

HP 1000 and HP21XX SOFTWARE AGREEMENT

This **HP 1000 and HP21XX SOFTWARE AGREEMENT** (this "**Agreement**") is made between Hewlett-Packard Company having offices at 8000 Foothills Blvd., Roseville, California, 95742 ("**HP**") the Computer History Museum, a 501(c)(3) corporation formed under the laws of the State of California with its principal place of business at 1401 N. Shoreline Blvd., Mountain View CA 94043 ("CHM") **CHM** effective as of the date of HP's signature below (the "**Effective Date**").

WHEREAS, HP has developed certain computer programs, firmware and related documentation written, owned and first distributed by HP to execute on the computer systems commonly known as the HP1000 and HP21XX architecture families (the "**Program**") which embody and reflect certain proprietary information of HP or the Hewlett-Packard Development Company, L.P., and

WHEREAS, CHM is dedicated to preserving and presenting the stories and artifacts of the information age. HP wishes to assist CHM in accomplishing its mission and is willing to provide CHM the Program subject to the limited licenses stated below, and

WHEREAS, CHM may wish to modify the Program in the future and to distribute the Program to third parties for the third party's personal, non-commercial purposes, and

WHEREAS, HP is willing to deliver to CHM the Source Code for the Program and any existing standard documents, manuals and written materials with respect to the Program plus any other developer documents, manuals and written materials with respect to the Program provided by HP pursuant to this Agreement (the "**Program Materials**") solely for the purpose or purposes described in this Agreement,

NOW, THEREFORE, HP and CHM agree as follows:

1. DEFINITIONS

1.1 "Derivative Works" means modifications and enhancements created by CHM, in Source Code and Object Code format, that are based upon the Program pursuant to the license terms in Section 2.1.

1.2 "Intellectual Property Rights" means (by whatever name or term know or designated) copyrights, Trade Secrets, patents, and any other intellectual and industrial property and proprietary rights (excluding trademarks) including registrations, applications, renewals, and extensions of such rights anywhere in the world.

1.3 "Object Code" means all or any portion of machine-readable and executable code.

1.4 "Source Code" means all or any portion of human readable code.

2. LICENSES AND DELIVERY

2.1 HP hereby grants CHM a personal, internal to CHM only, non-exclusive, fully-paid right and license, including the right to sublicense for use and to copy (only to the extent reasonably necessary for CHM to make and support Derivative Works), compile, modify, enhance and create Derivative Works of the Program and Program Materials solely for CHM's non-commercial internal development purposes, internal use and internal support.

2.2 CHM shall not remove any confidentiality notices, copyright notices, limited rights legends, restricted rights legends and other proprietary rights notices contained within the Source Code.

2.3 HP hereby authorizes CHM to do the following with the Program and Program Materials solely for educational and non-commercial purposes:

(a) Preserve the Program by (i) storing the Program in different formats; (ii) copying the Program onto stable media as needed; and (iii) tagging the Program with metadata for easy identification and classification.

(b) Provide public viewing of the Program and Program Materials in a physical exhibit at CHM or online via the CHM website, <http://www.computerhistory.org>.

(c) Allow the Program to be run in simulators, or actual hardware.

(d) Provide the Program and Program Materials to private individuals ("Museum Users") with the same rights granted by HP to CHM.

2.4 HP shall deliver to CHM one copy of the source code for the Program and Program Materials, promptly following the Effective Date of this Agreement.

3. OWNERSHIP.

3.1 Title to, ownership of and all proprietary and Intellectual Property Rights in the Program, Program Materials and Derivative Works and all copies thereof are reserved to and will at all times remain with HP. Except for the limited license granted to CHM in this Agreement, CHM shall not assert any right, title, or interest in or to any of the Program, Program Materials and/or Derivative Works or any proprietary or Intellectual Property Rights therein.

3.2 HP and CHM agree to attempt to resolve, reasonably and in good faith, such transitional issues or issues of an administrative nature that may arise after the Effective Date, but which are not covered, or which have not been anticipated, by this Agreement with the license right granted from HP to CHM hereunder.

4. INDEMNIFICATION.

4.1 CHM shall defend, indemnify, and hold harmless HP and its suppliers from and against any damages, liabilities, costs, expenses (including reasonable attorney's fees) claim, demand, suit, or proceeding (an "**Action**") which arises out of or is related to any allegation that the Program, Program Materials, or any portion thereof, modified by CHM infringes any third-party copyright, patent, trademark, trade secret or any other proprietary right, provided that HP gives written notice of the Action (a "**Notice**") to CHM and that CHM shall control and direct the defense of settlement of such Action. HP may opt to participate in the defense of an Action after the defense or settlement thereof has been assumed by CHM, provided HP bears any legal fees and expenses and other costs of defense it incurs in so participating.

4.2 HP shall defend, indemnify, and hold harmless CHM from and against any damages, liabilities, costs, expenses (including reasonable attorney's fees) claim, demand, suit, or proceeding (an "**Action**") which arises out of or is related to any allegation that the Program, Program Materials, or any portion thereof, developed by HP infringes any third-party copyright, patent, trademark, trade secret or any other proprietary right, provided that CHM gives written notice of the Action (a "**Notice**") to HP and that HP shall control and direct the defense of settlement of such Action. CHM may opt to participate in the defense of an Action after the defense or settlement thereof has been assumed by HP, provided CHM bears any legal fees and expenses and other costs of defense it incurs in so participating.

5. NO WARRANTIES. THE PROGRAM AND PROGRAM MATERIALS ARE PROVIDED TO CHM "AS IS" AND UNSUPPORTED. HP MAKES NO REPRESENTATIONS, GUARANTEES OR WARRANTIES WITH RESPECT TO THE PROGRAM AND/OR PROGRAM MATERIALS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY GUARANTY, REPRESENTATION OR WARRANTY ON THEIR CONDITION, CONFORMITY TO ANY DESCRIPTION OR THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS IN THE PROGRAM OR PROGRAM MATERIALS OR ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. HP SHALL NOT BE LIABLE FOR ANY ERROR, OMISSION, DEFECT, DEFICIENCY, OR NONCONFORMITY IN THE PROGRAM AND PROGRAM MATERIALS.

6. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR ANY DAMAGES RESULTING FROM LOSS OF USE, DATA OR PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF THE PROGRAM AND/OR PROGRAM MATERIALS.

7. TERM AND TERMINATION

7.1 The term of this Agreement will commence upon the Effective Date and will continue indefinitely unless otherwise terminated as provided herein.

7.2 HP may terminate this Agreement immediately upon notice to CHM if CHM breaches any provisions of this Agreement and does not cure the breach to HP's satisfaction within 30 days after receiving notice of breach.

7.3 Upon termination of the Agreement, the licenses granted to CHM in this Agreement will terminate as well. Thereafter, CHM will immediately destroy the Program and Program Materials and all copies thereof in its possession or under its. CHM will certify to HP in a writing signed by an officer of CHM that it has fully complied with the foregoing and no copy of the Program and/or Program Materials remains in CHM's possession or under its control. This certification will accompany the returned Program and Program Materials.

7.4 The provisions of Sections 3, 4, 6, 7.3, 7.4 and 10 shall survive the termination of this Agreement.

8. NO ASSIGNMENT. This Agreement may not be assigned by CHM without the prior written consent of HP and any attempt to assign it in violation of this provision will be void.

9. ENTIRE UNDERSTANDING. This Agreement sets forth the entire understanding between the parties with respect to the matters set forth herein and supersedes all prior representations, understandings or agreements, whether written or oral, express or implied, with respect to this transaction.

10. GOVERNING LAW. This Agreement is governed by and interpreted in accordance with the laws of the State of New York, excluding New York's conflict or laws rules and principles.

11. WAIVERS. Any waiver of any provision of this Agreement, or a delay by either party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver, nor create an expectation of non-enforcement of that or any other provision or right.

12. RELATIONSHIP OF PARTIES. The parties are independent contractors under this Agreement and no other relationship is intended, including a partnership, franchise, joint venture, agency, employer/employee, or master/servant relationship. Neither party shall act in a manner that expresses or implies a relationship other than that of independent contractor, nor bind the other party.

13. NOTICES. Any notice required to be given under this Agreement must be given in writing and will be effective on receipt when delivered to the party at the address stated on the first page of this Agreement, or to such other address as such party may designate by written notice in accordance with the provisions of this Section.

If to HP:

With a copy to:

If to CHM: Vice President of Collections & Exhibits

With a copy to: Executive Director & CEO

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives below.

Computer History Museum

Hewlett-Packard Company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____