

SOFTWARE AGREEMENT
TERMINATION

1.01 The LICENSEE shall fail to fulfill its obligations under this agreement if it fails to pay to the LICENSOR the sum of \$100,000.00 within 30 days of the date of the invoice for the same. If the LICENSEE fails to pay the sum of \$100,000.00 within the above specified time, the LICENSOR shall be entitled to terminate this agreement and to seek recovery of its costs and expenses, including reasonable attorneys' fees, from the LICENSEE.

ARTICLE IV

MISCELLANEOUS PROVISIONS

4.01 No rights are granted under this agreement expressly or impliedly with respect to any trademark or service mark of the LICENSOR or its licensors.

SOFTWARE AGREEMENT

1.01 Terms in this agreement (other than the definitions) which are in capital letters shall have the meanings specified in the following definitions.

between

WESTERN ELECTRIC COMPANY, INCORPORATED

and

THE REGENTS OF

THE UNIVERSITY OF CALIFORNIA

Effective as of

December 1, 1973

2.01 The form of the LICENSED SOFTWARE shall be as determined by WESTERN, and delivery of the LICENSED SOFTWARE to LICENSEE shall be within a reasonable time after execution of this agreement by LICENSEE.

2.02 The form of the LICENSED SOFTWARE shall be as determined by WESTERN, and delivery of the LICENSED SOFTWARE to LICENSEE shall be within a reasonable time after execution of this agreement by LICENSEE.

SOFTWARE AGREEMENT

Effective as of December 1, 1973

WESTERN ELECTRIC COMPANY, INCORPORATED, a New York corporation ("WESTERN"), having an office at 222 Broadway, New York, New York 10038, and ~~XXXXXXXXXXXXXXXXXXXX~~ THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

("LICENSEE"), having an office at 2200 University Avenue, Berkeley, California 94720

agree as follows:

ARTICLE I

DEFINITIONS

1.01 Terms in this agreement (other than names of parties and Article headings) which are in capital letters shall have the meanings specified in the Definitions Appendix.

ARTICLE II

GRANTS OF RIGHTS TO USE LICENSED SOFTWARE

2.01 WESTERN grants royalty-free to LICENSEE, a personal, nontransferable and nonexclusive right to use the LICENSED SOFTWARE, solely for academic and educational purposes in the United States and solely at the following location of the LICENSEE:

~~_____~~ 1/25/74
School of Medicine
Department of Clinical Pathology
and Laboratory Medicine
The University of California, San Francisco
1378 Third Avenue
San Francisco, California 94143

2.02 The form of the LICENSED SOFTWARE shall be as determined by WESTERN, and delivery of the LICENSED SOFTWARE to LICENSEE shall be within a reasonable time after execution of this agreement by LICENSEE.

ARTICLE III

TERMINATION

3.01 If LICENSEE shall fail to fulfill one or more of its obligations under this agreement, WESTERN may, upon its election and in addition to any other remedies that it may have, terminate the rights granted hereunder at any time; upon such termination LICENSEE shall within thirty (30) days deliver to WESTERN all documentation containing the LICENSED SOFTWARE, and shall render unusable all LICENSED SOFTWARE placed in any storage apparatus.

ARTICLE IV

MISCELLANEOUS PROVISIONS

4.01 No rights are granted under this agreement expressly or impliedly with respect to any trademarks or any inventions of any patents.

4.02 This agreement shall prevail notwithstanding any conflicting terms or legends which may appear in the LICENSED SOFTWARE.

4.03 WESTERN and its ASSOCIATED COMPANIES make no representations or warranties, expressly or impliedly. By way of example but not of limitation, WESTERN and its ASSOCIATED COMPANIES make no representations or warranties of merchantability or fitness for any particular purpose, or that the use of the LICENSED SOFTWARE will not infringe any patent, copyright or trademark of any third person. WESTERN and its ASSOCIATED COMPANIES 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 such LICENSED SOFTWARE.

4.04 Neither the execution of this agreement nor anything in it or in the LICENSED SOFTWARE shall be construed as an obligation upon WESTERN or any of its ASSOCIATED COMPANIES to furnish any person, including the LICENSEE, any assistance of any kind whatsoever, or any information or documentation other than the LICENSED SOFTWARE.

4.05 LICENSEE agrees that it shall hold the LICENSED SOFTWARE in confidence for WESTERN and its ASSOCIATED COMPANIES. LICENSEE further agrees that it shall not make any disclosure of the LICENSED SOFTWARE or any portion thereof (including methods or concepts utilized therein) to anyone, except to employees or students of the LICENSEE to whom such disclosure is necessary to the use for which rights are granted hereunder. LICENSEE shall appropriately notify each employee and student to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by him.

4.06 The obligation of the LICENSEE and of its employees and students under Section 4.05 shall survive and continue after any termination of rights under this agreement; however, such obligations shall not extend to any information or technical data relating to the LICENSED SOFTWARE which is now available to the general public or which later becomes available to the general public by acts not attributable to LICENSEE, its employees or students.

4.07 LICENSEE agrees that it will not make or have made, or permit to be made, any copies of the LICENSED SOFTWARE or portions thereof, except those copies which are necessary to the use, by the LICENSEE, for which rights are granted hereunder, that each such necessary copy shall contain the same proprietary notices or legends which appear on the LICENSED SOFTWARE or which are applicable to such portions thereof, and that no rights are granted under this agreement expressly or impliedly with respect to any copyrights except as provided for in this Section 4.07.

4.08 Neither this agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable.

4.09 Nothing in this agreement grants to LICENSEE the right to sell, lease or otherwise transfer or dispose of the LICENSED SOFTWARE in whole or in part.

4.10 Any notice hereunder shall be deemed to be sufficiently given and any delivery hereunder deemed made when sent by registered mail addressed to the addressee at its office above specified or at such changed address as the addressee shall have specified by written notice.

4.11 This agreement 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 in any prior existing written agreement between the parties, 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.

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

IN WITNESS WHEREOF, each of the parties has caused this agreement to be executed in duplicate originals by its duly authorized representatives on the respective dates entered below.

WESTERN ELECTRIC COMPANY, INCORPORATED

By
Director of Patent Licensing

Date January 16, 1974

Attest:

Al Meade
.....
Assistant Secretary

[SEAL]

THE REGENTS OF
THE UNIVERSITY OF CALIFORNIA

APPROVED AS TO FORM:

Lin Z. London
.....
ASSOCIATE COUNSEL OF THE REGENTS
OF THE UNIVERSITY OF CALIFORNIA

By
A. M. BORDIN

Title Material Manager

Date 1/7/74

Attest:

.....
Secretary

[SEAL]

DEFINITIONS APPENDIX

ASSOCIATED COMPANIES OF WESTERN means **SUBSIDIARIES** of **WESTERN**, companies presently having **WESTERN** as a **SUBSIDIARY** and other **SUBSIDIARIES** of such companies and their **SUBSIDIARIES**. The term also means and includes Cincinnati Bell Inc., an Ohio corporation, and The Southern New England Telephone Company, a Connecticut corporation, and their **SUBSIDIARIES**.

SUBSIDIARY means a company the majority of whose stock entitled to vote for election of directors is now or hereafter controlled by the parent company either directly or indirectly, but any such company shall be deemed to be a **SUBSIDIARY** only so long as such control exists.

LICENSED SOFTWARE means the computer programs, or any portions thereof, and the associated documentation therefor, listed below:

UNIX time shared operating system computer program and supporting programs and documentation consisting of the following:

- (a) a first reel of 9 track 800 bpi magnetic tape supplied by **LICENSEE** in required length on which the following will be recorded:
 - (1) Binary object code of the **UNIX** core resident operating system;
 - (2) Source program code;
 - (3) User's manual.
- (b) a second reel of 9 track 800 bpi magnetic tape supplied by **LICENSEE** in required length on which the binary object code of the supporting programs will be recorded.
- (c) printed documentation:
 - (1) **UNIX** programmer's manual;
 - (2) Bell Telephone Laboratories, Inc. technical memorandum entitled **NROFF User's Manual**;
 - (3) **C** reference manual;
 - (4) **UNIX** assembler reference manual.