

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 Canada, Ltd., a Canadian corporation with headquarters at 3100 Steeles Ave East, Suite 500, Markham, Ontario, L3R 8T3, ("Novell"), and the customer entity signing below (ACustomer@). 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 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 liable for the actions and omissions of all schools, educational administrative organizations, or other entities with respect to obligations under this SLA.

1.4 Effective Date means the date on which the SLA is signed by both parties.

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. Student use of the Software is restricted to use on equipment owned or leased by Customer.

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

1.7 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 Licensed Works. The School License Fee is an annual payment that must be paid each year during the SLA term.

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 any single-user computer or workstation (including servers), whether attached to a network or otherwise, that is owned or leased and operated by Customer at Customer's location.

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 terms of the SLA shall govern.

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

2.3 GroupWise Mailbox License. If Customer licenses GroupWise under the SLA optional software elections, Customer must include as part of their Annual Fee Worksheet a report showing the number of GroupWise Mailboxes (accounts for the storage of electronic mail, whether attached to a network and/or remote) created for the GroupWise product.

2.3.1 Remote Access. A Mailbox License for the Use of faculty or staff will include the right to remote access; however, a GroupWise Mailbox License for student Use will not include the right to remote access, except for remote access obtained through GroupWise Web Access.

2.4 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

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

3.3 Delivery. Delivery will be made F.O.B. Novell's Dock, Customers' carrier.

3.4 Title & Risk of Loss. 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.

4. Upgrade Protection. For any software covered by Customer's payment of School License annual fees, Novell will provide any Upgrades within a reasonable period of time after they become commercially available. Upgrades to non-Novell products delivered with 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. Place 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 certifying the Total Student Enrollment, along with the applicable School License Fee

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

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

6.4 Taxes. The License Fees and Upgrade Protection Fees are exclusive of all applicable taxes. Customer agrees to pay and bear the liability for any taxes associated with delivery of the Licensed Works, including retail sales tax, goods and services tax, and harmonized sales tax as 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 or twelve percent (12%) per annum or the highest rate allowed by applicable law. Customer agrees to pay reasonable costs and attorney's fees if Novell is required to undertake collection measures against Customer

6.6 Canadian Dollar Payment All fees shall be paid in Canadian 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 a period of one year after the first day of the month following the Effective Date. The SLA will be automatically renewed for one year periods until either party gives written notice at least ninety (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 the Licensed Works 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, Licenses 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, except such copies for which licenses were or are purchased by Customer under Section 7.4 below. All licenses purchased outside of the SLA will remain the property of Customer and will survive termination or expiration of the SLA. Within thirty (30) days after termination or expiration hereof: (a) Customer may submit an order for any licenses available under Section 7.4 and (b) Customer shall certify in writing that all copies of Software for which no licenses have been purchased have been removed and that all fees due have been paid

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

7.4 Ownership Registration

7.4.1 Installed Base Upgrade. Upon execution of the SLA, Customer may list on the Installed Base Upgrade Form the software licenses owned by Customer prior to SLA execution. During the initial three terms of the SLA, upon payment of an SLA annual license fee Customer shall be licensed to any Upgrades to such Software for one-third of the software licenses listed; this one-third of the Installed Base licenses is covered under the Upgrade Protection terms of the SLA. Customer's rights to use these licenses will continue upon contract termination or expiration.

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

8. Limitation of Liability. See the applicable End User License Agreement and Limited Warranty ("EULA") that accompanies a Licensed Work for limitation of liability provisions governing use of such Licensed Work.

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 Employee and Agents. Customer agrees to use commercially reasonable efforts to inform its employees, agents, and 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 Province of Ontario and applicable federal Canadian laws, unless the laws of the province 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 Binding Effect / 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 right under the SLA shall be effective unless made in writing signed by a duly 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 Signature. By signing below Customer agrees to the SLA provisions. 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 SKA form shall have the same contractual effect as if Customer had signed a paper original by hand and submitted the paper original to Novell.

Customer Information

Organization Name

Address

Primary Contact Name

Shipping Address

Phone

Fax

E-mail address

Customer Signature

Signature

Print Name

Title

Date

Novell Canada, Ltd.

Signature

Print Name

Title

Date

Return to: **Novell Academic Sales Contract Administrator**
 3100 Steeles Ave East, Suite 500
 Markham, ON L3R 8T3