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*Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,

Plaintiff/Counterclaim-Defendant,

-against-

**INTERNATIONAL BUSINESS
MACHINES CORPORATION,**

Defendant/Counterclaim-Plaintiff.

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

DECLARATION OF DAVID P. RODGERS

I, David P. Rodgers, declare as follows:

1. From July 1983 until December 1996, I held various positions at Sequent Computer Systems, Inc. ("Sequent"), including Vice President of Engineering from 1983 through 1988. Since October 2001, I have been employed as Senior Vice President of Engineering at IP Unity Corp.

2. During the time I served as Vice President of Engineering at Sequent, I executed several agreements with AT&T Technologies, Inc. ("AT&T Technologies") for the licensing of certain Unix software and related materials. In particular, I executed the following agreements between Sequent and AT&T Technologies:

- the Software Agreement (Agreement Number SOFT-00321) dated April 18, 1985 (the "Software Agreement")
- the Sublicensing Agreement (Agreement Number SUB-00321A) dated January 28, 1996 (the "Sublicensing Agreement"),
- the Substitution Agreement (Agreement Number XFER-000321B) dated January 28, 1986 (the "Substitution Agreement").

True and correct copies of these agreements, referred to herein as the "Sequent Agreements", are attached as Exhibits 1, 2 and 3 to this Declaration.

3. This declaration is submitted in connection with the lawsuit entitled The SCO Group, Inc. v. International Business Machines Corporation, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003). Except as stated otherwise, this declaration is based upon personal knowledge.

4. Section I of this declaration sets out my understanding of the grant of rights under the license agreements pursuant to which Unix software and related

materials were licensed to Sequent by AT&T Technologies. Section II sets out my understanding of the confidentiality provisions of the license agreements. Section III sets out my understanding of certain exceptions to the confidentiality provisions.

I. Basic Grant of Rights to Unix System V.

5. Although I did not personally negotiate the Sequent Agreements with representatives of AT&T Technologies, I carefully reviewed the agreements myself and with other Sequent employees before executing them and have personal knowledge of the parties' understanding of, and intent behind, the terms and conditions of the agreements.

6. It was my understanding that the licensing agreements that I executed were standard form agreements used by AT&T Technologies to license Unix software products to its users. The Software Agreement granted Sequent the right to use Unix software products, including source code, for its internal business purposes. The agreement further granted Sequent the right to modify Unix software products and to prepare derivative works based upon such products.

7. Section 2.01 of the Software Agreement states that Sequent's "right to use includes the right to modify such SOFTWARE PRODUCT and to prepare derivative works based on such SOFTWARE PRODUCT, provided that the resulting materials are treated hereunder as part of the original SOFTWARE PRODUCT". I did not understand this language to give AT&T Technologies the right to assert ownership or control over modifications or derivative works prepared by Sequent, except to the extent that the licensed Unix software product was included in such modifications or derivative works. I would never have signed an agreement that would grant ownership or control to

AT&T Technologies over modifications or derivative works prepared by Sequent to the extent those modifications or derivative works contained no part of the Unix software product licensed from AT&T Technologies.

8. As I understood the Software Agreement between Sequent and AT&T Technologies, Sequent was free to use, copy, distribute or disclose any modifications or derivative works developed by Sequent, provided that it did not copy, distribute or disclose any portion of the licensed Unix software product source code (except as otherwise permitted by the licensing agreements).

9. It is my understanding that Sequent's Dynix products might include some small parts of the licensed Unix System V source code, although I do not personally know whether it does or not. I also do not know whether Dynix is so similar to Unix System V that it may properly be viewed as a "derivative work" based on Unix System V, particularly in light of the fact that Dynix was originally created using Berkeley Software Design ("BSD") Unix as a base and not AT&T Technologies' Unix System V. In any event, as I understood the Sequent Agreements, Sequent was free to use, copy, distribute, or disclose Dynix (including source code), provided that it did not copy, distribute or disclose any Unix System V source code that might be contained therein (except as otherwise permitted by the licensing agreements).

II. Confidentiality Restrictions in the License Agreements.

10. The standard form licensing agreements proposed by AT&T Technologies imposed certain confidentiality restrictions on Sequent.

11. Section 7.06(a) of the Software Agreement included the following language concerning confidentiality:

LICENSEE agrees that it shall hold all parts of the SOFTWARE PRODUCTS subject to this Agreement in confidence for AT&T. LICENSEE further agrees that it shall not make any disclosure of any or all of such SOFTWARE PRODUCTS (including methods or concepts utilized therein) to anyone, except to employees of LICENSEE to whom such disclosure is necessary to the use for which rights are granted hereunder.

As discussed below in Section III, Sequent's confidentiality obligation was subject to important exceptions.

12. It was my understanding that the purpose of this confidentiality provision from the perspective of AT&T Technologies was to protect the Unix System V source code that it was licensing. Although there is reference in Section 7.06(a) to "methods or concepts", I had no understanding at the time that AT&T Technologies was interested in protecting anything other than the Unix source code.

13. As I understood the agreement regarding confidentiality, Sequent had no obligation to keep confidential any information embodied in any of the software products provided to Sequent, provided that Sequent did not disclose source code (except as otherwise permitted by the license agreements). In addition, as I discuss above, Sequent had no obligation to keep confidential any modification or derivative work developed by Sequent that did not include Unix System V source code. Sequent was free to use, copy, distribute or disclose such modifications and derivative works, provided that it did not copy, distribute or disclose any portions of the licensed Unix source code (except as otherwise permitted by the license agreements).

III. Relief from Confidentiality Restrictions.

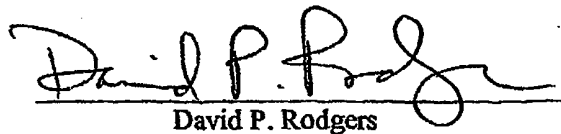
14. The confidentiality provision of the Software Agreement provided that Sequent was not required to keep a software product confidential if it became "available without restriction to the general public". As I understood the agreement, Sequent would be free to disclose, without any restriction whatsoever, information that became available without restriction to the general public by acts not attributable to Sequent or its employees.

15. Although I do not recall any particular definition being given to the term "available without restriction to the general public" at the time the Software Agreement was executed, I believe a number of circumstances would meet the definition. For example, a software product or any part of a software product would be considered "available without restriction to the general public" if it was lawfully published by someone outside of Sequent. I believe that any number of books and other materials have been published regarding the Unix software, and that the information contained in those materials at least would not be subject to the confidentiality restrictions in the Software Agreement.

16. I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 5, 2003.

Saratoga, California


David P. Rodgers

AT&T TECHNOLOGIES, INC.
SOFTWARE AGREEMENT

1. AT&T TECHNOLOGIES, INC., a New York corporation ("AT&T"), having an office at 1 Oak Way, Berkeley Heights, New Jersey 07922, and SEQUENT COMPUTER SYSTEMS, INC., a Delaware corporation having an office at 14360 N. W. Science Park Drive, Portland, Oregon 97229,

for itself and its SUBSIDIARIES (collectively referred to herein as "LICENSEE") agree that, after execution of this Agreement by LICENSEE and acceptance of this Agreement by AT&T, the terms and conditions set forth on pages 1 through 6 of this Agreement shall apply to use by LICENSEE of SOFTWARE PRODUCTS that become subject to this Agreement.

2. AT&T makes certain SOFTWARE PRODUCTS available under this Agreement. Each such SOFTWARE PRODUCT shall become subject to this Agreement on acceptance by AT&T of a Supplement executed by LICENSEE that identifies such SOFTWARE PRODUCT and lists the DESIGNATED CPUs therefor. The first Supplement for a specific SOFTWARE PRODUCT shall have attached a Schedule for such SOFTWARE PRODUCT. Any additional terms and conditions set forth in such Schedule shall also apply with respect to such SOFTWARE PRODUCT. Initially, Supplement(s) numbered 1 -----
----- are included in and made part of this Agreement.

3. Additional Supplements may be added to this Agreement to add additional SOFTWARE PRODUCTS (and DESIGNATED CPUs therefor) or to add or replace DESIGNATED CPUs for other SOFTWARE PRODUCTS covered by previous Supplements. Each such additional Supplement shall be considered part of this Agreement when executed by LICENSEE and accepted by AT&T.

4. This Agreement and its Supplements set forth the entire agreement and understanding between the parties as to the subject matter hereof and merge all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein or as duly set forth on or subsequent to the date of acceptance hereof in writing and signed by a proper and duly authorized representative of the party to be bound thereby. No provision appearing on any form originated by LICENSEE shall be applicable unless such provision is expressly accepted in writing by an authorized representative of AT&T.

Accepted by:

SEQUENT COMPUTER SYSTEMS, INC.

By David P. Rodgers 4/12/85
(Signature) (Date)

David P. Rodgers
(Type or print name)

Vice President of Engineering
(Title)

AT&T TECHNOLOGIES, INC.

By O. L. Wilson APR 18 1985
(Signature) (Date)

O. L. WILSON
(Type or print name)

Manager, Software Sales and Marketing
(Title)

I. DEFINITIONS

1.01 CPU means central processing unit.

1.02 COMPUTER PROGRAM means any instruction or instructions, in source-code or object-code format, for controlling the operation of a CPU.

1.03 DESIGNATED CPU means any CPU listed as such for a specific SOFTWARE PRODUCT in a Supplement to this Agreement.

1.04 SOFTWARE PRODUCT means materials such as COMPUTER PROGRAMS, information used or interpreted by COMPUTER PROGRAMS and documentation relating to the use of COMPUTER PROGRAMS. Materials available from AT&T for a specific SOFTWARE PRODUCT are listed in the Schedule for such SOFTWARE PRODUCT.

1.05 SUBSIDIARY of a company means a corporation or other legal entity (i) the majority of whose shares or other securities entitled to vote for election of directors (or other managing authority) is now or hereafter controlled by such company either directly or indirectly; or (ii) the majority of the equity interest in which is now or hereafter owned and controlled by such company either directly or indirectly; but any such corporation or other legal entity shall be deemed to be a SUBSIDIARY of such company only so long as such control or such ownership and control exists.

II. GRANT OF RIGHTS

2.01 AT&T grants to LICENSEE a personal, nontransferable and nonexclusive right to use in the United States each SOFTWARE PRODUCT identified in the one or more Supplements hereto, solely for LICENSEE'S own internal business purposes and solely on or in conjunction with DESIGNATED CPUs for such SOFTWARE PRODUCT. Such right to use includes the right to modify such SOFTWARE PRODUCT and to prepare derivative works based on such SOFTWARE PRODUCT, provided the resulting materials are treated hereunder as part of the original SOFTWARE PRODUCT.

2.02 A single back-up CPU may be used as a substitute for a DESIGNATED CPU without notice to AT&T during any time when such DESIGNATED CPU is inoperative because it is malfunctioning or undergoing repair, maintenance or other modification.

2.03 LICENSEE may at any time notify AT&T in writing of any changes, such as replacements or additions, that LICENSEE wishes to make to the DESIGNATED CPUs for a specific SOFTWARE PRODUCT. AT&T will prepare additional Supplements as required to cover such changes. Changes covered by a Supplement shall become effective after execution of such Supplement by LICENSEE, acceptance thereof by AT&T and, in the case of each additional CPU, receipt by AT&T of the appropriate fee.

2.04 On AT&T'S request, but not more frequently than annually, LICENSEE shall furnish to AT&T a statement, certified by an authorized representative of LICENSEE, listing the location, type and serial number of all DESIGNATED CPUs hereunder and stating that the use by LICENSEE of SOFTWARE PRODUCTS subject to this Agreement has been reviewed and that each such SOFTWARE PRODUCT is being used solely on DESIGNATED CPUs (or temporarily on back-up CPUs) for such SOFTWARE PRODUCTS pursuant to the provisions of this Agreement.

2.05 No right is granted by this Agreement for the use of SOFTWARE PRODUCTS directly for others, or for any use of SOFTWARE PRODUCTS by others.

III. DELIVERY

3.01 Within a reasonable time after AT&T receives the fee specified in the first Supplement for a SOFTWARE PRODUCT, AT&T will furnish to LICENSEE one (1) copy of such SOFTWARE PRODUCT in the form identified in the Schedule for such SOFTWARE PRODUCT.

3.02 Additional copies of SOFTWARE PRODUCTS covered by this Agreement will be furnished to LICENSEE after receipt by AT&T of the then-current distribution fee for each such copy.

IV. EXPORT

4.01 LICENSEE agrees that it will not, without the prior written consent of AT&T, export, directly or indirectly, SOFTWARE PRODUCTS covered by this Agreement to any country outside of the United States.

V. FEES AND TAXES

5.01 Within sixty (60) days after acceptance of this Agreement by AT&T, LICENSEE shall pay to AT&T the fees required by the Supplement(s) initially attached hereto for the DESIGNATED CPUs listed in such Supplement(s).

5.02 Within sixty (60) days after acceptance of each additional Supplement by AT&T, LICENSEE shall pay to AT&T any fee required by such additional Supplement for the DESIGNATED CPUs listed in such additional Supplement.

5.03 Payments to AT&T shall be made in United States dollars to AT&T at the address specified in Section 7.11(a).

5.04 LICENSEE shall pay all taxes, including any sales or use tax (and any related interest or penalty), however designated, imposed as a result of the existence or operation of this Agreement, except any income tax imposed upon AT&T by any governmental entity within the United States proper (the fifty (50) states and the District of Columbia). Fees specified in Supplement(s) to this Agreement and in Schedule(s) attached to Supplement(s) are exclusive of any taxes. If AT&T is required to collect a tax to be paid by LICENSEE, LICENSEE shall pay such tax to AT&T on demand.

VI. TERM

6.01 This Agreement shall become effective on and as of the date of acceptance by AT&T.

6.02 LICENSEE may terminate its rights under this Agreement by written notice to AT&T certifying that LICENSEE has discontinued use of and returned or destroyed all copies of SOFTWARE PRODUCTS subject to this Agreement.

6.03 If LICENSEE fails to fulfill one or more of its obligations under this Agreement, AT&T may, upon its election and in addition to any other remedies that it may have, at any time terminate all the rights granted by it hereunder by not less than two (2) months' written notice to LICENSEE specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied; upon such termination LICENSEE shall immediately discontinue use of and return or destroy all copies of SOFTWARE PRODUCTS subject to this Agreement.

6.04 In the event of termination of rights under Sections 6.02 or 6.03, AT&T shall have no obligation to refund any amounts paid to it under this Agreement.

6.05 LICENSEE agrees that when a SUBSIDIARY'S relationship to LICENSEE changes so that it is no longer a SUBSIDIARY of LICENSEE, (i) all rights of such former SUBSIDIARY to use SOFTWARE PRODUCTS subject to this Agreement shall immediately cease, and (ii) such former SUBSIDIARY shall immediately discontinue use of and return to LICENSEE or destroy all copies of SOFTWARE PRODUCTS subject to this Agreement. No fees paid to AT&T for use of SOFTWARE PRODUCTS on DESIGNATED CPUs of such former SUBSIDIARIES shall be refunded; however, LICENSEE may substitute other CPUs for such DESIGNATED CPUs in accordance with Section 2.03.

VII. MISCELLANEOUS PROVISIONS

7.01 Nothing contained herein shall be construed as conferring by implication, estoppel or otherwise any license or right under any patent or trademark. However, in respect of patents under which AT&T can grant rights, AT&T grants to LICENSEE all such rights necessary for the use by LICENSEE, pursuant to the rights granted herein, of SOFTWARE PRODUCTS, except to the extent that such patents apply (i) independently of the use of any such SOFTWARE PRODUCT, (ii) because a DESIGNATED CPU is used in combination with other hardware or (iii) because any such SOFTWARE PRODUCT is modified from the version furnished hereunder to LICENSEE by AT&T or is used in combination with other software.

7.02 This Agreement shall prevail notwithstanding any conflicting terms or legends which may appear in a SOFTWARE PRODUCT.

7.03 AT&T warrants that it is empowered to grant the rights granted hereunder. AT&T makes no other representations or warranties, expressly or impliedly. By way of example but not of limitation, AT&T makes no representations or warranties of merchantability or fitness for any particular purpose, or that the use of any SOFTWARE PRODUCT will not infringe any patent, copyright or trademark. AT&T shall not be held to any liability with respect to any claim by LICENSEE, or a third party on account of, or arising from, the use of any SOFTWARE PRODUCT.

7.04 LICENSEE agrees that it will not, without the prior written permission of AT&T, (i) use in advertising, publicity, packaging, labeling or otherwise any trade name, trademark, trade device, service mark, symbol or any other identification or any abbreviation, contraction or simulation thereof owned by AT&T (or a corporate affiliate thereof) or used by AT&T (or such an affiliate) to identify any of its products or services, or (ii) represent, directly or indirectly, that any product or service of LICENSEE is a product or service of AT&T (or such an affiliate), or is made in accordance with or utilizes any information or documentation of AT&T (or such an affiliate).

7.05 Neither the execution of this Agreement nor anything in it or in any SOFTWARE PRODUCT shall be construed as an obligation upon AT&T to furnish any person, including LICENSEE, any assistance of any kind whatsoever, or any information or documentation other than the SOFTWARE PRODUCTS to be furnished pursuant to Sections 3.01 and 3.02.

7.06 (a) LICENSEE agrees that it shall hold all parts of the SOFTWARE PRODUCTS subject to this Agreement in confidence for AT&T. LICENSEE further agrees that it shall not make any disclosure of any or all of such SOFTWARE PRODUCTS (including methods or concepts utilized therein) to anyone, except to employees of LICENSEE to whom such disclosure is necessary to the use for which rights are granted hereunder. LICENSEE shall appropriately notify each employee to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by such employee. If information relating to a SOFTWARE PRODUCT subject to this Agreement at any time becomes available without restriction to the general public by acts not attributable to LICENSEE or its employees, LICENSEE'S obligations under this section shall not apply to such information after such time.

(b) Notwithstanding the provisions of Section 7.06(a), LICENSEE may distribute copies of a SOFTWARE PRODUCT, either in modified or unmodified form, to third parties having licenses of equivalent scope herewith from AT&T (or a corporate affiliate thereof) for the same SOFTWARE PRODUCT, provided that LICENSEE first verifies the status of any such third party in accordance with specific instructions issued by AT&T. Such instructions may be obtained on request from AT&T at the correspondence address specified in Section 7.11(b). LICENSEE may also obtain materials based on a SOFTWARE PRODUCT subject to this Agreement from such a third party and use such materials pursuant to this Agreement, provided that LICENSEE treats such materials as if they were part of such SOFTWARE PRODUCT.

7.07 The obligations of LICENSEE and its employees under Section 7.06(a) shall survive and continue after any termination of rights under this Agreement or cessation of a SUBSIDIARY'S status as a SUBSIDIARY.

7.08 LICENSEE agrees that it will not use SOFTWARE PRODUCTS subject to this Agreement except as authorized herein and that it will not make, have made or permit to be made any copies of such SOFTWARE PRODUCTS except for use on DESIGNATED CPUs for such SOFTWARE PRODUCTS (including backup and archival copies necessary in connection with such use) and for distribution in accordance with Section 7.06(b). Each such copy shall contain the same copyright and/or proprietary notices or notice giving credit to a developer, which appear on or in the SOFTWARE PRODUCT being copied.

7.09 Neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by LICENSEE and any purported assignment or transfer shall be null and void.

7.10 Except as provided in Section 7.06(b), nothing in this Agreement grants to LICENSEE the right to sell, lease or otherwise transfer or dispose of a SOFTWARE PRODUCT in whole or in part.

7.11 (a) Payments to AT&T under this Agreement shall be made payable and sent to:

AT&T TECHNOLOGIES, INC.
P.O. Box 65080
Charlotte, North Carolina 28265

(b) Correspondence with AT&T relating to this Agreement shall be sent to:

AT&T TECHNOLOGIES, INC.
Software Sales and Marketing Organization
P.O. Box 25000
Greensboro, North Carolina 27420

(c) Any payment, statement, notice, request or other communication shall be deemed to be sufficiently given to the addressee and any delivery hereunder deemed made when sent by certified mail addressed to LICENSEE at its office specified in this Agreement or to AT&T at the appropriate address specified in this Section 7.11. Each party to this Agreement may change an address relating to it by written notice to the other party.

7.12 If LICENSEE is not a corporation, all references to LICENSEE'S SUBSIDIARIES shall be deemed deleted.

7.13 The construction and performance of this Agreement shall be governed by the law of the State of New York.

AT&T TECHNOLOGIES, INC.
SUBLICENSING AGREEMENT

1. AT&T TECHNOLOGIES, INC., a New York corporation ("AT&T"), having an office at 1 Oak Way, Berkeley Heights, New Jersey 07922, and SEQUENT COMPUTER SYSTEMS, INC., a Delaware corporation

having an office at 14360 N. W. Science Park Drive, Portland, Oregon 97229,

for itself and its SUBSIDIARIES (collectively referred to herein as "LICENSEE") agree that, after execution of this Sublicensing Agreement by LICENSEE and acceptance of this Sublicensing Agreement by AT&T, the terms and conditions set forth on pages 1 through 9 of this Sublicensing Agreement shall apply to the SOFTWARE PRODUCTS subject to Software Agreement Number between AT&T and LICENSEE ("the Software Agreement").

2. The discount percentage applicable to per-copy fees payable hereunder shall be % during the initial period. The advance commitment for the initial period shall be \$ (See Section 4.02).

3. Except as otherwise specifically provided herein, all the provisions of the Software Agreement remain in full force and effect.

4. This Sublicensing Agreement, together with the Software Agreement and its Supplement(s), sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein or as duly set forth on or subsequent to the effective date hereof in writing and signed by a proper and duly authorized representative of the party to be bound thereby. No provision appearing on any form originated by LICENSEE shall be applicable unless such provision is expressly accepted in writing by an authorized representative of AT&T.

Accepted by:

SEQUENT COMPUTER SYSTEMS, INC.

By David P. Rodgers 1/20/86
(Signature) (Date)

DAVID P. RODGERS

(Type or print name)

VICE-PRESIDENT

(Title)

AT&T TECHNOLOGIES, INC.

By O. L. Wilson JAN 28 1986
(Signature) (Date)

O. L. WILSON

(Type or print name)

Manager, Software Sales and Marketing

(Title)

I. DEFINITIONS

1.01 The terms "CPU", "COMPUTER PROGRAM", "SOFTWARE PRODUCT" and "SUBSIDIARIES" are defined in the Software Agreement.

1.02 AUTHORIZED COPIER means a DISTRIBUTOR authorized by LICENSEE to make copies of SUBLICENSED PRODUCTS.

1.03 DISTRIBUTOR means an entity authorized by LICENSEE or another DISTRIBUTOR to receive copies of SUBLICENSED PRODUCTS from LICENSEE or another DISTRIBUTOR and furnish such copies to customers and/or other DISTRIBUTORS.

1.04 SUBLICENSED PRODUCT means (i) COMPUTER PROGRAMS in object-code format based on a SOFTWARE PRODUCT subject to the Software Agreement and (ii) any other materials identified in the "Sublicensing" section of the Schedule for such SOFTWARE PRODUCT.

II. GRANT OF RIGHTS

2.01 Notwithstanding any provisions to the contrary in the Software Agreement, AT&T grants to LICENSEE personal, nontransferable and nonexclusive rights:

- (a) to make copies of SUBLICENSED PRODUCTS and to furnish, either directly or through DISTRIBUTORS, such copies of SUBLICENSED PRODUCTS to customers anywhere in the world (subject to U.S. government export restrictions) for use on customer CPUs solely for each such customer's internal business purposes, provided that the entity (LICENSEE or a DISTRIBUTOR) furnishing the SUBLICENSED PRODUCTS obtains agreement as specified in Section 2.02 from such a customer, before or at the time of furnishing each copy of a SUBLICENSED PRODUCT, that:
 - (i) only a personal, nontransferable and nonexclusive right to use such copy of the SUBLICENSED PRODUCT on one CPU at a time is granted to such customer;
 - (ii) no title to the intellectual property in the SUBLICENSED PRODUCT is transferred to such customer;
 - (iii) such customer will not copy the SUBLICENSED PRODUCT except as necessary to use such SUBLICENSED PRODUCT on such one CPU;

- (iv) such customer will not transfer the **SUBLICENSSED PRODUCT** to any other party except as authorized by the entity furnishing the **SUBLICENSSED PRODUCT**;
 - (v) such customer will not export or re-export the **SUBLICENSSED PRODUCT** without the appropriate United States or foreign government licenses;
 - (vi) such customer will not reverse compile or disassemble the **SUBLICENSSED PRODUCT**;
- (b) to use **SUBLICENSSED PRODUCTS** on **LICENSEE'S** CPUs solely for **LICENSEE'S** own internal business purposes; and
 - (c) to use, and to permit **DISTRIBUTORS** to use, **SUBLICENSSED PRODUCTS** without fee solely for testing CPUs that are to be delivered to customers and for demonstrating **SUBLICENSSED PRODUCTS** to prospective customers.

2.02 In the United States and in other jurisdictions where an enforceable copyright covering the **COMPUTER PROGRAMS** of the **SUBLICENSSED PRODUCT** exists, the agreement specified in Section 2.01(a) may be a written agreement signed by the customer or a written agreement on the package containing the **SUBLICENSSED PRODUCT** that is fully visible to the customer and that the customer accepts by opening the package. In all other jurisdictions such agreement must be a written agreement signed by the customer. AT&T does not undertake to inform **LICENSEE** of the jurisdictions where such copyright exists.

2.03 **LICENSEE** shall require each **DISTRIBUTOR** to enter into a written agreement with its supplier of **SUBLICENSSED PRODUCTS** (**LICENSEE** or another **DISTRIBUTOR**) before any **SUBLICENSSED PRODUCT** is furnished to such **DISTRIBUTOR**. Such agreement shall include provisions consistent with and containing the relevant substance of Sections 2.01, 2.02, 2.04, 2.07, this Section 2.03 and Section 3.05 of this Sublicensing Agreement. For a **DISTRIBUTOR** who is also to be an **AUTHORIZED COPIER**, such agreement shall also include provisions consistent with and containing the relevant substance of Sections 2.05, 2.08, 2.10 and 5.01 of this Sublicensing Agreement.

2.04 **DISTRIBUTORS** who are not also **AUTHORIZED COPIERS** may not make copies of **SUBLICENSSED PRODUCTS**, but may furnish to customers copies of **SUBLICENSSED PRODUCTS** furnished to such **DISTRIBUTOR** by **LICENSEE** or other **DISTRIBUTORS**. In such cases the product name appearing on such copies shall not be deleted or altered by such a **DISTRIBUTOR**.

2.05 (a) A DISTRIBUTOR who is also an AUTHORIZED COPIER may modify and make copies of SUBLICENSED PRODUCTS, select a name for SUBLICENSED PRODUCTS to appear on such copies (consistent with the provisions of Section 2.10), and furnish such copies to customers and other DISTRIBUTORS.

(b) If an AUTHORIZED COPIER also has been granted a right to use a SOFTWARE PRODUCT, either as a licensee of AT&T (or of a corporate affiliate thereof) or as a contractor of LICENSEE (in accordance with requirements of AT&T), such AUTHORIZED COPIER may use such SOFTWARE PRODUCT to modify a SUBLICENSED PRODUCT derived from such SOFTWARE PRODUCT. If LICENSEE and such AUTHORIZED COPIER agree in writing that all right, title and interest in the resulting modifications belong to LICENSEE, then copies of such modified SUBLICENSED PRODUCT may be furnished to such customers and fees for such copies may be paid to AT&T pursuant to this Sublicensing Agreement. However, if all right, title and interest in the resulting modifications do not belong to LICENSEE then such AUTHORIZED COPIER must be a licensee of AT&T (or of a corporate affiliate thereof) for such SOFTWARE PRODUCT and copies of such modified SUBLICENSED PRODUCT must be furnished to customers and fees must be paid to AT&T only pursuant to a Sublicensing Agreement between AT&T and such AUTHORIZED COPIER, even if the version of such SOFTWARE PRODUCT used by such AUTHORIZED COPIER is furnished to such AUTHORIZED COPIER by LICENSEE. Regardless of which Sublicensing Agreement is involved in furnishing a copy of a SUBLICENSED PRODUCT to a customer, only one fee shall be collected by AT&T for such copy.

2.06 LICENSEE shall use its best efforts to enforce the agreements with DISTRIBUTORS and customers specified in this Sublicensing Agreement.

2.07 If a DISTRIBUTOR fails to fulfill one or more of its obligations under the agreement required by Section 2.03, AT&T may, upon its election and in addition to any other remedies that it may have, at any time notify LICENSEE in writing of such breach and require LICENSEE to terminate all the rights granted in such agreement by not less than two (2) months' written notice to such DISTRIBUTOR specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied; upon such termination such DISTRIBUTOR shall within thirty (30) days immediately discontinue use of and return or destroy all copies of SUBLICENSED PRODUCTS in its possession.

2.08 (a) Any notice acknowledging a contribution of a third party appearing in a SOFTWARE PRODUCT shall be included in corresponding portions of SUBLICENSED PRODUCTS made by LICENSEE or AUTHORIZED COPIERS.

(b) Each portion of a SUBLICENSED PRODUCT shall include an appropriate copyright notice. Such copyright notice may be the copyright notice or notices appearing in or on the corresponding portions of the SOFTWARE PRODUCT on which such SUBLICENSED PRODUCT is based or, if copyrightable changes are made in developing such SUBLICENSED PRODUCT, a copyright notice identifying the owner of such changes.

2.09 In certain cases AT&T may make copies of software materials available on appropriate media for purchase by LICENSEE for distribution by LICENSEE as SUBLICENSED PRODUCTS. However, purchase of such copies shall not relieve LICENSEE of its obligation to pay fees under this Sublicensing Agreement for such SUBLICENSED PRODUCTS.

2.10 No right is granted hereunder or under the Software Agreement to use any trademark of AT&T (or a corporate affiliate thereof) in the name of the SUBLICENSED PRODUCTS offered or furnished to customers by LICENSEE or DISTRIBUTORS. However, LICENSEE and DISTRIBUTORS may state in advertising, publicity, packaging, labeling or otherwise that a SUBLICENSED PRODUCT is derived from AT&T'S software under license from AT&T and identify such software (including any trademark, provided the proprietor of the trademark is appropriately identified). LICENSEE agrees, for itself and its DISTRIBUTORS, not to use a name or trademark for a SUBLICENSED PRODUCT that is confusingly similar to a name or trademark used by AT&T (or a corporate affiliate thereof).

III. TERM

3.01 This Sublicensing Agreement shall become effective for an initial period that expires one year from the end of the quarter (ending March 31st, June 30th, September 30th or December 31st) during which this Sublicensing Agreement is accepted.

3.02 Unless LICENSEE notifies AT&T in writing or ~~AT&T notifies LICENSEE in writing~~ at least thirty (30) days before the expiration date established in Section 3.01 that such party does not wish renewal, this Sublicensing Agreement shall be renewed automatically for an additional one-year period and shall continue to be renewed in such a manner from year to year. Alternatively, new one-year periods may be initiated as specified in Section 4.02(d).

3.03 If LICENSEE fails to fulfill one or more of its obligations under this Sublicensing Agreement or the Software Agreement, AT&T may, upon its election and in addition to any other remedies that it may have, at any time terminate all the rights granted by it hereunder and under the Software Agreement by not less than two (2) months' written notice to LICENSEE specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied; upon such termination LICENSEE shall immediately discontinue use of and return or destroy all copies of SOFTWARE PRODUCTS covered by the Software Agreement and immediately discontinue distribution and use of and destroy all copies of SUBLICENSED PRODUCTS in its possession.

3.04 Neither the expiration of this Sublicensing Agreement nor the termination of LICENSEE'S rights hereunder shall relieve LICENSEE of its obligation to pay any fee hereunder. In the event of termination of LICENSEE'S rights hereunder, all fees that LICENSEE has become obligated to pay hereunder shall become immediately due and payable.

3.05 LICENSEE agrees that when a SUBSIDIARY'S or a DISTRIBUTOR'S relationship to LICENSEE changes so that it is no longer a SUBSIDIARY or a DISTRIBUTOR of LICENSEE, all rights of such former SUBSIDIARY or DISTRIBUTOR under this Sublicensing Agreement shall immediately cease, and such former SUBSIDIARY or DISTRIBUTOR shall return to LICENSEE or destroy all copies of SUBLICENSED PRODUCTS for which per-copy fees have not been paid to AT&T. However, such former SUBSIDIARY or DISTRIBUTOR may continue to use copies of SUBLICENSED PRODUCTS for which per-copy fees have been paid on the same basis that a customer may use copies of SUBLICENSED PRODUCTS pursuant to Section 2.01(a).

IV. FEES AND DISCOUNTS

4.01 (a) For rights granted under this Sublicensing Agreement, LICENSEE shall pay to AT&T, in the manner and at the times specified in Article V, any initial sublicensing fee specified for the SOFTWARE PRODUCT on which a SUBLICENSED PRODUCT is based and a per-copy fee for each copy of a SUBLICENSED PRODUCT either (i) furnished by LICENSEE to a customer or to a DISTRIBUTOR, (ii) made by an AUTHORIZED COPIER and furnished by such AUTHORIZED COPIER to a customer or to another DISTRIBUTOR or (iii) put into use by LICENSEE on a CPU of LICENSEE. The amounts of such sublicensing fees are listed in the Schedule for each SOFTWARE PRODUCT.

(b) Amounts paid to AT&T under this Sublicensing Agreement for a copy of a SUBLICENSED PRODUCT furnished to a particular customer shall not be creditable toward any fees payable under any agreement between AT&T (or between a corporate affiliate thereof) and such customer.

(c) Fees paid to AT&T under this Sublicensing Agreement shall not be creditable toward fees that become payable under the Software Agreement. Fees paid under the Software Agreement shall not be creditable toward fees that become payable under this Sublicensing Agreement.

(d) No additional fee is payable for the transfer of a SUBLICENSED PRODUCT from one customer to another customer in conjunction with the transfer of a CPU between such customers, provided that the first customer does not retain any portion of the SUBLICENSED PRODUCT after such transfer and that agreement of the second customer is obtained in accordance with Sections 2.01 and 2.02. Such transfer of a SUBLICENSED PRODUCT may result from, for example, a sale of a CPU by the first customer to the second customer or the termination of a lease with the first customer for a CPU and the execution of a new lease with the second customer for such CPU.

(e) No additional fee is payable for the transfer of a SUBLICENSED PRODUCT from one CPU of LICENSEE to another or the transfer of a SUBLICENSED PRODUCT from one CPU of a customer to another CPU of the same customer.

4.02 (a) The discount percentage applicable during the initial period referred to in Section 3.01 shall be based on LICENSEE'S advance commitment to pay a specified minimum total amount of discounted per-copy fees for SUBLICENSED PRODUCTS furnished or put into use during such initial period. If no such commitment is made, no discount shall be available during the initial period. The discount percentage and the advance commitment, if any, for the initial period are set forth on page 1 of this Sublicensing Agreement. The discount percentage applicable during each additional one-year period referred to in Section 3.02 shall be based either on LICENSEE'S advance commitment to pay a specified minimum total amount of discounted per-copy fees for such additional one-year period or on the actual total of such fees payable for the preceding period, as LICENSEE shall elect.

(b) Such discount percentage shall be two percent (2%) for each whole one hundred thousand dollars (\$100,000.00) of either the advance commitment or the actual total for the preceding period, as the case may be, up to a maximum of sixty percent (60%).

(c) If LICENSEE elects to base its discount percentage for a forthcoming additional period on its advance commitment, LICENSEE shall notify AT&T in writing of the amount of such advance commitment before the end of the preceding period. If such notification is not received by such time, such discount percentage shall be based on the actual total of discounted per-copy fees payable for the preceding period.

(d) An advance commitment may not be reduced. However, LICENSEE may at any time request of AT&T in writing that the then-current initial period or additional one-year period be terminated and that a new one-year period be started, beginning with the next quarter, for which new period LICENSEE shall make an advance commitment corresponding to a higher discount percentage than that currently applicable. Such request will be subject to AT&T'S acceptance. In the case of such termination and start of a new period, the discount percentage for the terminated period shall apply to all transactions occurring before the end of such period.

4.03 The section of the Software Agreement relating to taxes shall apply to fees payable under this Sublicensing Agreement.

V. REPORTS AND PAYMENTS

5.01 (a) LICENSEE shall keep full, clear and accurate records of the number of copies of each SUBLICENSED PRODUCT furnished by it and AUTHORIZED COPIERS to other DISTRIBUTORS and customers and put into use on LICENSEE'S CPUs.

(b) Each AUTHORIZED COPIER shall keep full, clear and accurate records of the number of copies of each SUBLICENSED PRODUCT furnished by it to other DISTRIBUTORS and customers.

(c) Each AUTHORIZED COPIER shall furnish a statement at least quarterly to LICENSEE identifying the number of copies recorded according to Section 5.01(b) since the previous such statement was furnished.

(d) LICENSEE shall keep full, clear and accurate records of the identities and locations of AUTHORIZED COPIERS.

(e) AT&T shall have the right through its accredited auditing representatives to make an examination and audit, during normal business hours, not more frequently than annually, of all records kept pursuant to this Section by LICENSEE and AUTHORIZED COPIERS and such other records and accounts as may under recognized accounting practices contain information bearing upon the amounts of fees payable to it under this Sublicensing Agreement. Prompt adjustment shall be made by the proper party to compensate for any errors or omissions disclosed by such examination or audit. Neither such right to examine and audit nor the right to receive such adjustment shall be affected by any statement to the contrary, appearing on checks or otherwise, unless such statement appears in a letter, signed by the party having such right and delivered to the other party, expressly waiving such right.

5.02 (a) LICENSEE shall notify AT&T in writing at least thirty (30) days in advance of the date LICENSEE intends to begin furnishing copies of a SUBLICENSED PRODUCT to customers or DISTRIBUTORS or putting any such copies into use on LICENSEE'S CPUs. Before such date LICENSEE shall pay to AT&T any initial sublicensing fee specified for the SOFTWARE PRODUCT on which such SUBLICENSED PRODUCT is based. Discount percentages established under Section 4.02 do not apply to initial sublicensing fees.

(b) Within thirty (30) days after the end of each quarter ending on March 31st, June 30th, September 30th or December 31st, commencing with the quarter during which this Sublicensing Agreement first becomes effective, LICENSEE shall furnish to AT&T a statement, in form acceptable to AT&T, certified by an authorized representative of LICENSEE, identifying the number of copies of each SUBLICENSED PRODUCT furnished by it and AUTHORIZED COPIERS or put into use on LICENSEE'S CPUs, the SOFTWARE PRODUCT on which each such SUBLICENSED PRODUCT is based, the per-copy fees for such copies and the net fees payable after the applicable discount percentage is taken into account. If the per-copy fees for a particular SUBLICENSED PRODUCT are based on a characteristic such as number of users supported, information on such characteristic for the copies of such SUBLICENSED PRODUCT furnished or put into use shall also be included in such statement. Each SUBLICENSED PRODUCT for which LICENSEE has given notice to AT&T pursuant to Section 5.02(a) shall be covered by such statement. In each such statement, LICENSEE shall also fully identify any AUTHORIZED COPIER added or terminated during the quarter covered by such statement.

(c) Within such thirty (30) days LICENSEE shall, irrespective of its own business and accounting methods, pay to AT&T the net fees payable for such quarter as shown in the statement required by Section 5.02(b), except that if the applicable discount percentage is based on an advance commitment for a period, LICENSEE shall pay the net fees payable for such quarter plus any additional amount necessary for the total of amounts paid for such period after the first, second, third and fourth full quarters thereof to be, respectively, one-quarter, one-half, three-quarters and the full amount of such advance commitment. Any such additional amount paid during a period shall be creditable against net fees payable later in the same period, but no such additional amount remaining at the end of the fourth full quarter of a period shall be refunded or creditable against any other amounts payable to AT&T. If AT&T accepts a new one-year period pursuant to Section 4.02(d), no such additional amount remaining at the end of the last full quarter of the terminated period shall be refunded or creditable against any other amounts payable to AT&T.

(d) LICENSEE shall furnish whatever additional information AT&T may reasonably prescribe from time to time to enable AT&T to ascertain the amounts of fees payable pursuant hereto.

5.03 Payments provided for in this Sublicensing Agreement shall, when overdue, be subject to a late payment charge calculated at an annual rate of one percent (1%) over the posted prime rate or successive posted prime rates in effect in New York City during delinquency; provided, however, that if the amount of such late payment charge exceeds the maximum permitted by law for such charge, such charge shall be reduced to such maximum amount.

VI. MISCELLANEOUS PROVISIONS

6.01 Neither this Sublicensing Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by LICENSEE and any purported assignment or transfer shall be null and void.

6.02 (a) Payments to AT&T under this Sublicensing Agreement shall be made payable and sent to:

AT&T TECHNOLOGIES, INC.
P.O. Box 65080
Charlotte, North Carolina 28265

(b) Correspondence with AT&T relating to this Sublicensing Agreement shall be sent to:

AT&T TECHNOLOGIES, INC.
Software Sales and Marketing Organization
P.O. Box 25000
Greensboro, North Carolina 27420

(c) Any payment, statement, notice, request or other communication shall be deemed to be sufficiently given to the addressee and any delivery hereunder deemed made when sent by certified mail addressed to LICENSEE at its office specified in this Sublicensing Agreement or to AT&T at the appropriate address specified in this Section 6.02. Each party to this Sublicensing Agreement may change an address relating to it by written notice to the other party.

6.03 The limited grant of rights under patents in the Software Agreement applies to any use permitted under Section 2.01 of this Sublicensing Agreement.

6.04 If LICENSEE is not a corporation, all references to LICENSEE'S SUBSIDIARIES shall be deemed deleted.

6.05 The construction and performance of this Sublicensing Agreement shall be governed by the law of the State of New York.

AT&T TECHNOLOGIES, INC.
Substitution Agreement

The following agreements ("the prior agreements") are in effect between AT&T TECHNOLOGIES, INC., a New York corporation ("AT&T"), or an affiliate thereof, and SEQUENT COMPUTER SYSTEMS, INC., a Delaware corporation, ----- ("LICENSEE"):

1. April 1, 1983 Software Agreement, as Modified, relating to UNIXTM System V, Release 2.0 and other UNIX Operating Systems.
2. March 1, 1984 Supplemental Agreement (Customer Provisions) relating to UNIX System V, Release 2.0 and other UNIX Operating Systems.

Agreement Numbers SOFT-000321 and SUB-000321A ----- between AT&T and LICENSEE ("the new agreements") are hereby substituted for the prior agreements. Accordingly, the rights and obligations of the parties under the prior agreements are terminated and replaced by the rights and obligations of the parties under the new agreements. No other agreements between the parties hereto are affected by this Agreement.

The following provision is:



applicable



not applicable:

The discount percentage for the initial period pursuant to Agreement No. _____ is _____ %, based on total per-copy fees of \$ _____ paid by LICENSEE under the prior Supplemental Agreement (Customer Provisions) listed above relating to UNIX[®] System III and/or UNIX System V.

Accepted by:

SEQUENT COMPUTER SYSTEMS, INC.

By David P. Rodgers ^{1/20/86}
(Signature) (Date)

DAVID P RODGERS
(Type or print name)

VICE - PRESIDENT
(Title)

AT&T TECHNOLOGIES, INC.

By O. L. Wilson ^{JAN 28 1986}
(Signature) (Date)

O. L. WILSON

(Type or print name)

Manager - Software Sales and Marketing
(Title)