



From: Rob Young (OEM)
Sent: Thursday, August 31, 2000 10:52 AM
To: Rob Young (OEM); Julie-Ann Muir; Erika Tipp
Cc: Bradley Wood (LCA)
Subject: RE: Gateway Office Agreement Draft.

Julie,

One more thing...I suggest you add language that ensures your agreement cuts over to the new BTD once it is signed vs allowing for the current/old BTD to survive.

-----Original Message-----

From: Rob Young (OEM)
Sent: Thursday, August 31, 2000 10:50 AM
To: Julie-Ann Muir; Erika Tipp
Cc: Bradley Wood (LCA)
Subject: RE: Gateway Office Agreement Draft.

Comments in line.

-----Original Message-----

From: Julie-Ann Muir
Sent: Thursday, August 31, 2000 9:04 AM
To: Rob Young (OEM); Erika Tipp
Cc: Bradley Wood (LCA)
Subject: Gateway Office Agreement Draft.
Importance: High

Rob, please find attached first draft of the Office Agreement FYI. We have some questions so please could you reply asap to the following:

(Bradley - for your reference as we hope to get this following Robs replies to you within the next 24 hrs).

Section 1 incorporation of BTD. Is exhibit 1-3 still effective? [Rob Young (OEM)] Still effective but will desolve w/ the current BTD at the end of October.

License Grant

(b) cancellation of license if price increases with new version. Have you agreed to do this in the US? [Rob Young (OEM)] What we agreed to is the following: "COMPANY has the right to terminate this License Agreement with regard to any Product for which MS increases the price of a new Version Release, in which case, COMPANY's minimum commitment payments hereunder shall be adjusted to account for such discontinued Products."

(c) "subject to restrictions set forth in section 17a of BTD, what does this refer to? [Rob Young (OEM)] It deals w/ export and re-export of products to countries outside the US that have US embargos in place.

Section 5. Entire Agreement.

The non standard clause, in connection with routing delays by MS, are we still allowing this clause to be applicable in the US? [Rob Young (OEM)] We have no such language or agreement in GW's license.

Leasing rights

Do gateway have leasing rights now? I had to include them in the last license because there was no standard provision. [Rob Young (OEM)] AP 1007 deals w/ this, and I attach it here. The new/pending BTD states that MS maintains all rights to rental AND leasing, so don't reference the BTD where leasing is concerned.

(1007) MS hereby grants to COMPANY the right to lease and grant authorized third-party leasing agents the right to lease the identified Product(s) preinstalled on the Customer System hard disk to end user customers who simultaneously and for an identical term of twelve (12) months or longer lease such Customer System. COMPANY shall comply with all other provisions of this License Agreement with respect to any such leased Product. The following additional restrictions shall apply to Product leasing:

(a) COMPANY or its authorized third party leasing agent(s) shall enter into a written lease agreement for the Customer System and Product(s) ("Lease") signed by each customer. The term of such Lease shall not be less than twelve (12) months. The Lease shall provide that, at the termination or expiration of the Lease, if the customer is required to return the Customer System, the

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customer shall return the Customer System together with all copies of the Product(s) to COMPANY or its authorized third party leasing agent. The license granted by MS to lease the Product(s) shall expire upon return of the Customer System.

(b) COMPANY shall provide all reasonable cooperation to MS to investigate and remedy any unauthorized reproduction of Product(s) leased under this Agreement.

(c) The additional rights granted to COMPANY hereunder shall terminate upon termination or expiration of this License Agreement provided, however, that MS may agree to terminate the additional rights granted hereunder upon thirty (30) days prior written notice in the event that MS develops a standard Product leasing option for OEMs in which COMPANY may participate. The parties hereby agree that COMPANY may continue its business under the terms set forth above until the time such alternative Product leasing option(s) for OEMs has been set forth in writing by the parties.

#### Customer System Definition.

Gateway have a very old definition that they want to continue using, are you allowing them to deviate from the norm? *[Rob Young (OEM)]* Here's our definition below. The 4% exclusion is a very sore spot for us and them, as they wish to license per system but don't want to (claim they cannot) track exceptions. An exception might be a customer who asks for a system not to have Office on it. Our solution was to carve out those systems they wish to have per copy or wish not to include in the per system calculation, but they argued their inability to account for that. My point is a) heads up - they'll probably want the same from you, and b) hold firm on no exclusions if you can.

COMPANY's Customer Systems shall be defined to be all of COMPANY's single user computer system models which COMPANY advertises in print and/or other media, except those computer system models specifically excluded below. Each computer system model must be advertised by specific configuration (i.e. RAM, disk storage and such other features deemed appropriate by COMPANY). A Customer System shall be deemed "designated" by COMPANY at such time that COMPANY advertises such computer system in print and/or other media and shall remain designated as a Customer System for which COMPANY pays a royalty for as long as COMPANY, in its discretion, advertises such computer system. A "Customer System" shall further include any such advertised computer system model which includes upgraded hardware components (e.g. additional RAM, larger disk storage, larger monitor, etc.) requested by the customer and distributed by COMPANY.

Notwithstanding the foregoing, Customer Systems shall exclude:

- (i) Up to four percent (4%) of the above described Customer Systems; and
- (ii) Customer Systems for which end-users are licensed for the applicable Product(s) under other MS volume licensing programs (i.e., Select, MOLP or Education), provided such Customer Systems are tracked by COMPANY's internal systems and may be audited by MS upon request, subject to Section 14 of the Business Terms Document.

thanks  
Julie.

<< File: Office v2.doc >>

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