Corporation for Research and Educational Networking

Software License Agreement

Parties:

This Agreement is between

The Corporation for Research and Educational Networking,
a New Jersey non-profit corporation, with business address
Suite 600, 1112 Sixteenth Street, NW, Washington, DC 20036,
(hereafter "**CREN**"),

and

____,

____,

____,

____,
(hereafter "**Licensee**").

Agreements:

In consideration of the mutual covenants and obligations herein contained, CREN and the Licensee hereby agree as follows:

1. The **Licensed Software Product**, the **Term of the License,** the required **Fee**, and any **Special Conditions** are specified in Schedule A attached hereto and included herein by reference. Subject to payment by Licensee of the Fee, CREN hereby grants to Licensee a non-exclusive, non-transferable license to use the Licensed Software Product in accordance with the terms and conditions of this Agreement and the Special Conditions for the Term of the License. The Licensed Software Product is, for the purposes of this Agreement, deemed to include the actual computer code (whether source, binary, or some combination thereof) and all included documentation, whether machine-readable, printed, or on some other medium, excepting any documentation designated in Schedule A as **User Documentation**. For all purposes under this Agreement, the terms "Licensed Software Product" and "User Documentation" shall refer to the versions of the Licensed Software Product and User Documentation as originally licensed to Licensee under this Agreement and as they may be modified from time-to-time by Licensee as permitted hereunder and as may be modified, updated, enhanced or replaced by CREN under this Agreement or pursuant to any undertaking by CREN, if any, to provide such modifications, updates, enhancements or replacements.

2. Licensee agrees not to have simultaneously in use (actively running and available for use, even if not actually processing data) more copies of the Licensed Software Product than the **Number of Licenses** specified in Schedule A, each of which may be on a separate computer.

3. Licensee agrees to cease using and to render unavailable for use all copies of the Licensed Software Product in its possession or under its control at the end of the Term of the License specified in Schedule A, or upon termination of this Agreement, whichever may occur first.

4. CREN agrees that Licensee shall be entitled to modify the Licensed Software Product for its internal use only. The incorporation by Licensee of enhancements into the Licensed Software Product shall in no way affect the ownership of the Licensed Software Product. Licensee agrees that it shall not, by use, reproduction, or modification of the Licensed Software Product, gain title or ownership thereto.

5. Licensee agrees not to copy or reproduce the Licensed Software Product in whole or in part except as necessary for installation and support of the number of copies specified in 2, above, and for back-up purposes. Licensee agrees to reproduce and include on each permitted copy of the Licensed Software Product (including partial copies, modifications, or derivative works), regardless of the medium, any and all copyright or other propriety rights notices contained on the original copies of the Licensed Software Product.

6. Licensee agrees that the Licensed Software Product is Confidential Information. Licensee agrees to limit access to the Licensed Software Product to those who have a need for such access. Licensee agrees to exercise a level of effort commensurate with the level of effort it exercises to protect its own confidential material, to ensure that all persons to whom it has permitted access to the Licensed Software Product do not duplicate the Confidential Information or disclose the Confidential Information to any third party. The obligations of this paragraph shall survive termination of this Agreement. The Confidential Information shall not be deemed to include information which was or is publicly disclosed by CREN or its agents, information which was in Licensee's possession without restriction prior to its disclosure to Licensee by CREN, or information which had entered the public domain prior to its disclosure by Licensee; provided that such Confidential Information did not become public and did not enter Licensee's possession by a breach of this Agreement by Licensee or a breach by a third party of its obligations to CREN or to a third party to protect the confidentiality of the Confidential Information. If Licensee is an agency or other organ of the U.S. Federal Government, the Licensed Software Product is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. Federal Government is subject to restrictions as set forth in subparagraph (c) (I) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c) (1) and (2) of the Commercial Computer Software—Restricted Rights at 48 CFR 52.227-19, as applicable. Contractor/manufacturer is CREN.

7. Licensee is encouraged to provide CREN with ideas, suggestions, code, and documentation which might be useful to CREN for the improvement of the Licensed Software Product. Licensee agrees that CREN has a non-exclusive right to use, distribute, modify, enhance, and incorporate any such ideas, suggestions, code, or documentation made available to CREN into products for CREN's internal use or external distribution without limitation. If permitted by statute, CREN may obtain copyright protection for any software and documentation which may incorporate such ideas, suggestions, code, or documentation made available to CREN unless Licensee and CREN agree in writing, in advance, to the contrary.

8. No Maintenance Included. Nothing in this Agreement shall require CREN to provide any modifications, updates, enhancements or replacements to the Licensed Software Product or the User Documentation. However, CREN, at its sole option, may provide such modifications, updates, and enhancements.

9. LIMITED WARRANTY. CREN warrants that it has the right to distribute and license the Licensed Software Product. If any claim is asserted or action brought against Licensee which alleges that all or any part of the Licensed Software Product in the form supplied by CREN, or Licensee's use thereof, infringes or misappropriates any patent, copyright, trade secret or other property right, Licensee shall

give CREN prompt written notice thereof. CREN shall defend any such claim or action with counsel of CREN's choice and at CREN's expense and shall indemnify Licensee for any costs (including reasonable attorney's fees) and damages actually incurred by Licensee in connection therewith. Licensee shall cooperate fully with CREN in the defense of any such claim or action. This indemnity is limited to the Licensed Software Product as delivered to Licensee and does not cover any unauthorized use of the Licensed Software Product or any additions to or modifications of the Licensed Software Product by Licensee or any third party. If the Licensed Software Product is, in CREN's reasonable opinion, likely to become or does become the subject of a claim of infringement or misappropriation of a patent, copyright, trade secret or other proprietary right, CREN may, at its option, (1) replace the Licensed Software Product with compatible, functionally equivalent non-infringing product, or (2) modify the Licensed Software Product to make it non-infringing without materially impairing Licensee's ability to use the Licensed Software Product as intended, or (3) procure the right of Licensee to continue using the Licensed Software Product, or (4) if none of the foregoing alternatives are reasonably available to CREN, return a prorata portion of the Fee based upon the actual Term of the License, or if no Term of the License, or a "perpetual" Term of the License, is specified in Schedule A then based upon a ten year period.

10. NO OTHER WARRANTIES. CREN DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE LICENSED SOFTWARE PRODUCT. CREN DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF, OR THE RESULTS OF THE USE OF THE LICENSED SOFTWARE PRODUCT, IN TERMS OF PERFORMANCE, CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE; AND YOU RELY ON THE LICENSED SOFTWARE PRODUCT SOLELY AT YOUR OWN RISK. LICENSEE ACCEPTS LICENSED SOFTWARE PRODUCT AS IS, WITH ALL FAULTS.

11. LIMITATION OF LIABILITY - NEITHER CREN NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE LICENSED SOFTWARE PRODUCT SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF THE USE, THE RESULTS OF USE, OR INABILITY TO USE SUCH LICENSED SOFTWARE PRODUCT EVEN IF CREN OR SUCH OTHER PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIM. EXCEPT IN CASES OF PERSONAL INJURY OR PROVEN WILLFUL MISCONDUCT, IN NO EVENT SHALL CREN'S LIABILITY EXCEED THE AMOUNT PAID FOR THE LICENSED SOFTWARE PRODUCT. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

12. This Agreement shall take effect upon the date of its signing. The licenses granted hereunder shall automatically and immediately terminate in the event that Licensee shall violate any term of this Agreement.

13. Taxes. If any sales, use, personal property, ad valorem, or other tax (except a tax on CREN's net income) or duty or similar levy shall be or become payable to a taxing or other authority in connection with this Agreement or the Licensed Software Product, all such amounts shall be timely paid by Licensee.

14. Assignment. Licensee shall not assign, convey, sublicense, or otherwise transfer any of Licensee's rights in this Agreement or in the Licensed Software Product or any part thereof, or in the use of the Licensed Software Product, to any third party.

15. Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the District of Columbia without regard to any conflict of laws which might result in the application of the laws of any other jurisdiction, including all matters of construction, validity and performance.

16. Arbitration. Any dispute or controversy arising from this Agreement or the terms thereof which cannot be timely resolved by the parties shall be determined and settled by arbitration in Washington, DC. Such arbitration shall be conducted upon the request of one of the parties before three arbitrators, one of which shall be selected by each of the parties, and the third agreed upon by the first two arbitrators, in accordance with the rules of the American Arbitration Association then in effect. Any award or decision of such arbitration shall be final and binding upon each of the parties, and judgment may be entered thereon in any court having jurisdiction thereof. Arbitration as provided herein shall be a condition precedent to any legal action hereunder and shall be specifically enforceable. The expense of arbitration shall be borne equally by the disputing parties.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Licensee represents and warrants that the person executing Schedule A on behalf of Licensee has all necessary rights and authority to bind the Licensee to all obligations of this Agreement.

18. Section Headings. Section headings used in this Agreement are for convenience and reference only and shall not affect the meaning or construction hereof.

19. Severability. If any provision of this Agreement or the application thereof shall be held invalid or unenforceable, the remainder of this Agreement and the application thereof, other than those provisions which shall have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted at law or in equity.

20. Notices. All notices required under this Agreement shall be in writing and mailed by certified mail, return receipt requested, and shall be sent to the addresses specified in the Section "Parties" of this Agreement. Such notices will be deemed delivered upon receipt. Either party may change the address to which notice to that party shall be sent by giving written notice pursuant to this paragraph to the other party.

21. Relationship of Parties. Nothing in this Agreement shall be construed as establishing a joint venture, partnership, agency, employment, or other business relationship between the parties.

22. Modifications. Modifications or amendments of this Agreement shall not be effective unless set forth in writing and executed by an officer or principal of the party against whom the modification or amendment is sought to be enforced.

23. Entire Agreement. This Agreement including all the provisions of Schedule A attached hereto embodies the entire Agreement, representations, and warranties between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between them.

In Witness Whereof, the parties hereto have executed Schedule A to this Agreement, thereby incorporating the provisions of this Agreement as of the date shown on Schedule A.

Corporation for Research and Educational Networking
Software License Agreement

Schedule A

Licensed Software Product

The Licensed Software Product to which this Agreement applies is

ListProcessor (also known as **ListProc**)

which is used for

list-management, list and file distribution, file-update notification, and related services ____.

Number of Licenses

The Number of Licenses authorized under this Agreement for the Licensed Software Product is:

One (1)________

Term of the License

The Term for which use of the Licensed Software Product is authorized under this Agreement is:

Perpetual

Fee

The Fee which must be paid prior to delivery of the Licensed Software Product is:

$____________________

User Documentation.

Only documentation which has a CREN Distribution Code of "User" is considered to be User Documentation for the purposes of this Agreement.

Special Conditions

Special Conditions which apply to the Agreement:

None.

In Witness Whereof, the parties hereto have executed this Schedule A to the Corporation for Research and Educational Networking Software License Agreement, thereby incorporating the provisions of the Agreement into this Schedule A as of the date below.

LICENSEE:	Corporation for Research and Educational Networking (CREN)
______________________________	
By: ______________________________	By: ______________________________
Name: ______________________________	Name: __James B. Conklin, Jr.______
Title: ______________________________	Title: ___Director, BITNIC_________
	Date: ______________________________