

From: Kellee McCusker [kelleem]
Sent: Thursday, October 28, 1993 6:42 PM
To: Charlotte Guyman; John Williams (APPS); Mike Metzger; Patty Stonesifer; Tom Reeve
Subject: Dell MFN Clause

I just sent a previous mail announcing that Dell has signed a \$1M worldwide agreement for our products with the great details. I wanted to send a follow-up email on the agreed upon MFN language. **Privilege Material**

Redacted We can raise royalties at new releases and we have an incredible amount of flexibility. If Dell wanted to match the exact same terms of another OEM, they could, but they are very scared of high min commits and IBM is currently at \$2.8M. PBell is at \$4M and will likely go up. I feel very comfortable with this language

Privilege Material **Redacted**

So, for your information, below is a summary sheet the account manager filled out which highlights the key changes in the contract and what ms benefited from – plus the exact mfn language from the contract. Please let me know if you have any questions. Thanks. --Kellee



C mplete MFN Language below: (direct from contract)

(h) MS will make available to COMPANY other MS Consumer Applications products not then currently available to COMPANY, and which are made available to other OEM customers (other than products licensed exclusively through a single OEM customer for a non-renewable period of time of twelve (12) months or less in one or more countries or geographic areas) from time to time under this Agreement upon terms and conditions which are as favorable to COMPANY as the terms and conditions granted by MS to other OEM customers for such products under similar conditions and circumstances. MS will not be obligated to disclose specific terms and conditions of agreements between MS and such other OEM customer(s) but shall be obligated to disclose the general level of terms, conditions and commitments applicable to such other customer(s) and agreement(s) for such other products.

(j) Upon request by COMPANY, MS will review with COMPANY the terms and conditions under which COMPANY could enjoy more favorable terms and conditions for Products than those herein. Such terms and conditions shall be as favorable as those granted to any other OEM customer(s), provided COMPANY agrees to substantially similar terms, conditions and levels of minimum commitment as are applicable under the agreement(s) between MS and such other OEM customer(s). MS will not be obligated to disclose specific terms and conditions of agreements between MS and such other OEM customer(s) but shall be obligated to disclose the general level of terms, conditions and commitments applicable to such other customer(s) and agreement(s) for Products. Any such request by COMPANY shall not be more often than semi-annually.

(k) Upon request by COMPANY, MS will review with COMPANY specific minimum commitment(s) for specific Product(s) which would enable COMPANY to enjoy terms and conditions more favorable than those herein. Such terms and conditions shall be as favorable as those granted to any other OEM customer(s), provided COMPANY agrees to substantially similar terms, conditions and levels of minimum commitment as are applicable under the agreement(s) between MS and such other OEM customer(s). MS will not be obligated to disclose specific terms and conditions of agreements between MS and such other OEM customer(s) but shall be obligated to disclose the general level of terms, conditions and commitments applicable to such other customer(s) and agreement(s) for Products. Any such request by COMPANY shall not be more often than semi-annually.

MS-PCA 2603177

HIGHLY
CONFIDENTIAL

Microsoft
License or Addendum Summary Sheet

Date	Account Manager
October 18, 1993	Carl Gulledge
OEM Company	Date of Agreement
DELL Computer	June 1, 1993
MS Product(s)	Agreement Number
MS Consumer Applications	2811-3168
Standard Agreement?	Commitment
Yes () No (X)	\$ 1M

Summary of Changes:

MS-PCA 2603178

**HIGHLY
CONFIDENTIAL**

This license was done separate from Dell's Applications Agreement because it introduces several new experimental concepts that MS may or may not want to live with long term. The term of the Agreement is fifteen months. The term was suppose to be one year but Dell felt it necessary to ask for a ramp period. As it turned out, the additional three months was consumed in the negotiation process where-in Dell continued to ship applications pervious licensed under 2811-2160 without an active Agreement. This license was designed with product management after spending many hour with Dell discovering their true needs and priorities. Following are list of "revolutionary" concepts never employed in a Dell Agreement prior.

1. Single commitment for a family of Products.
2. Product Release rights.
3. Limited Per System Definitions - minimum life of 30 days.

Other important concessions include:

1. PPB carryover for the Consumer Exhibits in 2811-2160.
2. Extended Term (1 year + 3 month ramp).
3. New MFN language.
4. Access to the Encarta product via the Sam's PC promotion.

In exchange for this MS received:

MS-PCA 2603179

**HIGHLY
CONFIDENTIAL**

1. A commitment to keep MS consumer apps as Dell's primary offering through the Consumer Channel and on their direct Multimedia systems.
2. A commitment for \$1M
3. A commitment to bundle the Home CD Sampler with all CD equipped systems that ship with a MS app.
4. LVA Reporting.
5. Reg cards.
6. Tighter MFN language.
7. Terms and conditions that are more favorable than those developed in 2811-2160.

MS-PCA 2603180

**HIGHLY
CONFIDENTIAL**

Non Standard Terms:

Section 1(h) - Definition of Associated Product Materials - Sentence added to end of paragraph agreeing to work with Dell on the such materials - permitting possible modification by Dell (at their expense) to such materials to accommodate peculiarities in their business model.

Section 2(a)(i) - Granting Dell Product-use rights so that they can properly support the product.

Section 2(b) - AR language terms.

1. Dell can have AR's make product mods where Dell is authorized to do so. (Generally they aren't)
2. MS to provide COMPANY with a copy of notices that go out to AR's that would be expected to affect Dell's business.
3. MS to not unreasonably withhold consent for AR's to manuf where ever they please.
4. Dell permitted to do their own replication if they are not able to get acceptable terms from all of MS' AR's.

Section 2(d) - COMPANY may alter docs but only with MS permission.

MS-PCA 2603181

**HIGHLY
CONFIDENTIAL**

Section 2(h) (j) (k) - New MFN language. This was developed in lieu of Dell's proposed language. MS believes that we substantially improved our position on this.

Dell's proposed language read as follows:

(h) MS will make available to COMPANY other MS products not then currently available to COMPANY from time to time under this Agreement upon terms and conditions which are as favorable to COMPANY as the terms and conditions granted by MS to other OEM customers for such products under similar conditions and circumstances. MS will review such terms, conditions and circumstances with COMPANY in good faith and in sufficient detail to allow an opportunity for reasonable decision making by COMPANY with respect to the licensing of such products by COMPANY. During the term of the Agreement, MS will not increase the royalty for a new Product Release above the royalty amount stated in the applicable Exhibit C for the Product to which the new Product Release relates. COMPANY shall receive equally favorable notice and promotion rights as granted and generally available to other OEM customers in any MS promotion or marketing campaign for any MS products licensed under this Agreement. MS shall make OEM Product Releases available to COMPANY at the same time it generally makes such Releases available to other OEM customers. MS shall notify COMPANY of the shipment of an OEM "Product Release" as soon as reasonable in advance of such shipment.

MS was concerned about the solid underline above. In the course of renegotiating this language Dell forfeited the terms underlined with dots above. The new language is very tight and should cause us no problems. If it does, we can simply let this entire Agreement expire in a year without consequence to any other MS-DELL License.

MS-PCA 2603182

**HIGHLY
CONFIDENTIAL**

Section 3(a) - MS agrees to assist Dell with an AR qualify problem when notified.

Section 3(e) - Dell is limited to 100 sample give-a-ways of each product. But there is no limit to the number shipped in installed on a system to a dealer if the system and the SW are clearly labeled as demo-only product.

Section 4(a)(iii) - MS to keep COMPANY informed of progress during correction efforts.

Section 4(b) - Language permitting COMPANY to replicate if not able to get acceptable warranties from MS' (exhaustive list) of AR's.

Section 4(d) - Escalation support granted to COMPANY as part of the SC program. As long as the SC program offers it at no charge, they will have it at no charge.

Section 5 - MS indemnifies COMPANY, subs, and resellers.

Section 5(e) - MS not to use COMPANY's trademarks or trade names.

Section 6(d)(ii) - COMPANY to ship with a system or sell doc as mail order fulfillment only.

MS-PCA 2603183

**HIGHLY
CONFIDENTIAL**

Section 6(f) - COMPANY required to put support phone number on Product package - VERY IMPORTANT.

Section 6(g) - MS agrees to let COMPANY remove the OEM field from the standard REG card.

Section 7(b) - Small classifiers made to this language. No major change to language.

Section 8 - COMPANY may assign this Agreement to any successor to all or substantially all of COMPANY's computer products business.

Section 9(a) - Agreement expires September 30, 1994.

Section 9(b) - MS permitting PPB carryover for Consumer Exhibits in Agreement 2811-2160.

Section 11(c) - Acceleration language limited to commit payments due at the end of calendar quarter.

Section 12 - Limits of Liability and Remedy - This section has been totally replaced with mutual declaration of liability limitation. **Privilege Material Redacted** While not the most ideal of terms, it is a big improvement over prior Dell Agreements.

Section 13 - Small changes made by Dell to convert this to mutual NDA language.

MS-PCA 2603184

**HIGHLY
CONFIDENTIAL**

Section 14(b) - Audit terms - Material to mean the greater of \$10K or 5%. Audits confined to a semi-annual frequency.

Section 14(d) - MS agrees to share audit findings by the third party auditor with COMPANY.

Section 15(a) - Controlling law in the state of Texas.

Section 16 - Cost recovery limited to attorneys' fees.

Exhibit A - Dell substituted in their own EULA as an example.

Exhibit C1 - Dell is licensed for WW distribution of all listed products with a royalty adder associated for Non-English versions.

Exhibit C1(b) - Dell permitted to add and remove their own system definitions. MS gets 5 days notice and rights to reject. Dell can add systems and expire them in as little as 30 days.

Exhibit C1(d) - Encarta-Works promotion expires on June 30, 1994.

Exhibit C1(f) - Dell agrees to include a MS Home CD Sampler with all system configured as a MM system and ship with a MS consumer application.

MS-PCA 2603185

**HIGHLY
CONFIDENTIAL**

ACCOUNT MANAGER Verify that all pages have been proofread X _____ Date: _____	LEGAL If necessary X _____ Date: _____
SALES MANAGER Approve all changes and business terms X _____ Date: _____	LICENSE ADMINISTRATOR Prepare for executive review X _____ Date: _____
DIRECTOR OF OEM X _____ Date: _____	To MS Executive for signature X _____ Date: _____

MS-PCA 2603186

**HIGHLY
CONFIDENTIAL**

<p>OEM Finance</p> <p>x _____ Date: _____</p>	
---	--

MS-PCA 2603187
HIGHLY
CONFIDENTIAL