

SS-Soft. Ed.-050184-070185

Agreement Number E-SOFT-00089

AT&T INFORMATION SYSTEMS INC.
EDUCATIONAL SOFTWARE AGREEMENT

1. AT&T INFORMATION SYSTEMS INC., a Delaware corporation ("AT&T-IS"), having an office at 100 Southgate Parkway, Morristown, New Jersey, 07960, and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA----- ("LICENSEE"), having an office at Berkeley, California 94720,

agree that, after execution of this Agreement by LICENSEE and acceptance of this Agreement by AT&T-IS, the terms and conditions set forth on pages 1 through 7 of this Agreement shall apply to use by LICENSEE of SOFTWARE PRODUCTS that become subject to this Agreement.

2. AT&T-IS makes certain SOFTWARE PRODUCTS available under this Agreement. Each such SOFTWARE PRODUCT shall become subject to this Agreement on acceptance by AT&T-IS 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, if required, and accepted by AT&T-IS.

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-IS.

Accepted by:

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

AT&T INFORMATION
SYSTEMS INC.

By Katherine R. Delucchi
(Signature) (Date)

By O. L. Wilson NOV 12 1985
(Signature) (Date)

Katherine R. Delucchi
(Type or print name)

O. L. WILSON
(Type or print name)

Director of Materiel Management
(Title)

Manager - Software Sales and Licensing
(Title)

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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-IS for a specific SOFTWARE PRODUCT are listed in the Schedule for such SOFTWARE PRODUCT. Certain SOFTWARE PRODUCTS available under this Agreement may contain materials prepared by other developers.

II. GRANT OF RIGHTS

- 2.01 (a) AT&T-IS 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 educational use 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 that any such modification or derivative work that contains any part of a SOFTWARE PRODUCT subject to this Agreement is treated hereunder the same as such SOFTWARE PRODUCT. AT&T-IS claims no ownership interest in any portion of such a modification or derivative work that is not part of a SOFTWARE PRODUCT.
- (b) Educational use is limited to uses directly related to teaching and degree-granting programs and uses in noncommercial research by students and faculty members, including any uses made in connection with the development of enhancements or modifications to SOFTWARE PRODUCTS. Such uses are permitted only provided that (i) neither the results of such research nor any enhancement or modification so developed is intended primarily for the benefit of a third party, (ii) such results, enhancements and modifications (all to the extent that they do not include any portion of SOFTWARE PRODUCTS) are made available to anyone (including AT&T-IS and its corporate affiliates) without restriction on use, copying or further distribution, notwithstanding any proprietary right (such as a copyright or patent right) that could be asserted by LICENSEE, its employees, students or faculty members and (iii) any copy of any such result, enhancement or modification furnished by LICENSEE is furnished for no more than the cost of reproduction and shipping. Any such copy that includes any portion of a SOFTWARE PRODUCT shall be subject to the provisions of Section 7.05(b).

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(c) For certain SOFTWARE PRODUCTS, LICENSEE'S right to use may be extended to include administrative use on payment of a higher fee. Administrative use is limited to uses directly related to LICENSEE'S internal administration and operation. LICENSEE'S obligations under Section 2.01(b) relating to educational use shall also apply to administrative use. The Supplement covering a SOFTWARE PRODUCT will specify whether LICENSEE'S right to use includes administrative use.

(d) Commercial use by LICENSEE of SOFTWARE PRODUCTS or of any result, enhancement or modification associated with the use of SOFTWARE PRODUCTS under this Agreement is not permitted. Such commercial use is permissible only pursuant to the terms of an appropriate commercial software agreement between AT&T-IS or a corporate affiliate thereof and LICENSEE. Any such result, enhancement or modification may be developed further by LICENSEE for commercial use (such as by developing software for license or for a third party) only on CPUs covered by such a commercial software agreement and only provided that the result, enhancement or modification, in the form in which it exists when such commercial software agreement is executed by LICENSEE, remains available to anyone as specified in Section 2.01(b).

2.02 A single back-up CPU may be used as a substitute for a DESIGNATED CPU without notice to AT&T-IS 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-IS in writing of any DESIGNATED CPUs that it wishes to replace or add for a specific SOFTWARE PRODUCT or, for certain SOFTWARE PRODUCTS, its election to extend rights to include administrative uses. AT&T-IS 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, if required, acceptance thereof by AT&T-IS and receipt by AT&T-IS of any required fee.

2.04 On AT&T-IS'S request, but not more frequently than annually, LICENSEE shall furnish to AT&T-IS 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 in full compliance with 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.

2.06 LICENSEE shall not include in its curriculum any course of instruction in which the source code or other representation of the internal operation of a SOFTWARE PRODUCT is disclosed or discussed, or prepare or publish any documentation disclosing or describing such code or representation.

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III. DELIVERY

3.01 Within a reasonable time after AT&T-IS receives the fee specified in the first Supplement for a SOFTWARE PRODUCT, AT&T-IS 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-IS 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-IS, export, directly or indirectly, SOFTWARE PRODUCTS covered by this Agreement to any country outside of the United States. LICENSEE also agrees that it will obtain any and all necessary export licenses for any such export or for any disclosure of a SOFTWARE PRODUCT to a foreign national.

V. FEES AND TAXES

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

5.03 Payments to AT&T-IS shall be made in United States dollars to AT&T-IS at the address specified in Section 7.10(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-IS by any governmental entity within the United States proper (the fifty (50) states and the District of Columbia), subject to exemptions applicable to LICENSEE. Fees specified in Supplement(s) to this Agreement and in Schedule(s) attached to Supplement(s) do not include any taxes. If AT&T-IS is required to collect a tax to be paid by LICENSEE, LICENSEE shall pay such tax to AT&T-IS on demand.

VI. TERM

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

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

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6.03 If LICENSEE fails to fulfill one or more of its obligations under this Agreement, AT&T-IS 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-IS shall have no obligation to refund any amounts paid to it under this Agreement.

VII. MISCELLANEOUS PROVISIONS

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

7.02 AT&T-IS warrants for a period of ninety (90) days from furnishing a SOFTWARE PRODUCT to LICENSEE that any magnetic medium on which portions of a SOFTWARE PRODUCT are furnished will be free under normal use from defects in materials, workmanship or recording. If such a defect appears within such warranty period LICENSEE may return the defective medium for replacement without charge. Replacement is LICENSEE'S sole remedy with respect to such a defect. AT&T-IS also warrants that it is empowered to grant the rights granted herein. AT&T-IS and other developers make no other representations or warranties, expressly or impliedly. By way of example but not of limitation, AT&T-IS and other developers make 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-IS and other developers 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.

7.03 No right is granted herein to use any identifying mark (such as, but not limited to, trade names, trademarks, trade devices, service marks or symbols, and abbreviations, contractions or simulations thereof) owned by, or used to identify any product or service of, AT&T-IS or a corporate affiliate thereof. LICENSEE agrees that it will not, without the prior written permission of AT&T-IS, (i) use any such identifying mark in advertising, publicity, packaging, labeling or in any other manner 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-IS or such an affiliate or is made in accordance with or utilizes any information or documentation of AT&T-IS or such an affiliate.

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7.04 Neither the execution of this Agreement nor anything in it or in any SOFTWARE PRODUCT shall be construed as an obligation upon AT&T-IS or any other developer 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 by AT&T-IS pursuant to Sections 3.01 and 3.02.

7.05 (a) LICENSEE agrees that it shall hold all parts of the SOFTWARE PRODUCTS subject to this Agreement in confidence for AT&T-IS. 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, students and faculty members of LICENSEE to whom such disclosure is necessary to the use for which rights are granted hereunder. LICENSEE shall appropriately notify each such person to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by such person. 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, students or faculty members, LICENSEE'S obligations under this section shall not apply to such information after such time.

(b) Notwithstanding the provisions of Section 7.05(a), LICENSEE may distribute copies of a SOFTWARE PRODUCT, either in modified or unmodified form, to third parties having licenses of at least equivalent scope herewith from AT&T-IS (or a corporate affiliate or authorized distributor thereof) for the same SOFTWARE PRODUCT, provided that LICENSEE first verifies the status of the recipient by calling AT&T-IS at 800-828-8649 or other number specified by AT&T-IS. AT&T-IS will give oral verification of the recipient's status for recipients in the United States and written verification for recipients outside the United States. LICENSEE shall maintain a record of each such distribution and, for each quarterly period (ending on March 31st, June 30th, September 30th and December 31st) during which any such distribution occurs, forward a copy of such record for such period to AT&T-IS at the correspondence address specified in Section 7.10(b) within thirty (30) days of the end of such period. Such record shall include, for each such distribution, the identity of the recipient, the date of verification, the name of the person at AT&T-IS providing verification and the date of distribution. 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 hereunder the same as such SOFTWARE PRODUCT.

7.06 The obligations of LICENSEE and its employees, students and faculty members under Section 7.05(a) shall survive and continue after any termination of rights under this Agreement.

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7.07 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 7.05(b). Each such copy shall contain any copyright notice, proprietary notice or notice giving credit to another developer, which appears on or in the SOFTWARE PRODUCT being copied. Specific instructions regarding such notices may also appear in the Schedules for certain SOFTWARE PRODUCTS.

7.08 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.

7.09 Except as provided in Section 7.05(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.

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

AT&T INFORMATION SYSTEMS
P.O. Box 65080
Charlotte, North Carolina 28265

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

AT&T INFORMATION SYSTEMS
Software Sales and Licensing Organization
P.O. Box 25000
Greensboro, North Carolina 27420

(c) Any 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-IS at the appropriate address specified in this Section 7.10. Each party to this Agreement may change an address relating to it by written notice to the other party.

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