

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, WESTERN ELECTRIC COMPANY, INCORPORATED ("WESTERN") is the proprietor and owner of the UNIX/32V Time Sharing System, Version 1.0 ("UNIX"); and

WHEREAS, LICENSOR is the proprietor and owner of enhancements and additions to UNIX, which together with UNIX comprise computer programs and documentation entitled, "Fourth Berkeley Software Distribution ("Licensed Material)"; and

WHEREAS, LICENSOR has been authorized by WESTERN to distribute the Licensed Material to licensees who are also WESTERN's licensees for UNIX; and

WHEREAS, LICENSEE warrants and represents that it is a WESTERN licensee for UNIX; and

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

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 Licensed Material, the components of which are described on annexed Schedule A, subject to a non-transferable, 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. **Fees.** The fee for this license and one physical copy of the Licensed Material is three hundred dollars (\$300.00). LICENSEE may obtain additional copies of the Licensed Material and copies of new releases of the Licensed Material which the LICENSOR may make available by paying a duplication fee of three hundred dollars (\$300.00) per copy. All such copies shall be subject to the terms and conditions of this agreement. All fees are due and payable in advance.

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.

5. **Duplication and Disclosure.** LICENSEE and LICENSOR agree that the Licensed Material contains proprietary UNIX Operating System Software belonging to WESTERN and licensed by WESTERN as part of UNIX. LICENSEE represents that it has obtained a valid license from WESTERN to use UNIX and has provided a copy of this license to LICENSOR. LICENSEE agrees to treat WESTERN's included proprietary software in the same manner as if such included proprietary software had been

received directly pursuant to LICENSEE's UNIX license from WESTERN. It is agreed that should the LICENSEE's UNIX license from WESTERN be modified, for example, to include additional CPU's, the modified license will govern the use of the Licensed Material. LICENSOR need not be notified of such modifications. Likewise, it is agreed that if LICENSEE's UNIX license from WESTERN is terminated, LICENSEE's license from LICENSOR is also terminated.

LICENSEE may license the use of the Licensed Material to third parties provided that such licensing is acceptable to WESTERN. Material so provided may be either modified or unmodified. LICENSEE may, but need not, charge a fee for such licenses. LICENSOR need not be notified of such licensing.

6. Proper Credit and Recognition. In the use and/or distribution of the Licensed Material, LICENSEE will take all reasonable measures to give appropriate credit to The Regents of the University of California and the Electrical Engineering and Computer Sciences Department at the Berkeley Campus of the University of California for their roles in the development of the Licensed Material, and shall make this condition a requirement of any agreement by which LICENSEE distributes the Licensed Material.

7. 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.

LICENSEE agrees to indemnify, defend, and hold harmless LICENSOR, its agents, officers, and employees, 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. LICENSEE's obligations under this paragraph include, but are not limited to, its obligation to indemnify, defend, and hold LICENSOR, its agents, officers, and employees harmless in the case of any claim of copyright or patent infringement based in any manner on LICENSEE's use of the Licensed Material.

8. 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.

9. 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.

10. 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. If LICENSEE is located outside the United States of America, the parties hereto agree that any dispute arising in connection with this agreement will be settled by the ICC Court of Arbitration.

11. 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.

12. 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.

13. Authority. Each of the undersigned warrants that he/she has the authority to bind to this Agreement the party which he/she represents.

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
(Licensor)

By _____

(Title)

(Licensee)

By _____

(Title)