



O. L. WELSON  
Division Manager

UNIC Software Operation  
P.O. Box 25000  
Greensboro, NC 27402  
(919) 855-2700

JUN 24 1989

Mr. Bob Factor  
AT&T Bell Laboratories  
Org. 58637  
2200 E. Broad Street  
Columbus, Ohio 43213

Dear Mr. Factor:

Re: Licenses for specified UNIX Software Operation (USO)  
SOFTWARE PRODUCTS, Letter Agreement Number ATT-59837

Upon your written concurrence as indicated below, USO will make available to you licenses for certain of USO's SOFTWARE PRODUCTS under the terms of this Letter Agreement. Each such SOFTWARE PRODUCT shall become subject to this Letter Agreement on acceptance by USO of a Supplement executed by you 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 listing the fees payable by you for the applicable licenses. 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 Letter Agreement.

Additional Supplements may be added to this Letter 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 Letter Agreement when executed by you, if required, and accepted by USO. Subject to the provisions of subparagraph (f) below, additional or replacement CPUs shall be deemed to be DESIGNATED CPUs on the date a copy of a SOFTWARE PRODUCT covered by a previous Supplement is first put into use by you on such additional or replacement CPU. (Terms in capital letters that are set forth in this Letter Agreement are defined in Attachment A hereto.)

The licenses granted to you are to (i) use the SOFTWARE PRODUCT on DESIGNATED CPU(s), to modify such SOFTWARE PRODUCT and to make SUBLICENSED PRODUCTS based on such SOFTWARE PRODUCT, (ii) distribute such SUBLICENSED PRODUCTS internally and to other end-user customers, and (iii) permit access to SOFTWARE PRODUCTS by your contractors and allow use of SOFTWARE PRODUCTS by your contractors on DESIGNATED CPUs, provided such access and use is exclusively for you in connection with work called for in written agreements between you and such contractors entered into before or at the time of permitting such access or allowing such use. Such written agreement, which you shall diligently enforce, shall be consistent with the following:

- (1) Contractors shall agree to the same responsibilities and obligations and other restrictions pertaining to the use of SOFTWARE PRODUCTS as those undertaken by you under this Letter Agreement.

Page 1 of 4

- (2) When a contractor's work for you is completed, all copies of SOFTWARE PRODUCTS furnished to such contractor or made by such contractor and all copies of any modifications or derivative works made by such contractor based on such SOFTWARE PRODUCT shall be returned to you or destroyed, including any copies stored in any computer memory or storage medium.
- (3) A contractor may not acquire any ownership interest in any modification or derivative work prepared by such contractor based on or using a SOFTWARE PRODUCT subject to this Letter Agreement unless and until such contractor also becomes a licensee of USO for such SOFTWARE PRODUCT.

The conditions under which such licenses are granted to you are as follows:

- (a) You will not provide access to any copy of the source code of the SOFTWARE PRODUCT (including methods and concepts contained therein), in whole or in part, to anyone other than your organization's employees who have a need to know.
- (b) Notwithstanding the provisions of the paragraph above, you may distribute copies of a SOFTWARE PRODUCT, either in modified or unmodified form, to third parties having licenses of equivalent scope herewith from AMERICAN TELEPHONE AND TELEGRAPH COMPANY ("AT&T"), or a corporate affiliate or authorized distributor thereof, for the same SOFTWARE PRODUCT, provided that you first verify the status of the recipient by calling USO at 800-828-8649 (or other number specified by USO). USO will give written verification of the recipient's status. You shall maintain a record of each such distribution and include such record in the quarterly report specified below. Such record shall include, for each such distribution, the identity of the recipient, the date of the verification, the name of the person at USO providing verification and the date of distribution. You may also obtain materials based on SOFTWARE PRODUCTS subject to this Letter Agreement from such a third party and use such materials pursuant to this Letter Agreement, provided that you treat such materials hereunder the same as such SOFTWARE PRODUCT.
- (c) You will restrict the number of copies of both SOFTWARE PRODUCTS and SUBLICENSED PRODUCTS made by you to those necessary (including backup and archival copies) to exercise the licenses above.
- (d) No copies of a SUBLICENSED PRODUCT shall be distributed to a non-AT&T end-user customer unless and until you have entered into a written agreement with such customer that includes the substance of the following provisions:
- (1) Only a personal, nontransferable and non-exclusive right to use the software on one machine at a time is granted to the customer.
  - (2) No title to the intellectual property in the software is transferred to the customer.
  - (3) The customer will not copy the software except as necessary to use the software on such one machine.
  - (4) The customer will not transfer the software to any other party unless authorized by you to do so.
  - (5) The customer will not export or re-export the software without the appropriate licenses from the U. S. Government.
  - (6) The customer will not reverse compile or disassemble the software.

Such written agreement may be a document executed by the customer or a "shrink wrap" agreement. However, we prefer that shrink wrap agreements not be used in those foreign jurisdictions where it is not clear that our software is protected by copyright.

If you plan to use distributors, you must assure that such distributors pass on corresponding provisions to their customers. If you permit such distributors to make the copies of the software they distribute, you will need to keep track of the quantities such distributors make

for purposes of reporting such quantities to us and determining fees payable.

- (e) The written agreement contemplated in (d) above shall include an appropriate disclaimer of any warranty by AT&T or any of its subsidiaries (including USO).
- (f) 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 Letter Agreement first becomes effective, you must furnish to USO a written statement identifying:
- (1) the make, model, serial number and location of each additional or replacing DESIGNATED CPU on which a copy of a specified SOFTWARE PRODUCT was installed during such quarter and the equivalent information for any DESIGNATED CPU(s) which were replaced during such quarter;
  - (2) the right to use fees for such additional DESIGNATED CPUs;
  - (3) the number of copies of each SUBLICENSED PRODUCT put into use by you during such quarter, furnished by you to other AT&T entities or to customers or distributors during such quarter or reported to you during such quarter as having been made and furnished to customers and other distributors by your distributors to whom you have given the right to copy;
  - (4) the SOFTWARE PRODUCT on which each such SUBLICENSED PRODUCT is based;
  - (5) the initial sublicensing fee, if applicable, for any such SOFTWARE PRODUCT;
  - (6) the per-copy sublicensing fees for such copies and, if applicable, whether such fees are based on such factors as a limitation on number of users, a fee for a combination of products or a right granted to a customer to use a copy of a SUBLICENSED PRODUCT on multiple CPUs;
  - (7) the NET AMOUNT of the quarterly payment relating to per-copy fees; and
  - (8) the DISCOUNT PERCENTAGE used in calculating such NET AMOUNT.
- (g) You may be entitled to a discount on per-copy sublicensing fees payable for SUBLICENSED PRODUCTS distributed during a twelve (12) month calendar year. Such discount shall be based on either the GROSS AMOUNT for such period or the GROSS AMOUNT for the immediately preceding period, if any, whichever yields the greater discount; provided however, that for the period covering calendar year 1990, such discount may, at your option, be the greater of the discount calculated per the preceding sentence or forty-five percent (45%).
- (h) You may estimate a GROSS AMOUNT for any additional one-year period in which you expect the GROSS AMOUNT to be higher than that for the immediately preceding period. However, if you calculate any quarterly payment during a period based on such an estimate, then the total amount paid after the first, second and third full quarters of such period must be, respectively, at least one quarter, one half and three quarters of the NET AMOUNT calculated using such estimated GROSS AMOUNT and such corresponding DISCOUNT PERCENTAGE. At the end of each period for which an estimated GROSS AMOUNT has been used, the actual DISCOUNT PERCENTAGE and actual NET AMOUNT shall be determined from the actual GROSS AMOUNT for such period and the final quarterly payment shall be determined by subtracting the total of the quarterly payments previously made for such period from such NET AMOUNT. If such total exceeds the actual NET AMOUNT, the excess shall be credited against future quarterly payments for per-copy sublicensing fees. Such excess shall not be refunded.
- (i) If you do not make an estimate pursuant to the paragraph above, then the payment for each quarter in a period shall be calculated by determining a NET AMOUNT from the GROSS AMOUNT for the portion of such period up to the end of such quarter and subtracting from such NET AMOUNT the total of any quarterly payments already made for such period. The DISCOUNT PERCENTAGE used in determining such NET AMOUNT shall either be

that corresponding to the GROSS AMOUNT for such portion or that corresponding to the the GROSS AMOUNT for the immediately preceding period, whichever percentage is greater.

- (j) Such written statement covering the quarter in which you first begin furnishing copies of a SUBLICENSSED PRODUCT to other AT&T entities or to customers or to distributors during such quarter or reported to you during such quarter as having been made and furnished to customers and other distributors by your distributors to whom you have given the right to copy must also include notification of such beginning activity as well as any initial sublicensing fee specified in the applicable product schedule.
- (k) Within the thirty (30) day period contemplated in (f) above, you must, irrespective of your own business and accounting methods, pay to USO the quarterly payment for the applicable quarter as shown in the statement required above.
- (l) Within a reasonable time after receipt of the report and payment contemplated in (f) and (k) above, USO will, if the statement is otherwise correct and complete, complete and execute the appropriate Supplement(s) to cover the additional DESIGNATED CPU(s).
- (m) USO 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 Letter Agreement by you and by your distributors to whom you have given the right to copy 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 Letter 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.

Please indicate your concurrence with the above by signing and dating the attached copy of this Letter Agreement and returning such signed copy to us.

Very truly yours,

UNIX SOFTWARE OPERATION

By: [Signature]

AGREED TO BY:

AT&T Bell Laboratories  
Org. 59637

By: [Signature]

Printed Name: Robert M. Factor

Title: Director, LEC Network Operations Laboratory

Organization Number: 59630

Date: 6/11/90

## ATTACHMENT A

## DEFINITIONS

1. CPU means central processing unit.
2. COMPUTER PROGRAM means any instruction or instructions, in source-code or object-code format, for controlling the operation of a CPU.
3. DESIGNATED CPU means any CPU listed as such for a specific SOFTWARE PRODUCT in a Supplement to this Letter Agreement.
4. 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 USO for a specific SOFTWARE PRODUCT are listed in the Schedule for such SOFTWARE PRODUCT. Certain SOFTWARE PRODUCTS available under this Letter Agreement may contain materials prepared by other developers.
5. SUBLICENSED PRODUCT means (i) COMPUTER PROGRAMS in object-code format based on a SOFTWARE PRODUCT subject to this Letter Agreement and (ii) any other materials identified in the "Sublicensing" section of the Schedule for such SOFTWARE PRODUCT.
6. GROSS AMOUNT for a calendar year (or portion thereof) means the total amount of per-copy sublicensing fees accrued during such calendar year (or portion thereof).
7. NET AMOUNT for a calendar year (or portion thereof) means the amount determined from the GROSS AMOUNT for such calendar year (or portion thereof) by multiplying such GROSS AMOUNT by the DISCOUNT PERCENTAGE for such calendar year (or portion thereof) and subtracting the result from such GROSS AMOUNT.
8. DISCOUNT PERCENTAGE for a calendar year (or portion thereof) is the percentage calculated from the previous calendar year's GROSS AMOUNT by using the following formula:

$$\text{DISCOUNT PERCENTAGE} = \frac{\text{GROSS AMOUNT for previous calendar year}}{\text{GROSS AMOUNT} + \$75 \text{ million}} \times 100\%$$

up to a maximum of sixty percent (60%). The DISCOUNT PERCENTAGE for a calendar year following a calendar year during which the GROSS AMOUNT was less than \$100,000.00 is zero percent (0%).

**CERTIFICATE OF SERVICE**

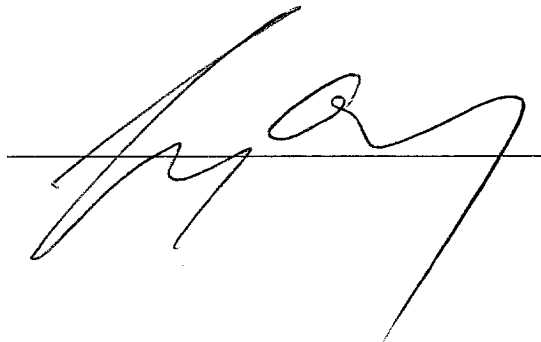
I HEREBY CERTIFY that I caused a true and correct copy of the foregoing VOLUME II OF EXHIBITS TO MEMORANDUM IN SUPPORT OF SCO'S EXPEDITED MOTION TO ENFORCE THE COURT'S AMENDED SCHEDULING ORDER DATED JUNE 10, 2004 to be hand-delivered this 9 day of September, 2004, to the following:

Alan L. Sullivan, Esq.  
Todd M. Shaughnessy, Esq.  
Snell & Wilmer L.L.P.  
15 West South Temple, Ste. 1200  
Gateway Tower West  
Salt Lake City, Utah 84101-1004

mailed by U.S. Mail, first class postage prepaid, to the following:

Evan R. Chesler, Esq.  
Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019

Donald J. Rosenberg, Esq.  
1133 Westchester Avenue  
White Plains, New York 10604

A handwritten signature in black ink, appearing to be "Alan L. Sullivan", is written over a horizontal line.