for NT Workstation based on this quote.

General: S
 10. Existing Windows 3.11 contract

Issue: Is current Windows 3.11 contract superceded and are we no longer eligible for its terms or royalties. When do new terms/royalties for Windows 3.11 begin? Per MS, intended to supercede 3.11 contract when effective.

Solution:

11. Only supercedes/effects Windows 3.X OEM and Windows 95 OEM contracts. Does not effect existing PSP contracts or other agreements.

Solution: Add language: "This Agreement and Exhibit only modifies the License Agreement for Microsoft Windows and Microsoft Windows for Workgroups. Contract Number M001-4028 dated January 1, 1994 solely with respect to the Products specified herein. All other agreements and terms of contract number M001-4028 between the parties not expressly referenced and amended hereby shall remain in full force and effect and unmodified." (See 1B1 of Win 3.11.)

Note: Need to better understand rights that PSP has to MS DOS and Windows 3.X under various agreements with MS (including JDA). Need to ensure that those rights are not superceded.

*** the family would supercede the existing 3.11 agreement, but microsoft will allow IBM to add some of the items

11-A. Additional License rights for NT, Windows 3.11 and Windows 95

Explanation: These are rights we currently have and use under the Windows 3.11 agreement.

Solution: Add the Windows 3.11 Additional License language to WDF Exhibit.

Additional Provisions:

12. "Key" in royalty grid indicates certain additional provisions only apply to certain Product(s).

Solution:

1. Verify accuracy of "key".
2. Modify italicized note to read "(Note: The following applicable Additional Provisions apply only to those licensed Product(s) with which they are identified. Section lettering may not be consecutive.)"

13. Some Additional Provisions duplicate pre-existing language in Win 95 Exhibit C1; other language of C1 is not included.	CL	<p>Solution: Clarify whether this replaced the existing Exhibit C1 of Windows 95 contract.</p>
14. Recovery CD	S	<p>Explanation:</p> <ol style="list-style-type: none"> 1. Need to know how existing Recovery CD Attachments applies (Windows 3.11 and NT) 2. Need clarification of Recovery CD issues and exceptions for limitations contained in attachments. 3. More flexibility in distribution of Recovery CD to end users without CD Rom based machines (docking stations). <p>Issue: (a) limits IBM's ability to ship Windows 3.11 and Windows 95 on same Customer System</p> <p>Solution: Must retain freedom to offer multiple OSs & only pay one royalty Per MS (Baber/Norris call on 4/18), they will allow us to continue Dual Install. Need language to clarify rights, volume counting and royalty. Flashpoint needs right through 2Q97. Only applies to certain CDT machine types.</p> <p>Solution: Change last sentence to read "...use, or authorize the use of the tangible forms of..."</p> <p>Explanation: Clarification due to "Product Release" definition.</p> <p>Solution: Ensure that we have rights to continue using our EULA for other Products (i.e. Win 3.11).</p> <p>Issue: Will impact OEM offerings. Windows 3.11 agreement has "Eligible Third Party" provisions. NT/PPC Amendment allows for sublicensing.</p> <p>Solution:</p> <p>Issue: Select-A-System impacted. Need to be able to drop in box (not pre-install)</p> <p>Explanation: Requires compliance with an OPK for Windows 3.11, unlike current Win 3.11 agreement. MS can use the OPK to place added restrictions on our ability to modify the code or</p>
15. (a) Dual Install	S	
15-A. (b)(3) and (c) (2) Limitations on use of diskette images.	S	
16. (b)(4) Windows 95 is a "Product Release".	CL	
17. (b)(5) Must use MS EULA for Windows 95.	CL	
18. (c)(1) License only for IBM or IBM Subsidiary logood systems.	S	
19. (c)(2) Product must be installed as default OS.	S	

accomplish SAS. OPK and tools have specific use restrictions.

Solution: Strike this provision

20. (c)(3) Monthly volume commitment. S

Issue:

1. Current language says that we cannot consolidate per system and per copy volumes
2. Discrepancy in the timing of this section - what happens at 5th and 3rd missed months.
3. 20% increase too high based on the volume/price grids.
4. Partial month (at start up).
5. Added language "commencing with monthly reporting period following such three consecutive months" to clarify that rate is not retroactive.

Solution:

1. Line 2: change "or" to "and".
2. Rewrite section to reflect that royalty increase is effective after 5th month of missed volumes.
3. Change increase from 20% to ____%.
4. Language to exclude partial month from volume commitment.
5. Check with Norris/Walsh on intent.

21. (c)(4) Shipments of Products # 2-5 in grid do not count toward monthly volume commitment. S

Solution: Change grid as #2 above with all Product shipment counting toward monthly volume commitment.

22. (c)(5) Effective Date S

Explanation: Agreement is effective later of Effective Date or 7/1/96. Per MS, the intent was to tie Effective Date to NT 4.0 GA.

Solution: If NT 4.0 GA slips, Effective Date should also slip.

23. (c)(6) Typo CL

Solution: Change "Windows System Family" to "Windows Desktop Family".

24. (c)(7) Dual Install S

Issue: Same as 14 above.

25. (c)(9) Product documentation S

Issue: Must ship docs with Product. Currently not obligated to do this for Windows 3.11 and NT. Typo in line 2. Product documentation should be limited to end user manuals and not include APM and marketing materials.

26. (e) PRC versions CL

Issue: What does IBM ship into PRC? Do we ship machines built in PRC (IIPC) out of PRC? Special labeling is required.

DDR-LICENSE.DOC

27. (X1) Multi-language installation.	S	<p>Issue:</p> <ol style="list-style-type: none"> 1. Indemnification is too broad. 2. Is Recovery CD an issue? <p>Solution: Change indemnification to equate with agreed to Dual Install language. IBM hereby indemnifies and defends MS from and against all damages, costs and attorney's fees arising from claims or demands awarded against MS (or settlements to which IBM consents) to the extent such are based on any advertisements or other representations by IBM that the end user is entitled to multiple language versions of the MS OS or that such advertisements or other representations are otherwise false and/or misleading with respect to the end user's right to multiple language versions, provided IBM is notified promptly in writing of the claim and has sole control over its defense and settlement and MS provides reasonable assistance in the defense of same."</p>
28. (Xc) Multi-language royalty reporting.	M	<p>Explanation:</p> <ol style="list-style-type: none"> 1. Requirement to indicate number of systems with each combination of language versions of Product. 2. Highest language royalty shall apply. <p>Solution: 1. Check with Sal to ensure this is not an issue.</p>
29. (gX1) License extends to NT 4.0 Workstation	S	<p>Explanation: Per MS, royalty will remain the same. Needs to be clarified in contract.</p> <p>Solution: See grid in # 2 above.</p>
30. NT for PPC and Server.	CL	<p>Issue: Need rights to NT 4.0 on PPC and Server.</p>
31. (gX3) Clarification.	CL	<p>Solution: Add "hereunder" after "licensed".</p>
32. (gX4) Causes our NT license to expire.	S	<p>Issue: Must be limited to Intel-based NT only, and PPC terms must remain.</p> <p>Solution: Add language to limit license expiration to NT for Intel-based systems only.</p>
33. (gX5) Royalty applies to systems with 2 or fewer microprocessors.	S	<p>Explanation: Multiplier for 3 - 4 microprocessors is 1.8. No license for systems with more than 4 microprocessors.</p> <p>Solution: (1) Clearly define multi processors as excluding math, graphics or other specialized co-</p>

processors (2) Language should obligate IBM to pay for systems which we distribute with the multi processors. (We cannot police whether a customer has made an upgrade or restrict their right to upgrade by way of licensing)

What does this section mean? WW and Windows 3.11 royalties are the same?

CL

Customer Systems:

34. Customer System definition

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Explanation: Language is different from Windows 95 Exhibit and definition of Customer System differs from definition in base agreement.

1. The way this is drafted it will impact EIAA. They've added a "HDD or CD ROM" requirement to the definition and removed "the input/output device".
2. Why use "s" or "c" to denote per system or per copy? All systems not designated are per copy by default.
3. Need right to delete models from designation. Add "or deleted" after "Models may be added" in last line of 1st paragraph.
4. When do additions/deletions take effect?

Solution: Per MS, they will make this section identical to current Windows 95 Exhibit C1.

35. EIAA

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Explanation: Requires model number be on customer system case and packaging. It would be very difficult to accomplish this in the EIAA program.

Solution: Delete requirement in 1st paragraph or negotiate for exception for EIAA systems.

36. Recs & Warranty at bottom of page 5

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Explanation: EIAA issue.

Solution: Delete.

Attachment 2:

37. (e) What is "Market Development and Support Agreement"?

CL

Answer: Per MS, another version of MDA (for smaller OEMs).

38. (c) Current Windows 95 MDA & "MDA-95 Discount"

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Explanation: This section is incorrect. We earned our discount from the beginning of the MDA.

- Solution:** Delete this paragraph and define "MDA-95 Discount" in paragraph (a)
- Explanation:** This modifies the term of the existing MDA-95 Discount. Implies obligation to continue milestones.
- Solution:** Change to read: "The MDA-95 Discount shall terminate upon the termination of the license Agreement." or delete in its entirety.
- Explanation:**
 - (1) MDA-95 Discounts also apply to Per Copy royalty rates. This implies that MDA-05 Discount only applies to existing Exhibit C through 6/30/96. New rates start thereafter.
 - (2) When Windows Desktop Family Exhibit takes effect, we will get the \$14.50 discount until 1/1/97. (Effect is higher royalty.)
 - (3) Again this caps our Windows 95 MDA to 12/31 and modifies the existing contract.
- Solution:**
 - (1) Add language in (3)(1) to indicate that MDA-95 Discount applies to Per Copy royalties.
 - (3) Delete "on December 31, 1996 in paragraph (c)(3).
- Explanation:** MDA-96 Discount should be effective on 7/1 or effective date of this Amendment. That would be an incentive for IBM to sign this Amendment by 7/1. Full MDA discount should start 7/1 and adjustment (if any) should take place on 1/1/97.
- Solution:** Have MDA start on 7/1 and readjust discount at 12/31/96. Add language in Attachment for MDA-96 Discount to start on 7/1/96 or the effective date of this Amendment.
- Explanation:** Current MDA expires when the license agreement expires. This implies that if we do not sign the Windows Desktop Family amendment, they will not extend the current MDA even if our license is extended. This conflicts with terms of current MDA.
- Solution:** Delete (f). If we're going to address termination of MDA-95, do it in paragraph (g).

39. (d) MDA-95 Discount effective period S

40. (e) MDA-95 Discount S

40-A. MDA-96 Effective Date S

41. (f) Current Windows 95 MDA expiration S

Current Windows 3.11 terms:

42. Need existing Windows 3.11 terms.

1. Limited liability for third party installers (6d of Windows 3.11; 2i of Windows 95)

2. Right to authorize resellers to install but, in the case of per copy code, MS approval is needed (which won't be unreasonably withheld - Windows 3.11 2av)
3. Unlimited, royalty free demonstration/training licenses (3d of Windows 3.11; 3c of Windows 95)
4. 10,000 royalty free internal use licenses (3d of Windows 3.11)
5. IBM EULA terms (2aiii of Windows 3.11)
 - no additional license copy rights (2av)
 - MS limits end user right to transfer copies
6. Now obliged to include documentation/APM with the Products. Cost-77? Stream payments are separate (not included in financial analysis). Also, some customers don't want documentation. All products require COA today.
7. Product need not be preinstalled or included in the Customer System package (6a of Windows 3.11).
8. Royalty exclusions in Windows 3.11 3d are far broader, e.g. demo/training copies for resellers, defective in manufacture, materials, reproduction or a defect in the Customer System, certified destruction of code; documentation only.
9. MS warranty and support terms:
 - MS will use reasonable efforts to correct deviations from Specifications (4c) and would also correct reported defects per Severity Levels 94g) during first 120 days
 - MS provided us a most favored customer support warranty under Windows 3.11 (4b)
 - source code license (Exhibit S1) includes a right to redistribute bugs/fixes in OS
 - no right to source code if MS fails to fix bugs (2d of Windows 3.11). Very limited rights to modify select SDK files
 - no standard for support imposed on IBM.
10. Recovery CD terms would be restrictive if applied to Windows 3.11 or Windows NT.
11. 12(d) patent immunity provisions will apply to all products (potential issues with Windows NT). IPL (Terry Ilandi) is examining impact.
12. Required to identify machine type/model of Designated Systems

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- 13. PPC terms.
 - access to source
 - sublicensing

Ability to put bug fixes on OPK and
Interact (and distribute) S

Need right to immediately ship bug
fixes that MS introduces.

Ability to customize main screen for ICON S
movement (without putting a complete
shell over it).

Strategy is to grandfather the important things and phase them out over time.

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