

This School License Agreement for Primary and Secondary Education ("SLA") is entered into by Novell ("Novell")\*, and the customer entity signing below ("Customer"). This SLA 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 SLA will be signed either by the local Novell entity or by Novell Ireland Software Limited.

The SLA 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 SLA Program enables primary and secondary schools to obtain the right to use certain Novell software for all staff members and all students enrolled at the school during a school year. All licenses made available under the SLA Program are obtained from appointed Novell Authorised Resellers. Each license of Novell Software under the SLA 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 SLA, are defined as follows.

- a. 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.
- b. Authorised Users means (a) all students enrolled at each school that participates in the SLA, and (b) all of such school's faculty and administrative personnel.
- c. Customer means either (i) a primary or secondary school, or (ii) an education authority or similar organisation that represents or comprises of a number of primary or secondary schools which will participate in the SLA Program through the education authority's membership of the SLA Program and, in either case, 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 Authorised Users with regard to the copying or Use of the Software, and will be responsible for the obligations with respect to this SLA of other schools or entities which participate in this SLA. The attached Participation Form, Exhibit B, must be completed for each school that participates under the SLA. For a school joining after the Effective Date, a new Exhibit A and a separate Exhibit B must be completed and submitted prior to such school joining the SLA.
- d. Documentation means user documentation and manuals (including electronic versions, when available) provided by Novell which accompany a Software product.
- e. Effective Date means the date on which the SLA is signed by an authorised Novell representative, which will follow Customer's signing.
- f. 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.
- g. Media means media (in such format as Novell shall determine) available from Novell from which Customer may

duplicate and install the Software under this SLA.

- h. Novell Authorised Resellers shall mean resellers or other partners who are authorised by Novell for the purposes of selling licenses of Software under the SLA Program.
  - i. Software means, collectively, the Novell software for which Customer may obtain licenses pursuant to this SLA 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 SLA.
  - j. School License Fee means the license fee that Customer must pay to the Novell Authorised Reseller to be licensed under this SLA to use Software. The School License Fee is an annual payment that must be paid each Annual Period of the SLA term. Novell has a recommended price for the School 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.
  - k. 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 6.0 to 6.5 or NetWare 5.1 to 6.0). 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.
  - l. 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.
  - m. Workstation means (a) any single-user computer or workstation, attached to a network, 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.
- 2. Licenses.** Subject to the provisions of this SLA, and for the term of the SLA 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 enrolled students (as applicable) declared in Exhibits A and B for each school that participates in the SLA. Only Authorised Users may Use the Software. This license is conditional upon Customer paying the applicable annual School License Fee based on the number of Workstations or students at each participating school.
- a. Additional Terms and Limited Warranty. The license of the Software made available under this SLA is subject to all other provisions of this Agreement, the provisions in the

attached License Terms and the applicable End User License Agreement ("EULA") that accompanies each Software product. Each EULA for a Software product made available under this SLA is incorporated herein as part of the SLA. If there is any conflict between the terms of the EULA and those of the SLA, the terms of the SLA 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.

- b. Removal from Novell Academic Price List. For any Software product licensed by Customer pursuant to the SLA 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.
- c. 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 SLA on a site license basis.
- d. 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 Media and Documentation.

- a. Media. Within a reasonable time after Customer has submitted the signed and completed SLA (including all relevant Exhibits) and has paid the appropriate annual School License Fee to the Novell Authorised Reseller for each participating school, Novell will make available, either directly or indirectly, to Customer for each such school 1 set of Media required for installation of the Software. It will be Customer's obligation to pass on Media to the participating schools. Novell will make available to Customer, either directly or through third parties, additional sets of Media at the prices listed in the Novell Materials Price List. During the time that the SLA is in effect, in the case of Upgrades, Novell will make available to Customer, for each participating school, 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 SLA, 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 School 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 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 Software product.

- 5. **Technical Services.** No technical or support services are included in the SLA. 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. School License Fee. Customer may obtain the right to Use the Software by submitting to a Novell Authorised Reseller a completed and signed SLA (with all relevant Exhibits duly completed and signed) and a purchase order for the amount of the annual School License Fee. To obtain the right to Use Software hereunder, Customer must include in the Annual Fee Worksheet *either* the total number of enrolled students *or* the total number of Workstations at each participating school. For any school that joins in the SLA part way through an Annual Period, prior to that school joining the SLA Customer must submit a new Exhibit B and a revised Exhibit A and place a new purchase order for the additional School 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 number of enrolled students or the total number of Workstations for the next following Annual Period, and (ii) a new purchase order for the applicable School License Fee due for the next following Annual Period. A new and duly completed Participation Form, Exhibit B must also be submitted for any school that joins at that time.
- b. Minimum Order. In order to qualify for the SLA Program, Customer must place an order for at least 1,000 points per annum.
- c. Price and Product Changes. Novell may revise the SLA 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 SLA 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 SLA will only apply to subsequent license orders.
  - (i) Separate from Customer's SLA 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 SLA will not apply to such purchases.

### 7. Term and Termination.

- a. Term. This SLA commences on the Effective Date and continues until the end of the first Annual Period. Thereafter, the SLA 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 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.
- c. Effect of Termination. Upon expiration or termination of the SLA 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.d below, to Use the Software will immediately terminate.
  - i. Transition from SLA. Upon termination or expiration of the SLA, all rights granted under the SLA will immediately terminate and Customer shall return all Media to Novell and remove and shall ensure that all participating schools remove all Software copies made hereunder, except such copies for which Customer may continue to Use licenses under Section 7.d below. Those licenses acquired pursuant to Section 7.d below must be transitioned to Novell's standard licensing model. All licenses purchased outside of the SLA will not be affected by the expiration or termination of the SLA. Within thirty (30) days after termination or expiration hereof, Customer shall certify in writing that all copies of Software, except as provided in 7.d 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 SLA under Section 7.d below, the License Terms attached and the terms of the applicable EULA will govern Customer's continued Use of the Software.
- d. Ownership Registration:
  - i. Installed Base Upgrade. Upon execution of the SLA, 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 SLA by Customer in Exhibit A. Proof of ownership of such licenses may be required. For each of the initial three Annual Periods of the SLA, upon payment of the School 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 this SLA, 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 SLA Workstation count, student enrolment, or points value. Upon termination or expiry of the SLA, 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 SLA term, upon payment of the annual School License Fees, Customer will receive perpetual license rights for new licenses declared under the SLA equal in value to 30% of the Annual Points Value as specified in the SLA Annual Fee Worksheet and for which the School 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 SLA, Customer shall have the option to purchase additional perpetual license rights for all the new licenses installed under the SLA 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 SLA 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 SLA.
- b. Notices. All notices to a party under the SLA 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.
- c. 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 organisation in the event of a merger or acquisition.
- d. Severability. 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.
- e. Waiver. No waiver of any right under the SLA 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 SLA, including Novell's right to revise anything contained in the Novell Academic Price List or Materials Price List, the SLA 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 SLA unless the parties agree otherwise in writing.
- g. Entire Agreement. The SLA and the agreements referenced herein represent 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.
- h. Law and Jurisdiction. The SLA 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 SLA as above. Each party will, at its own expense, comply with any applicable law, statute, ordinance, administrative order, rule and regulation.



CUSTOMER INFORMATION

Organisation Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Primary Contact Name: \_\_\_\_\_

Shipping Address: \_\_\_\_\_

\_\_\_\_\_

Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

E-mail address: \_\_\_\_\_

NOVELL

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

CUSTOMER

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## EXHIBIT B – SLA PARTICIPATION FORM

This Participation Form must be completed for each school that participates in the SLA. For any schools that wish to be added subsequently, a Participation Form and a new, revised Annual Fee Worksheet (Exhibit A) must be completed and submitted for that school and then in the following Annual Period, that new school should also be included in the new Annual Fee Worksheet which is due 15 days prior to the end of each Annual Period of the SLA.

**Customer Name:** \_\_\_\_\_  
(Print name of school, education authority, board of education etc)

**School Name:** \_\_\_\_\_

(If the Customer named above is not a school)

**School Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **Postal Code:** \_\_\_\_\_ **Country:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_ **E-mail:** \_\_\_\_\_

<b>A. Total Student Enrolment</b> (Enter the TOTAL number of students enrolled at the school)	OR	<b>A. Total Workstation Count</b> (Enter the TOTAL number of Workstations at the school)	
<b>B. Total Number of Servers</b> (This will determine the Media that is shipped.)			

### Existing License Certification

Please detail ALL Novell products that you have installed and are using immediately prior to joining the SLA, and which bear the same product names as the Software you enrol under the SLA.

NOTE that the upgrade right only applies to the Novell products licensed to you under the SLA. E.g., if you list below NetWare and ManageWise and only take out NetWare under SLA then the upgrade right only applies to the NetWare licenses.

Product Description	Platform	Version	Quantity

### Example of Upgrade Rights Calculation:

At the time of signing the SLA, you owned and declared NetWare licenses for a 750 user count and NDS licenses for a 300 user count.

- At the end of the **1<sup>st</sup>** Annual Period of the SLA: you will be licensed for **1/3** of these licenses at the latest available version;
- At the end of the **2<sup>nd</sup>** Annual Period of the SLA: you will be licensed for **2/3** of these licenses at the latest available version;
- At the end of the **3<sup>rd</sup>** Annual Period of the SLA: you will be licensed for **ALL** of these licenses at the latest available version.

**By signing below, Customer certifies that as of the date below, the information contained in this document is complete and accurate to the best of its knowledge.**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT C - LICENSE TERMS

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

- 1. License Definitions.** All definitions used in the SLA 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 SLA, 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 SLA, 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 (f) non-licensed use of the Software, (g) third party software provided under this Agreement, or (h) 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 SLA shall be limited to the greater of 1.25 times the fees paid by You hereunder or EUR 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 SLA, 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 SLA, 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 SLA SHALL BE THE SOLE AND EXCLUSIVE REMEDIES FOR THE BREACH OF ANY SLA

## OBLIGATIONS.

- 6. **Intellectual Property Rights and Remedies.** Nothing in this SLA 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. **Records Examination.** During the term of the SLA and for a period of three years after the termination or expiration hereof, You must maintain complete and accurate records evidencing (i) amounts due and amounts paid under the SLA, (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 SLA by virtue of Section 7.d of the SLA. 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 SLA and to remedy any non-compliance. Novell shall otherwise maintain the confidentiality of all such information.
- 8. **Export Compliance.** Any products or technical information provided under this Agreement 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., and also 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.