



EXHIBIT B  
SUB-ASSEMBLER TERMS AND CONDITIONS

*A copy of the signed terms MUST be returned to your Distributor prior to purchasing any Novell Software*

*[to be completed and signed by Authorized Sub-Assemblers prior to acceptance of any orders for Novell Software]*

Authorized Sub-Assembler legal Company name:	
Address:	
Novell PartnerNet Program I.D.:	

These terms and conditions supplement our standard terms and conditions of business and are for the benefit of Novell. In the case of any conflict between these terms and conditions and our standard terms and conditions, these terms and conditions shall prevail. These terms and conditions apply to all purchases of Novell Software products and licenses until superceded. You accept these terms and conditions by placing an order for Novell Software products or licenses. Any terms and conditions included in any purchase order or other document from you shall not apply. Novell shall be entitled to enforce these terms directly against you and you agree to this.

1. Restrictions and Obligations.

- 1.1. Prior to purchasing any Novell Software for bundling you must ensure that you participate in the Novell PartnerNet program at the Ready Program level or at a higher level (<http://www.novell.com/partners/isvihv/>).
- 1.2. Except as authorised below, all Novell Software purchased from us MUST be bundled with either your own hardware (brand personal computer or your own brand personal computer server) or software products and sold as a bundled unit only ("Bundled Package"). If you violate this restriction, the license you sell to your end user customer (either directly or through your approved resellers) will be an illegal license and Novell shall be entitled to require you to purchase a legal license and seek damages against you in a court of law. Notwithstanding the above, you may purchase stand-alone Upgrade licenses or Upgrade Protection without the bundling obligation provided that the purchase is a renewal for end customers already using Novell Software that has been bundled by you so that the end customer can receive the upgrade of the Novell Software.
- 1.3. After participation in the Novell PartnerNet program you MUST ensure that all your Bundled Packages are listed on the Novell Partner Product Guide at: <http://www.novell.com/partnerguide>.
- 1.4. All Novell Software purchased from us MUST be sold only to bona fide end user customers or to your authorised resellers for onward sale to end user customers.
- 1.5. You must NOT disclose the individual pricing of the Novell Software when selling it as part of a Bundled Package.
- 1.6. You MUST ensure that all Bundled Packages include the standard Novell End User License Agreement in the package.
- 1.7. You must NOT use, copy, modify, or otherwise transfer the Novell Software or documentation, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this Agreement.
- 1.8. You MUST:
  - \* Report to Novell promptly and in writing all suspected and actual problems with any Novell Software;
  - \* Maintain a shipment report identifying the Novell Software product or license sold, the date of sale, and each Novell Software's serial number;
  - \* During the term of this Agreement and for a period of three years after the last sale of Novell Software hereunder, retain all shipment reports and assist Novell, upon request, in tracing Novell Software licenses, in order to obtain critical product information, locate copies of Novell Software for safety reasons, or discover unauthorized marketing or infringing acts;
  - \* Conduct business in a manner that reflects favorably at all times on the Novell Software, goodwill and reputation of Novell;
  - \* Avoid deceptive, misleading or unethical practices that are or might be detrimental to Novell or Novell Software;
  - \* Refrain from making any false or misleading representations with regard to Novell or Novell Software;

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- \* Refrain from making any representations, warranties or guarantees to customers with respect to the specifications, features or capabilities of Novell Software that are inconsistent with the literature distributed by Novell; and
- \* Provide or cause to be provided all original media and manuals accompanying each Novell Software license to the End User.

- 1.9. You must NOT de-compile, reverse engineer, reverse compile, modify or perform any similar type of operation on any Novell Software, in any fashion or for any purpose whatsoever, without the prior written consent of Novell or save as permitted by law. You also agree that any such works are derivative works and as such are the sole and exclusive property of Novell or its licensor. You may not rent, timeshare or lease the Software except as expressly authorized by Novell.
- 1.10. **Upgrade Protection.** For any Novell Software that is open source software, the price ("Upgrade Protection") includes the right for End User to receive upgrades (i.e. new versions) of the Novell Software for periods ranging from one year to five years from the registration (depending on the years of Upgrade Protection purchased), by the end customer, on the Novell upgrade protection portal at <https://portal.suse.com>. You MUST therefore inform each end customer of such Upgrade Protection right and necessity to register on the Novell Upgrade Protection portal prior to receiving such upgrades.
- 1.11. **Anti-Piracy.** You agree NOT to engage in the manufacture, use, distribution, supply, marketing or promotion of any counterfeit, pirated or illegal software whether directly or indirectly and will assist Novell to all extent reasonably required by Novell in the investigation of any such activities. You acknowledge the rights of Novell granted by the EC Council Directive of 1991 on the Legal Protection of Computer Programs (91/250/EEC) and agrees to not do anything whereby Novell's rights thereunder are breached or adversely affected.
- 1.12. **Support.** You are responsible to provide all technical and other support to end customers that acquire licenses of Novell Software as part of a Bundled Package. Notwithstanding anything to the contrary in the applicable End User License Agreement (EULA), Upgrade Protection does not include technical or installation support from Novell to the end customer.
- 1.13. **Trade Marks** You agree to preserve and respect the trademark and copyright notices on the sealed packages containing Novell Product(s). Novell Product(s) may not be shipped, displayed or licensed under any other name, label or mark. OEM Customer shall promptly notify Novell, and fully assist Novell in prosecution of any copyright or trademark infringements which come to its attention.
- 1.14. **Audits** During the term of this Agreement and for a period of three years after the last sale of any Novell Software purchased hereunder, you shall maintain complete and accurate records evidencing (i) amounts due and amounts paid under this Agreement, and (ii) your actual use or distribution of licenses of Novell Software. We, and Novell, as our representative, shall have the right, at our expense and upon no less than three business days prior written notice, to audit your records. Such audit may be conducted by us or by our authorized representative(s), including Novell, 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. Information obtained from any such audit shall be used solely to determine your compliance or non-compliance with this Agreement and to remedy any non-compliance.
- 1.15. **Export Compliance.** Any products or technical information provided under these terms may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all export control regulations and to obtain any required licenses or classification to export, re export or import deliverables. The parties agree not to export or re export to entities on the current U.S. export exclusion lists or to any embargoed or terrorist countries as specified in the U.S. export laws. The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses. Please consult the Bureau of Industry and Security web page [www.bis.doc.gov](http://www.bis.doc.gov) before exporting Novell products from the U.S. Please refer to [www.novell.com/info/exports/](http://www.novell.com/info/exports/) for more information on exporting Novell software. Upon request, Novell will provide you specific information regarding applicable restrictions. However, Novell assumes no responsibility for your failure to obtain any necessary export approvals.

SUB-ASSEMBLER

SIGNATURE: \_\_\_\_\_

Name: .....

Title: .....

Date: .....