

**IBM Agreements – Finance Quick Reference Guide**

MS-DOS                    A-SW-047(IBM)                    M001-MISC(MS) Expires 9/17/93

- Perpetual rights to object and source code of MS-DOS basic releases (excludes the Enhanced Tools) through 9/16/93, plus all MS-DOS (basic) code in the development build as of 9/16/93.
- License is based on flat fees. No per copy royalties or reporting except in certain circumstances. Flat fees billed on delivery. --- Version fee is \$500k; fee per language is \$75k. (Amend #9,5(e)(vi))
- Gives IBM broad rights to create derivative works based on the source code and to distribute and license object code. However, IBM may not license the source code.
- Annual audit done by IBM's outside auditors at MS's request, expenses to be split.

Windows                    S-SW-0005(IBM)                    M001-0319(MS)                    Expires 9/17/93

- License rights are similar to the MS-DOS license. IBM receives all Windows releases through 9/16/93 plus all Windows code in the development build as of 9/16/93.
- Royalties are stated as a percentage of Local SRP for four distribution types (Amend#3, 9.22):

Educational	3.5% MS Local SRP
Per Copy	13.33% MS Local SRP
Soft Bundle (ordered with system)	9% MS Local SRP
Per System	6% MS Local SRP

- "Local SRP" for foreign language versions is based on SRP in the "Home Country" (e.g., France for the French version).
- Upgrades are calculated similarly on MS Local SRP for the Upgrade unless the above price is lower.
- Reports and payment are due 90 days after qtr-end (9.3).
- Additional royalty of 20% of Local SRP is owed for copies initially used on non-IBM machines, determined annually based on reg cards, royalty reports, and an AL (Additional License) Survey, to be paid 3 mos. after the end of each survey period (Amend #3, 9.24).
- Annual audit done by mutually agreed upon outside auditor at MS's request, expenses to be split (9.12).
- Issue: Reporting and administration of this license is very difficult because of local SRP pricing.

OS/2                    A-MS-424(IBM)                    M001-IL4(MS)                    Expires 9/17/93

- Key doc for OS/2 2.0 is Phase II Doc 4. Section 5 (pmt/reporting) is replaced in Amendment #3.
- Royalties are paid to MS for OS/2 releases containing "WABCC" (Windows Application Binary Compatibility Capability), which is code licensed under the above Windows agreement that enables Windows Apps to run under OS/2.
- Royalties (Amend #3, 5.2.1):

OS/2 2.x with WABCC on IBM System (/copy)	\$15
OS/2 2.x with WABCC on non-IBM System (/copy)	\$22.50
Translated versions	20% uplift
Upgrade OS/2 1.X to 2.X based on Win 3.0 code	\$11.25 (75%)
Upgrade OS/2 2.0 to 2.X based on Win 3.0 code	\$7.50
OS/2 code without WABCC	\$2.00

- No royalties due for documentation, backup, replacement, complimentary, internal, or demo copies, or Toolkit. (5.2.7)
- Non-IBM sales are determined the same way as under the Windows license (5.2) and the delta per machine (i.e., \$7.50) is paid annually.
- Non-logged IBM-manufactured systems are treated as "IBM Systems" up to a cap of 200k units/year.
- Payments are due 120 days after the calendar quarter(5.1.1.a).
- Audit Rights: Independent Public Accountant "reasonably acceptable" to the other party can verify accuracy of reporting. Expense paid by party requesting the audit. Disclosure of conclusions only. Can audit up to 2x/year (5.1.1.g).

Other Licenses

- IBM also holds retail licenses permitting purchase of FG Windows at 30% off SRP and certain applications at 53% off SRP as well as OEM licenses for Works, LAN Manager, and other products.

*For reference only. Attorney-Client Privileged.*

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