

Windows Desktop Family Agreement

Description

Royalty Grid:

1. Royalty assumes Win 3.11 or WTW will ship with PC DOS (vs. MS DOS)

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 WTW individually at a lower royalty, but the volumes won't count toward monthly volume commitment.

Solution: 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 volumes commitment.

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

Solution: 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 (Version 3.51 and 4.X if and when available on x86/Pentium compatible platforms only)	127.00	147.75	12.00

Add MS DOS if needed.

3. What's in Enhanced Tools ship with MS DOS?

Explanation: They're always required with MS DOS.

4. Language version "EN" in royalty grid.

Solution: Change to "EN and all languages as made available by MS"

5. Royalties do not include MDA reductions.

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. Volume/price grid for lower/higher monthly volume commitment.
Need volume/price for lower than 250k/month.

Explanation:	Monthly Volume Commitment	Royalty
250k		\$62.50
500k		\$61.75

Subsections 2-5 (NTW, Windows 3.11, MS DOS, Enhanced Tools):

- 7. Were these intended to:
 - a. Discourage us from shipping Win 3.11 or WTW with PC DOS?
 - b. Modify the existing MS DOS license terms?
- 8. Volumes should count toward monthly volume commitments.

Solution: See # 11 below.

Solution: Structure grid as in # 2 above, with all volumes being aggregated toward monthly volume commitment.

9. NT Workstation (Intel version) royalties

Explanation: We received a volume/price grid for NT 3.51 from MS that had lower royalties at lower volumes.

Royalty Rate:	Annual Volume:	Annual \$ Amount:	Initial Payment Amount:	Term
\$105	50,000	\$ 5,250,000	\$ 250,000	1 year
\$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:

10. Existing Windows 3.11 contract

Issue: Is current Windows 3.11 contract superseded and are we no longer eligible for its terms or royalties. When do new terms/royalties for Windows 3.11 begin? Marty awaiting response from Peter Miller.

Solution:

11. Only superseded/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. All other agreements between the parties not expressly referenced and amended hereby shall remain in full force and effect and unmodified." (See 18J 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 superseded.

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.

Solution: Clarify whether this replaced the existing Exhibit C1 of Windows 95 contract.

14. Recovery CD

Explanation:

1. Need to know how existing Recovery CD Attachment applies (Windows 3.11 and NT)
2. Need clarification of Recovery CD issues and exceptions for limitations contained in attachment.

15. (a) Dual Install

Issue: (a) limits IBM's ability to ship Windows 3.11 and Windows 95 on same Customer System.

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. May agree to limit right to machines manufactured through IH97. Only applies to certain CDT machine types.

16. (b)(4) Windows 95 is a "Product Release".

Explanation: Clarification due to "Product Release" definition.

17. (b)(5) Must use MS EULA for Windows 95.

Solution: Ensure that we have rights to continue using our EULA for other Products (i.e. Win 3.11).

18. (c)(1) License only for IBM or IBM Subsidiary logood systems.

Issue: Will impact OEM offerings. Windows 3.11 agreement has "Eligible Third Party" provisions. NT/PPC Amendment allows for sublicensing.

Solution:

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19. (c)(2) Product must be installed as default OS.

Issue: Select-A-System

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 accomplish SAS. OPK and tools have specific use restrictions.

Solution: Strike this provision.

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

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.

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

22. (c)(5) Effective Date

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

Solution: If NT 4.0 GA ships, Effective Date should also ship

23. (c)(6) Typo

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

24. (c)(7) Dual Install

Issue: Same as 14 above.

25. (c)(9) Product documentation

Issue: Must ship docs with Product. Currently not obligated to do this for Windows 3.11 an NT. Typo in line 2.

26. (c) PRC versions
 Issue: What does IBM ship into PRC? Special labeling is required.
 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."

27. (X1) Multi-language installation
 Issue: Indemnification is too broad.
 Solution: 1. Indemnification is too broad.
 2. Is Recovery CD an issue?
 Explanation: Requirement to indicate number of systems with each combination of language versions of Product.
 Solution: 1. Check with Sal to ensure this is not an issue.
 2. Highest language royalty shall apply.

28. (Xc) Multi-language royalty reporting
 Issue: Multi-language royalty reporting.
 Solution: 1. Requirement to indicate number of systems with each combination of language versions of Product.
 2. Highest language royalty shall apply.

29. (gX1) License extends to NT 4.0 Workstation
 Issue: License extends to NT 4.0 Workstation
 Solution: Per MS, royalty will remain the same. Needs to be clarified in contract

30. NT for PPC
 Issue: Need rights to NT 4.0 on PPC
 Solution: See grid in # 2 above.

31. (gX3) Clarification
 Issue: Add "hereunder" after "licensed".
 Solution: Add "hereunder" after "licensed".

32. (gX4) Causes our NT license to expire
 Issue: Must be limited to Intel-based NT only, and PPC terms must remain.
 Solution: Add language to limit license expiration to NT for Intel-based systems only.

33. (gX5) Royalty applies to systems with 2 or fewer microprocessors.
 Issue: Royalty applies to systems with 2 or fewer microprocessors.
 Solution: Multiplier for 3 - 4 microprocessors is 1.8. No license for systems with more than 4 microprocessors.

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Solution: Clearly define multi processors as excluding math, graphics or other specialized co-processors. Language should only 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.)

Customer Systems:

34. Customer System definition

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

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.

Solution: Delete.

36. Reps & Warranty at bottom of page 5

Attachment 2:

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

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

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

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)

MS-PCA 7209626

39. (d) MDA-95 Discount

Explanation: This modifies the term of the existing MDA-95 Discount.

Solution: Change to read: "The MDA-95 Discount shall terminate upon the termination of the license Agreement" or delete in its entirety.

40. (e) MDA-95 Discount

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 (3X1) to indicate that MDA-95 Discount applies to Per Copy royalties.
- (3) Delete "on December 31, 1996 in paragraph (eX3).

41. (f) Current Windows 95 MDA expiration

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)

Current Windows 3.11 terms:

42. If Windows 3.11 terms no longer apply, we lose:

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)

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- MS limits end user right to transfer copies
- 6. Now obliged to include documentation/APM with the Products. Cost-777 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 (4h).
 - source code license (Exhibit S1) includes a right to redistribute bug/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 indemnity provisions will apply to all products (potential issues with Windows NT). IPL (Terry Harati) is examining impact.
- 12. Required to identify machine type/model of Designated Systems.
- 13. PPC terms:
 - access to source
 - sublicensing

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