

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made and entered into this _____ day of _____, 19____, by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, hereinafter called "LICENSOR", and _____, a _____ having its principal office at _____, hereinafter called "LICENSEE";

WITNESSETH:

WHEREAS, LICENSOR owns and is the proprietor of the copyright of a certain computer program entitled, "Third Berkeley Software Distribution (3BSD)"; and

WHEREAS, LICENSEE desires to obtain from LICENSOR, and LICENSOR desires to grant to LICENSEE, a license to use the aforementioned computer program;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms hereinafter set forth, and for other good and valuable consideration, LICENSOR hereby leases to LICENSEE the physical property described on annexed Schedule A ("Licensed Material") subject to a non-transferrable, nonexclusive license ("License"), which is hereby granted to LICENSEE, to use such Licensed Material upon the terms and conditions hereinafter set forth; and LICENSEE hereby accepts such lease subject to the License solely upon such terms and conditions.

1. **Term.** The term of this Agreement shall commence on the date hereof, and, unless sooner terminated as hereinafter set forth, shall extend indefinitely.

2. **Charges.** As a fee for the use of the Licensed Material, LICENSEE shall pay LICENSOR a duplication charge of two hundred dollars (\$200.00). LICENSEE may obtain new releases of the Licensed Material as LICENSOR may from time to time make available at a duplication charge of two hundred dollars (\$200.00). Such new releases as are purchased by LICENSEE shall be subject to the terms and conditions of this Agreement. Such fee is due and payable when this License Agreement is returned, signed by the LICENSEE, and with a copy of the LICENSEE's UNIX/32V[†] Agreement.

Such fee does not include local, state or federal taxes, and LICENSEE hereby agrees to pay all such taxes as may be imposed upon LICENSEE or LICENSOR with respect to the ownership, leasing, licensing, rental, sale, purchase, possession or use of the Licensed Material.

3. **Maintenance and Update Services.** Neither maintenance services nor update services are included in this Agreement. As used in the Agreement, the term "maintenance services" includes notice to LICENSEE of latent errors in the Licensed Material and rectification thereof.

4. **Title.** LICENSEE agrees that the Licensed Material is, and shall at all times remain, the property of LICENSOR. LICENSEE shall have no right, title or interest therein or thereto except as expressly set forth in this Agreement. However, those portions of the Licensed Material which are modifications of UNIX/32V and are so indicated on schedule A, are also governed by the LICENSEE's agreement with Western Electric.

5. **Duplication and Disclosure.** LICENSEE agrees that all Licensed Material shall be held in confidence, that such Licensed Material is provided for the exclusive use of LICENSEE, on the following CPU, namely _____, Serial No. _____ located at its _____ facility, and any single replacement thereof, provided, that written notice of the replacement and its Serial Number is first given to LICENSOR. The LICENSEE warrants that this machine is licensed, by agreement with Western Electric, for using of the UNIX timesharing system, version 7 (UNIX/32V), dated _____. The Licensed Material 3BSD shall not be

[†] UNIX is a trademark of Bell Laboratories

duplicated, except as reasonably necessary to LICENSEE's use of the Licensed Material under this Agreement or disclosed to others in whole or in part without the express written permission of LICENSOR. IN PARTICULAR, LICENSEE AGREES THAT THE SOURCE FORM OF LICENSED MATERIAL SHALL NOT BE DISCLOSED TO OTHER LICENSEES WHETHER OR NOT SUCH OTHER LICENSEES HAVE CURRENT VERSIONS OF THE LICENSED MATERIAL. Such prohibitions on disclosure shall not apply to disclosure by LICENSEE to its employees and consultants if and to the extent that such disclosure is reasonably necessary to LICENSEE's use of the Licensed Material and provided that LICENSEE shall take all reasonable steps (including, but not limited to, all steps that LICENSEE takes with respect to information, data, and other tangible and intangible property of its own that it regards as confidential or proprietary) to ensure that such Licensed Material is not disclosed or duplicated in contravention of the provisions of the Agreement by such employees or consultants.

6. Warranty and Limitation of Liability. LICENSOR MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION OF THE LICENSED MATERIAL, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.

LICENSOR shall not be liable for, and LICENSEE hereby assumes the risk of and will release and forever discharge LICENSOR, its agents, officers, assistants and employees thereof either in their individual capacities or by reason of their relationship to LICENSOR and its successors in respect to any expense, claim, liability, loss or damage (including any incidental or consequential damage) either direct or indirect, whether incurred, made or suffered by LICENSEE or by third parties, in connection with or in any way arising out of the furnishing, performance or use of the Licensed Material. In any event LICENSOR's liability to LICENSEE on any ground, including but not limited to negligence, shall not exceed a sum equal to the fee paid to LICENSOR by the LICENSEE hereunder except as provided in paragraph 7 hereunder entitled "Patent and Copyright Indemnity".

7. Patent and Copyright Indemnity. LICENSOR will defend the LICENSEE against a claim that a program supplied hereunder infringes a U.S. patent or copyright, LICENSOR will pay the resulting cost and damage awards provided that:

- a. The LICENSEE promptly notifies LICENSOR in writing of the claim; and
- b. LICENSOR has sole control of the defense and all related settlement negotiations.

If such claim has occurred, or in LICENSOR'S opinion is likely to occur, the LICENSEE agrees to accept noninfringing replacement programs from LICENSOR, if available, or, if not, to return the program on written request by LICENSOR. The LICENSEE will pay only those charges which were payable prior to the date of such return. LICENSOR has no liability for any claim based upon the combination, operation or use of any program supplied hereunder with equipment or data not supplied by LICENSOR, or with any program other than or in addition to the program supplied by LICENSOR if such claim would have been avoided by use of another program whether or not capable of achieving the same results, or based upon modification of any program supplied hereunder.

This indemnity does not cover any material originally supplied to LICENSEE by Western Electric under LICENSEE's UNIX/32V license.

The foregoing states the entire obligation of LICENSOR with respect to infringement of patents and copyrights.

8. Alterations and Modifications. LICENSEE shall make any alterations, variations, modifications, additions or improvements to the Licensed Material, at its own risk and expense for its own use and merge it into other program material to form an updated work, provided that, upon discontinuance of the License for such Licensed Material the Licensed Material supplied by LICENSOR will be completely removed from the updated work and dealt with under this Agreement as if permission to modify had never been granted. Any portion of the Licensed Material included in an updated work shall be used only on the designated CPU and shall remain subject to all other terms of this agreement.

9. Inspection. LICENSOR shall have the right at all reasonable times to inspect the premises of LICENSEE subject to all LICENSEE'S industrial security and other rules then in effect at LICENSEE'S premises; to determine and verify LICENSEE'S compliance with this Agreement.

10. **Default.** If with regard to any of the Licensed Material, LICENSEE fails to pay any charge provided for herein within ten (10) days after written notice that the same is overdue and payable, or if LICENSEE with regard to any item or items of Licensed Material fails to observe, keep or perform any other provisions of the Agreement required to be observed, kept or performed by LICENSEE, LICENSOR shall have the right to exercise any one or more of the following remedies:

- (a) To terminate the License herein granted;
- (b) To declare the entire amount of any fee payable under Paragraph 2 hereinabove for the entire term of this Agreement immediately due and payable as to any or all items of Licensed Material without notice or demand to LICENSEE;
- (c) To sue for and recover all fees then accrued or thereafter accruing, with respect to any items of Licensed Material;
- (d) To take possession of any or all items of Licensed Material without demand or notice, wherever they may be located, without court order or other process of law. LICENSEE hereby waives any and all damages occasioned by such taking of possession. No taking of possession shall constitute a termination of this Agreement as to any item of Licensed Material unless LICENSOR expressly so notifies LICENSEE in writing;
- (e) To terminate this Agreement as to any or all items of Licensed Material;
- (f) In the event of any unauthorized use of the Licensed Material, including, but not limited to, unauthorized disclosure to third persons or use by LICENSEE of the material at facilities other than those identified in Paragraph 5 above, LICENSOR shall at its option have the right in addition to its other remedies, to recover from LICENSEE an amount equal to (i) the sum LICENSOR would have charged the person or persons obtaining the benefit of such unauthorized use of the Licensed Material, plus (ii) any amount received by LICENSEE on account of such unauthorized use;
- (g) To have the obligations of LICENSEE hereunder specifically performed and to have any threatened or actual breach by LICENSEE enjoined, it being acknowledged with respect to the obligations of LICENSEE under Paragraph 5 hereof that such equitable relief is the only adequate remedy;
- (h) To pursue any other remedy at law or in equity. Notwithstanding any said repossession, or any other action which LICENSOR may take, LICENSEE shall be and remain liable for the full performance of all obligations on his/her part to be performed under this Agreement. All such remedies are cumulative, and may be exercised concurrently or separately.

11. **Legal Expenses.** In case legal action is taken by either party to enforce this Agreement, all costs and expenses, including reasonable attorney's fees, incurred by the prevailing party in exercising any of its rights or remedies hereunder or in enforcing any of the terms, conditions, or provisions hereof shall be paid by the other party.

12. **Assignment.** Without the prior written consent of the other, neither party shall (a) assign, transfer, pledge or hypothecate this Agreement, the Licensed Material or any part thereof or any interest therein or (b) sublet or lend the Licensed Material or any part thereof, or permit the Licensed Material or any part thereof to be used by anyone except as specifically authorized by Paragraph 5 above. Any consent to any of the foregoing prohibited acts shall apply only in the given instance and shall not be deemed a consent to any subsequent like act nor a consent to any other act. In the event either party consents to any prohibited act hereunder, the other shall, without further request, apprise any third party receiving Licensed Material or the use thereof of the restrictions upon use contained in this Agreement. Subject always to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns.

13. **Severability.** If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected thereby.

14. **Governing Law.** This Agreement shall be construed and enforced according to the laws of California as applied to contracts made and to be performed in California.

15. **Paragraph Headings.** The headings herein are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.

16. **Termination.** Upon termination of the lease herein, all Licensed Materials and copies thereof shall be returned to LICENSOR.

17. **Installations.** Under the terms hereof, LICENSEE is entitled to only one installation of Licensed Materials. Additional installations requested by LICENSEE will be made by LICENSOR under the terms and conditions to be separately negotiated.

18. **Entire Agreement.** This Agreement contains all the agreements, representations, and understandings of the parties hereto and supersedes any previous understandings, commitments or agreements, oral or written.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

By

(Licensor)

By

(Licensee)