

**LICENSING AGREEMENT  
FLAT FEE DISTRIBUTION OPTION OF CP/M® 2.2**

THIS SOFTWARE LICENSING AGREEMENT is between **DIGITAL RESEARCH, INC.**, a California Corporation with offices at 160 Central Avenue, Pacific Grove, California, (hereinafter **DRI**) and \_\_\_\_\_ the **LICENSEE** executing this agreement (hereinafter **LICENSEE**).

**A. DRI** has developed, at considerable expense and effort, a microcomputer operating system which uses IBM-compatible flexible disk drives for backup storage. Such program is called "CP/M", Release 2, a trademark of **DRI**. For convenience the defined program is hereinafter called CP/M. The CP/M programs include the software as listed on Schedules A & B annexed hereto and made a part hereof. Use of other members of the **DRI** family of programs must be licensed separately.

**B. LICENSEE** is a manufacturer of microcomputer hardware which is sold throughout the world.

**C. DRI** and **LICENSEE** desire to provide a comprehensive means of licensing the use and distribution of CP/M to **LICENSEE** for distribution to **LICENSEE'S** customers in connection with \_\_\_\_\_ hardware, which licensing agreement will protect **DRI's** proprietary rights in the software and its documentation, and **DRI's** trademarks and copyrights.

**BASED ON THE FOREGOING FACTS IT IS AGREED:**

**1. Non-exclusive License.** So long and only during such period as **LICENSEE** complies with the terms and conditions of this Agreement, **DRI** hereby grants a non-exclusive license to **LICENSEE** to utilize and distribute up to 10,000 copies of CP/M and all related documentation as scheduled herein, in connection with \_\_\_\_\_ hardware of **LICENSEE** distributed to third parties. CP/M and all related documentation is copyrighted material, the rights to which belong to **DRI**. During the term of this license, **LICENSEE** shall have the right **(1)** to use CP/M and related documentation in its own operations and development efforts and research on an in-house basis; **(2)** to distribute under a sublicense, directly, or through distributors and dealers, and only on behalf of **DRI** the right of end users of **LICENSEE'S** \_\_\_\_\_ hardware to use CP/M, consisting only of the programs listed in schedule A, in connection with \_\_\_\_\_ hardware acquired from **LICENSEE** and **(3)** to advertise and offer for distribution CP/M nationally and internationally so long as the same is offered and sold only in conjunction with \_\_\_\_\_ hardware acquired from **LICENSEE**. **LICENSEE** shall be entitled to sublicense the use of CP/M at any price determined by it, subject only to the other requirements of this Agreement with respect to registration, serialization and software protection.

**2. Items Included.** As a part of this license, **DRI** agrees to provide one complete set of CP/M Manuals, Release 2, detailed in Schedule C. **DRI** agrees to provide **LICENSEE** with CP/M, Release 2, Manuals at 50% off the Digital Research standard price list, to be ordered in a minimum quantity of 10. **DRI** further agrees to provide **LICENSEE** with CP/M Source, Release 2, for internal use only, as printed listings. However, CP/M Source code may not be redistributed by **LICENSEE** under any circumstances.

**3. Use of CP/M Name and Trademark.** **DRI** further grants **LICENSEE** a nonexclusive right to use the CP/M trademark in association with the software and documentation referred to in Paragraphs 1 and 2 above, and the annexed Schedules, provided only that all references to CP/M shall at least once in a prominent place in such reference clearly indicate by the use of ® that CP/M is a trademark belonging to **DRI**. The CP/M operating system may not be marketed by **LICENSEE** under any name other than CP/M and shall always include the Digital Research

release number in the name. **LICENSEE'S** name may be included. For example, "Licensee CP/M 2.2 Operating System". A negligent or intentional breach of this Paragraph shall be deemed a material breach of this Agreement.

**4. Modifications and Updates.** **LICENSEE** is solely responsible for support of its customers as to CP/M use, including modifications and updates. As a part of the items provided under Paragraphs 1 through 3 above, **DRI** agrees to supply **LICENSEE** all published modifications or updates which correct known errors in either the software or documentation of CP/M Release 2 for a period of one year. **DRI** shall have no further obligation under this Paragraph after a period of one year from the effective date of the signing of this agreement, unless additional compensation is paid for such publications and updates in an amount mutually agreed upon.

**5. Payment by LICENSEE.** **LICENSEE** shall pay the sum of \$60,000.00 (Sixty Thousand Dollars) to **DRI** in consideration of all the agreements and performance of all the obligations contained in this Agreement required by **DRI**, payable net thirty (30) days from effective date of this contract at which time the total licensing fee is fully paid. Should **LICENSEE** distribute 10,000 copies of CP/M, **LICENSEE** may contract to distribute additional copies of CP/M under the then current terms and prices. Any unpaid balance shall be subject to a service charge of 2% per month.

**6. Additional Obligations.** In addition to the payment of money to **DRI**, **LICENSEE** agrees to abide by the following additional terms and conditions set forth in Paragraphs 7 through 10 below. It is understood that affirmative failure by **LICENSEE** to comply with the additional terms and conditions shall be deemed a material breach of this Agreement giving rise to the right of **DRI** to terminate the Licensing Agreement as to any further use of CP/M and for injunctive relief and for damages, if appropriate. **LICENSEE** further acknowledges that protection of software and related documentation is an extremely difficult problem and that injunctive relief aimed at protection of trade secrets, trademarks, copyrights, and proprietary information may be **DRI's** only remedy, in the event of a material breach by **LICENSEE**.

**7. Standard Software License.** **LICENSEE** agrees to abide by the standard **DRI** Software Licensing Agreement, a copy of the present form of which is attached hereto and incorporated herein by reference, and to include a copy of the Software Licensing Agreement and Registration Card with each copy of CP/M distributed by **LICENSEE**. **LICENSEE** shall use its best efforts to obtain, either directly or through its distributors or dealers, the signature of the end-user on the **DRI** registration card, and to cause its prompt return to **DRI**.

**8. Serialization and Record Keeping.** **LICENSEE** agrees to consecutively serialize all **DRI** CP/M Diskettes, starting at serial number 00001, using **DRI's** proprietary serialization format, and using the "origin number" which will be assigned by **DRI**. **LICENSEE** will keep a record of each copy of CP/M that is distributed, in accordance with such serialization and **LICENSEE** shall prepare a report that contains the serial number of each CP/M diskette transferred to a third party, by **LICENSEE**, its distributors and dealers, and the name and complete address of said party. This report shall contain a list of all serial numbers transferred during each month and shall be submitted to **DRI** with 10 days of the last day of each month.

**LICENSEE** agrees to notify **DRI** promptly of any misuse or unauthorized use of the software and documentation which comes to its attention, and agrees to notify its dealers, distributors and customers upon request of **DRI** when **DRI** believes such software and docu-

mentation is being subjected to misuse. **LICENSEE** will also cooperate, at **DRI**'s reasonable expense, with **DRI** in any legal action or threatened legal action which **DRI** may feel is necessary to take in order to protect the software and documentation. **DRI** shall fully hold harmless **LICENSEE** for any liability incurred in connection with this paragraph.

**9. Audits.** Distribution records maintained by **LICENSEE** shall remain the property of the **LICENSEE** but may be inspected at any reasonable time during business hours by **DRI**'s auditors at its own cost and expense for the purpose of determining compliance. If material errors are found, the cost of the audit shall be borne by **LICENSEE**.

**10. Modification of Software.** It is understood that **LICENSEE** may from time to time make modifications in CP/M, to adapt the same to its hardware, but that such modifications do not in any way give rise to any proprietary rights of **LICENSEE** in the original CP/M code provided **LICENSEE**. **DRI** shall not be responsible for maintenance in any way of any CP/M software which has been modified by **LICENSEE**, and no representations to the contrary shall ever be made to any customers of **LICENSEE**. It is further understood that removal or use of sections of code from CP/M in other programs by **LICENSEE** is not authorized by this Agreement and that to do so breaches this Agreement and infringes the rights of **DRI**. Because of the significance of problems created by unauthorized modifications to the CP/M software, **LICENSEE** agrees that it will advise **DRI**, in writing, from time to time, of any major modifications to the CP/M software. Should **LICENSEE** so modify CP/M as to materially change its operating characteristics, **DRI** reserves the right, in its sole discretion, to deny **LICENSEE** the use of the name CP/M to identify the modified product.

**11. Limited Warranty.** Except for the agreement in Paragraph 4 to provide information as to known errors or required modifications, **DRI** disclaims any warranty as to the scheduled products. These products are sold for commercial, and not consumer use. In no event will **DRI** be liable for consequential damages of any kind whatsoever, even if **DRI** has been advised of the possibility of such damages.

**12. Mutual Indemnity.** **DRI** agrees to indemnify and hold **LICENSEE** harmless from any and all liability or claims against **LICENSEE** which are a direct result of patent, trademark, or copyright infringement claims derived out of or based upon any matter contained in Schedules A, B & C annexed hereto. Conversely, **LICENSEE** agrees to indemnify and hold **DRI** harmless from any and all claims by third parties arising out of claimed patent or copyright infringement on the part of **LICENSEE** hardware or **LICENSEE** software utilized with or in conjunction with CP/M. Both parties agree to notify the other promptly, in writing, in the event of a claim by a third party of any patent or copyright infringement, in order to give the other party an opportunity to defend such claim.

**13. Title to Software Source and Object Code; Effect of Bankruptcy.** **LICENSEE** acknowledges that this License transfers no title or ownership in or to the software itself, whether in source or object form to **LICENSEE** but only the right to use it, and the right to sublicense the use of the object code to ultimate users. The obligations of **LICENSEE** hereunder are a continuing duty in the nature of an executory contract. In the event of the bankruptcy or insolvency of **LICENSEE**, **LICENSEE** or the receiver in bankruptcy shall promptly notify **DRI** of that fact, and immediately return to **DRI** all copies of CP/M source code, in any form, and all CP/M distribution and registration records. Failure to do so within thirty (30) days of the filing of any petition concerning **LICENSEE** under the Federal Bankruptcy laws is a material and incurable default entitling **DRI** to terminate this agreement without further notice.

**LICENSEE**, and any successor or assignee as a result of the bankruptcy, shall have no right to sell the rights of **LICENSEE** under this contract unless (1) **LICENSEE** or the receiver has returned the source code to **DRI**; (2) **LICENSEE** or receiver has notified **DRI** in writing of any proposed receiver's sale at least ten (10) working days prior to the sale; (3) the proposed purchaser or assignee has qualified with **DRI** as a **LICENSEE**, based on experience and financial standing; and (4) such assignee signs a license agreement similar to this, prior to taking possession of any software involved.

In the meantime, all copies of **DRI**'s proprietary software and all related materials shall be impounded by **LICENSEE** or the receiver in bankruptcy and safeguarded from disclosure to unauthorized persons.

**14. Non-Assignability; Integration; Governing Law.** Neither the benefits nor the obligations of this Agreement may be assigned, transferred or sold, except as expressly set forth herein, to any third

party or organization. This agreement integrates all prior agreements, as to the software Scheduled herein. This agreement shall be governed by California law. **LICENSEE** consents to suit at Monterey, California.

**15. Litigation Costs.** In the event that either party finds it necessary to bring suit or retain an attorney to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and court costs.

**16. Taxes.** All taxes on the use, sale, or possession of the Scheduled items (other than income or franchise taxes due from **DRI**) shall be borne and paid by **LICENSEE**.

**17. Effective Date.** This agreement shall be effective on \_\_\_\_\_.

**18. Notices and Written Communications.** All notices, demands, consents, etc., hereunder by one party to the other shall be in writing addressed as follows:

**LICENSEE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DRI**

P.O. Box 579

Pacific Grove, CA 93950

**EXECUTED BY THE PARTIES:**

**LICENSEE:**

\_\_\_\_\_

**By:**

\_\_\_\_\_

**Name:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**DRI**

**BY:**

\_\_\_\_\_

**Name:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**Schedule A — CP/M Release 2 Software to be distributed:**

ED. COM	DUMP. COM
ASM. COM	DUMP. ASM
PIP. COM	LOAD. COM
STAT. COM	CBIOS. ASM
DDT. COM	SUBMIT. COM
SYSGEN. COM	XSUB. COM
MOVCPM. COM	BIOS. ASM

**Schedule B — CP/M Release 2 Software to be used, but not distributed by LICENSEE:**

GENHEX. COM	CPXFER. COM
GENMOD. COM	UNSKEW. COM
CPSYSO. HEX	CPXFER. ASM
CPSYSI. HEX	UNSKEW. ASM
CPMOVE. ASM	SERIAL. COM
SERIAL. ASM	SYSGEN. ASM

Source Programs of all software listed in schedule A

**Schedule C — CP/M Release 2 Documentation**

CP/M 2.2 User's Guide  
An Introduction to CP/M Features and Facilities  
ED: A Context Editor for the CP/M User's Guide  
CP/M Assembler (ASM) User's Guide  
CP/M Dynamic Debugging Tool (DDT) User's Guide  
CP/M 2.2 Interface Guide  
CP/M 2.2 Alteration Guide