

SIGNED ORIGINAL

COMPANY Name:  
MS Agreement Number:  
Effective Date:  
Expiration Date:

GATEWAY, INC.  
5126990006  
February 1, 2001  
January 31, 2002

**MICROSOFT DESKTOP OPERATING SYSTEM LICENSE AGREEMENT FOR OEM CUSTOMERS**  
(For Large Accounts)

This License Agreement ("License Agreement") is made and entered into as of the Effective Date set forth above ("License Effective Date"), by and between MICROSOFT LICENSING, INC. ("MS"), and the company specified above ("COMPANY"). This License Agreement includes:

This Signature Page,  
Shipping and Billing Address Schedule,  
Terms and Conditions, and  
Product Schedule(s).

**NOTICE**

This is a Microsoft Per System License. As a Customer, you may create a "New System" at any time that does not require the payment of a royalty to Microsoft unless the Customer and Microsoft agree to add it to the License Agreement. Any New System created may be identical in every respect to a system as to which the Customer pays a Per System royalty to Microsoft provided that the New System has a unique model number or model name for internal and external identification purposes which distinguishes it from any system the Customer sells that is included in a Per System License. The requirement of external identification may be satisfied by placement of the unique model name or model number on the machine and its container (if any), without more.

If the Customer does not intend to include a Microsoft operating system product with a New System, the Customer does not need to notify Microsoft at any time of the creation, use or sale of any such New System, nor does it need to take any particular steps to market or advertise the New System.

Under Microsoft's License Agreement, there is no charge or penalty if a Customer chooses at any time to create a New System incorporating a non-Microsoft operating system. If the Customer intends to include a Microsoft operating system product with the New System, the Customer must so notify Microsoft, after which the parties may enter into arm's length negotiation with respect to a license to apply to the New System.

By signing below, each party acknowledges that it has read and understood, and will act in accordance with, all of the terms set forth in the attached documents.

**MICROSOFT LICENSING, INC.**  
A company organized under the laws of  
State of Nevada, U.S.A.

**GATEWAY, INC.**  
A company organized under the laws of  
Delaware, U.S.A.

By:

  
(signature)

By:

  
(signature)

Name:

Karen Benoit  
(printed)

Name:

Dave Russell  
(printed)

Title:

OEM Operations Analyst  
(printed)

Title:

Sr. Vice President SEM  
(printed)

Date:

4-3-01  
(printed)

Date:

March 22, 2001  
(printed)

**CONFIDENTIAL**

Microsoft Desktop Operating System License Agreement for OEM Customers, #5126990006-2 dated February 1, 2001, between MICROSOFT LICENSING, INC. and GATEWAY INC

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Plaintiff's Exhibit

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Comes V. Microsoft

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(l) Unless otherwise noted in an Additional Provision applicable to the Product, COMPANY may pre-populate a product identification number or "PID" on behalf of the end user provided that such PID matches the unique number provided by MS to COMPANY for COMPANY's preinstallation of the Product.

(m) COMPANY's license to distribute the Product is limited to distribution (directly or indirectly through its channels of distribution) and sublicense of the Product by COMPANY to end users for use pursuant to the EULA for each Product.

(n) COMPANY may install and distribute the Product on Customer Systems that are rented or leased to end users ("Lessee"), provided the conditions listed below are and remain satisfied.

(i) COMPANY shall enter into a written lease agreement with a Lessee for Customer Systems distributed with the Product ("Lease"). The term of each Lease shall be no less than twelve (12) nor longer than sixty (60) consecutive months. COMPANY shall have the right to re-lease each Customer System.

(ii) The Lease shall provide that at the expiration or termination of the Lease the Lessee shall purchase or return the Customer System (together with all copies of Product, any APM and Product CD-ROM, diskettes or other media) to COMPANY or the third party which administers COMPANY's leasing program.

(iii) If COMPANY wishes to re-lease or sell a previously leased Customer System or transfer ownership of a leased Customer System to a Lessee, COMPANY may re-lease, sell or transfer such Customer System with copies of the Product, COA, APM and related materials originally included with such Customer System for no additional royalty to MS. Alternatively, COMPANY may reinstall the Customer System with a later release of the Product or alternate Product, subject to the royalty obligations and terms set forth in this License Agreement. If COMPANY elects to install a later release or alternative Product, COMPANY shall destroy and keep records of the destruction of the external media, APM and related materials for the Product originally included with such Customer System.

(iv) Upon termination of this License Agreement, COMPANY shall have the right to allow each Lessee to continue to use the Product for the remaining period of its then-current Lease. Section (iii) of this subsection shall survive termination or expiration of this License Agreement.

(o) For Windows 98 and Windows NT Workstation Product leased in accordance with Section 2(n), COMPANY shall ensure that each copy of Product which is distributed with a leased or rented system is distributed with the applicable EULA modified or supplemented consistent with the Leased Product EULA Addendum contained in the OEM Resource Guide.

(p) COMPANY may grant to COMPANY Subsidiaries the limited rights granted to COMPANY in Section 2, as well as any rights MS may grant to COMPANY for Products licensed herein under a Supplement notice during the term hereof, subject to all the terms and conditions set forth in this License Agreement.

### **3. ROYALTIES AND INITIAL PAYMENTS**

(a) Some or all of the Products are marked in the Product Table(s) to indicate they are licensed on a "per system" basis. Accordingly, for those Products COMPANY shall pay the royalty rate listed in the Product Schedule(s) for each licensed Customer System distributed during the term of this License Agreement. COMPANY shall pay royalties for Products licensed on a "per copy" basis for each unit of Product distributed with a Customer System. No royalty shall be due for replacement media distributed pursuant to Section 2(b) or copies of Product reproduced for testing pursuant to Section 2(c). Royalty rates are based on the estimated monthly volume provided by COMPANY for each Product. COMPANY represents that it has provided a good faith estimated monthly volume for each Product to MS.

(b) Unless otherwise specified in the Product Schedule for the Product, the Billing Type for Products identified in the Product Schedule as Type II or OEM Report based billing will change to Shipment based billing (Type I) on July 1, 2001. Not later than July 31, 2001, COMPANY shall provide an inventory report to MS, in the format provided by MS, indicating all COAs for the Product received by COMPANY from an AR but which have not been distributed and reported by COMPANY. The foregoing shall be subject to the COA and return process set forth in Section 3(g) of the LTD. COMPANY shall pay the applicable royalty for each COA no later than August 31, 2001. Late payment shall be subject to the Section 3(h) of the LTD. Any changes to these dates will be made by notifying COMPANY in writing at least 90 (ninety) days prior to the change to Shipment-based billing, notification not to come before May 1, 2001.

(c) The initial payment amount ("Initial Payment Amount") for Product(s) licensed under this License Agreement is \$0 (Zero Dollars). COMPANY shall pay MS the Initial Payment Amount within forty-five (45) days of MS' invoice. Provided COMPANY has complied with all material terms and conditions of this License Agreement the Initial Payment Amount will be refunded to COMPANY within forty-five (45) days of COMPANY's final royalty report under the License Agreement, after deduction, by setoff or otherwise, of any amounts or obligations due to MS. COMPANY may not recoup the Initial Payment Amount against royalties due to MS or payments made to any Authorized Replicator.

### **4. LICENSE TERM**

The term of this License Agreement shall run from the License Effective Date until January 31, 2002.

### **5. ENTIRE AGREEMENT**

Upon execution by both parties, this License Agreement together with the LTD as incorporated herein shall constitute the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications.

### **CONFIDENTIAL**

Microsoft Desktop Operating System License Agreement for OEM Customers, #3126990006-2 dated February 1, 2001, between MICROSOFT LICENSING, INC. and GATEWAY INC

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COMPANY's seal or "chop"

**NOTICE:** This is an OEM distribution license. Product can only be distributed with a Customer System, as specified in the attached Terms and Conditions and the Product Schedule(s) herein.

**CONFIDENTIAL**

Microsoft Desktop Operating System License Agreement for OEM Customers, #5126990006-2 dated February 1, 2001, between  
MICROSOFT LICENSING, INC. and GATEWAY INC

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**SHIPPING AND BILLING ADDRESS SCHEDULE**

**COMPANY "Ship To" Address(es):**

**COMPANY Billing Address:**

Gateway, Inc.  
610 Gateway Drive MD Y-09  
North Sioux City, SD 57049-2000  
Attn: Penny L. Nash  
Title: Sr. Business Manager Supply Chain Management  
Phone Number: 605-232-2566  
Fax Number: 605-232-2462  
Email Address (required): [penny.nash@gateway.com](mailto:penny.nash@gateway.com)

And To:  
Gateway, Inc.  
26110 Enterprise Way  
Lake Forest, CA 92630  
Attn: Cameron Spears  
Title: Sf. Manager Operating Systems  
Phone Number: 949-454-3207  
Fax Number: 949-454-3217  
Email Address: [cameron.spears@gateway.com](mailto:cameron.spears@gateway.com)

And To:  
Gateway, Inc.  
610 Gateway Drive  
North Sioux City, SD 57049-2000  
Attn: Jim Marshall  
Title: Chief Engineer Mfg. Operations  
Phone Number: 605-232-2810  
Fax Number: 605-232-  
Email Address:

And To:  
Gateway, Ireland Ltd.  
Clonsaugh Industrial Estate  
Dublin 17 Ireland  
Attn: John Bretler  
Phone Number: 011-353-1-797-7613  
Fax Number: 011-353-1-797-7700  
Email: [john.bretler@gateway.com](mailto:john.bretler@gateway.com)

And To:  
Gateway (M) Sdn Bhd  
No. 1 Jalan TTC 32  
Taman Technology Cheng  
Cheng, 75250 Melaka Malaysia  
Attn: Chee Ming Lee  
Title: Section Head, Integration Services  
Phone Number: 011-606-334-2412  
Fax Number: 011-606-334-5017  
Email: [leeche@gateway.com](mailto:leeche@gateway.com)

Any To:  
Gateway Japan Inc.  
Yokohama Business Park Hi-Tech Center  
134 Goudo-cho, Hodogaya-ku  
Yokohama, Kanagawa 240-8520 Japan  
Attn: Mitsuhiro Matsutani  
Phone Number: 011-81-45-338-2079  
Fax Number: 011-81-45-338-2141  
Email: [mitsuhiro.matsutani@gateway.com](mailto:mitsuhiro.matsutani@gateway.com)

Gateway, Inc.  
610 Gateway Drive MD Y-09  
North Sioux City, SD 57049-2000  
Attn: Mary Kay Ferry  
Title: Sr. Manager Manufacturing Finance  
Phone Number: 605-232-2000 x27617  
Fax Number: 605-232-2515  
Email Address (required): [mary.ferry@gateway.com](mailto:mary.ferry@gateway.com)

Copy To:  
Gateway, Inc.  
610 Gateway Drive MD Y-09  
North Sioux City, SD 57049-2000  
Attn: Penny L. Nash  
Title: Sr. Business Manager Supply Chain Management  
Phone: 605-232-2566  
Fax: 605-232-2462  
Email: [penny.nash@gateway.com](mailto:penny.nash@gateway.com)

Or to such other COMPANY and/or COMPANY Subsidiary address(es) as COMPANY may specify in writing from time to time.

Or to such other COMPANY address(es) as COMPANY may specify in writing from time to time

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Microsoft Desktop Operating System License Agreement for OEM Customers, #5126990006-2 dated February 1, 2001, between MICROSOFT LICENSING, INC. and GATEWAY INC

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## TERMS AND CONDITIONS

### 1. INCORPORATION OF BUSINESS TERMS DOCUMENT.

This License Agreement hereby incorporates by reference all of the terms of the Microsoft Business Terms Document for OEM Customers ("BTD") dated November 1, 2000, Number 5123340021 between MS and COMPANY, as may be revised from time to time during the term of this License Agreement by agreement of the parties. In the event of any inconsistencies between this License Agreement and the BTD, the terms of this License Agreement shall control.

### 2. LICENSE GRANT.

(a) Subject to limitations in this License Agreement, including the License Grant Limitations set forth in Section 2 of the BTD, MS grants to COMPANY a non-exclusive, limited license to:

- (i) preinstall the Product software on a Customer System;
- (ii) if COMPANY elects to provide a hard disk recovery system, replicate the preinstalled image of the Product software on the Customer System hard disk in accordance with the specifications provided in the OEM Resource Guide and the Installation Kit; and
- (iii) distribute and sublicense to end users pursuant to the EULA for each Product the following:
  - \*1) the preinstalled Product software (as described in Section 2(a)(i)),
  - 2) one copy of the Product software for recovery purposes in accordance with the specifications for recovery media in the OEM Resource Guide; and
  - 3) one COA and one APM;

in each case, only with those Customer System(s) identified on the Customer System table as licensed for the particular Product(s) and only inside the Customer System package(s).

(b) COMPANY may provide an end user with media to replace lost or damaged media provided such media utilizes a system lock as approved by MS and such end user's Customer System was originally shipped with the same licensed version and release of Product. Such media shall be distributed to end users only by way of an MS Authorized Fulfillment Center or by COMPANY. A list of current MS Authorized Fulfillment Centers is provided in the OEM Resource Guide.

(c) COMPANY may reproduce up to five-hundred (500) copies of each Product software to be used solely in connection with each of the following: A) COMPANY's internal testing of its Customer Systems, B) the demonstration of Customer Systems to prospective customers so long as such Customer Systems are clearly marked "FOR DEMONSTRATION PURPOSES ONLY", or C) use by COMPANY for sales or technical support. COMPANY may also reproduce up to five-hundred (500) copies of Windows 2000 Professional solely for use by the Gateway Country Business Sales Representatives ("BSR's").

(d) Where the COA is provided in a label format COMPANY shall permanently affix the COA in a readily visible location to the outside front, side or back of the Customer System (or bottom, if the Customer System is a laptop) at the time of manufacture. COMPANY shall distribute one copy of preinstalled Product software, one COA, and one APM with each unit of Product distributed. COMPANY shall not make the COA or APM available through any other means or channel.

(e) COMPANY's license shall extend to new Supplements following the Product release listed in this License Agreement. At the time of release of a Supplement (or thereafter) MS may grant to COMPANY one or more non-exclusive, limited additional rights in a written notice. Except for mandatory Supplements which may require COMPANY to replace any or all of the Product software, the terms and conditions for licensing a new Supplement shall not limit COMPANY's then current rights under the applicable License Agreement. If COMPANY elects to exercise any such additional rights, COMPANY shall comply with all terms and conditions specified for such additional rights in the notice. Distribution of a Supplement by COMPANY shall constitute COMPANY's acceptance of such terms and conditions. Notwithstanding the terms and conditions of this Section (e), COMPANY may with the consent of MS, which consent shall not be unreasonably withheld, add drivers or other utilities to a Product. A failure by MS to respond within five (5) business days of receipt of a written request regarding such changes shall be deemed consent to such request.

(f) COMPANY shall preinstall the Product software solely in accordance with, and make no changes or deletions unless expressly permitted in this License Agreement or in, the installation instructions set forth in the Installation Kit. COMPANY may use the information, tools and materials contained in the Installation Kit solely to preinstall the Product software in accordance with the Installation Kit and for no other purpose.

(g) COMPANY's license rights shall be worldwide.

(h) Upon request from end customer, COMPANY may distribute more than one (1) Windows operating system with the same Customer System licensed hereunder. COMPANY shall pay MS the royalty rate indicated in the Product Table above for each such Customer System distributed with such Product(s).

(i) Unless otherwise specifically permitted by an Additional Provision applicable to the Product, COMPANY may distribute only one unit of Product in one language and release for use with each Customer System. COMPANY may choose any language for which it is licensed.

(j) COMPANY shall comply with the additional provisions listed in the Product Schedule(s) with respect to the Product(s).

(k) COMPANY may supplement but shall not modify or translate Product end user documentation. Notwithstanding anything to the contrary in Section 1(a) of the Business Terms Document, COMPANY shall not remove or modify the package contents of APM.

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Microsoft Desktop Operating System License Agreement for OEM Customers, #5126990006-2 dated February 1, 2001, between MICROSOFT LICENSING, INC. and GATEWAY INC

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**PRODUCT SCHEDULE - WINDOWS DESKTOP FAMILIES**

**PRODUCT TABLES**

Product Number	Product Name And Version*	Language Versions**	Applicable Additional Provisions	Royalty** *	Basis	Estimated Monthly Volume	Billing Type***
13229	Microsoft® Windows® Home and Consumer Family		(17), (530)	US\$70.25	Per System	425,000	
	Microsoft® Windows® 98 (Second Edition)	EN, ES, FR, DE, DA, JA, YL, XC, RU, SV, IT, XT, AR, IW, NL, ZH, TH, KO, BG, CS, RO, YX, VI	(26), (396), (494)	Royalty specified for Family Above			Type II
	Microsoft® Windows® Millennium Edition	EN, ES, FR, DE, DA, JA, YL, XC, RU, SV, IT, XT, AR, IW, NL, ZH, TH, KO, BG, CS, RO, YX, VI	(26), (396), (494)	Royalty Specified for Family Above			Type II

Product Number	Product Name And Version*	Language Versions**	Applicable Additional Provisions	Royalty***	Basis	Estimated Monthly Volume	Billing Type***
13228	Microsoft® Windows® Business Family		(17), (530)	US\$133.50	Per System	50,000	
	Microsoft® Windows® 2000 Professional (1-2 Processor Version)	EN, ES, FR, DE, DA, JA, YL, XC, RU, SV, IT, XT, AR, IW, NL, ZH, TH, KO, BG, CS, RO, YX, VI	(26), (27), (396), (397), (493)	Royalty Specified for Family Above			Type II
	Microsoft® Windows® 2000 Professional (1-4 Processor Version)	EN, ES, FR, DE, DA, JA, YL, XC, RU, SV, IT, XT, AR, IW, NL, ZH, TH, KO, BG, CS, RO, YX, VI	(26), (27), (396), (397), (493)	US\$198.00 In Addition to the Royalty Specified for Family Above			Type II
	Microsoft® Windows NT® Workstation Version 4.0 (1-2 Processor Version)	EN, ES, FR, DE, DA, JA, YL, XC, RU, SV, IT, XT, AR, IW, NL, ZH, TH, KO, BG, CS, RO, YX, VI	(26), (27), (396), (397), (493)	Royalty Specified for Family Above			Type II
	Microsoft® Windows NT® Workstation Version 4.0 (1-4 Processor Version)	EN, ES, FR, DE, DA, JA, YL, XC, RU, SV, IT, XT, AR, IW, NL, ZH, TH, KO, BG, CS, RO, YX, VI	(26), (27), (396), (397), (493)	US\$198.00 In Addition to the Royalty Specified for Family Above			Type II
	Microsoft® Windows NT® Workstation Version 4.0 (1-2 Processor Version) (China English)	EN, ES, FR, DE, DA, JA, YL, XC, RU, SV, IT, XT, AR, IW, NL, ZH, TH, KO, BG, CS, RO, YX, VI	(26), (27), (396), (397), (493)	Royalty Specified for Family Above			Type II

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\* COMPANY may receive an Installation Kit for the licensed Product in other available language versions by sending a written request to MS. All such COMPANY requests for additional language versions shall be sent to the address indicated in the OEM Resource Guide. Any such additional language version(s) added by notice shall be deemed licensed hereunder on the same basis (i.e., "per system") as the versions listed in the Product Table above. For language version(s) added by notice, COMPANY shall pay MS the highest royalty rate specified in the Product Table above for licensed language versions of such Product.

\*\* Language Version Key: Please refer to the Language Version Key in the OEM Resource Guide for explanation of Language Version codes. Localized versions are licensed on an if and as available basis.

\*\*\* A Product is not licensed hereunder unless royalty rate(s) are indicated in the Product Table and the Product is licensed for one or more Customer System(s) described in the Customer System section of this License Agreement.

\*\*\*\* Billing Type: "Type II" means OEM Report - based on COMPANY royalty reports, "Type I" means Shipment - based on shipments to COMPANY by MS or AR.

#### WINDOWS MARKET DEVELOPMENT AGREEMENT DISCOUNT

The royalty for those Windows Desktop Family Product(s) licensed above that qualify for a discount ("MDA Discount") pursuant to the Cooperative Market Development Agreement between MS and COMPANY, MS Agreement #5123346009 ("MDA"), shall be subject to such MDA discount. COMPANY has been recognized as having earned an MDA Discount effective January 1, 2001 of Twelve Dollars and Seventy-five Cents (US\$12.75) under the MDA for specified Product(s). Such MDA Discount amount shall be deducted from the royalty specified in the table above for such qualifying Product(s) distributed during calendar year 2001. An MDA Discount for qualifying Product(s) distributed during calendar year 2002 may be available under a subsequent Cooperative Market Development Agreement between MS and COMPANY.

#### WINDOWS 2000 PROMOTIONAL DISCOUNT

The royalty for Windows 2000 Professional Product(s) licensed in the Product table above is subject to a promotional discount of Eighteen Dollars (US\$18.00) per unit from the Effective Date until the earlier of the date of expiration or termination of the License Agreement, or March 31, 2002.

#### ADDITIONAL PROVISIONS

*(Note: Only those Additional Provisions applicable to licensed Product(s) may appear. Section numbering may not be consecutive.)*

(17) Unless otherwise provided in Section 2(h) of the License Agreement, COMPANY may not distribute more than one of the Products listed in the Family table above with each licensed Customer System. COMPANY's report shall separately indicate the quantity of each such Product that COMPANY distributes.

(26) COMPANY may install one or more language versions (listed in the Language Version box above) of Product software with each applicable Customer System provided COMPANY shall:

(i) use the set-up utility included in the Installation Kit which allows the end-user to choose one, and only one, language version of Product for the Customer System and comply with all guidelines provided in the Installation Kit for multiple language installation. Any backup or recovery copy of the Product, shall give end users access to install only one language version of the Product;

(ii) clearly indicate to end-users, including without limitation, in advertising and on Customer System packaging, that end-users shall have access to one language version only;

(iii) defend MS and MSCORP against, and pay the amount of any adverse final judgment (or settlement to which COMPANY consents) resulting from, third party claims or demands based on COMPANY's failure to adequately inform end users receiving multiple language versions that they are not entitled to use more than one language version of the Product; and

(iv) pay the highest royalty applicable to the language versions distributed.

If COMPANY does not comply with all of the requirements stated above, in addition to any other remedies MS may have, COMPANY shall pay MS the applicable royalty for each language version of Product software included with the Customer System.

(27) COMPANY agrees to employ at all times at least one (1) support technician who has successfully completed the Microsoft Certified Professional program for this Product.

(396) COMPANY shall include a full copy of the back-up disk images ("CAB" files) contained in the Installation Kit and/or such other directories or files as specified in the Installation Kit on the hard disk drive of each Customer System distributed with the Product.

(397) COMPANY is not licensed to distribute this Product on Customer Systems which are capable of utilizing more microprocessors than the number specified in the Product Table.

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Microsoft Desktop Operating System License Agreement for OEM Customers, #5126990006-2 dated February 1, 2001, between MICROSOFT LICENSING, INC. and GATEWAY INC

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(493) The Default Charge for this Product as described in Section 3(e) of the LTD shall be an amount equal to One Hundred Fifty Dollars (US\$150.00) minus the applicable royalty for this Product.

(494) The Default Charge for this Product as described in Section 3(e) of the LTD shall be an amount equal to One Hundred Dollars (US\$100.00) minus the applicable royalty for this Product.

(495) If Company is licensed for this operating system Product or this operating system combination Product on a per system basis and also for other Windows Products (e.g., Windows 2000 Professional, Microsoft® Windows® 98 (Second Edition), Microsoft® Windows® Millennium Edition) on a per system basis for the same Customer System, COMPANY shall pay the royalty for the operating system Product or operating system combination Product distributed with the Customer System, or in the event no such Product is distributed with the Customer System, COMPANY shall pay the higher royalty applicable to any such licensed operating system Product or operating system combination Product for such Customer System.

#### **CUSTOMER SYSTEMS DEFINITION**

COMPANY's Customer Systems shall be the assembled computer systems described in the table below which (i) are configured for use only by a single user; (ii) utilize an Intel x86, Pentium, or Celeron series processor or compatible; and (iii) include at least a CPU, a motherboard, a power supply, a hard disk drive, and a case. COMPANY's computer systems which do not meet the foregoing requirements are not "Customer Systems" and, therefore, not covered by this License Agreement absent written agreement of the parties (e.g., COMPANY computer systems shipped without a hard disk drive, often referred to as "thin clients" are not covered by this License Agreement). Each listed Customer System must have a unique model line name, model name, or model number which COMPANY uses both internally (in COMPANY's books and records) and externally (on the Customer System case and packaging).

At COMPANY's option, for purposes of administrative convenience, COMPANY may designate models by model line or series (e.g., "Jaguar model line", "Jaguar Pro series", "Jaguar Pro 750 model line", "Jaguar Pro 950 series"). Customer Systems defined by model line or series shall include all present models which include the designated model line or series name, (e.g., "Jaguar Pro model line" includes Jaguar Pro, Jaguar Pro 950, Jaguar Pro S; "Jaguar series" includes Jaguar, Jaguar Pro, Jaguar Pro 950, Jaguar 3400; "Jaguar Pro 950 series" includes Jaguar Pro 950, Jaguar Pro 955).

COMPANY may elect to include as Customer System(s) new models which comply with all of the terms and conditions of this License Agreement by notifying MS, when COMPANY submits its royalty report for the reporting period in which each such new model is first distributed with the Product. Unless otherwise agreed to by the parties prior to COMPANY's first distribution of a new model with the Product, each such new model designated on a royalty report shall be licensed for the remainder of the term of the License Agreement on the same basis as the other models in the model line or series as set forth herein unless otherwise specified. All new models added to this License Agreement shall bear the applicable royalty set forth in this License Agreement. Any new model in a licensed model line or series which is not included in a notice to add Customer Systems (and is thus not licensed for the applicable Product) must have a unique model number or model name used for internal and external identification purposes which distinguishes it from any model which COMPANY has designated previously as a Customer System.

Notwithstanding the foregoing, COMPANY may exclude from royalty calculation up to twenty-thousand (20,000) Customer Systems that are not distributed with Product(s) listed below.

#### **COMPANY AND COMPANY SUBSIDIARIES BRAND NAMES AND TRADEMARKS**

If COMPANY Customer Systems are marketed or distributed under COMPANY's or COMPANY Subsidiaries' brand names and trademarks which do not include COMPANY's name, those brand names and trademarks must be listed below.

Company Brand Names

Brand Names & Trademarks

PC Direct

**Product Number Key:** Please refer to the Product Number in the Product Table above.

#### **CUSTOMER SYSTEM TABLE**

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Microsoft Desktop Operating System License Agreement for OEM Customers, #5126990006-2 dated February 1, 2001, between MICROSOFT LICENSING, INC. and GATEWAY INC

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Model Name/Model Number	Processor	Product #13229	Product #13228	<<Product #>>	<<Product #>>	<<Product #>>	<<Product #>>	<<Product #>>
Solo Series	Intel Pentium, Pentium Pro (or compatible)	S	C					
G - Series	Intel Pentium, Pentium Pro (or compatible)	S	C					
Gateway Essentials Line	Intel Pentium, Pentium Pro (or compatible)	S	C					
Gateway Performance Line	Intel Pentium, Pentium Pro (or compatible)	S	C					
Gateway Select Line	Intel Pentium, Pentium Pro (or compatible)	S	C					
Gateway Astro/Neo Line	Intel Pentium, Pentium Pro (or compatible)	S	C					
GP - Series	Intel Pentium, Pentium Pro (or compatible)	S	C					
Gateway Professional Line	Intel Pentium, Pentium Pro (or compatible)	S	C					
Gateway Profile Line	Intel Pentium, Pentium Pro (or compatible)	S	C					
E - Series	Intel Pentium, Pentium Pro (or compatible)	C	S					

COMPANY hereby agrees that the names and numbers indicated in the Model Name or Model Number column in the table above accurately denote the actual designation used by COMPANY to identify the listed models (on the Customer System case and in COMPANY's internal books and records).

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Microsoft Desktop Operating System License Agreement for OEM Customers, #5126990006-2 dated February 1, 2001, between MICROSOFT LICENSING, INC. and GATEWAY INC

MS-CC-MDL 5007929 2/3/01 Form 2.5.71

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