

OEM SOFTWARE LICENSE AGREEMENT

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(the "Licensee")

(the "Company")

598300

This Agreement is entered into by and between Digital Research (UK) Ltd, ("the Company") and the Licensee set out above ("Licensee"). This Agreement shall comprise the License Agreement Terms and Conditions (including those set out in Schedule A and B) stated below. This Agreement is made by and between the Company by signing and the Licensee by signing and the Company grants to the Licensee the right to reproduce, use, supply, distribute and

SCHEDULES: A and B

LICENSEE WARRANTS THAT IT HAS THE AUTHORITY TO ENTER INTO AND PERFORM THIS AGREEMENT ON BEHALF OF THE COMPANY AND THAT IT HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNDER WHICH IT IS TO BE BOUND BY

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Authorized Signature
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Date

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Plaintiff's Exhibit
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TERMS & CONDITIONS

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1 DEFINITIONS

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In this Agreement, the terms:

"DRI" means Digital Research Inc. of Monterey, California U.S.A., the parent company of the Company.

"Licensed Program" means DRI's computer programs including machine readable code, intermediate code or interpreted form specified in SCHEDULE A and all corrections, modifications and enhancements to such program made by DRI and provided hereunder. Licensed Program does not include Source Code, nor any part of the Redistribution Kit labelled "Not Redistributable".

"Use" means copying any portion of a Licensed Program into a microcomputer and/or transmitting it to a microcomputer for processing of the machine instructions or statements contained in such material.

"Licensee" means the nonexclusive, nontransferable right of the Licensee to Use, reproduce and distribute the Licensed Program subject to the provisions of this Agreement.

"Documentation" means any combination of DRI's user manuals, program users guides, system guides and related materials of DRI or of the Company which facilitate the Use of the Licensed Programs.

"Defined Hardware" means those computer hardware products manufactured by or for Licensee, marketed under Licensee's name and identified in SCHEDULE A.

"Product" means a Licensed Program or Documentation and any combination of a Licensed Program and Documentation.

"End User Program License Agreement" means the End User Program License Agreement attached as an EXHIBIT and distributed by Licensee in the form described in the Software Redistribution Guide, or other form approved by the Company and attached as an EXHIBIT to this Agreement.

"Release" of a Licensed Program refers to the number prior to the decimal point of a Licensed Program identification number.

"Version" of a Licensed Program refers to the number after the decimal point of a Licensed Program identification number, for example, GEM Paint R.3.0 is Release 3, Version 0 of the GEM Paint Licensed Program.

"Redistribution Kit" means a Licensed Program, Documentation, tools and utilities that are shipped to Licensee for each Licensed Program specified in SCHEDULE A.

"Software Redistribution Guide" means the informational guide attached as an EXHIBIT and also supplied with each Redistribution Kit, which specifies the requirements of the Company regarding reproduction, certification and distribution of the Product.

"Source Code" means a form of a Licensed Program in which the program logic is easily deduced by a human being, such as a printed listing of the program, or in an encoded machine-readable form, such as might be recorded on magnetic tape or disk, from which a printed listing can be made by processing it with a computer.

"Object Code" means the form of a Licensed Program resulting from the translation or processing of Source Code by a computer into machine language or intermediate code, and thus in a form that would not be convenient to human understanding of the program logic, but which is appropriate for execution or interpretation by a computer.

"Derivative Works" means a revision, modification, translation, abridgement, condensation or expansion of a Product or any other form in which such Product may be recast, transferred or adapted which, if prepared without the consent of the Company would constitute a copyright infringement.

2 LICENSE

2.1 The Company grants Licensee a nonexclusive, nontransferable worldwide License to reproduce and distribute each Licensed Program solely in conjunction with and for Use on the Defined Hardware subject to the provisions of SCHEDULES A & B. Licensee shall have the right to distribute each Licensed Program to end users as part of each distribution pursuant to the terms and limitations of Section 9 hereof, through the use of the End User Program License Agreement.

2.2 Licensee shall have no rights to Source Code in any Licensed Program and Licensee shall not have any rights to create any Derivative Works of the Licensed Program and shall not disassemble, reverse assemble or reverse compile such Licensed Program or attempt to determine the Source Code nor permit others to do so.

2.3 Licensee may Use a Licensed Program internally for Licensee's own use for testing, demonstrating, training, and sales purposes by its own personnel. All copies distributed for such internal purposes shall be serialised and registered in Licensee's name as though an end user copy, and shall count towards any royalty or quantity limitation under this Agreement.

2.4 No license is granted for any use or reproduction of any Product for which the required payment has not been made by Licensee.

2.5 Licensee shall ensure that any Licensed Program or Documentation shall be distributed to end users in the form specified in the Software Redistribution Guide.

2.6 Licensee may make Defined Hardware specific I/O system installations necessary for the operation of a Licensed Program on the Defined Hardware which may be based upon Sample Source Code supplied with the Redistribution Kit. Sample Source Code shall be defined as an XIOS, BIOS, GIOS or NIOS listing which the Company may provide to Licensee to assist with machine specific implementations.

3 DELIVERY

3.1 Upon receipt and execution of this Agreement including the SCHEDULES hereto, the Company agrees to deliver the Redistribution Kit(s) and other deliverables specified in SCHEDULE A. All deliveries of any Products under this Agreement shall be ex-works Hangford, Berkshire, England.

4 PAYMENT; TAXES

4.1 All payments provided for in this Agreement are exclusive of, and Licensee shall pay, all taxes, customs duties, insurance, shipping and other charges. Payments shall be made in the currency specified in SCHEDULE B hereto.

4.2 All payments by Licensee to the Company shall be due as specified in SCHEDULE B. In no event shall Licensee be entitled to a refund of prepaid royalties nor shall Licensee be relieved from any guaranteed minimum payment obligation, which obligations shall survive any termination of this Agreement.

4.3 If any payment, or any other sum due from Licensee under this Agreement, should become overdue, the Company may, without declaring Licensee to be in default, charge Licensee a late payment charge of one and one-half percent (1.5%) per month on the overdue balance, but not in excess of the lawful maximum.

5 RECORD KEEPING AND REPORTS

5.1 Licensee agrees to maintain shipment records relating to the disposition of Products. Licensee shall prepare and submit monthly reports to the Company no later than thirty (30) days following the last business day of each calendar month which reports must be made on the Monthly Distribution Statements which is mailed to the Licensee each month by the Company. Each report must specify the quantities of any Product distributed by Licensee during that month. With Licensee distributed copies of Licensed Programs on diskette or ROM in groups or blocks of numbers, logging and subsequent reporting by such groups is approved.

5.2 Licensee agrees to allow independent auditors of the Company to audit and analyse appropriate accounting records of Licensee to ensure compliance with all terms of this Agreement. Any such audit shall be permitted by Licensee within fifteen (15) days of Licensee's receipt of the written request of the Company to audit, during normal business hours, at a mutually agreed upon time. The cost of such an audit will be borne by the Company unless a material discrepancy indicating inadequate record keeping or that additional license fees are due to the Company is discovered, in which case the cost of the audit shall be borne by the Licensee. A discrepancy shall be deemed material if it involves an adjustment of more than 5% of the quantity of Licensed Programs licensed under the appropriate Schedule, up to a maximum of One Thousand Pounds Sterling (£1,000). Audits shall not interfere unreasonably with Licensee's business activities.



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6 TRADEMARKS; COPYRIGHT NOTICES

6.1 The trademarks and trade names under which the Company markets any Product are the property of the Company and/or DRI. This Agreement gives Licensee no rights therein, except the restricted license to reproduce such trademarks and trade names in any authorized reproduction of any Product, provided that the Company and/or DRI is referenced as the owner of the trade name or trademark, as specified in the Software Redistribution Guide. Licensee may not market the Product and/or any other or different name than those specified by the Company, except that Licensee may add its name to the Product title, for example: "The XYZ Computer Concurrent DOS Operating System". No other modification or supplementation of the name is authorized.

6.2 Licensee agrees to maintain and respect the trademark, trade name and copyright notices of any Licensed Program and Documentation in connection with its advertisement and distribution of any Product. Licensee hereby agrees to include a reference to Digital Research and the Licensed Program(s) in any advertisement for the Defined Hardware. Licensee shall ensure compliance hereto by all Licensee's distributors and dealers. Copyright notices placed by Licensee shall read as specified in the Software Redistribution Guide. The Company retains the right to specify the quality and standards of all materials upon which the Company and/or DRI trademark or trade name is used. Failure by Licensee to adhere to such standards of quality shall be grounds for the Company to suspend Licensee's right to reproduce and distribute such Licensed Program and Documentation until such quality and standards, at the Company's discretion, are met.

7 LICENSED PROGRAM REPRODUCTION; SERIALIZATION

7.1 Unless an alternative location is otherwise specified and agreed to in writing by the Company, Licensee is authorized to reproduce the Licensed Program only at the location of its principal office specified on the first page of this Agreement. No subsidiary or affiliate of Licensee shall have any right to reproduce the Licensed Program unless an Additional Reproduction Site has been purchased. Licensee may purchase from the Company additional reproduction sites as provided in a SCHEDULE B attached, at the then current prices, terms and conditions of the Company.

7.2 Licensee agrees to consecutively serialize each copy of a Licensed Program in human readable form, as required and as specified in the Software Redistribution Guide using DRI's proprietary serialization form and using Licensee's unique origin number which will be assigned by the Company.

8 DOCUMENTATION

8.1 Licensee may purchase from the Company Documentation at the price set forth in the then current OEM Price List of the Company. Licensee must imprint or sticker the Documentation with Licensee's name and address, in addition to that of the Company. Licensee may not distribute more than one unit of applicable Documentation with each copy of the Licensed Program, and may not distribute the Documentation as a stand-alone item.

8.2 Unless Licensee purchases Documentation reprint rights from the Company, Licensee may not reproduce or modify Documentation. Reprint rights for Documentation reprint rights shall be listed in SCHEDULE B. If Documentation reprint rights are purchased, Licensee may reproduce the existing version or a modified version of the Documentation in accordance with the Software Redistribution Guide. Such right shall not include the right to translate. Licensee shall promptly furnish the Company with a copy of all modified versions of the Documentation. Licensee shall, at its cost, file or register such copyrights where required to obtain protection in a particular country. The Company shall have a nonexclusive right to all modified versions of the Documentation. Upon termination of this Agreement, all rights to modified versions of Documentation shall vest in the Company and/or DRI as the Company may stipulate. In such latter event, Licensee shall cooperate and take such actions as the Company may reasonably request to assign all rights in and to modified versions of Documentation to the Company and/or DRI as aforesaid.

9 DISTRIBUTION; EXPORT RESTRICTIONS

9.1 Licensee agrees to contractually require each entity in Licensee's chain of distribution to accept and distribute the Licensed Program(s) and the Defined Hardware as a unit, and to prohibit any sale or distribution of the Licensed Program separate from the Defined Hardware. Licensee shall ensure provision of any separation of the Licensed Program(s) and the Defined hardware prior to their delivery to the final end user.

9.2 Licensee shall include a copy of the End User Program License Agreement with each copy of any Licensed Program distributed, in the format specified in the Software Redistribution Guide.

9.3 Licensee shall ensure that each item of sale entity in its chain of distribution to the final end user respects the Company's and/or DRI's copyrights, trade names and trademarks, complies with the Product handling, recording and reporting requirements of this Agreement, and makes no unauthorized copies of the Products.

9.4 End Users may use the Licensed Program for the term and in the manner provided for in the End User Program License

Agreement and User rights and obligations set forth therein will survive any termination of the relationship between Licensee and the Company.

9.5 Licensee warrants and hereby gives written assurance to the Company that it will do all things necessary to comply with the COCOM and United States Export Administration and other applicable export laws and regulations as they apply to Licensed Programs, Documentation, Products and all other things delivered to, or derived from things delivered to, Licensee under this Agreement. Exhibit B attached hereto gives Licensee guidance as to the classification of Digital Research Licensed Programs. The Company can make no representation that the information in Exhibit B is correct, and it remains the Licensee's responsibility to ascertain the applicability of all Export Administration regulations.

10 PATENTS AND COPYRIGHTS

10.1 DRI and the Company will defend any action brought against the Licensee to the extent that it is based upon a claim that a Licensed Program, furnished hereunder and used within the scope of a License granted hereunder, infringes a U.S. patent or U.S. copyright which registration is recognized and enforceable in and limited to those countries which are signatory to the Universal Copyright Convention, to which the U.S. is a party. The Company will pay resulting costs, damages and legal fees finally awarded against the Licensee in such action which are attributable to such claim provided that (1) the Licensee notifies the Company promptly in writing of any claim, and (2) the Company has sole control of the defense of any such claim and all related settlement negotiations.

10.2 Should the Licensed Program become, or be likely to become, in the Company's opinion, the subject of a claim of infringement of such copyright or patent, the Company may procure for the Licensee the right to continue using the Licensed Program, or replace or modify it to make it non-infringing. The Company shall have no liability for, and Licensee shall not claim and hold the Company harmless from and against any claim based upon (1) Use of other than a current unaltered release of the Licensed Program or (2) Use, operation or combination of the Licensed Program with non-DRI and/or non-Company programs or data if such infringement would have been avoided but for such Use, operation or combination.

10.3 This Section 10 states the entire liability of the Company with respect to infringement of copyrights or patents.

11 WARRANTY; SUPPORT; MAINTENANCE

11.1 The Company warrants only to Licensee that any Licensed Programs described in SCHEDULE A will substantially conform to the specifications in the published Documentation for such Licensed Programs in effect when Licensed Programs are shipped to Licensee. If Licensee finds a what it believes to be errors of a failure of the Licensed Programs to meet specifications which significantly affect performance, and provides the Company with a written report, the Company will use reasonable efforts to correct, at no cost to Licensee, any such errors or failures. This is Licensee's sole and exclusive remedy for any breach of express or implied warranties hereunder other than the warranty against infringement specified in Section 10 hereof. The Company's warranty and obligations shall extend for a period of six (6) months from the date the Company first delivers the Licensed Program to Licensee. The Company's warranty and obligations is solely for the benefit of Licensee, who has no authority to extend this warranty to any other person or entity. THE COMPANY MAKES NO WARRANTY THAT ALL ERRORS OR FAILURES WILL BE CORRECTED.

11.2 The Company agrees to make available to Licensee, for a period of twelve (12) months from the date the Company first delivers the Licensed Program to Licensee, the Company's current basic OEM support services consisting of verbal and written communication regarding problems and technical advice.

11.3 The Company agrees to make available to Licensee, at no charge, as published during the term of this Agreement and only for so long as such Product is distributed by the Company, object code patches and corrections and Documentation which correct errors or problems discovered in the then current Release and Version of the Product. Such patches, corrections and Documentation may be distributed by the Company in written or machine readable form, or as an entirely new reproduction diskette, at the Company's option, and shall be considered part of the Product hereunder. Maintenance as defined in this Paragraph 11.3 entitles Licensee to new Versions of a Licensed Program; new Releases may be available upon payment of the then current License fee.

11.4 Licensee is solely responsible for all audits provided to end users and for passing on to its distributors, dealers and end users all maintenance materials, and for making the changes required in the master reproduction diskettes supplied with the Redistribution Kit, both of which Licensee agrees to do. Licensee is solely responsible for all verbal and written contact with its end users of Licensed Programs in the following context: (1) software maintenance patches and updates, and (2) software support, operational instruction, problem reporting, and technical advice.

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11.5 EXCEPT AS PROVIDED IN PARAGRAPH 11.1 ALL CONDITIONS (INCLUDING BUT NOT LIMITED TO IMPLIED CONDITIONS OF FITNESS FOR PURPOSE AND MERCHANTABILITY) WARRANTIES AND REPRESENTATIONS EXPRESSED OR IMPLIED BY STATUTE COMMON LAW OR OTHERWISE ARE HEREBY EXCLUDED

12 CONFIDENTIAL INFORMATION

12.1 All documentation and information which is disclosed by DRI or Company as proprietary or confidential including without limitation drawings, computer programs listings, techniques, algorithms and processes and technical and marketing information ("Confidential Information") which is supplied by the Company to Licensee in connection with this Agreement (other than documentation and information intended for distribution to third parties) shall be treated confidentially by Licensee and its employees and shall not be disclosed by Licensee without the Company's prior written consent. Information shall not be considered to be Confidential Information if it (1) is already or otherwise becomes publicly known through no act of the receiving party; (2) is lawfully received from third parties subject to no restriction of confidentiality; or (3) can be shown by the receiving party to have been independently developed by it prior to such disclosure.

12.2 Licensee shall not copy, reproduce, re-manufacture, disassemble the Object Code or in any way duplicate all or any part of the Confidential Information, including translating it into another software language, except in accordance with the terms and conditions of this Agreement. Licensee shall have an appropriate agreement with each of its employees having access to Confidential Information, sufficient to enable Licensee to comply with all terms of this Agreement. Licensee agrees to protect the Confidential Information with the same standard of care and procedures which it uses to protect its own trade secrets and proprietary information.

13 LIMITATION OF LIABILITY

13.1 In no event shall DRI and/or the Company be liable for any loss of profits, loss of business, loss of use or of data, interruption of business, or for indirect, special, incidental or consequential damage or injury direct or indirect of any kind whether under this Agreement or otherwise, in no case will DRI and/or the Company be liable for any representation or warranty made to any third party by Licensee, any agent for Licensee, any distributor or dealer or other person or entity in the distribution chain.

13.2 Notwithstanding anything in this Agreement to the contrary, the entire liability of the Company to Licensee for damages concerning performance or nonperformance by the Company or in any way related to the subject matter of this Agreement and regardless of whether the claim for such damages is based in contract or in tort, shall not exceed the amount of payments made hereunder by Licensee to the Company prior to such claim. SAVE THAT the Company shall accept liability for death or personal injury caused by its negligence.

14 TERM, TERMINATION

14.1 The term of this Agreement shall commence on the date executed by the Company and shall continue unless earlier terminated as provided in this Section 14 or otherwise rightfully terminated.

14.2 The Company may, at its option, terminate this Agreement forthwith and the license granted hereunder if Licensee materially breaches any of Licensee's obligations under this Agreement. A material breach includes, but is not limited to, the following:

- a) Not shipping the Licensed Program in conjunction with the Defined Hardware; or
- b) Reproducing in more than the prepaid, licensed quantity of Licensed Program; or
- c) Shipping the Licensed Program without the required labeling; or
- d) Not providing the reports required under Paragraph 5.1 hereunder; or
- e) Non-payment of any obligatory payment(s) specified in a SCHEDULE.

In the event of a non-material breach, the Company shall provide Licensee, in writing, notice of such breach and a reasonable time period in which the breach must be remedied. Failure by the Licensee to remedy such breach within the remedial period shall enable the Company to terminate the license forthwith.

14.3 Notwithstanding any other provision of this Agreement the occurrence of any of the following events shall, at the option of the Company, constitute an event of default under this Agreement enabling the Company to terminate this Agreement forthwith:

- a) If a petition or action shall be filed or taken by or against Licensee under any law dealing with insolvency, bankruptcy or suspension of payment;
- b) If a Receiver is appointed over the assets or undertaking of Licensee (or any part thereof); or
- c) If Licensee enters into a deed of arrangement or makes an assignment for the benefit of creditors;

14.4 The obligations of Licensee in Section 12.0 shall survive termination of this Agreement and shall remain in effect until the earlier of such time as the Confidential Information becomes in the public domain or eight (8) years following the termination of this Agreement. Upon termination of the Agreement, Licensee shall discontinue marketing and reproduction of the Product and shall promptly return and make no further use of property, materials and other items and all copies thereof belonging to the Company relating to this Agreement.

14.5 This Agreement is executory in nature and so long as Licensee has any continuing obligations hereunder, the Company shall be entitled to protect the matter reproduction privileges of the Licensed Program and for this purpose in the event that Licensee fails promptly to perform any obligation under this Agreement which would fully protect the proprietary rights of the Company or DRI, the Company reserves the right to reproduce such matter in either reproduction privileges as aforesaid and Licensee hereby grants an irrevocable right and license to the Company's servants and agents to enter upon all or any of its premises during normal business hours. The right shall continue to exist notwithstanding the termination of this Agreement for any reason and in without prejudice to any accrued rights of the Company hereunder.

14.6 Licensee understands and acknowledges that violation of Licensee's obligations pursuant to this Agreement and the SCHEDULES and EXHIBITS may cause the Company irreparable harm or damage, which may not be recovered at law, and Licensee agrees that the Company's remedies for breach of this Agreement may be in equity by way of injunctive relief, as well as any other relief available, whether in law or in equity.

14.8 Nothing contained herein shall limit any other remedies which either party may have for the default of the other party under this Agreement.

15 ASSIGNMENT

This Agreement and the License granted hereunder are to a specific entity or legal person, not including corporate subsidiaries or affiliates of Licensee, and no rights hereunder are assignable by Licensee nor are the obligations imposed on Licensee delegable. Any attempt by Licensee to sublicense, assign, or transfer the rights, duties or obligations under this Agreement in derogation hereof shall be null and void.

16 GENERAL

16.1 In the event that any one or more of the provisions of this Agreement shall be found to be illegal or unenforceable, then notwithstanding, this Agreement shall remain in full force and effect, and such term or provision shall be deemed severed.

16.2 Neither party's right to require performance of the other party's obligations hereunder shall be affected by any previous waiver, forbearance, or course of dealing.

16.3 This is a non-se agreement. No agency, partnership, joint venture or other joint relationship is created hereby and neither Licensee nor Licensee's agents have any authority of any kind to bind the Company in any respect whatsoever.

16.4 Notwithstanding anything in this Agreement to the contrary, no default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due entirely to causes beyond reasonable control of the party charged with a default, including, but not limited to, causes such as strikes, lockouts or other labour disputes, riots, civil disturbances, actions or reactions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather, fire, earthquake, acts of God or the public enemy, nuclear disasters or default of a common carrier.

16.5 Wherever in this Agreement either party's consent is required, such consent shall not unreasonably be withheld or delayed.

16.6 This Agreement constitutes the entire understanding between the Company and Licensee and supersedes all proposals, oral or written, and all communications between the parties relating to this Agreement. The terms and conditions of this Agreement shall prevail, notwithstanding any variance with any purchase order or other written instrument submitted by Licensee, whether formally rejected by the Company or not. This Agreement may be modified only in writing, signed by each party.

16.7 Notices under this Agreement shall be sufficient only if mailed by certified or registered mail, return receipt requested or personally delivered to the parties. Notices by mail shall be deemed received three days after deposit. Notices to the Company or Licensee as appropriate, shall be sent to the address of such party specified at the head of this Agreement.

16.8 This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereto hereby submit to the non-exclusive jurisdiction of the English Courts.

