Services Terms and Conditions

This document describes the terms and conditions under which Novell will perform the Services ("Services") and provide the Deliverables ("Deliverables") for Customer as described in a Statement of Work ("SOW") and together with the SOW and applicable licensing agreement, represents the entire agreement between the parties with regard to the subject matter described in the SOW. Except as modified herein, the terms of the relevant license agreement remain unchanged. If a conflict exists between the license agreement and these terms, these terms shall control any Services provided under a SOW.

1 Payment Terms

1.1 Services; Expenses . Customer shall pay all fees specified in the SOW, plus any actual travel and living expenses incurred in the performance of Services. Prior to the start date of the SOW, Customer shall issue a purchase order equal to the amount specified in the SOW. Customer will be invoiced by Novell on a monthly basis. Payment shall be in U.S. dollars and will be due 30 days from the date of invoice. Payments made later than the due date will accrue interest from the date due to the date paid at the lesser rate of one percent (1%) per month or the maximum allowed by applicable law. If a payment is late, Novell shall be entitled to suspend performance of the Services and, at its option, terminate the SOW on written notice.

2 License Grant

Subject to payment of all applicable fees for Services and Deliverables, Novell grants to Customer a nonexclusive, nontransferable, worldwide, perpetual license to reproduce and internally use the Deliverables. All proprietary rights notices must be faithfully reproduced and included on all copies (including any modifications or adaptations allowed by a SOW). 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 a SOW. This clause shall not affect the ownership of any preexisting materials. Nothing in this document or any related agreement shall restrict or limit or otherwise affect any rights or obligations Customer may have, or conditions to which Customer may be subject, under any applicable open source licenses to any open source code contained in Deliverables or any third-party licenses for third-party Code contained in Deliverables.

3 Performance of Services

3.1 Statements of Work . Consulting or other optional custom Services and related Deliverables provided under a Novell licensing agreement must be documented in a statement of work ("Statement of Work" or "SOW") signed by authorized representatives of both parties. A SOW must include at least the following information: (i) a description of the Services and Deliverables; (ii) the parties' responsibilities; (iii) the service fees and method of calculation.

3.2 Changes . Any changes to the obligations of either party, or to any other material aspect of a SOW will require a written change order signed by authorized representatives of both parties that describes the changes and any related cost or schedule adjustments.

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

4 Warranty Disclaimer

NOVELL DISCLAIMS AND EXCLUDES ALL EXPRESS, AND IMPLIED WARRANTIES, REPRESENTATIONS, AND CONDITIONS WITH RESPECT TO THE SERVICES AND ANY DELIVERABLES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, GOOD TITLE, NON-INGRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

5 Limitation of Liability

The relevant license agreement's limitations of liability shall apply to Services and Deliverables provided under a SOW, except that NOVELL"S AGGREGATE LIABILITY ARISING OUT OF OR RELATING IN ANY WAY TO THE SERVICES PERFORMED SHALL NOT EXEED THE AMOUNT PAID UNDER A SOW AND ANY AMOUNTS OWED BUT NOT YET PAID.

6 Non-Solicitation/No Hire

During the term of this Agreement and for six (6) months thereafter, Customer agrees not to directly or indirectly solicit or induce any Novell personnel or subcontractor who performs services under this Agreement to leave the employment of Novell.   The foregoing shall not restrict contact with such persons resulting from non-solicited responses to any general advertising or referrals from placement agencies.

In addition, Customer agrees not to hire or engage any Novell personnel or subcontractor designated to provide on-site support services or consulting services to Customer such as a Primary Support Engineer, Dedicated Support Engineer or consultant ("Designated Provider") pursuant to this Agreement or any related statement of work or support or consulting engagement.   The foregoing no-hire obligation shall terminate six (6) months after the Designated Provider has completed all services for Customer.   Customer acknowledges that Designated Providers represent a significant investment in recruitment and training, the loss of which would be detrimental to Novell's current and future business and profits.   If Customer breaches this provision and hires or engages a Designated Provider to leave the employment of Novell, Customer agrees to pay Novell as liquidated damages an amount equal to $80,000.

7 General Provisions

Termination. Either party may terminate a SOW for the other party's breach of a material term if such breach is not cured within 30 days of receipt of notice of the breach. If a SOW is terminated at any time or for any reason, Customer shall be responsible for payment of all fees and expenses owed to Novell up to the effective date of termination. Separate Software License. Any software provided in conjunction with a SOW must be licensed by Customer under a separate agreement. Independent Contractor. Novell is an independent contractor. Nothing in the dealings between the parties to a SOW shall be construed to create an employment or agency relationship. . Severability. If any provision or portion of a SOW is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect. Waiver. No waiver of any SOW right shall be effective unless in writing signed by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform shall be deemed a waiver of any future right.