

Novell Master License Agreement - State of Maryland (April 2005)

THIS NOVELL MASTER LICENSE AGREEMENT- State of Maryland (April 2005) (referred to herein as the "Agreement" or the "MLA"), is made this 15 day of April, 2005, by and between the State of Maryland ("State"), a body corporate and politic, acting by and through its Department of Budget and Management, and Novell, Inc., a Delaware corporation having its principal place of business at 404 Wyman Street, Waltham, MA 02451 ("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 plans to issue a certain "Invitation For Bids" ("IFB") which SGAs and NSGAs may use to procure Novell products and services from a "Novell Software Services Agent" (hereinafter defined), subject to the terms and conditions of the MLA (hereinafter defined); 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: (i) assure such terms and conditions are consistent with the terms and conditions of the IFB and (ii) clarify who may acquire Novell products and services under the IFB.

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 under the IFB. Alternatively, SGAs and NSGAs may initiate separate procurements directly with Novell that are outside of the IFB but that otherwise 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, #125336 (M5Z167-000Z06) ("Prior MLA"), who acquire Novell products and services under the IFB 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 under the IFB or under a Separate Procurement, 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.

SGAs AND NSGAs SHALL NOT PURCHASE NON-NOVELL PRODUCTS FROM NOVELL UNDER THE IFB OR A SEPARATE PROCUREMENT THAT INCORPORATES THE TERMS OF THIS AGREEMENT, EVEN IF THE SAME ARE OFFERED BY NOVELL.

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 (April 2005):

1. **INTRODUCTION.** Novell has created three volume licensing programs: the Volume License Agreement ("VLA"), the Corporate License Agreement ("CLA"), and the Master License Agreement ("MLA") programs. These programs allow Prime Customer and its Subsidiaries and Affiliates to obtain software licenses and services through volume purchasing, which includes discounts and other benefits. This Master License Agreement ("Agreement") applies to the MLA Program, which is referred to below as the "Program."
2. **DEFINITIONS.** Capitalized terms used in this Agreement are defined as follows:
 - 2.1 **Affiliate** means an entity that does not meet the definition of a Subsidiary, but has an organizational relationship with Prime Customer.
 - 2.2 **Annual Period** means for the first Annual Period, the period July 1, 2005 through June 30, 2006. The next Annual Period shall run from July 1, 2006 through June 30, 2007. Subsequent Annual Periods shall run consecutively from July 1st through June 30th of the following year.
 - 2.3 **Customer** means any SGA or NSGA identified by the Prime 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".
 - 2.4 **Documentation** means any user documentation and manuals (including electronic versions) provided by Novell with a Software product.
 - 2.5 **Effective Date:** The Effective Date of the Agreement is July 1, 2005. The Effective Date of each Customer's enrollment is the date the Application Form is accepted by Novell and a unique contract identifier number is issued to the Customer.
 - 2.6 **Internal Use** means use (a) for Your internal business, provided that persons not employed by You do not have access to the Novell Software through input devices, and (b) by Your consultants and contractors only while performing work for Your internal business. Access by non-employees to public systems, data bases, records and applications that use Novell products to support the day-to-day operations and missions of those operating such systems, data bases, records and applications shall not be considered a violation of Subsection (a). In no event shall a Customer be liable for any illegal access made to Novell products by individuals not under the direct control and supervision of the Customer.
 - 2.7 **Membership Level** means the Program level, which is determined by the aggregate price of all purchases made by all SGA and NSGA Customers procuring Novell products and services under the IFB and Separate Procurements during the most recent Term. The Membership level determines the discount range with which Novell will provide You for Software purchases (licenses and Maintenance) under this Agreement.

- 2.8 **Novell** means the Novell entity that enters into this Agreement with You, as defined on Your Application Form.
- 2.9 **Price List** means the product availability and price list for the Program as published by Novell from time to time. The then-current Price List can be downloaded at <http://www.novell.com/licensing/price.html> or obtained from your local Novell office.
- 2.10 **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.
- 2.11 **Software** means the Novell commercial software licensed to You under this Agreement.
- 2.12 **Term** means two consecutive Annual Periods as described in section 8.1. The parties agree that the first two consecutive annual periods shall run from July 1, 2005 through June 30, 2007. The Term expires on June 30, 2007. The State has the sole option to renew this Agreement for up to two (2) additional renewal terms, in accordance with Section 8.1.
- 2.13 **Update** means a fix or compilation of fixes released by Novell to correct operation defects (program bugs) in the Software.
- 2.14 **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. for GroupWise 5.5 to 6.0). 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.
- 2.15 **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 NSGAs 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.
- 2.16 **Agreement** means the Novell Master License Agreement – State of Maryland (April 2005), as the same is set forth herein.
- 2.17 **Novell Software Services Agent** means any entity that is not a part of the corporate structure of Novell that: (i) is certified by Novell to resell Novell products and provide services to Novell products; (ii) is selected by the State to provide such products and services under the IFB; and (iii) is duly authorized by Novell to act in accordance with the Software Services Agent Addendum to the MLA.
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 is available from Novell upon request or 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 (but not to make copies from Master 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. If You obtain the Software in Europe, the Middle-East or Africa, any license under this Agreement or applicable EULA is granted to You by, or on behalf of, Novell Ireland Software Limited.
4. **VOLUME LICENSING PROGRAM.**
- 4.1 **Program Changes.** The Program is described in Novell's Program Guide, which is available at <http://www.novell.com/licensing/> and forms an integral part of this Agreement. To the extent of any conflict between the terms and conditions of this Agreement and the Program Guide, the terms and conditions of this Agreement will prevail. To make the Program open for enhancements or changes, Novell may modify the Program, with any changes becoming effective 30 days after Novell notifies You in writing of the changes. Any changes will apply only to purchases made after the effective date of the changes. If a 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.
- 4.2 **Parents and Subsidiaries.** Prime Customer's parent company and Subsidiaries may receive Program benefits and privileges through Prime Customer (i.e., without completing a separate Application Form) if Prime Customer orders on their behalf using its own contract number. In this situation, Prime Customer is responsible with such Subsidiaries and parent company for compliance with this Agreement and the Program. If a Subsidiary or parent company wishes to maintain a separate ordering location, it must submit its own Application Form.
- 4.3 **Affiliates.** An Affiliate may participate in the Program only by submitting an Application Form to Novell. By submitting an Application Form, an Affiliate confirms that it has the consent of Prime Customer to join Prime Customer's Program membership and that it has an organizational relationship with Prime Customer.
- 4.4 **Unique Number and Acceptance.** Upon entering the Program, each Affiliate is assigned a unique contract number under its Prime Customer's Master License Agreement Number. The number assigned to You is personal and unique to You. You may not disclose or allow this number to be disclosed to third parties (except Your Novell-authorized Software Services Agent if You have appointed one) or allow it to be used by third parties. Novell's acceptance of Your participation in this Agreement is conditioned upon Novell assigning a unique number to You under this Agreement. The unique contract number may be disclosed to the Novell Software Services Agent and to third parties who have a need-to-know in order to perform a legitimate contracted function for Customer, including, by way of example only, internal and external auditors.
- 4.5 **Customer Acceptance.** By completing and signing an Application Form for the Program and submitting it to Novell, You agree to be bound by the terms of this Agreement. If You submit Your Application Form electronically, You represent that the person signing the Application Form has authority to commit Customer to the Agreement provisions, and You agree that its electronic submission of the Application Form will have the same contractual effect as if You had signed a paper original by hand and submitted the paper original to Novell.
5. **OPTIONAL SERVICES. Subsections 5.2 through 5.2.4 shall only be applicable to NSGAs. SGAs shall not be permitted to obtain 'Other Services' under the IFB or under a Separate Procurement.**
- 5.1 **Technical Support Services.** The technical support services available from Novell are as described in the then-current Premium Service Guide applicable to Your region, published on <http://www.novell.com/services/premium/>, the terms of which are incorporated into this Agreement. Novell may revise the Premium Service Guide from time to time, provided that any such change that materially diminishes Your level of support will only apply to services purchased after the changes are published. 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. Unless otherwise agreed in a separate agreement specifically covering Novell technical support services, those services will be governed by this Agreement's terms.
- 5.2 **Other Services.** Your optional purchase and Novell's delivery of Services, such as consulting or education ("Services") under the Agreement, are subject to the following terms, unless otherwise agreed in a separate agreement specifically covering those Services.
- 5.2.1 **Statement of Work.** The parties may choose to enter into a mutually agreeable 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.
- 5.2.2 **Acceptance.** Upon completion and delivery of the Services, You will have 30 days to notify Novell if the Services fail to comply with the relevant SOW. If Novell is not notified of any problems within this time period, the Services shall be deemed accepted by You.
- 5.2.3 **License.** Subject to payment of applicable fees for Services and Deliverables, Novell grants You a nonexclusive, nontransferable, worldwide, perpetual, royalty-free license to use, reproduce, display and distribute the Deliverables internally within Your organization. All proprietary rights notices must be faithfully reproduced and included on all copies. Except as expressly provided otherwise in this Section, Novell (and/or its licensors) retains on an exclusive basis all right, title and interest in and to any intellectual property developed, delivered and/or used by Novell in the performance of any Services.

5.2.4 Term. If a SOW extends beyond the term of the Agreement, this section 5.2 and sections 9, 10.4, 10.6, and 11 of this Agreement will continue in effect solely with respect to such SOW.

6. ORDERING AND DELIVERABLES.

6.1 Orders. Except as otherwise provided, all orders must be submitted to Novell. You must place an order for the appropriate number of Software licenses (and associated Maintenance – see Section 13 below) within thirty (30) days after installation. A valid order is a completed and signed Novell MLA Order Form coupled with Your matching purchase order that is either signed by Your authorized representative or generated by Your automated ordering system. Novell's acceptance of an order does not suggest Novell's agreement in the accuracy of the quantities or other information set forth in the order or otherwise waive Novell's rights to enforce its rights under this Agreement. Novell reserves the right to invoice You in the absence of receiving a purchase order for fees otherwise owing under this Agreement. Novell may delay accepting orders, suspend technical support and/or eliminate any volume or program discount if You fail to satisfy Your obligations under this Agreement. With respect to the State, SGAs and NSGAs procuring Novell products and services under the IFB, all orders shall be placed through the Novell Software Services Agent. With respect to Separate Procurements undertaken by SGAs and NSGAs, all orders shall be placed directly through Novell, except as otherwise provided. While Novell may invoice in the absence of receiving a purchase order for fees otherwise owing under this Agreement, no Customer shall be obligated to pay any such invoice until a purchase order has been identified by Customer and issued against such invoice. Customer agrees to be diligent in issuing purchase orders. No payment shall be deemed late or entitle Novell to withhold any products, services, or discounts while any such purchase order is pending or any such invoiced amount is in legitimate dispute.

6.2 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 products (branded as such), special promotions, licenses and Maintenance invoiced in non-U.S. 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.

6.3 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 purchased. Upon termination of this Agreement, Your right to use Master Software ends and You must follow the termination procedures as outlined in section 8.5.

6.4 Copying. During the term of this Agreement, You may make copies of the Software from Master Software for Your Internal Use, up to the number of licenses You purchase. You must reproduce the Master Software's serial numbers and all proprietary rights notices in any copies You make.

6.5 Payment. All fees will be due and payable in U.S. Dollars within 30 days from the date of invoice. However, for Customer orders requesting shipment and billing to a country whose currency is the Euro, the fees may be paid in Euros for the amount set forth on Novell's invoice, provided Customer's MLA Order Form and purchase order were issued in Euros.

6.6 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: (a) taxes based upon Novell's net income, capital, or gross receipts, or (b) any withholding taxes imposed if such withholding tax is allowed as a credit against income taxes of Novell 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. RECORD-KEEPING AND AUDIT.

7.1 Self-Audits. As part of the Program and to help You manage Your licenses of Novell Software, You agree to perform a self-audit at the end of each Annual Period and at the end of Your participation in the Program. The self-audit must identify (a) all Software copying and use subject to a license, (b) the number of licenses of Software and Maintenance purchased, and (c) whether You have paid for all Software licenses copied or used and all Maintenance due. The report will be made in the on-line self-audit tool or on the self audit form made available by Novell and must be provided to Novell on the last day of each Annual Period and within 30 days after termination of this Agreement. If Your self-audit information shows that You have copied or are using Software for which You are not licensed, You must submit to Novell a purchase order for the licenses and Maintenance, and provide a copy of the purchase order to Novell at the same time You submit the self-audit information to Novell. It is Your responsibility to provide the report without notice from Novell. If You are late in submitting a self-audit, Novell may delay accepting orders, suspend technical support and/or eliminate any volume or program discount on future orders until it receives the late report.

7.2 Formal Audits. During the term of this Agreement and for two years afterward, You must keep complete and accurate records of the information referred to above in Section 7.1. During this period, Novell will have the right, at its expense and upon no fewer than 3 working days prior written notice, to audit Your use of the Software and Your related records and Program 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. 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 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.

7.2.1 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 7.2, 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.

7.3 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, 2007 subject to earlier termination as stated herein. If You are participating under a Prime Customer's Agreement number, Your Term is the same as the Term of membership of the Prime Customer. 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. Your Membership Level for any renewal shall be as stated in the then-current Program Guide.

8.2

(a) Terminations:

(i) For Cause: 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: 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.

(b) Terminations generally. The State or Novell may terminate this Agreement (and Your Program Membership) upon written notice for any substantial breach by the other party where the other party has failed to commence a reasonable effort to cure said breach within thirty (30) days of said notice, or having commenced such a cure, has thereafter failed to diligently pursue the cure of such breach to completion. Both parties agree to make reasonable efforts to cooperate and minimize any material impact of such breach upon the non-breaching party, including telephone or personal conference calls between the parties. However, nothing in this Agreement shall be construed to limit the non-breaching party's right to terminate this Agreement; provided, however, that such a termination complies with the provisions of Section 8.2(a)(i), (ii) and (iii) above.

8.3 Effect of Termination on Other Memberships. Any termination by You or Novell of Your membership will not terminate any other memberships under the Program. Except as specified in Section 8.2(b), should a Prime Customer's Program membership become terminated, You agree that Novell may, upon 30 days written notice, designate another Customer (ordinarily the one with the highest purchase history) to become the new Prime Customer.

8.4 Effect of Termination. Upon termination of this Agreement for any reason, all rights to copy the Software and to use or acquire Master Software will immediately terminate, except as provided in section 13.1.2 below. However, unless Your membership is terminated by reason of Your violation of Novell's intellectual property rights, Your right to continue to use any perpetual licenses will not be affected, except as explained in Section 8.5 below.

8.5 Transition to Standard Licenses. Upon termination of this Agreement, Novell reserves the right to replace any licenses obtained under this Agreement with standard licenses (those available to Novell's non-contract customers). Following termination, You will only be licensed on the then-current, standard license model for that Software and for the number of licenses specified by Novell which provide You equivalent functionality. Such standard licenses will be governed by the then-current standard EULA for that product. You may continue to use Master Software but must (for NetWare and other products specified by Novell) install limited user license certificates to authorize Your continued use of such products and thereafter remove from Your systems any unlimited user licenses obtained under the Program. Your costs for this transition will be any reasonable media and shipping costs incurred by Novell.

9. INTELLECTUAL PROPERTY INDEMNIFICATION.

9.1 Novell will defend any claim brought against You to the extent it is based on an allegation that a Novell Software product or service deliverable infringes a third-party patent, copyright, trademark, or trade secret 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 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 Novell will not be liable for infringement to the extent the infringement results 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) third party software provided under this Agreement, (g) open source technology incorporated in or provided with Novell Software, or (h) non-licensed use of the Software or deliverable.

9.4 Indemnification Limitation. To the extent allowed by applicable law, Novell's liability under this section 9 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 US\$200,000. This limit does not apply to expenses incurred by Novell in defending a claim referred to in section 9.1 or amounts expended or incurred by Novell under Section 9.2 (a), (b), and/or (c). 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 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 upon Your return of all the non-conforming Software. In the event of a refund, Your license to use the non-conforming 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 nonconforming Software. In any such event, the refund of amounts paid to license nonconforming Novell Software shall include those amounts attributable to: (x) the Novell Software that does not conform to all material specifications of the Documentation and (y) all Novell Software adversely affected by the nonconforming Novell Software specified in subparagraph (x).

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 Beta Software. Any beta Software is provided to You "AS IS" without any warranty. You acknowledge that such Software has not been fully tested and may contain errors and bugs. You must determine the suitability of the use of such Software for any purpose. Use of beta Software must be restricted to test environments only. Novell does not guarantee that a commercial version of the Software or that associated products will be released. Novell will have no obligation to provide support for beta Software.

10.4 Services. This section 10.4 is applicable only to NSGAs procuring products and services from Novell. Novell warrants that any optional services purchased under section 5 of the Agreement will be supplied 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. Upon any breach of this warranty, Novell's obligation, at its option, is to either correct the services so that they comply with this warranty or refund the amount You paid to Novell for the services. 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. Novell shall also be liable for loss of data in connection with such services as specified in Section 10.4a 'Loss of Data'.

10.4a 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 10.6 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, NOVELL WILL NOT 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, EXCEPT AS SPECIFIED IN SECTION 10.4.a OF THIS AGREEMENT) RELATED TO OR ARISING OUT OF THIS AGREEMENT OR THE PROVISION OR DEFAULT OF PROVISION OF ANY SERVICES BY NOVELL OR ANY OTHER DELIVERABLE, EVEN IF NOVELL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 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

11.3 Customer Liability. TO THE EXTENT ALLOWED BY APPLICABLE LAW, YOU WILL NOT BE LIABLE TO NOVELL FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE (INCLUDING LOSS OF PROFITS, BUSINESS, OR DATA), WHETHER IN AN ACTION ARISING OUT OF BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. With respect to any and all damages, losses, and/or expenses which are claimed against the State or any other Customer, Novell agrees that the State and other Customers shall not incur any liability where the liability is potentially unlimited, when no funds have been appropriated to fund the liability, the risk is uninsured, and/or the liability is not conditioned upon the

future appropriation of funds to satisfy the liability. Consequently, the State and Customers shall not incur any monetary liability under Sections 11.1, 11.2, or 11.3 of this Agreement if such liability would meet any of the criteria specified in the immediately preceding sentence.

12. GENERAL.

12.1 Choice of Law. The Agreement shall be governed by the laws of the State of Maryland and applicable federal laws. 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, as to a Customer that has its principal residence in (a) a member state of the European Union or (b) a member state of the European Free Trade Association or (c) the Republic of South Africa or Poland, the governing law is that of the country of that Customer's principal residence. For a Customer with principal residence in any other country in Europe the applicable law will be the law of the Federal Republic of Germany. For a Customer with 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 12.1. 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 to the parent company or a subsidiary of the other party. 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. 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 Program as a commercial reference and for direct marketing purposes 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 Application Form or such other address as a party may provide in writing. This includes e-mail notices, which must be sent to the e-mail address given in the Application Form or a replacement address subsequently provided 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 person or entity exporting or re-exporting Novell products directly or indirectly and via any means, including electronic transfer, is wholly responsible for doing so in accordance with the U.S. Export Administration Regulations and the laws of host countries. Novell assumes no responsibility or liability for Your failure to obtain any necessary export approvals. Approvals are dependent upon an item's technical characteristics, the destination, end-use and end-user, as well as other activities of the end user. Specifically, no Novell product may be exported to embargoed or otherwise restricted countries or end users. Please consult the Bureau of Industry and Security web page (www.bxa.doc.gov/) and other sources before exporting Novell products from the U.S. and familiarize yourself with the laws of destination countries before re-exporting Novell products. This provision shall survive the expiration or earlier termination of this Agreement. Please refer to the export matrix for Novell products for more information on exporting Novell Software. You can download a copy from <http://www.novell.com/info/exports/> or obtain a copy from Your local Novell office.

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 through the SSA 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 cooperate with the SSA selected by the State under the IFB to provide such information as may be requested by the State to permit the State to determine whether: (1) software ordered by the SSA is not available with nonvisual access because the essential elements of the software are visual and nonvisual equivalence cannot be developed; or (2) the cost of modifying the information technology for compatibility with software and hardware used for nonvisual access would increase the cost of the procurement by more than 5 percent.

13. MAINTENANCE SERVICES

13.1 A fundamental purpose of the Program is to provide Customer access to the most current Software revision and Premium (technical support) Services. Accordingly, 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 Program, and discounted Maintenance fees must be paid for such services on all Software licenses for as long as this Agreement remains in effect. Unless otherwise permitted by Novell, Customer is not permitted to cease paying Maintenance fees on any Novell product license, nor reduce the license count on which Maintenance must be paid, unless Customer has terminated any such license. During the period for which Maintenance is paid for a license, Novell will provide You with the following benefits for the license.

13.1.1 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/licensing/upgfulfill/>. 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. Nothing in this Agreement implies that Upgrades or Updates will be produced for any product or, if produced, when such Upgrades or Updates will be made commercially available.

13.1.2 Rights on Termination. Following termination of Your Agreement (for any reason except termination by Novell for Your breach under section 8.2 above), You may continue to install Upgrades and Updates of Software to which You were entitled but did not actually install during the period of Maintenance, up to the number of licenses for which You purchased Maintenance.

13.1.3 Upgrade Restrictions. Use of Upgrades is subject to the restrictions of the EULA provided with the Upgrade, which provides, among other things, that an Upgrade license replaces the license on which the Upgrade is based. The terms of any Upgrade license shall not alter the terms or conditions of this Agreement.

13.1.4 Premium Services. "Premium Services" means technical support services as described in Section 5.1 of this Agreement. Novell will provide to Customers Premium Services as described in the then-current Premium Service Guide. The level of Premium Services to which Customers hereunder are entitled during an Annual Period under this Agreement 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 5.1 above.

13.1.5 Customer Contacts. You must identify on the Application Form the contact information of each of Your Premium Services contacts.

13.2 Installed Base. Your installed base (Novell Software licenses available under the Program which You purchased outside the Program) must be transitioned into the 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 product so transitioned for as long as this Agreement remains in effect with respect to You and the products remain 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 before purchasing the required Maintenance.

13.3 Ordering Maintenance. The discounted Maintenance fee will be calculated on an annual basis and paid annually in advance, each Maintenance period expiring at the end of each Annual Period, no matter when during such Annual Period the Maintenance was purchased. The initial discounted Maintenance fee for a license will be calculated from the first day of the month following the earlier of: (a) submission of the order form, or (b) making of a Software copy, through the end of the then-current Annual Period. If Maintenance is not purchased upon renewal of this Agreement, Your discount will be reduced to the level offered by Novell to non-MLA customers. The initial discounted Maintenance fee will be pro rated for the first Annual Period.

13.4 Ongoing Maintenance. Once the initial Maintenance is purchased for a license, for each of Your subsequent Annual Periods during this Agreement, You must order Maintenance on all product licenses governed by this Agreement by the start of the new Annual Period and pay the applicable discounted Maintenance. SGAs and NSGAs that procure products under the IFB shall submit such orders to the duly designated Novell Software Services Agent. SGAs and NSGAs that procure products under a Separate Procurement shall submit their orders directly to Novell, except as otherwise provided. Novell's acceptance of an order for Maintenance does not suggest Novell's agreement in the accuracy of the quantity of Maintenance set forth in the order or otherwise waive Novell's rights to enforce its rights, as specified under this Agreement.

13.5 Optional Full-Term Payment. You may elect to purchase Maintenance for a full Term, rather than on an annual basis as described above. In such event, Your discounted Maintenance fees will be calculated through the end of the current Term.

13.6 Refunds. If this Agreement is terminated because of Novell's breach under section 8.2 above, Novell will refund any discounted 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.

14. DELIVERY

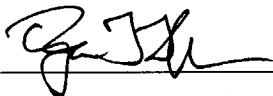
14.1 Delivery Terms.

14.1.1 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.

- 14.1.2 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.
- 14.1.3 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.
- 14.2 **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.

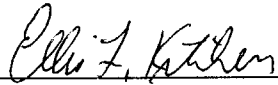
IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this MLA as of the day and year first set forth above.

NOVELL INCORPORATED ("NOVELL")

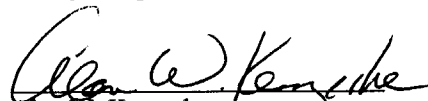
By: 
 Title: Director, Contracts
 Date: 18 APR 05

STATE OF MARYLAND

By: MARYLAND DEPARTMENT OF BUDGET
 AND MANAGEMENT

By: 
 Title: State CIO
 Date: April 19, 2005

Approved for form and legal sufficiency this
 day of April, 2005.


 Alan W. Kempske
 Assistant Attorney General