

NOVELL CUSTOMER CONNECTIONS

School License Agreement for Primary and Secondary Education

This School License Agreement for Primary and Secondary Education (SLA) is entered into by Novell, Inc., a Delaware corporation located at 1800 South Novell Place, Provo, Utah, 84606, ("Novell"), and the customer entity signing below ("Customer"). This SLA consists of these Terms and Conditions, the Annual Fee Worksheet and the End User License Agreements of the Software covered under this program.

Terms and Conditions

1 Definitions. Capitalized terms, as used in the SLA, are defined as follows.

1.1 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 SLA.

1.2 Authorized Users means (a) students currently enrolled in Customer, and (b) Customer's faculty and administrative personnel.

1.3 Customer means an educational organization that has been approved by Novell and has signed this SLA. The Customer signing this SLA will be responsible for the obligations with respect to this SLA of other schools or entities which participate in the SLA. Customer shall not be responsible for entities which execute their own separate School License Agreement with Novell.

1.4 Effective Date means the date after customer's execution of the SLA when the first SLA purchase order is accepted by Novell.

1.5 Internal Use means use by (a) Authorized Users for Customer's internal operations, and (b) while performing work for Customer on Customer's premises, Customer's consultants and contractors.

1.6 School License Fee means the license fee set forth in the attached SLA Annual Fee Worksheet that Customer must pay to be licensed under this SLA to use the Software. The School License Fee is an annual payment that must be paid each year during the SLA term.

1.7 Software means (collectively or individually, as the context requires) the Novell software licensed under this SLA.

1.8 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.

1.9 Workstation means (a) a personal computer or workstation, whether attached to a network or otherwise, that is owned or leased and 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 part (b) above, Customer may choose to count instead the maximum number of connections available to Authorized 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 SLA, for the term of the SLA only, and conditional upon Customer paying the

applicable annual School License Fee, Novell grants and Customer accepts a non-exclusive, non-transferable license to copy and distribute the software identified on the SLA Annual Fee Worksheet, for Use by Authorized Users on Customer's Workstations. Only individuals qualifying as Authorized Users may copy and/or Use the software.

2.1 Additional Terms and Limited Warranty. The School License is subject to the license terms and restrictions set forth in the applicable End User License Agreement and Limited Warranty ("EULA") that accompanies a Software product. Each EULA for a product licensed under this SLA is incorporated into the SLA. The EULA accompanying a product sets forth the limited warranty and warranty disclaimers for such product. If there is any conflict between the terms of the EULA and those of the SLA, the SLA will govern.

2.2 Removal from Price List. For any product licensed under the SLA which Novell removes from the Academic Price List, Customer may not make additional copies of the product after such removal occurs unless Novell agrees in writing otherwise.

2.3 Special Products. Products delivered under the SLA 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 SLA on a site license basis.

2.4 Third-Party Royalties. The Use and copying of some Novell software products under the SLA 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 SLA.

3 Delivery of Software Media and Documentation.

3.1 Software Media. Novell will provide Customer 1 set of software media and the license diskettes required for software ordered under the SLA. Novell will make available to Customer, either directly or through third parties, additional sets of software media at the prices listed in the Novell Materials Price List. During the time that the Agreement is in effect, in the case of upgrades, Novell will ship to Customer 1 set of software media along with the license diskettes for the upgrade after it becomes commercially available. The software media may contain a serial number that has been registered by Novell to Customer.

3.2 Delivery. Delivery in the United States will be made F.O.B. Novell's Dock, Customer's carrier. For delivery outside the U.S., Novell will select a carrier to transport deliverables to the port of entry and will prepay and bill Customer for applicable shipping and handling charges. Customer will be responsible for all applicable import duties and value added tax, goods and services

tax, or other similar taxes and fees, except that for shipments from Ireland to Norway or Switzerland, Novell will be so responsible. For shipments from Ireland, delivery terms are Carriage Paid To (CPT) destination, as defined in INCOTERMS 1990.

3.3 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 delivery to Customer's carrier. 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 originating in Ireland, title to and risk of loss passes to Customer at the Irish shipment point. Notwithstanding the above provisions, no title to any master media is transferred to Customer.

3.4 Documentation. Other than documentation in electronic or CD-ROM format, no documentation will be provided to Customer as part of the annual fee. Customer may make copies of Documentation provided in CD-ROM format from the on-line screen for use with the Software.

4 Upgrade Protection. For any Software covered by Customer's payment of School License annual fees, Novell will make available any Upgrades within a reasonable period of time after they become commercially available. Upgrades to non-Novell products delivered with SLA software may not be available from Novell. Nothing in this SLA shall be construed to warrant or imply that Upgrades will be produced for any product.

5 Technical Services. No technical services are included in the SLA. Technical 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 and Payment Terms.

6.1 Annual License Fee. Customer may obtain Software by submitting to Novell a completed and signed SLA Annual Fee Worksheet with a Customer purchase order for the amount of the annual School License Fee. The total, non-refundable School License Fee will be payable in a lump sum net 30 days from the date of invoice. Within at least 15 days prior to the end of each Annual Period, Customer shall submit to Novell a new SLA Annual Fee Worksheet, along with the applicable School License Fee.

6.2 Minimum Order. The minimum annual School License Fee is \$1,000.

6.3 Price and Product Changes. Novell may revise the SLA prices at any time to (a) change the prices for Software licenses or other deliverables, or (b) add or delete available products or other offerings. Any price increase made to a Software product license which Customer has previously purchased under the SLA will only apply to subsequent license purchases.

6.3.1 Separate from Customer's School License Fee purchases, Customer may purchase standard Novell licenses available on the Academic Price List at the published educational discount. The SLA's Upgrade Protection and Ownership Registration provisions will not apply to such purchases.

6.4 Taxes. All fees are exclusive of all applicable taxes. Customer agrees to pay and bear the liability for any taxes associated with the delivery of the Software, including but not limited to 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 it is allowed as a credit against U.S. income taxes of Novell such as a withholding tax on a royalty payment made by Customer where such withholding is required by law. If Customer is required to withhold taxes, Customer will furnish Novell all required receipts and documentation substantiating such payment. If Novell is required by law to remit any tax or duty on behalf, or for the account, of Customer upon the delivery of Software, Customer will reimburse Novell within 30 days after Novell notifies Customer in writing of such remittance. *Customer will provide Novell with valid tax exemption certificates in advance of any remittance otherwise required to be made by Novell on behalf of, or for the account of, Customer where such certificates are applicable.*

6.5 Late Payments. Payments made later than the due date will accrue interest from the date due to the date paid at the lesser of the rate of 12% per year or the highest rate allowed by applicable law. Customer will pay reasonable costs and attorney's fees if Novell is required to undertake collection measures against Customer.

6.6 U.S. Dollars. All fees shall be paid in U.S. Dollars.

7 Term and Termination.

7.1 Term. The term of this SLA will begin on the Effective Date and will remain in effect for one Annual Period. The SLA will be automatically renewed for one year periods until either party gives written notice at least 90 days prior to the end of the SLA term.

7.2 Termination for Cause. Either party may terminate the SLA 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. If Customer terminates the SLA for cause, Novell will refund Customer a prorated portion of the School License annual fees paid for the period beyond termination.

7.3 Effect of Termination. Upon expiration or termination of the SLA for any reason, Customer's right to duplicate Software and to acquire new licenses or receive Upgrades and Updates through SLA Upgrade Protection will immediately terminate. Except as may be explicitly provided for in the SLA, License and Upgrade Protection Fees paid by Customer are non-cancelable and non-refundable.

7.3.1 Transition from SLA. Upon termination or expiration of the SLA, all rights granted under the SLA will immediately terminate and Customer shall return all software media to Novell and remove all software copies made hereunder. Licenses purchased other than through the School License Fee or acquired pursuant to Section 7.4, Ownership Registration, will remain the property of Customer and will survive SLA termination. Within 30 days after SLA termination, (a) customer may submit an order for any licenses available under Section 7.4.2, and (b) Customer shall certify in writing that all copies of Software for which no licenses have been obtained have been removed and that all fees due have been paid.

7.3.2 Survival of Terms. For any licenses Customer uses after SLA termination under the previous Transition from SLA section, the General Terms provisions below and the terms of the applicable End User License Agreements govern Customer's use of the Software.

7.4 Ownership Registration:

7.4.1 Installed Base Upgrade. Upon execution of the SLA, Customer may list on the Installed Base Upgrade Form software licenses owned by Customer prior to SLA execution and which have the same product name as the licenses Customer requests on the SLA Annual Fee Worksheet. Proof of ownership of such licenses may be required. For any products so listed, at the beginning of each Annual Period (up to three Annual Periods), upon payment of the Annual SLA License Fee, Customer shall be licensed to any Upgrades to such licenses for one-third of the software licenses listed under the Upgrade Protection terms of the SLA (for example, upon payment at the beginning of a second Annual Period, Customer would be licensed to Upgrades to two-thirds of the Installed Base software licenses). Customer's rights to use these licenses will continue upon contract termination or expiration.

7.4.2 New Licenses. During the SLA term, upon payment of the annual School License Fees, Customer will receive perpetual license rights for new licenses installed under the SLA equal in value to 30% of the annual School License Fees. Pricing for such licenses shall be determined from the then-current Novell Academic Price List.

8 Limitation of Liability. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NOVELL WILL NOT BE LIABLE TO CUSTOMER 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 SLA, WHETHER IN A CONTRACT, TORT OR OTHER ACTION FOR OR ARISING OUT OF BREACH OF WARRANTY OR CONTRACT, DELAY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. Some states/jurisdictions do not allow exclusion or limitation of incidental or consequential damages, so these exclusions or limitations may not be applicable.

8.1 TO THE EXTENT ALLOWED BY APPLICABLE LAW, NOVELL'S LIABILITY TO A CUSTOMER FOR ANY CAUSE OF ACTION ARISING UNDER THIS SLA WILL NOT EXCEED THE AMOUNT OF FEES PAID BY THAT CUSTOMER UNDER THIS SLA.

9 General Terms.

9.1 Employees and Agents. Customer will use reasonable efforts to inform its employees, agents, or others using the Software that it may only be used, copied or transferred subject to the SLA license terms.

9.2 Notices. All notices shall be in writing and will be deemed effective upon confirmed receipt by the recipient's person identified as its primary SLA contact. Notices may be delivered by mail, fax, or courier.

9.3 Law. Each party will, at its own expense, comply with any applicable law, statute, administrative order, or regulation. The SLA will be governed by the laws of the State of Utah and applicable federal U.S. laws, unless the laws of the state, province, or country of Customer's domicile require otherwise, in which case the laws so required will govern. The conflicts of law rules of the governing law are excluded.

9.4 Assignment. This SLA 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 SLA 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 SLA to the surviving company or other organization in the event of a merger or acquisition.

9.5 Severability / Waiver. If an SLA 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. No waiver of any SLA right shall be effective unless made in writing signed by an authorized representative of the waiving party.

9.6 Modifications. Except as may be expressly provided for in the SLA, including Novell's right to revise SLA Prices, the SLA may not be modified except in writing signed by authorized representatives of each party. In particular, the terms of a purchase order will not modify the SLA unless the parties agree otherwise in writing.

9.7 Entire Agreement. The SLA is the entire agreement and understanding between the parties as to its subject matter. The SLA supersedes all other prior and contemporaneous agreements and statements on these subjects. Each party warrants that in entering into this SLA, it has not relied upon or been induced by any representation or statement not expressly set forth in this SLA.

9.8 Acceptance. By signing below Customer agrees to the SLA provisions. Novell's acceptance of the SLA shall occur upon Novell's acceptance of a purchase order placed under the SLA. If Novell does not receive and accept an SLA purchase order, the SLA is of no effect. If Customer's purchasing procedures require a Novell signature on the contract, please inform Novell and sign and send the contract to the below address. In such a case, Novell's acceptance will be demonstrated by its signature on the contract. If Novell signs the SLA it will return a signed copy to Customer.

9.9 Electronic Submission. If Customer submits the SLA electronically, Customer represents that the person signing the SLA has authority to commit Customer to the SLA provisions, and Customer agrees that its electronic submission of the SLA form shall have the same contractual effect as if Customer had signed a paper original by hand and submitted the paper original to Novell

NOVELL, INC.

Signature: _____

Print Name: _____

Title: _____

Date: _____

CUSTOMER

Signature: _____

Print Name: _____

Title: _____

Date: _____

CUSTOMER INFORMATION

Organization Name: _____

Address: _____

Primary Contact Name: _____

Shipping Address: _____

Phone #: _____ Fax #: _____

E-mail address: _____

Return to: **Novell Contracts & Negotiations**
1800 South Novell Place
M/S PRV-H-544
Provo, UT 84606 USA

Districts that choose to participate in the School License Agreement must provide the following information for each school that will be included in the Agreement.

District Name _____

School Name _____

Enrollment _____

Contact Name _____

Title _____

Street Address _____

City, State Zip _____

Phone Number _____

Fax Number _____

E-Mail Address _____

District Name _____

School Name _____

Enrollment _____

Contact Name _____

Title _____

Street Address _____

City, State Zip _____

Phone Number _____

Fax Number _____

E-Mail Address _____

District Name _____

School Name _____

Enrollment _____

Contact Name _____

Title _____

Street Address _____

City, State Zip _____

Phone Number _____

Fax Number _____

E-Mail Address _____

District Name _____

School Name _____

Enrollment _____

Contact Name _____

Title _____

Street Address _____

City, State Zip _____

Phone Number _____

Fax Number _____

E-Mail Address _____

District Name _____

School Name _____

Enrollment _____

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Title _____

Street Address _____

City, State Zip _____

Phone Number _____

Fax Number _____

E-Mail Address _____

District Name _____

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Enrollment _____

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Title _____

Street Address _____

City, State Zip _____

Phone Number _____

Fax Number _____

E-Mail Address _____