

January 31, 2002

GATEWAY INC.  
610 Gateway Drive W09  
North Sioux City, SD 57049  
UNITED STATES  
Attn: Dean Van Dyke, Manager, Microsoft Operations

**Microsoft**

**MICROSOFT CONFIDENTIAL**

**RE: Interim Microsoft License Agreement for Desktop Operating Systems between GATEWAY INC. ("COMPANY") and Microsoft Licensing, Inc. ("MS") for the period from February 1, 2002 through February 28, 2002 ("Interim License Agreement")**

Dear OEM Customer:

As you are aware, your current Microsoft License Agreement for Desktop Operating Systems for OEM Customers with MS, License Number 5126990006, dated February 1, 2001, including the incorporated Microsoft Business Terms Document for OEM Customers, License Number 5123340021, dated November 1, 2000 (together, the "Old License Agreement") expires on January 31, 2002 ("Expiration Date"). COMPANY has informed MS that COMPANY is reviewing the Microsoft Desktop Operating System License Agreement for OEM Customers (Version 4.0 or higher), including the Microsoft Business Terms Document for OEM Customers (Version 4.0 or higher) incorporated into that agreement (together, the "New License Agreement"), provided by MS. COMPANY has notified MS that COMPANY is unable to complete its internal review of, and signature process for, the New License Agreement before the Expiration Date, and COMPANY has requested additional time to complete those steps.

To accommodate COMPANY's request, and so that COMPANY may continue to distribute Microsoft Desktop Operating Systems products acquired through the OEM channel for a reasonable time following the Expiration Date, MS is willing to offer the Interim License Agreement described in this letter upon all the terms and conditions included herein.

1. The Interim License Agreement shall be effective February 1, 2002, and shall continue in effect through February 28, 2002, unless earlier terminated as provided in this letter or in the New License Agreement. The Interim License Agreement shall be effective for this time period only; there will be no extensions or subsequent interim agreements.
2. The Interim License Agreement shall apply only to those Desktop Operating System products that are available to be licensed under the New License Agreement ("Interim DTOS Products").
3. Before COMPANY may accept this Interim License Agreement, and as a condition to the terms and conditions offered in this letter, COMPANY must first fully execute and deliver to MS the Designed for Microsoft Windows Logo License Agreement (Hardware) (version 4.0 or higher).
4. COMPANY's acquiring, preinstalling, shipping or distributing of any Interim DTOS Product(s) through the OEM channel after January 31, 2002 and during the month of February shall manifest COMPANY's acceptance of, and agreement to comply with, all the terms and conditions of this Interim License Agreement.
5. Except as set forth in this letter, the terms and conditions of the Interim License Agreement shall be the same as those of the New License Agreement (including the Business Terms Document for OEM Customers (Version 4.0) provided to COMPANY by MS. The royalties applicable to Desktop Operating System Products available under the New License Agreement are posted on the MSLI OEM Online Site at <https://www.microsoftOEM.com>. The terms and conditions of the New License Agreement, including the Business Terms Document and applicable royalties, are incorporated herein by this reference.
6. If COMPANY does not (a) fully execute and deliver to MS the Designed for Microsoft Windows Logo License Agreement (Hardware) (version 4.0 or higher); (b) acquire, preinstall, ship or distribute Interim DTOS Product(s) during the month of February; or (c) fully execute and deliver to MS the Microsoft Corporation Non-Disclosure Agreement (OEM Standard Reciprocal Version 4.0 or higher), the New License Agreement, and the applicable OEM Third Party Installer Agreement (Version 4.0) before March 1, 2002; COMPANY may license Microsoft Desktop Operating System products through a different channel (e.g., Microsoft's System Builder channel) upon the terms and conditions, including royalties, applicable to that channel.
7. Upon execution of the New License Agreement by COMPANY and MS, which shall be dated and effective as of February 1, 2002, this Interim License Agreement shall automatically terminate and shall be superseded in its entirety by the New License Agreement.

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**CONFIDENTIAL**

Interim Microsoft License Agreement for Desktop Operating Systems

Microsoft Licensing, Inc. is an equal opportunity employer.

Plaintiff's Exhibit

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All capitalized terms used herein and not otherwise defined shall have the same meaning as in the New License Agreement. In the event of any inconsistencies between this letter and the New License Agreement, the terms of this letter shall govern.

Please contact your Account Manager if you have any questions.

**NOTICE:**

For Product(s) specified in a Product Schedule to as licensed under the "per system" royalty calculation provisions, please note the following:


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 Interim 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 MS 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.

MICROSOFT LICENSING, INC.

  
By (Signature) \_\_\_\_\_  
Name (Print) **Mark Gunter**  
**Senior OEM Accounting Manager**  
Title \_\_\_\_\_  
Date **31 Jan 02**

cc: Microsoft Licensing, Inc. - OEM Accounting Services  
Microsoft Corporation - Law & Corporate Affairs  
Microsoft Corporation - OEM License Administration Files  
Microsoft Corporation - OEM Sales & Marketing