

Master License Agreement

THIS NOVELL MASTER LICENSE AGREEMENT- State of Maryland (April 2005) (referred to herein as the "Agreement" or the "MLA"), is made this 21 day of June, 2011, by and between the State of Maryland ("State" or "You"), a body corporate and politic, acting by and through its Department of Information Technology, and Novell, Inc., a Delaware corporation having its principal place of business at 1800 South Novell Place, Provo, Utah 84606 ("Novell").

RECITALS

WHEREAS, a number of State government agencies, offices and departments (collectively, "SGAs") use certain Novell products and services in their day-to-day operations; and

WHEREAS, a number of non-State government agencies, offices and departments located in Maryland (collectively, "NSGAs") also use certain Novell products and services in their day-to-day operations; and

WHEREAS, the State and Novell desire to clarify certain terms and conditions contained within Novell's standard Master License Agreement to, among other things, clarify who may acquire Novell products and services.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows.

A. Recitals. The Recitals are not merely prefatory but are an integral part hereof.

B. Procuring Novell products and services from Novell. SGAs and NSGAs may procure Novell products and services from the Novell Software Services Agent. Alternatively, SGAs and NSGAs may initiate separate procurements directly with Novell that comply with all applicable procurement laws and regulations applicable to such procurements (these separate procurements are hereinafter referred to as "Separate Procurements"). SGAs and NSGAs that elect to pursue such Separate Procurements may, at their option, incorporate the applicable terms and conditions of this Agreement into such Separate Procurements. HOWEVER, IN NO EVENT SHALL AN SGA OR AN NSGA USE THIS AGREEMENT AS THE SOLE VEHICLE TO OBTAIN NOVELL PRODUCTS AND SERVICES AND ALL SEPARATE PROCUREMENTS MUST COMPLY WITH ALL APPLICABLE PROCUREMENT LAWS AND REGULATIONS. SGAs with an existing enrollment with Novell under the prior Master License Agreement, #7125336 ("Prior MLA"), who acquire Novell products and services from a Novell Software Services Agent will be migrated to this MLA without additional cost and will retain their current unique contract identifier number. Such SGAs shall be governed by the terms and conditions of this "Agreement" (hereinafter defined), including any changes in license grants, effective upon execution of the Agreement between Novell and the State (who as of the date hereof is also the "Prime Customer" with respect to SGAs only). For NetWare license count purposes, Node licenses under the Prior MLA convert to User licenses at a one-to-one ratio unless otherwise agreed between Novell and the applicable Customer.

In any case where an NSGA obtains Novell products and services, the State shall not be a party to any such procurements and not liable for any aspect of performance, non-performance, or liability under any such procurement. Certain sections of this MLA have been identified as being applicable only to NSGAs.

THE STATE HAS THE SOLE AND EXCLUSIVE AUTHORITY TO NEGOTIATE CHANGES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT WITH NOVELL.

C. Incorporation of terms and conditions of documents and materials not physically attached to this Addendum. The terms and conditions of any documents and/or materials incorporated by reference in the Agreement shall only be incorporated to the extent that they do not change the specifications, the prices, the conditions of service, Prime Customer's or any Customer's obligations, or any other material term or condition, including, by way of example only, Novell's obligations or liability under the Agreement.

D. The following terms and conditions have been adapted from Novell's standard Master License Agreement and modified to be applicable to and a part of this Novell Master License Agreement – State of Maryland (June 2011):

1. **INTRODUCTION.** This Master License Agreement ("MLA" or "Agreement") allows You to obtain software licenses and services from Novell through volume purchasing, which includes discounts and other benefits. The Effective Date of the MLA shall be July 1, 2011. At that time, a contract number will be assigned to You. That contract number is personal and may not be disclosed to third parties, except to Your Novell-authorized reseller.

2. **DEFINITIONS.** Capitalized terms used in this Agreement are defined as follows:

2.1. **Annual Period** means for the first Annual Period, the period July 1, 2011 through June 30, 2012. The next Annual Period shall run from July 1, 2012 through June 30, 2013. Subsequent Annual Periods shall run consecutively from July 1st through June 30th of the following year.

2.2. **Customer** means any SGA or NSGA identified by the Prime
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Customer as being authorized by the Prime Customer to incorporate the terms and conditions of this Agreement in any procurement of Novell products and/or services undertaken by the SGA or NSGA. The Prime Customer is also a "Customer".

2.3. **Documentation** means any user documentation and manuals (including electronic versions) provided by Novell with a Software product.

2.4. **Price List** means the price list for the MLA Program as published by Novell from time to time. Information on obtaining the then-current Price List can be found at <http://www.novell.com/licensing/price.html> or by contacting your local Novell office.

2.5. **Prime Customer** means the State. While the State is the Prime Customer, the State shall not be a party to any procurements undertaken by NSGAs and shall not be liable for any

aspect of performance, non-performance, or liability under any such procurements.

2.6. Qualified Member means those entities that have an organizational relationship with Prime Customer (e.g., parent companies, subsidiaries, affiliates, departments, agencies, political subdivisions), and submit their own Membership Forms, which are accepted by Novell. The Prime Customer will not be responsible for such Qualified Members, but will be responsible for ensuring Agreement compliance by those related entities that obtain Novell Software and MLA benefits through Prime Customer without submitting their own Membership Form. Any Qualified Member that submitted a completed Membership Form to Novell under the Prime Customer's previous MLA is not required to submit a new Membership Form upon execution of these terms. Upon the Effective Date of this Agreement, such Qualified Members shall be governed by the terms and conditions of this new MLA.

2.7. Software means the Novell software product licensed to You under this Agreement, excluding Services Deliverables.

2.8. Update means a fix or compilation of fixes released by Novell to correct operation defects (program bugs) in the Software.

2.9. Upgrade means any new version of Novell Software which bears the same product name, including version changes evidenced by a number immediately to either the left or right of the decimal (e.g. SUSE Linux Enterprise Server 9.x to 10.x). If a question arises as to whether a product offering is an Upgrade or a new product, Novell's opinion will prevail, provided that Novell treats the product offering the same for its end users generally.

2.10. You (or Your) means, individually, each Customer that participates in the Program. Each Customer shall have separate and independent rights and obligations under the MLA and no Customer shall be liable for procurements made by other Customers. The State and SGAs shall have no liability whatsoever for procurements made by NSGAs. The State may exercise any right or remedy and may assert any claim on behalf of an SGA.

2.11. Agreement means the Novell Master License Agreement – State of Maryland (June 2011), as the same is set forth herein.

3. LICENSING. The license grants and restrictions for the Software are contained in the End User License Agreement ("EULA") accompanying the Software. A copy of the EULA can be obtained at <http://www.novell.com/licensing/eula/>. Subject to Your payment of the applicable fees and compliance with this Agreement and the applicable EULA, Your licenses to use the Software will be perpetual, except as expressly provided otherwise (such as with beta products or products licensed on a subscription basis). To the extent of any conflict between the terms and conditions of this Agreement and the EULA, the terms and conditions of this Agreement will prevail. Ownership of Novell Software is held by Novell, Inc. and/or its licensors. Nothing in this Agreement or any related agreement shall restrict or limit or otherwise affect any rights or obligations You may have, or conditions to which You may be subject, under any applicable open source licenses to any open source code contained in the Novell Software or any third-party licenses for third-party code contained in the Novell Software.

4. Program Changes. The MLA Program Guide is available at http://www.novell.com/licensing/program_guide.html and forms an integral part of this Agreement. To the extent of any conflict between the terms of this Agreement and the Program Guide, the terms of this Agreement will prevail. Any changes will apply only to purchases made after the effective date of the changes. If any

material change to the Program has an adverse effect on Your participation in it, You will be entitled to terminate Your Agreement by giving written notice to Novell within 30 days after receiving notice from Novell of such a change. Such termination shall be effective as of the date specified by You in Your written notice to Novell, provided that You shall not be required to give a termination date that is less than six (6) months following the date of Your notice to Novell and further provided that during any such period between the date You provide notice of termination and the date of termination, the MLA shall continue under the same terms and conditions specified herein. If the MLA would expire prior to the date You specify as the date of termination and You do not exercise any option to renew the MLA, the termination date shall be the earlier to occur of (a) the date You specify as the date of termination in Your written notice; or (b) that date that is seven (7) months from the date You received the written notice of change from Novell.

5. MAINTENANCE.

5.1. The Maintenance services described in this section (the provision of Upgrades, Updates and Premium Services) are a mandatory part of all Software licenses granted and owned under the MLA Program (including all installations of Linux Products), and Maintenance fees must be paid for such services on all Software licenses for as long as this Agreement remains in effect. During the period for which Maintenance is paid for a license, Novell will provide You with the following benefits for the license.

5.1.1. **Upgrades and Updates.** If Novell commercially releases any Upgrades and/or Updates during the period covered by Your Maintenance, Novell will make such Upgrades and/or Updates available to You within a reasonable period of time after they become commercially available. To obtain Updates and Upgrades, You will need to subscribe, at no extra cost, to Novell's Upgrade notification service available at <http://www.novell.com/center>. You will be entitled to install and use such Upgrades and/or Updates up to the number of licenses for which You have purchased Maintenance. Use of Upgrades is subject to the restrictions of the EULA provided with the Upgrade.

5.1.2. **Premium Services.** "Premium Services" means technical support services as described in Section 6.1 of this Agreement. Novell will provide Premium Services as described in the then-current MLA Services Guide published on <http://support.novell.com/programs/mla.html>, the terms of which are incorporated into this Agreement. The level of Premium Services to which Customers hereunder are entitled during an Annual Period under this Agreement is determined on the basis of the accumulated discounted Maintenance fees paid by all Customers for that Annual Period. You may upgrade that level of service shall be determined by the State electing either Option A or Option B following. The State reserves the right to change its election of any Option made. Under Option A, each Customer's Premium Service level shall be determined by the discounted Maintenance fees paid by such Customer for that Annual Period. Under Option B, all Customers' Premium Service level shall be determined on the basis of the aggregated discounted Maintenance fees paid by all Customers (SGAs and NSGAs under the IFB and those SGAs and NSGAs that incorporate the terms and conditions of this Agreement in a Separate Procurement) for that Annual Period. If the State elects Option B, the technical support included within the level of Premium Services achieved shall be a dedicated Novell resource provided to all Customers under this Agreement, shall be managed by Novell, and shall be applied by Novell to technical service requests from Customers on an equitable and prioritized basis. In the event that competition among Customers for these Novell technical support resources at any given time makes it difficult for Novell to allocate these



resources among Customers, the State reserves the right to direct Novell how to make such allocation. In the event of any competition between SGAs and NSGAs for these resources, Novell agrees that SGAs will receive priority. Notwithstanding anything to the contrary, any Customer may upgrade the level of technical support to suit its needs by purchasing optional technical support services as provided in section 6 below.

5.2. Installed Base. Your installed base (Novell Software licenses available under the MLA Program which You purchased outside the MLA Program) must be transitioned into the MLA Program (be licensed under this Agreement at the product's most current version and receive Maintenance) through the purchase of Maintenance for the licenses, unless expressly allowed otherwise by Novell. You will pay Maintenance fees for any products so transitioned for as long as this Agreement remains in effect with respect to You and the products remaining licensed under this Agreement. To transition licenses that are not at the current product version, You must upgrade, at the discounted Upgrade price, the licenses to the current version.

5.3. Ordering Maintenance and Subscriptions. Unless the Price List allows You to purchase multi-year Maintenance or subscriptions for the relevant Software product, Maintenance and subscription fees will be calculated and paid on an annual basis. All Maintenance and subscription fees are paid in advance. Each Maintenance and subscription period shall expire at the end of each Annual Period (or the end of the multi-year period), no matter when during such Annual Period the Maintenance or subscription was purchased. The initial Maintenance or subscription fee for a license will be calculated, on a pro rata basis, from the first day of the month following the earlier of: (a) submission of the purchase order or the Novell Order Form, or (b) making of a Software copy, through the end of the then-current Annual Period.

5.4. Ongoing Maintenance. While this Agreement remains in effect, You must order Maintenance on all product licenses governed by this Agreement by the start of the new Annual Period and pay the applicable Maintenance fee.

5.5. Refunds. If this Agreement is terminated because of Novell's breach under section 8.2 below, Novell will refund any Maintenance fees paid for the time period past the first day of the month following the termination date. Maintenance fees are not refundable unless expressly stated otherwise.

6. OPTIONAL SERVICES.

6.1. Support, Consulting or Education Services. Your optional purchase and Novell's delivery of Services, such as technical support, consulting or education ("Services") under the Agreement, are subject to the following terms, unless otherwise agreed in a separate agreement specifically covering those Services. Notwithstanding the foregoing, if any such change materially diminishes Your level of support, You will be entitled to terminate Your Agreement by giving written notice to Novell within 30 days after receiving notice from Novell of such a change. Such termination shall be effective as of the date specified by You in Your written notice to Novell, provided that You shall not be required to give a termination date that is less than six (6) months following the date of Your notice to Novell and further provided that during any such period between the date You provide notice of termination and the date of termination, the MLA shall continue under the same terms and conditions specified herein. If the MLA would expire prior to the date You specify as the date of termination and You do not exercise any option to renew the MLA, the termination date shall be the earlier to occur of (a) the date You specify as the date of termination in Your written notice; or (b)

that date that is seven (7) months from the date You received the written notice of change from Novell. The level of additional Premium Services to which customers are entitled during an Annual Period is determined by the accumulated Maintenance fees paid by all Qualified Members for that Annual Period.

6.2. Statement of Work. The parties may choose to enter into a Statement of Work ("SOW") that describes the Services and may cover items such as project scope, code, documentation, media and other objects ("Deliverables"). Any such SOW will be governed by this Agreement's terms.

6.3. Acceptance. Services will be deemed satisfactory to and accepted by You unless within thirty (30) days after submission of Services to You, You give Novell written notice of aspects in which the Services do not meet the SOW requirements. Upon receipt of such written notice, Novell will use commercially reasonable efforts to make such changes as will be required to correct any deficiencies; if Novell is unable to correct the Services within a reasonable period of time, Novell or You may terminate the relevant SOW and Novell shall provide a refund of the amount You paid for the Services Novell did not correct.

6.4. License. Subject to payment of applicable fees for Services and Deliverables, Novell grants You a nonexclusive, nontransferable, worldwide, perpetual license to reproduce and internally use the Deliverables. All proprietary rights notices must be faithfully reproduced and included on all copies (including any modifications or adaptations allowed by this Agreement or any SOW). Except as expressly provided otherwise in this Section or any SOW, Novell (and/or its licensors) owns all right, title and interest, including all intellectual property rights, in any Deliverable developed, delivered and/or used by Novell in the performance of any Services. Neither this Agreement nor any SOW changes ownership of any pre-existing materials.

6.5. SOW Continuance. If a SOW extends beyond the term of the Agreement, this section 6 and sections 9, 10.3, 10.5, and 11 of this Agreement will continue in effect solely with respect to such SOW.

7. ORDERING AND DELIVERABLES.

7.1. Orders. You must place an order for the appropriate number of new Software licenses and associated Maintenance within thirty (30) days after installation. You must place an order for the appropriate renewal Maintenance or subscriptions at least five (5) days prior to the expiration date of Your then-current Maintenance or subscription ("Order Due Date"). Expiring software subscriptions are automatically renewed for an additional twelve (12) months at Your then-current subscription prices unless, at least thirty (30) days prior to the subscription expiration date, Novell receives written notification that You do not intend to renew. You agree to pay such renewal charges. A valid order is a purchase order that is either signed by Your authorized representative or generated by Your automated ordering system. If You are unable to issue purchase orders, You must complete and sign a Novell MLA Order Form. Novell's acceptance of an order does not suggest Novell's agreement with the accuracy of the quantities or other information set forth in the order. Novell reserves the right to invoice You without a purchase order for fees otherwise owing under this Agreement, including for Maintenance fees at the beginning of each Annual Period.

7.2. Price and Product Changes. Novell may revise the Price List at any time to (a) change the list prices for Software, Maintenance, and other services or deliverables, and (b) add or delete Software licenses or other services or deliverables available for purchase. During an MLA Term, however, Your list price for available



licenses or Maintenance shall remain at the price published by Novell the first month of such Term (or whenever the product first became published on the price list during the Term). This limited price protection will expire at the end of each Term. Any decrease in list prices will apply to Your orders received after publication of a new Price List. Novell's obligation to protect Your list prices will not apply to third-party branded products, special promotions, licenses and Maintenance invoiced in non-U.S., non-Canadian or non-EURO currency, and does not guarantee product availability for the full Term. For all Novell product(s) for which Customer has purchased Maintenance, Novell agrees it will not cease to offer Maintenance prior to the date on which Novell discontinues Maintenance generally to the public. If Novell ceases to provide Maintenance services for a product for which Customer has purchased Maintenance, Customer's Maintenance fees shall be prorated to the date Maintenance services ceased.

7.3. Master Software. Novell will make available Master Software for the Software products ordered from the Price List. "Master Software" means master media available from Novell from which You may make copies to install the Novell Software up to the number of licenses granted.

7.4. Copying. You may install the Software from Master Software for Your internal use by Your employees (which may include contractors and consultants while performing work for your business), up to the number of licenses granted to You. You must reproduce the Master Software's serial numbers and all proprietary rights notices in any copies You make.

7.5. Payment. All fees will be due and payable in U.S. Dollars within 30 days from the date of invoice. However, for orders requesting shipment and billing to a country whose currency is the Euro or a currency required by the applicable Price List, the purchase orders must be issued, and the fees paid, in Euros or the required currency. Orders issued in response to quotes must correspond to the currency in which the quote was made.

7.6. Taxes. The MLA fees are exclusive of all applicable taxes. You will pay and bear the liability for taxes associated with MLA deliverables, including sales, use, excise, and added value taxes but excluding taxes based upon Novell's net income, capital, or gross receipts, or any withholding taxes imposed such as a withholding tax on a royalty payment made by You where such withholding is required by law. In the event You are required to withhold taxes, You will furnish Novell all required receipts and documentation substantiating such payment. If Novell is required by law to remit any tax or duty on Your behalf or for Your account upon delivery, You agree to reimburse Novell within 30 days after Novell notifies You in writing of such remittance. You will provide Novell with valid tax exemption certificates in advance of any remittance otherwise required to be made by Novell on Your behalf or for Your account where such certificates are applicable. As of the date hereof, Novell acknowledges and agrees that the State and SGAs are exempt from all of the taxes specified in this Section. Should new taxes and/or surcharges be imposed by governmental authority during the Term or any renewal of the Term, Novell shall be bound by Customer's determination as to whether Novell may assess the tax or surcharge upon Customer; provided, however, that Customer shall provide Novell with reasonable documentation to support its determination. Novell agrees that reasonable documentation for SGAs and NSGAs includes, by way of example only, a valid tax exemption certificate and additionally, for SGAs, a written statement from an authorized State official stating that the SGA is exempt from such tax or surcharge.

7.7. Self-Audits. You agree to submit to Novell a self-audit report at the end of each Annual Period. The self-audit must identify all

Software use subject to a license, and the number of licenses of Software and Maintenance purchased. If Your self-audit information shows that You are using Software for which You are not licensed, or owe Maintenance, You must submit to Novell a purchase order for the licenses and Maintenance.

7.8. Formal Audits. During the Term of this Agreement and for two years afterward, You must keep complete and accurate records of all Software copying and use. During this period, Novell will have the right, at its expense and upon no fewer than 10 working days prior written notice, to audit Your use of the Software and Your related records and MLA payments. As part of such audit, Novell is entitled to obtain physical and electronic data concerning all Software usage at each of Your offices, regardless of the countries or regions in which Your offices are located (the audit may be at Your facilities or from a remote location, at Novell's option). An audit may be conducted either by Novell or by its authorized representative, will not interfere unreasonably with Your business activities, and will be conducted no more often than once per calendar year, unless a previous audit disclosed a material discrepancy. If such audit shows that You have understated Your actual use of the Novell Software or have otherwise underpaid amounts owing, You must immediately purchase from Novell sufficient licenses and Maintenance to support the actual use and copying and pay all amounts owing. Novell will use the information received during the audit solely for the purposes of this Agreement and will honor any applicable privacy/data protection laws and otherwise maintain the confidentiality of such information. No right of audit provided Novell hereunder shall grant Novell the right of access to any information that would otherwise be non-disclosable under State law or without a court order.

7.8.1. You may request that the formal audit described above be carried out by an independent third party who must be an accountant or qualified auditor approved by Novell. Novell will not unreasonably withhold its approval. In such a case, the expense of the audit will be borne entirely by You. Subject to the provisions of this section, Novell will have the right to determine the audit scope and required audit testing and to review the audit work prior to finalization of the audit.

7.8.2. State's and Customer's rights to perform audits of Novell in connection with this Agreement. The State and any Customer under this Agreement shall have the right, using its own employees or using contracted for auditors, to perform audits of Novell's records as they pertain to this Agreement, including, by way of example only, confirmation of List Prices and price change dates. Novell shall retain all records pertaining to a specific Customer in connection with this Agreement for no less than three (3) years following the termination or expiration of this Agreement with respect to such Customer.

8. TERM AND TERMINATION.

8.1. Term. This Agreement will begin on the Effective Date and will remain in effect until June 30, 2013 ("Term"), subject to earlier termination as stated herein. Qualified Members shall be subject to the same Term as the Prime Customer, but may continue their memberships if, for whatever reason, the Prime Customer's membership terminates earlier. The State has the sole and unilateral right to renew this Agreement for up to two (2) successive Renewal Terms of two (2) years each upon the same terms and conditions specified herein (but not including any further right to renew) by providing Novell with a written notice of such renewal at least thirty (30) days prior to the expiration of the Term, or the first Renewal Term, as applicable.

8.2. Termination:



(i) For Cause: If Novell fails to fulfill its obligations under this Agreement properly and on time, or otherwise violates any provision of the Agreement, the State may terminate the Agreement by written notice to Novell. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by Novell shall, at the State's option, become the State's property. The State shall pay Novell fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Novell's breach. If the damages are more than the compensation payable to Novell, Novell will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B;

(ii) For Convenience: The performance of work under this Agreement may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Agreement that Novell has incurred up to the date of termination, and all reasonable costs associated with termination of the Agreement; provided, however, Novell shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

(iii) For Non-Appropriation of Funds: If the Maryland General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Agreement succeeding the first fiscal period, this Agreement shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect the State's rights, Novell's rights, or any Customer's rights under any termination clause in this Agreement. The effect of termination of the Agreement hereunder will be to discharge Novell, the State and Customers from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The State shall notify Novell as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first.

8.3. Effect of Termination. Upon termination of this Agreement for any reason, Your right to acquire MLA licenses or Maintenance will immediately terminate. However, your right to continue to use any perpetual licenses will not be affected and You may keep and use Your Master Software to install licenses that You owned prior to termination, including any Upgrades and Updates to which You were entitled under Maintenance.

9. INTELLECTUAL PROPERTY INDEMNIFICATION.

9.1. Scope. Novell will defend any claim brought against You by a third party to the extent it is based on an allegation that a Novell Software product or service deliverable infringes such third-party's patent, copyright, or trademark, or misappropriates such third party's trade secrets, under the laws of the country in which You take delivery of the Software or deliverable. Novell will pay any damages, costs, and expenses finally awarded (or agreed to by settlement) for any such claim. You must promptly notify Novell of the claim, give Novell control of the defense and related settlement negotiations, and provide Novell with the reasonable assistance (for which Novell shall pay Your reasonable out-of-pocket costs) in defending the claim. If You desire separate legal representation in any such action, You will be responsible for the costs and fees of

Your separate counsel.

9.2. Remedies. If a Novell Software product or service deliverable is held to infringe and its use is prohibited or if, in Novell's reasonable opinion, is likely to become the subject of an infringement claim, You will permit Novell, at Novell's option and expense, to (a) procure for you the right to continue to use the Software or deliverable, or (b) replace or modify it so that it becomes non-infringing and has the same or additional functionality and comparable or improved performance characteristics, or (c) upon Your return of the infringing Software or deliverable, refund to You the amount paid for the Software or deliverable. Novell shall undertake good faith, commercially reasonable efforts to first resolve infringement claims in accordance with the provisions of subparagraphs 9.2 (a) and/or (b) and only upon a failure of such efforts shall Novell resort to the provisions of subparagraph 9.2 (c).

9.3. Exceptions. Novell will have no obligation of defense or indemnity to the extent the infringement claim arises from (a) Novell's compliance with Your designs, specifications or instructions, (b) use of other than the Software's current release, if the infringement would have been avoided by use of the current release and if the infringement occurs more than 90 days after Novell notifies You that a previous release may infringe, (c) a modification of the Software or deliverable not requested or authorized in writing by Novell, (d) its use or combination with non-Novell software, equipment, or data, other than as specified in the Documentation or otherwise approved by Novell in writing, (e) the furnishing to You of any information, service, or technical support by a third party (Novell shall be liable if the support from the third party was from a Novell Software Services Agent and Novell has authorized in writing the support from the Novell Software Services Agent), (f) non-licensed use of the Software or deliverable, or (g) any Linux-based Software or Software for which Novell does not charge a license fee ("Linux Product"), unless You are current on Maintenance for all installations of the Linux Product on the date the infringement claim is tendered to Novell.

9.4. Indemnification Limitation. To the extent allowed by applicable law, Novell's aggregate liability for any infringement claim is limited to the greater of three (3) times the aggregate amount paid by all Customers who have incorporated the terms and conditions of this Agreement in any procurement undertaken by them for the Novell licenses and/or services giving rise to the claim or \$200,000. This limit does not apply to expenses incurred by Novell in defending the claim or amounts expended or incurred by Novell under Section 9.2 (a), (b), and/or (c).

9.5. Exclusive Remedy. This section 9 states the exclusive obligation of Novell to Customer regarding any claim of infringement or misappropriation of any third party's intellectual property rights.

10. LIMITED WARRANTY.

10.1. Software. Novell warrants that the Software (including Upgrades) will conform substantially to the specifications in the Documentation, provided: (a) the Software is not modified by anyone other than Novell, unless authorized by Novell in writing; (b) You notify Novell in writing of the nonconformity within 90 days following the commencement of use of the Software by Customer, provided that such use shall commence no more than 30 days following the date of delivery of the Software to Customer; and (c) the Software is installed in accordance with Novell's written instructions which Novell shall provide to Customer in advance or concurrently with any such installation. In this section, "conform substantially" means that the Software conforms to all material specifications in the Documentation. Novell's only obligation under



this warranty, at its option, is to either cause the non-conforming Software to conform substantially with its specifications or to refund to You the amount paid to license such non-conforming Software (or, for an Upgrade, the annual Maintenance fee entitling You to the Upgrade) upon Your return of all the non-conforming Software. In the event of a refund, Your license to use the Software will automatically expire. Novell shall undertake good faith, commercially reasonable efforts to first cause the Software to conform to all material specifications in the Documentation and only upon a failure of such efforts and upon written direction from Customer shall Novell refund the amount paid to license the non-conforming Software. In any such event, the refund of amounts paid to license non-conforming Novell Software shall include those amounts attributable to: (i) the Novell Software that does not conform to all material specifications of the Documentation and (ii) all Novell Software adversely affected by the nonconforming Novell Software specified in subparagraph (i).

10.2. Media and Documentation. Novell warrants that if either the media or the Documentation provided by Novell is in a damaged or physically defective condition at the time of delivery to You and if it is returned to Novell (postage prepaid) within 90 days of delivery, Novell will provide You replacements at no charge and will also refund any postage costs incurred by Customer to return the defective or damaged media and/or Documentation.

10.3. Services. Novell warrants that any Services purchased under this Agreement will be performed in a professional manner in accordance with generally accepted industry standards. As files may be altered or damaged in the course of Novell providing technical services, You agree to take appropriate measures to isolate and back up Your systems. This warranty will be effective for 90 days following acceptance of the Services in accordance with Section 6.3. Upon receipt of written notice of breach of this warranty, Novell's obligation is to correct the Services so that they comply with this warranty. Upon any breach of this warranty, Novell shall first use good faith commercially reasonable efforts to correct the services so that they comply with the warranty and only upon the failure of such efforts shall Novell then resort to refunding the amount Customer has paid for the services.

10.4. Loss of Data. Customers shall undertake commercially reasonable measures to secure their data, including, by way of example only, backing up such data. In the event Customers undertake such commercially reasonable measures to secure their data and damage to and/or loss of data still occurs, Novell shall be liable for such loss of and/or damage to data if such loss and/or damage directly and solely results from any of the following:

(a) A Novell product or service is shown to be defective and Customer experiences a loss of or damage to data that is attributable to such defect; or

(b) A Novell employee, agent, or representative commits willful misconduct and Customer experiences a loss of or damage to data that directly results therefrom.

In the event Novell is liable for any such loss of and/or damage to data, Novell's liability shall be capped in accordance with the provisions of Section 11.2c. herein

10.5. Non-Novell Products. Novell does not warrant non-Novell products. Any such products are provided on an "AS IS" basis. Any technical or warranty service for non-Novell products is provided by the product manufacturer in accordance with any applicable manufacturer's warranty.

10.6. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NOVELL MAKES NO

WARRANTY OR REPRESENTATIONS REGARDING ANY SOFTWARE OR SERVICES. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NOVELL DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES OR CONDITIONS, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, AND NON-INFRINGEMENT, EXCEPT AS PROVIDED IN SECTION 9 AND SECTION 11.2. NOVELL DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL BE WITHOUT DEFECT OR ERROR, SATISFY YOUR REQUIREMENTS, OR PROVIDE UNINTERRUPTED USE OF THE SOFTWARE; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION 10.5 SHALL ABRIDGE, VOID OR DIMINISH ANY EXPRESS OBLIGATIONS OR WARRANTIES MADE BY NOVELL ELSEWHERE IN THIS AGREEMENT, INCLUDING, BY WAY OF EXAMPLE ONLY, THOSE MADE IN SECTION 10 AND SECTION 9 HEREIN.

11. LIABILITY LIMITATIONS.

11.1. Indirect Damages. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NEITHER NOVELL NOR CUSTOMER WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHETHER UNDER CONTRACT OR IN TORT (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INTERRUPTION OF BUSINESS, LOSS OF BUSINESS, LOSS OF PROFITS AND LOSS OF USE OF DATA) RELATED TO OR ARISING OUT OF THIS AGREEMENT, EVEN IF THE BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION DOES NOT APPLY TO VIOLATIONS BY EITHER PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

11.2. Direct Damages. Novell's liability for damages of any type arising out of or related to this Agreement shall be limited as follows:

a. For infringement of patents, trademarks, copyrights and/or trade secrets, as provided in Section 9 of this Agreement.

b. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and

c. For all other claims, damages, losses, costs, expenses, suits or actions in any way related to this Agreement, regardless of the form, Novell's aggregate liability to all Customers hereunder, shall be limited to the greater of three (3) times the aggregate amount paid by all Customers who have incorporated the terms and conditions of this Agreement in any procurement undertaken by them for Novell products and/or services giving rise to the claim, or US\$200,000. Third party claims arising under this Agreement are included in this limitation of liability only if the State or Customer, as applicable, is immune from liability. Where Novell is liable, Novell's liability for third party claims shall be unlimited if the State or Customer, as applicable, is not immune from liability for such claims.

12. GENERAL.

12.1. Choice of Law. The Agreement will be governed by the substantive laws of the State of Maryland and applicable federal law. The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or the software licenses acquired hereunder.

12.1.1. However, if Your principal residence is in (a) a member state of the European Union or (b) a member state of the



European Free Trade Association (c) the Republic of South Africa, or (d) Canada, the governing law is that of the country of Your principal residence (and for Canadian customers, the law of the Province of Ontario). If Your principal residence is in any other country in Europe the applicable law will be the law of the Federal Republic of Germany. If Your principal residence in the Middle-East or Africa (except South Africa), the applicable law will be the law of England. To the extent allowed by applicable law, the terms of the United Nations Convention on the International Sale of Goods will not apply, even where adopted as part of the domestic law of the country whose law governs the relationship.

12.1.2. Each party will, at its own expense, comply with any applicable law, statute, administrative order or regulation. An action at law under this Agreement may only be brought before a court of appropriate jurisdiction in the state whose law governs this Agreement under the terms of this Section 11. Each party shall be responsible for its own legal fees incurred in legal proceedings related to, arising from, or in connection with this Agreement.

12.2. Assignment. Neither party may transfer or assign any right or obligation set forth in this Agreement without the prior written consent of the other. Neither party will unreasonably withhold or delay its consent to an assignment of the Agreement by the other party to another entity in the same group of companies. Either party may, with written notice to the other party, assign the Agreement to the surviving entity in the case of a merger or acquisition. The State, may assign this MLA to any SGA upon written notice to Novell.

12.3. Confidentiality Obligations. The receiving party of Confidential Information will exercise reasonable care to protect any Confidential Information from unauthorized disclosure or use. The receiving party may disclose Confidential Information only to its employees or agents with a need to know such information and will inform such employees and agents by way of policy or agreement that they are bound by confidentiality obligations. "Confidential Information" means information that (i) if disclosed in tangible form, is clearly, prominently and unequivocally marked in writing as confidential, or (ii) if disclosed orally or visually, is clearly, prominently and unequivocally designated orally at the time of disclosure as "confidential" or is reasonably and actually understood by the recipient to be confidential. Information that is otherwise confidential may still be disclosed by the Customer to its employees who have a legitimate need to know and auditors hired by the Customer to audit the records of Novell pursuant to Section 7.3. The terms of this Agreement are not Confidential. Confidential Information will not include information (a) already in the receiving party's possession without obligation of confidence; or (b) independently developed by the receiving party; or (c) that becomes available to the general public without breach of this Agreement; or (d) rightfully received by the receiving party from a third party without obligation of confidence; or (e) released for disclosure by the disclosing party with its written consent; or (f) required to be disclosed by law, regulation, or court order. These confidentiality obligations will survive three (3) years after expiration or termination of this Agreement. Novell retains the right to use its knowledge and experience (including processes, ideas, and techniques) learned or developed in the course of providing any services to You.

12.4. Publicity. You agree that Novell may use Your participation in the MLA Program as a commercial reference unless You otherwise inform Novell in writing.

12.5. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to its subject matter. This Agreement supersedes all prior and contemporaneous agreements, proposals and statements on this

subject matter. Except as otherwise stated herein, this Agreement may only be modified in a writing signed by authorized representatives of each party. Purchase order terms will not modify the Agreement unless the parties agree otherwise in writing.

12.6. Severability/Waiver. If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties will amend the Agreement to reflect the original agreement to the maximum extent possible. No waiver of any contractual right will be effective unless in writing by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform will be deemed a waiver of any future right.

12.7. Notices. Notices to a party must be in writing and sent to the party's address on the Membership Form or such other address as a party may provide in writing. Notices may be delivered in a format reasonably chosen by the notifying party.

12.8. Force Majeure. Neither party will be liable for delay or failure to perform that arises out of causes beyond the reasonable control and without the fault or negligence of such party. A party will give prompt notice of any condition likely to cause any delay or default.

12.9. Survival. The provisions of this Agreement, which by their nature extend beyond termination of the Agreement, will survive termination of the Agreement.

12.10. Intellectual Property Rights/Remedies. Nothing in this Agreement waives or limits extra-contractual rights or remedies available to Novell to protect its rights in the Software, including those available under U.S. copyright law, international treaties, or national copyright and intellectual property laws of the countries in which You may use the Software. This Section shall not be used to assert any monetary claim against any Customer where such a claim would not be permitted under Maryland law.

12.11. Export Compliance. Any products or technical information provided under this Agreement may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all export control regulations and to obtain any required licenses or item classification to export, re-export or import deliverables. The parties agree not to export or re-export to entities on the current U.S. export exclusion lists or to any embargoed or terrorist supporting countries as specified in the Export Administration Regulations (EAR). The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses as specified in the EAR. Please consult the Bureau of Industry and Security web page: www.bis.doc.gov before exporting or re-exporting items subject to the EAR. Refer to: www.novell.com/info/exports/ for more information on exporting Software. Upon request, Novell can provide information regarding applicable export restrictions. However, Novell assumes no responsibility for Your failure to obtain any necessary export approvals.

12.12. Non-Visual Accessibility. Novell acknowledges that the provisions of COMAR 21.05.08.05 are required terms where new or upgraded information technology is being acquired and that the software being acquired is information technology governed by these provisions. Novell provides accessibility information about its products, including product descriptions in the Voluntary Product Accessibility Template ("VPAT"), on its external website (www.novell.com/products/accessibility/.) Not all products of Novell are intended to meet the requirements of federal or state accessibility laws; customers acquiring Novell software products must determine whether their procurement and use of such products comports with federal and state accessibility requirements. Novell agrees that it will provide such information as may be requested by the State to permit the State to determine



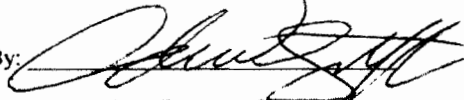
whether: (1) software is not available with non-visual access because the essential elements of the software are visual and non-visual equivalence cannot be developed; or (2) the cost of modifying the information technology for compatibility with software and hardware used for non-visual access would increase the cost of the procurement by more than 5 percent.

_____ **IN WITNESS WHEREOF**, the parties have, by their duly authorized representatives, executed this MLA as of the day and year first set forth above.

13. DELIVERY

NOVELL INCORPORATED ("NOVELL")

13.1 Delivery Terms.

By: 
Name: Andrew T. Wagstaff

13.1.1 For delivery from the U.S. to destinations within the U.S.A., delivery terms are FOB Customer's designated location. Novell will ship ground only and prepay freight from Novell's Dock to Customer's forwarder or named destination. All other freight arrangements will be billed to You.

Title: Sr. Contract Negotiator


Date: 16 June 2011

13.1.2 For delivery from the U.S. to destinations outside the U.S.A., delivery terms are DDU-POE (Delivery Duty Unpaid - Port of Entry) as defined in INCOTERMS 2000. Novell will select a carrier and will prepay shipping and handling charges. You will be responsible for all applicable import duties and value added tax, goods and services tax, or other similar taxes and fees.

STATE OF MARYLAND

By: MARYLAND DEPARTMENT OF INFORMATION TECHNOLOGY

13.1.3 For delivery within Europe, the Middle-East and Africa ("EMEA"), delivery terms will be Carriage Paid To (C.P.T.) Destination, as defined in INCOTERMS 2000. Novell will select a carrier, prepay the freight and invoice You for freight and any handling costs. Destinations for E.U. countries will be Your nominated delivery point; for non-E.U. countries, destination will be the point of import. The term C.P.T. does not include the payment by Novell of taxes or any applicable import duties.

By: 

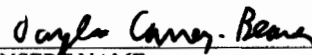
Name: Elliot Schlanger

Title: Secretary

Date: 06/21/11

Approved for form and legal sufficiency this 21th day of June, 2011.

13.2 Title & Risk of Loss. For shipment within the United States, title to any deliverables, exclusive of Novell's rights to intellectual property, and risk of loss will pass to Customer upon conforming receipted delivery FOB Customer designated location. For shipments from the U.S. to outside the U.S., title to and risk of loss will remain with Novell until the shipment arrives at the importing country's entry port (or at a bonded warehouse within Canada or Mexico if Customer so requests shipment). For shipments within EMEA (i.e. originating in Ireland), title to and risk of loss passes to You at the Irish shipment point. If You insure shipment, the insurance will protect Novell's interest until title passes as set forth above. Notwithstanding the above provisions, no title to Master Software is transferred to Customer.


INSERT NAME
Assistant Attorney General

