

Amendment
to Master License Agreement

This Amendment (the "Amendment") modifies the Novell Master License Agreement, version 6 1a (the "Agreement"), between the **State of Wisconsin** (the "Customer") with offices at 101 East Wilson Street, Madison, Wisconsin, 53707, and **Novell, Inc.** ("Novell") with offices at 1800 South Novell Place, Provo, Utah, 84606. This Amendment and the Agreement shall be effective beginning 01 July 2004 (the "Effective Date").

1. **Definitions.** Unless otherwise defined in this Amendment, terms with the initial letter capitalized will have the same meaning as defined in the Agreement. For purposes of this Amendment, "Customer" is defined as the State of Wisconsin to the extent that it purchases Novell Software, Maintenance, technical support or consulting services under this Agreement and each individual Department, Institution and Agency of the State of Wisconsin government that makes said purchases under this Agreement.

2. **Amendments to the Agreement.** The Agreement is amended as follows:

Section 2.1; Affiliate. The definition of Affiliate is changed in its entirety to read as follows:

"Affiliate" means (a) with regard to You, any county, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Your state and located within your state's jurisdiction and geographic boundaries; and any other entity in your state expressly authorized by the laws of your state to purchase under state contracts; provided that a state and its affiliates shall not, for purposes of this definition, be considered to be affiliates of the federal government and its affiliates; and (b) with regard to You, any legal entity that You own, that owns You, or that is under common ownership with You.

Section 2.10; Prime Customer. The definition of Prime Customer is changed in its entirety to read as follows:

"Prime Customer" means the State of Wisconsin and its Affiliates, represented by the Department of Administration.

Section 2.12; Subsidiary. The definition of Subsidiary is changed in its entirety to read as follows:

"Subsidiary" means any government agency, department, instrumentality, division, unit or other office of Your state or local government that is supervised by or is part of You, or which supervises You or of which You are a part, or which is under common supervision with You.

Section 4.3; Affiliates. The words "and that it has an organizational relationship with Prime Customer" are deleted from this Section.

Section 4.4; Unique Number and Acceptance. The words "Except for the Prime Customer MLA contract number 123569," are added to the beginning of the second sentence of this Section.

Section 5.2; Other Services. The following sentence is added to the end of Section 5.2.2:

Should any SOW specifically contain an acceptance period different than that set forth in this Section 5.2.2, then such SOW acceptance period shall apply for the Deliverables contained in such SOW.

Section 5.2; Other Services. With respect to Novell's performance of consulting Services under the Agreement, the following provisions are added to this section as subsections 5.2.5 through 5.2.13:

5.2.5 Cooperation with other Vendors or Contractors. In the event Customer enters into agreements with other vendors or contractors for additional work related to the development of any

software or other type of services, Novell agrees that its personnel shall cooperate in all material respects with such vendors or contractors. Novell's personnel shall not commit any act that will interfere with the performance of work by any other contractor or by the Customer. Novell's personnel shall cooperate with Customer's personnel, hardware manufacturing representatives, system software suppliers, and communications system suppliers in designing, programming, and testing any software being developed.

5.2.6 Key Personnel. Novell agrees that it will furnish Customer with a means of identifying all personnel assigned to perform work under this Agreement and furnish Customer with security credentials on these personnel, if reasonably requested by Customer.

5.2.7 Proposed Change in the Assigned Staff. If Novell proposes a change in the assigned staff, in each instance Customer shall be provided with a resume of the proposed substitute and an opportunity to interview that person prior to giving its approval or disapproval. Customer shall not unreasonably withhold its approval.

5.2.8 Access to Facilities: Unless otherwise agreed upon by the parties hereto, any and all access by Novell's employees to the facilities of the Customer shall be during Customer's normal office hours and all Novell employees shall be subject to the reasonable and customary security procedures of each such Customer facility.

5.2.9 Responsibilities of Novell. Novell agrees

(i) to perform those tasks and deliver the products identified in Customer order(s) identified under the heading "Scope of Work", and

(ii) to comply with all reasonable security regulations in effect at the Customer's premises, and externally for materials belonging to the Customer or to the project, and

(iii) to assign, on a full-time basis, Novell's employees, agents or representatives to assist in fulfilling its performance under this Agreement, and

(iv) to appoint a Contract Manager or Administrator for liaison and consultation with the Customer. Such liaison shall have authority to make managerial and technical decisions concerning the services deliverables under this Agreement, but only via a written modification signed by Authorized representatives of the parties hereto.

5.2.10 Responsibilities of the Customer. Customer agrees

(i) to arrange for necessary cooperation by the Customer's officials and employees, including providing access to such records and other information needed by Novell to carry out the work set forth in the Customer's order, and

(ii) to appoint a liaison for consultation with Novell. Such liaison(s) shall have authority to make managerial and technical decisions concerning the services deliverables under this Agreement and to accept or approve Novell's work on behalf of the Customer. Such Manager or Administrator shall not have the authority to amend, or in any way modify, the provisions of this Agreement, and

(iii) to deliver the following items prior to the Start Date for each phase of work specified in the Customer's order(s): (1) source programs in machine-readable form (i.e., cards, or card image magnetic tape or diskette); (2) a representative test data sample to exercise all items referenced in the Customer's order(s); (3) currently available detailed documentation and specifications; (4) program output reports produced by any delivered programs from (1) above, from any test data from (2) above; and (5) assignment of the file and program nomenclature. Delayed delivery of any of the above-specified products for any phase of work shall result in a day-for-day extension of the completion date for the work in that phase, and

(iv) to abstain from effecting any change, modification, or enhancement of all items referenced in the Customer's order subsequent to Novell's receipt of the deliverables provided the immediately preceding paragraph.

5.2.11 Reimbursable Expenses. In addition to the prices for the Services, Customer shall reimburse Novell for all reasonable out-of-pocket expenses incurred in performing the Services and for any non-standard expenses incurred at the written request of the Customer (the "Reimbursable Expenses"). Reimbursable Expenses shall include, but not be limited to, travel, food, lodging, and long distance telephone calls. However, for any travel expenses incurred in providing Services to the Customer Novell shall not charge Customer without Customer's prior written approval. Upon

obtaining said approval, Novell shall be authorized to incur travel expenses payable by Customer on to the extent provided by then-current Wisconsin Statutes and Administrative Rules as may be applicable from time to time for all State of Wisconsin vendors. For long-distance calls related to Services for a Customer, Novell agrees to utilize Customer telephone resources in order to minimize the cost of such calls as such resources are available. Unless otherwise specifically set forth in a SOW from time to time, any work performed that requires travel expenses to be incurred by Novell shall be pursuant to the Customer's advanced written approval and shall be at travel rates consistent with the State of Wisconsin's then-current standard travel rates publicly published by the State of Wisconsin from time to time.

5.2.12 Limitation of Cost. It is hereby stipulated and agreed that the total cost to the Customer for the performance of the Services under any Statement of Work under this Agreement shall not exceed the funding limitation set forth in the Customer's purchase order, and Novell agrees to perform the Services specified and all obligations under this Agreement within such funding limitation. If Novell intends to exceed the funding limitation, Novell agrees to notify Customer in writing no later than when the billable amounts reach eighty percent (80%) of the funding limitation in an order and will include in such notification an estimate to complete the requirements of the order. Customer shall not be obligated to reimburse Novell for billing in excess of the funding limitation set forth in the order(s), and Novell shall not be obligated to continue performance of Services under the order(s) or to incur costs in excess of the funding limitations if such increased costs are due to additional requirement identified by Customer after the initiation of effort on the work specified in the order unless and until a change order or amendment to the order increasing the funding limitation is approved by Customer.

5.2.13 Termination of Statement of Work. Termination by Novell or Customer of any individual Statement of Work shall not terminate this Amendment or the Agreement. The consequences of termination shall only apply to the Customer affected by the terminated Statement of Work.

Section 6.1; Orders. The following is added at the end of the section as an additional paragraph:

With respect to electronic ordering, Customer agrees that an order submitted under this Agreement using Customer's electronic password on Novell's electronic MLA ordering system shall have the same validity and effect as if Customer had submitted the order on a paper MLA Order Form signed by an authorized Customer representative.

Section 6.2; Price and Product Changes. The word "limited" is deleted from this Section.

Section 6.2; Price and Product Changes. The following is added at the end of the section as an additional paragraph:

For the Term, Customer's pricing discount off pricing for products listed on the MLA Price List Price for purchases of Software licenses and Maintenance is forty-two percent (42%) and The discount for Novell consulting Services and training Services is ten percent (10%). For any subsequent term of the Agreement, discounts shall be as described in the then-current MLA program.

Section 6.5; Payment. The following paragraph is added as the last sentence of Section 6.5:

Invoices that are the subject of a bona fide dispute by Customer shall not be subject to interest for late payment pursuant to Section 6.5.1 of this Agreement.

Section 6.6; Taxes. The following is added at the end of the section as an additional paragraph:

Novell recognizes that Customer is exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below: The State of Wisconsin, including all of its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.

Section 7.2; Formal Audits. In the second to the last sentence, the word "five" is changed to "ten" and the words "the audit" are changed to "that audit".

Section 8.3; Effect of Termination on Other Memberships. The second sentence is replaced with the following sentence:

Should the Prime Customer's Program membership become terminated, all Subsidiary memberships are terminated as well; provided, however, that Novell may continue to contract with any or all Affiliates.

Section 9.4; Indemnification Limitation. The title of this section is changed to read "Indemnification Exclusive Obligation" and the first two sentences are deleted in their entirety.

Section 10.6; DISCLAIMER OF WARRANTIES. The words "AND NON-INFRINGEMENT" are deleted.

Section 10.7; Viruses and Controls Mechanisms. This Section 10.7 is added to the Agreement and shall read as follows:

Novell represents and warrants that to the best of Novell's knowledge and exclusive of all trial or beta licenses and any limitations contained in the Software providing for a limited number of users or processors, etc., Novell has not included in the Software any feature that would impair its operation in the manner in which it was designed, including, but not limited to, Software locks or drop dead devices. In no event shall Novell, its agents or employees or anyone acting on its behalf, disable any Software, except in the event that either (i) Customer is in material breach of this Agreement (including non-payment of fees due to Novell under this Agreement) and has not cured such breach within thirty (30) days of written notice of such breach or (ii) it is necessary for Novell to disable the Software in connection with authorized Services provided by Novell to Customer. Novell further represents and warrants, exclusive of all trial licenses and any limitations contained in the Software providing for a limited number of users or processors, etc., that Novell will not knowingly include in the Software, nor in any update or revision thereto, any virus mechanism designed to delete, disable, interfere with or otherwise harm the Software (or Customer's hardware, data or other programs), or that is intended to provide access to or produce modifications not authorized by Customer or, upon full payment for the licenses and updates to the Software, makes the Software inaccessible to Customer once it has been installed.

Section 11.2; Direct Damages. The words "licenses or service/deliverable" are replaced with the word "order", and the amount of "\$US100,000" is replaced with the amount "\$US200,000".

Section 12.1; Choice of Law. The word "Utah" is replaced with "Wisconsin".

Section 12.1; Choice of Law. In Section 12.1.2, the last sentence is deleted.

Section 12.3; Confidentiality Obligations. The following is added to the beginning of the first sentence of this section:

To the extent allowed by Wisconsin' Public Records Law, Subchapter II, Chapter 19 of the Statutes,

Section 12.4; Publicity. This section is changed to read as follows:

Reference to or use of the Customer's name or the names of any of its departments, agencies, or other subunits, or any Customer official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the Customer's Department of Administration.

Section 13; Maintenance Services. The following sentence is inserted immediately prior to the last sentence of Section 13.1:

If such license reduction is permitted by Novell, it shall be pursuant to the then-current Novell program and policies related to license rights retirement.

Section 14.4; Nondiscrimination in Employment. This Section 14.4 is added to the Agreement and shall read as follows:

Novell shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Stats., sexual orientation as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, Novell shall take affirmative action to ensure equal employment opportunities. Novell shall post in conspicuous places, available for employees and applicants for employment, notices of this nondiscrimination clause.

Section 14.5; Affirmative Action. This Section 14.5 is added to the Agreement and shall read as follows:

All contracts of twenty-five-thousand dollars (\$25,000) or more require the submission of a written affirmative action plan. Contractors with an annual workforce of less than twenty-five (25) employees are excluded from this requirement. Novell shall submit such plan to You within fifteen (15) working days of Your written request of such plan from Novell.

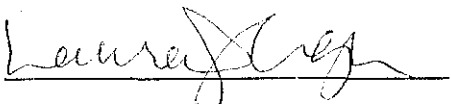
Section 14.6; Non-Appropriation of Funds. This Section 14.6 is added to the Agreement and shall read as follows:

This Agreement shall be terminated without penalty upon failure of the Legislature of the State of Wisconsin to appropriate funds necessary to carry out its terms.

3. **Continuance.** Except as expressly amended and supplemented by this Amendment, the terms and conditions of the Agreement shall remain in effect unchanged. If and to the extent that any inconsistency may appear between the Agreement and this Amendment, the provisions of this Amendment shall control.

IN WITNESS WHEREOF, each party hereto has caused this Amendment to be executed by a duly authorized representative.

STATE OF WISCONSIN

Signature: 

Name: Laura Engan

Title: Deputy Secretary

Date: 6/30/2004

NOVELL, INC.

Signature: 

Name: David P. Alvin

Title: Contracts

Date: 01 JULY 2004