

This Academic License Agreement for Higher Education ("ALA") is entered into by Novell _____ ("Novell")* and the customer entity signing below ("Customer"). This ALA becomes effective on the Effective Date (as defined below).

* Depending on the country in Europe, the Middle-East and Africa where the Customer is established the ALA will be signed either by the local Novell entity or by Novell Ireland Software Limited.

The ALA consists of:

- (1) this Agreement,
- (2) Exhibit A - Annual Fee Worksheet
- (3) Exhibit B - Participation Form
- (4) Exhibit C - License Terms

and the applicable End User License Agreement(s) of the Software licensed by the Customer hereunder.

PURPOSE: The ALA Program enables establishments of higher education to obtain the right to use certain Novell software for all staff members and all students enrolled at the establishment during a school year. All licenses made available under the ALA Program are obtained from appointed Novell Authorised Resellers. Each license of Novell Software under the ALA Program has an associated "points" value as specified in the Novell Academic Price List. At the end of the agreement, the Customer must return all Media for the Software to Novell and all rights to use the Software cease with immediate effect from the termination/expiry date.

NOW THE PARTIES AGREE AS FOLLOWS:

1. **Definitions.** Capitalised terms, as used in the ALA, are defined as follows.

- a. **Academic License Fee** means the license fee that Customer must pay to the Novell Authorised Reseller to be licensed under this ALA to use Software. The Academic License Fee is an annual payment that must be paid each Annual Period of the ALA term. Novell has a recommended price for the Academic License Fee for the Software - as stated on the Novell Academic Price List - but any final pricing shall be a matter for settlement by Customer with the Novell Authorised Reseller.
- b. **Annual Period** means the period beginning on the first day of the month following the Effective Date and ending one year thereafter, and each consecutive one-year period thereafter during the term of the ALA.
- c. **Authorised Users** means (a) all students enrolled at each establishment that participates in the ALA, and (b) all of such establishment's faculty and administrative personnel.
- d. **Customer** means either (i) an educational establishment providing higher education for students or (ii) an education authority or similar organisation that represents or comprises of a number of establishments of higher education which will participate in the ALA Program through the education authority's membership of the ALA Program and, in either case, has been approved by Novell and has signed this ALA. The Customer signing this ALA will be liable for the actions and omissions of all Authorised Users with regard to the copying or Use of the Software, and will be responsible for the obligations with respect to this ALA of other establishments or entities which participate in this ALA. The attached Participation Form (Exhibit B) must be completed for each establishment that participates under the ALA. For an establishment joining after the Effective Date, a new Exhibit A and a separate Exhibit B must be completed and submitted prior to such establishment joining the ALA.
- e. **Documentation** means user documentation and manuals (including electronic or digital versions, when available)

provided by Novell which accompany a Software product.

- f. **Effective Date** means the date on which the ALA is signed by an authorised Novell representative, which will follow Customer's signing.
- g. **FTE or Full Time Equivalent** means a measurement unit for students, faculty and administrative personnel, which is calculated by applying the following formula: $FTE = X / Y$, in which
X = total number of hours of student attendance and personnel working hours per week at Customer's establishment; and
Y = number of hours per week that is considered to be full-time student attendance and full-time personnel employment at Customer's establishment.
- h. **Internal Use** means use by (a) Authorised Users for Customer's internal operations or for educational purposes, and (b) Customer's consultants and contractors while performing work for Customer on Customer's premises. Use of the Software is restricted to use on equipment owned or leased by Customer.
- i. **Media** means media (in such format as Novell shall determine) available from Novell from which Customer may duplicate and install the Software under this ALA.
- j. **Novell Authorised Resellers** shall mean resellers or other partners who are authorised by Novell for the purposes of selling licenses of Software under the ALA Program.
- k. **Software** means, collectively, the Novell software for which Customer may obtain licenses pursuant to this ALA as specified in Exhibit A and as may be added from time to time by written agreement of the parties, and any Upgrades of such software released by Novell during the term of this ALA.
- l. **Upgrade** means any new version of a Software product which bears the same product name, including version changes evidenced by a number change immediately to either the right or left of the decimal (for example, GroupWise 5.1 to 5.2 or GroupWise 4.0 to 5.0). 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 user customers generally.
- m. **Use** means loading the Novell Software into the temporary memory of a computing device, i.e., RAM, and running or executing it for the purposes for which the Software was designed. Unless the applicable license states otherwise, Use shall be limited to a single computing device.
- n. **Workstation** means any single-user computer or workstation, attached to a network, that is owned or leased and/or

operated by Customer at Customer's location, and (b) any other personal computer or workstation that is allowed to connect to Customer's network. In calculating the total number of Workstations in (b) above, Customer may choose to count instead the maximum number of connections available to Authorised Users to connect to Customer's network using computers or workstations not owned or leased by Customer.

2. **Licenses.** Subject to the provisions of this ALA, and for the term of the ALA only, Novell makes available to Customer a non-exclusive, non-transferable license to copy the Software from Media and distribute the copies of the Software for Use by Authorised Users on Customer's Workstations, up to the number of Workstations or Full Time Equivalent (FTE) population, as applicable, declared in Exhibits A and B for each establishment that participates in the ALA. Only Authorised Users may Use the Software. This license is conditional upon Customer paying the applicable annual Academic License Fee based on the number of Workstations or FTE population at each participating establishment.
 - a. **Department Workstation.** Despite any provision in the ALA to the contrary, if Customer purchases the ALA for less than an entire organisation, such purchase must be made using Department Workstation pricing, and only Authorised Users within the department(s) or organisational unit(s) for which the Workstation price was paid are licensed to use the Software.
 - b. **Additional Terms and Limited Warranty.** The license of the Software made available under this ALA is subject to all other provisions of this Agreement, the provisions in the attached License Terms (Exhibit C) and the applicable End User License Agreement ("EULA") that accompanies each Software product. Each EULA for a Software product made available under this ALA is incorporated herein as part of the ALA. If there is any conflict between the terms of the EULA and those of the ALA, the terms of the ALA shall govern. If there is any conflict between the terms of the EULA and the attached License Terms, the attached License Terms shall prevail. In the case of any conflict between the terms of this Agreement and the License Terms, this Agreement shall prevail.
 - c. **Removal from Novell Academic Price List.** For any Software product licensed by Customer pursuant to the ALA which Novell removes from the Novell Academic Price List, Customer may not make additional copies of the Software product from Media after such removal occurs unless Novell agrees in writing otherwise.
 - d. **Special Products.** Software products delivered to Customer that include non-Novell products, evaluation products, or products requiring key activation, may require additional purchase if Customer chooses to be licensed to use such products, and such products may not be available under this ALA on a site license basis.
 - e. **Third-Party Royalties.** The Use and copying of some Novell Software products under the ALA may require payment of royalties to third-party licensors. If such products are made available hereunder, and if Customer elects to Use such products, Customer must report (in a form and manner specified by Novell) Customer's copying and use of all such products and must pay the required royalties, provided that Novell gives Customer written notice of the royalty obligation at or before the time Customer makes copies of such products under this ALA.
3. **Delivery of Media and Documentation.**
 - a. **Media.** Within a reasonable time after Customer has submitted the signed and completed ALA (including Exhibits A and B) and has paid the appropriate annual Academic License Fee to the Novell Authorised Reseller for each participating establishment, Novell will send to Customer, either directly or through third parties, for each such establishment 1 set of Media required for installation of the Software. It will be Customer's obligation to pass on Media to the participating establishments. Novell will make available to Customer, either directly or through third parties, additional sets of Media at the prices listed in the Novell Academic Price List. During the time that the ALA is in effect, in the case of Upgrades, Novell will make available to Customer, for each participating establishment, 1 set of Media for the Upgrade within a reasonable time after it becomes commercially available. The Media may contain a serial number that has been registered by Novell to Customer. All Media remains the property of Novell and Customer only receives a right to use the Media for the purposes of making copies of the Software for Use hereunder. Upon termination or expiry of this ALA, Customer must return all Media to Novell within 30 days at its own cost.
 - b. **Documentation.** Other than Documentation in CD-ROM format, no Documentation will be provided to Customer. Customer may make copies of Documentation provided in CD-ROM format from the on-line screen for Use with the Software.
 - c. **Delivery.** All Media are provided directly to Customer. Novell will pay the freight to destination. Destination for European Union countries will be Customer's ship-to address as indicated in Exhibit A. For non-European Union countries, destination will be the point of import. Novell will not pay for taxes or duties. Whether the Novell Authorised Reseller will invoice Customer for any taxes, duties or other charges incurred is a matter of negotiation between Customer and the Novell Authorised Reseller.
 - d. **Title and Risk of Loss.** Title (to the extent that it passes) and risk of loss to all Media passes to Customer from the point of delivery to the carrier at Novell's premises in Ireland. Delivery is deemed to have taken place when carrier accepts product into their custody. Notwithstanding the above provisions, no title to any Software or Media is transferred to Customer or the Novell Authorised Reseller.
4. **Upgrade Protection.** For any Software covered by Customer's payment of the Academic License Fee, Novell will make available to Customer any Upgrades released by Novell during the relevant period within a reasonable period of time after they become commercially available. Upgrades to non-Novell products delivered with ALA Software may not be available from Novell. Nothing in this ALA shall be construed to warrant or imply that Upgrades will be produced for any Software product.
5. **Technical Services.** No technical or support services are included in the ALA. Such services may be purchased through Novell or a Novell-approved third party provider under separate contract. Customer should contact a third party or refer to the Novell Internet web site for information concerning technical support programs or other a la carte support options.
6. **Placing Orders.**
 - a. **Academic License Fee.** Customer may obtain the right to Use the Software by submitting to a Novell Authorised Reseller a completed and signed ALA (with Exhibits A and B duly completed and signed) and a purchase order for the amount

of the annual Academic License Fee. To obtain the right to Use Software hereunder, Customer must include in the Annual Fee Worksheet *either* the total Full Time Equivalent (FTE) population (students, faculty and administrative personnel) *or* the total number of Workstations at each participating establishment (or, if Customer opts for the Department Workstation pricing, in the only department(s) or organisational unit(s) of Customer where the Software will be Used). For any establishment that joins in the ALA part way through an Annual Period, prior to that establishment joining the ALA Customer must submit a new Exhibit B and a revised Exhibit A and place a new purchase order for the additional Academic License Fee due for the current Annual Period. At least 15 days prior to the end of each Annual Period, Customer must submit to the Novell Authorised Reseller (i) a new Exhibit A certifying the total FTE population or the total number of Workstations for the next following Annual Period and (ii) a new purchase order for the applicable Academic License Fee due for that Annual Period. A new and duly completed Exhibit B must also be submitted for any establishment that joins at that time. During the first three Annual Periods of the ALA, Customer may not change its initial choice of purchasing licenses per FTE population or per Workstation, as applicable.

- b. Minimum Order. In order to qualify for the ALA Program, Customer must place an order for at least 5,000 points per annum.
- c. Price and Product Changes. Novell may revise the ALA Program at any time to (a) change the recommended prices or associated points value for Software, (b) add, change or delete Software or Media available under the ALA and (c) add Upgraded versions of Software or (d) generally. Any price increase made to a Software license which Customer has previously obtained under the ALA will only apply to subsequent license orders.
 - (i) Separate from Customer's ALA orders, Customer may purchase standard Novell licenses available on the Novell Academic Price List from its Novell Authorised Reseller. The Upgrade Protection and Ownership Registration provisions of the ALA will not apply to such purchases.

7. Term and Termination.

- a. Term. This ALA commences on the Effective Date and will remain in effect for three (3) Annual Periods. Thereafter, the ALA will automatically renew for successive Annual Periods unless either party gives written notice at least ninety (90) days prior to the end of an Annual Period.
- b. Termination for Cause. Either party may terminate the ALA upon written notice for the substantial breach by the other party of any material term, if such breach is not cured within 30 days following receipt of written notice of breach from the non-breaching party.
- c. Termination for Convenience. Either party may terminate the ALA for convenience at the end of any Annual Period by giving the other party written notice at least ninety (90) days prior to the end of the Annual Period.
- d. Effect of Termination. Upon expiration or termination of the ALA for any reason, Customer's right to make copies of the Software from Media, to acquire new licenses or receive Upgrades and, except as provided in Section 7.e below, to Use the Software will immediately terminate.
 - i. Transition from ALA. Upon termination or expiration of the ALA, all rights granted under the ALA will

immediately terminate and Customer shall return all Media to Novell and remove, and shall ensure that all participating establishments remove, all Software copies made hereunder, except such copies for which Customer may continue to Use licenses under Section 7.e below. All licenses purchased outside of the ALA will not be affected by the expiration or termination of the ALA. For those licenses acquired pursuant to Section 7.e below, Novell and Customer agree to work together in good faith to transition Customer from the ALA Programme back to Novell's standard licensing model; this process will include replacing ALA Media with the number of Novell's standard licenses which provide Customer equivalent functionality for these licenses, as reasonably determined by Novell. This transition shall occur at no cost to Customer, except for any media costs incurred by Novell in replacing the ALA Media with Novell's standard licenses and/or media. Within thirty (30) days after termination or expiration hereof, Customer shall certify in writing that all copies of Software, except as provided in 7.e below, have been removed and that all fees due have been paid.

- ii. Survival of Terms. For any licenses Customer validly and legally uses after expiration of the ALA under Section 7.e below, the License Terms attached and the terms of the applicable EULA will govern Customer's continued Use of the Software.
- e. Ownership Registration.
 - i. Installed Base Upgrade. Upon execution of the ALA, Customer must list in Exhibit B, ALL of the licenses of Novell software owned by Customer at that time, which bear the same product names as the Software enrolled under the ALA by Customer in Exhibit A. Proof of ownership of such licenses may be required. For each of the initial three Annual Periods of the ALA, upon payment of the Academic License Fee for each such Annual Period, Customer shall be entitled to and shall be licensed for Upgrades issued by Novell of such pre-existing software licenses that were listed in Exhibit B at the time of signing the ALA, as to one-third of such licenses in each Annual Period (see the example of calculation in Exhibit B). The number of Upgrade licenses thus obtained by Customer will be based on the quantities of pre-existing licenses declared in the Existing License Certification table of Exhibit B, not on the ALA Workstation count, FTE count or points value. Upon termination or expiry of the ALA, all Customer's rights to Use these Upgrade licenses will continue subject to the terms of the attached License Terms and the EULA.
 - ii. New Licenses. During the ALA term, upon payment of the annual Academic License Fees, Customer will receive perpetual license rights for new licenses declared under the ALA equal in value to 30% of the Annual Points Value as specified in the ALA Annual Fee Worksheet and for which the Academic License Fees have been paid. Details of such perpetual license rights (i.e. products and quantities) shall be determined by applying the 30% value against the number of points associated with such license as listed in the Novell Academic Price List that is current upon the date of termination. Upon termination of the ALA, Customer shall have the option to purchase additional perpetual license rights for all the new licenses installed under the ALA at that time, at the price listed in the then-current Novell Academic Price List.

8. General Terms.

- a. **Employees and Agents.** Customer agrees to use commercially reasonable efforts to inform its employees, agents, and other individuals using Software under the ALA that the Software are proprietary products of Novell, Inc. or its licensors and may only be used, copied or transferred subject to the license terms in the ALA.
- b. **Notices.** All notices to a party under the ALA shall be in writing and will be deemed effective upon confirmed receipt by the recipient's person identified as its primary ALA contact. Notices may be delivered by mail, fax, or courier.
- c. **Binding Effect / Assignment.** This ALA is binding upon the parties and their respective successors and assigns. Unless expressly permitted herein, neither party may transfer, assign, or delegate any right or obligation set forth in the ALA without the prior written consent of the other party; provided, that neither party will unreasonably withhold consent for an assignment to the other party's subsidiary. Either party may, upon prior written notice to the other party, assign the ALA to the surviving company or other organisation in the event of a merger or acquisition.
- d. **Severability.** If an ALA provision is held invalid or unenforceable, the provision will be severed to the extent of such invalidity, or unenforceability, and shall not affect or impair the remaining provisions hereof.
- e. **Waiver.** No waiver of any right under the ALA shall be effective unless in made in a writing signed by a duly authorised representative of the waiving party.
- f. **Modifications.** Except as may be expressly provided for in the ALA, including Novell's right to revise anything contained in the Novell Academic Price List, the ALA may not be modified except in writing signed by authorised representatives of each party. In particular, the terms of a purchase order will not modify the ALA unless the parties agree otherwise in writing.
- g. **Entire Agreement.** The ALA and the agreements referenced herein represent the entire agreement and understanding between the parties as to its subject matter. The ALA supersedes all other prior and contemporaneous agreements and statements on these subjects. Each party warrants that in entering into this ALA, it has not relied upon or been induced by any representation or statement not expressly set forth in this ALA.
- h. **Law and Jurisdiction.** The ALA will be governed by the substantive law, excluding the private international law rules, of the country of principal residence of Customer, where that country is 1) a member state of the European Union or 2) a member state of the European Free Trade Area or 3) the Republic of South Africa. In any other case within Europe, the applicable law shall be the law of the Federal Republic of Germany. Within the Middle East and Africa (excluding the Republic of South Africa) the applicable law shall be the law of England. Outside EMEA, the applicable law shall be the law of the State of Utah, USA. An action at law hereunder may only be brought before a court of competent jurisdiction in the state whose law governs the ALA as above. Each party will, at its own expense, comply with any applicable law, statute, ordinance, administrative order, rule and regulation.

CUSTOMER INFORMATION

Customer Name: _____

Address: _____

Primary Contact Name: _____

Shipping Address: _____

Phone #: _____ Fax #: _____

E-mail address: _____

NOVELL

CUSTOMER

Signature

Print Name

Title

Date

Signature

Print Name

Title

Date

EXHIBIT C - LICENSE TERMS

Use of the Software is subject to the following terms and restrictions together with all other ALA terms and the terms of the applicable EULA. Customer is defined as "You" hereinafter.

1. **License Definitions.** All definitions used in the ALA shall apply herein.
2. **License Conditions**
 - a. **Beta/Evaluation/Demonstration Software.** If Novell provides You beta, evaluation or demonstration software, You are authorised to Use such software solely for evaluation or demonstration purposes in a non-production environment. **Any use of beta, evaluation or demonstration software in a production environment is at Your own risk and Novell shall have no liability whatsoever for any damages arising from such use.** As beta, evaluation and demonstration software, documentation, and related information is confidential to Novell, You may not disclose it outside of Your organisation without Novell's prior written consent. Your license to Use beta software terminates upon the earlier of Novell's general release of the software to the public or written notice from Novell. Your license to Use evaluation or demonstration software terminates 180 days after installation or as indicated in the evaluation/demonstration copy, whichever is shorter.
 - b. **Non-Novell Products** If you receive non-Novell products, these are subject to the license terms issued by the manufacturer or vendor which accompany the product.
 - c. **Upgrade Restrictions.** Whether You receive Upgrade licenses through upgrade protection or through a separate purchase, You accept and Use Upgrade licenses subject to the following terms:
 - i. Use of an Upgrade is limited solely to replace a Novell product acquired by You pursuant to a valid Novell license. The product from which You are upgrading is referred to below as the "Original Product."
 - ii. You agree (a) that 90 days after installation of the Upgrade, the license associated with the Original Product will automatically terminate and become void, and (b) to return or destroy the Original Product within such 90 day period.
 - iii. Except as expressly permitted in this Upgrade Restrictions Section, You will not use, sell, or transfer the Original Product upon receipt of an Upgrade.
 - d. **Ownership.** Ownership of and title to the Licensed Works (including adaptations or copies) is held by Novell, Inc. or its licensors. Copies are provided only to allow You to exercise license rights.
 - e. **Transfer of License.** Except as otherwise provided in the ALA, You may transfer licenses to another entity only after receiving prior written consent from Novell. With any license transfer, You will transfer all copies of the transferred Software with its Documentation and any copies/adaptations made.
 - f. **Restrictions.** Except as may be expressly authorised in this ALA, You will not rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify, adapt, disassemble, or reverse-compile Software. Novell reserves all rights not expressly granted to You. Where You have a statutory right to adapt, disassemble or decompile the Software to obtain information needed to achieve interoperability with other programs, You will not exercise such right unless Novell does not respond within 60 days after receipt of a written request to provide the necessary information.
3. **Intellectual Property Indemnification.**
 - a. Novell will defend or settle any claim, suit or proceeding brought against You so far as it is based on an allegation that a Software product infringes a patent or copyright of the country in which You take delivery of such Software product. Novell will pay any damages, costs and expenses finally awarded (or agreed to by settlement) in any such claim, suit or proceeding. Novell shall be relieved of the foregoing obligation unless (a) You promptly notify Novell of any such claim, (b) Novell has sole control of the defence and all related settlement negotiations, and (c) You provide Novell with the reasonable assistance, information and authority necessary to perform the above. If You desire to have separate legal representation in any such action, You will be responsible for the costs and fees of Your separate counsel.
 - b. If a Software product is held to infringe and use of such Software product is enjoined, or if in Novell's opinion a Software product is likely to become the subject of infringement, You will permit Novell, at Novell's option and expense, to: (a) procure for You the right to continue to use the Software product, or (b) replace or modify the Software product 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 product, refund to You the consideration paid for such Software product pro rated on a monthly basis for the then remaining period of three years from the date of delivery, upon return of the Software product.
 - c. Novell shall have no liability for infringement to the extent that the infringement results from (a) Novell's compliance with Your designs, specifications, or instructions, (b) use of other than the current release of the Software, if the infringement would have been avoided by use of the current release and if the infringement occurs more than 90 days after Novell has made a public announcement or notified You that a previous release may infringe, (c) a modification of the Software that was not requested or authorised in writing by Novell, (d) use of the Software in combination with non-Novell software, equipment or data other than as specified in the Documentation or otherwise approved in writing by Novell for use with the Software, (e) the furnishing to You of any information, service, or technical support by a third party, or (g) non-licensed use of the Software (h) third party software provided under this Agreement, or (i) open source technology incorporated in or provided with Novell Software.
 - d. **Indemnification Limitation.** NOVELL'S LIABILITY UNDER THIS SECTION 3 IS LIMITED BY SECTION 5.a. THIS SECTION 3 STATES THE ENTIRE AND EXCLUSIVE OBLIGATION OF NOVELL TO YOU REGARDING ANY INFRINGEMENT CLAIM OR MISAPPROPRIATION OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.
4. **Limited Warranty**
 - a. **Software.** Novell warrants that the Software will conform substantially to the specifications in the Documentation, provided that: (a) the Software is not modified by anyone other than Novell, unless authorised by Novell in writing; (b) Customer notifies Novell in writing of the nonconformity within 90 days after licensing the Software; and (c) the Software is installed in a compatible environment. In this Section, "conform substantially" means that the Software conforms to the vast majority of all specifications in the Documentation. Novell's only obligation under this warranty is to cause the Software to conform substantially with its specifications or to refund to Customer the consideration paid for such Software

upon Customer's return of all the Software. In the event of a refund, Customer's right to use the Software shall automatically expire.

- b. **Magnetic Media and Documentation.** Novell warrants that if either the magnetic media on which the Software are contained or the Documentation 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 with replacements at no charge.
 - c. **Beta Software.** Beta software is provided to You "AS IS" without any warranty. You acknowledge that the beta software has not been fully tested and may contain errors and bugs. You must determine for Yourself the suitability of the use of beta software for any purpose. Novell does not guarantee that a commercial version of the software or that associated products will be released. Novell shall have no obligation to provide support for the software.
 - d. **Non-Novell Products.** Novell does not warrant non-Novell products. Any such products are provided on an "AS IS" basis. Any warranty service for non-Novell products is provided by the product manufacturer in accordance with any applicable manufacturer's warranty.
 - e. **DISCLAIMER OF WARRANTIES.** Except as expressly set forth in this Section 4, Novell makes no warranty or representations regarding any Software or services, Novell disclaims and excludes any and all other express, implied, and statutory warranties, including, without limitation, warranties of good title, warranties against infringement, and the implied warranties of merchantability and fitness for a particular purpose. Novell does not warrant that the Software will satisfy Your requirements or that the Software are without defect or error or that the operation of the Software will be uninterrupted.
 - f. **Hazardous Environments.** The Software is not designed, manufactured or intended for use or resale for on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or aircraft communication systems, air traffic control, direct life support machines, or weapons systems, in which failure of the software could lead directly to death, personal injury, or severe physical or environment damage.
5. **Limitation of Liability.**
- a. **Novell Liability. Direct Damage.** Save for death or personal injury caused by the negligence or wilful default of Novell, as to which there shall be no limitation of liability, Novell's liability for direct damages incurred by You arising out of the provision of Software or services by Novell under this ALA shall be limited to the greater of 1.25 times the fees paid by You hereunder or US\$ 50,000.
 - b. **Special damages.** Novell shall not be liable for any indirect, special, incidental, or consequential damages (including, but not limited to, damages for interruption of business, loss of business, and loss of date or loss of use of data) arising out of the provision of the Software or services by Novell under this ALA, even if Novell has been advised of the possibility of such damages.
 - c. **Your Liability.** To the extent allowed by applicable law, You will not be liable to Novell or a third party for indirect, special, reliance, incidental, or consequential loss or damage of any kind (including loss of profits, business, or data) related to or arising under this ALA, whether in a contract, tort or other action for or arising out of breach of warranty, breach of

contract, delay, negligence, strict liability or otherwise. This section does not apply to violations of Novell's intellectual property rights.

- d. **Limitation of Remedies.** THE REMEDIES DESCRIBED OR REFERRED TO IN THIS ALA SHALL BE THE SOLE AND EXCLUSIVE REMEDIES FOR THE BREACH OF ANY ALA OBLIGATIONS.
6. **Intellectual Property Rights and Remedies.** Nothing in this ALA waives or limits extra-contractual rights and remedies available to Novell to protect its proprietary interest in the Software, including, rights and remedies available under U.S. copyright law, European Union law, the Bern Convention or other international treaties, or applicable national copyright and intellectual property laws of the countries in which You Use the Software.
7. **Formal Audits.** During the term of the ALA and for a period of two years after the termination or expiration hereof, You must maintain complete and accurate records evidencing (i) amounts due and amounts paid under the ALA, (ii) Your actual use of licenses of Novell Software and Upgrades and (c) all proof of purchase documents in respect of all previously owned software which is brought into the ALA by virtue of Section 7.e of the ALA. Novell shall have the right, at its expense and upon no less than three business days prior written notice, to audit Your records. Such audit may be conducted by Novell or by its authorised representative(s), shall not interfere unreasonably with Your business activities, and shall 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 underpaid amounts owing, You shall immediately pay all amounts owing. If such audit shows that You have underpaid amounts owing by more than five percent (5%), You shall also pay the reasonable expenses of the audit. Novell shall use the information obtained from any such audit solely to determine Your compliance or non-compliance with the ALA and to remedy any non-compliance. Novell shall otherwise maintain the confidentiality of all such information.
8. **Export.** 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.