

EXHIBIT 4

NOVELL, INC.
SOFTWARE AGREEMENT

1. NOVELL, INC., a Delaware corporation ("NOVELL"), having an office at 190 River Road, Summit, New Jersey 07901, and LICENSEE, as defined in the signature block of this Agreement, for itself and its SUBSIDIARIES agree that, after LICENSEE's execution and NOVELL's acceptance of this Agreement, the terms and conditions set forth in this Agreement shall apply to use by LICENSEE of SOFTWARE PRODUCTS that become subject to this Agreement.
2. NOVELL makes certain SOFTWARE PRODUCTS available under this Agreement. Each such SOFTWARE PRODUCT shall become subject to this Agreement on NOVELL's acceptance of a Supplement executed by LICENSEE that identifies such SOFTWARE PRODUCT and lists the DESIGNATED CPUs therefor. The first Supplement for a specific SOFTWARE PRODUCT shall have attached a Schedule for such SOFTWARE PRODUCT. Any additional terms and conditions set forth in such Schedule shall also apply with respect to such SOFTWARE PRODUCT.
3. Additional Supplements may be added to this Agreement to add additional SOFTWARE PRODUCTS (and DESIGNATED CPUs therefor). Each such additional Supplement shall be considered part of this Agreement when executed by LICENSEE, if required, and accepted by NOVELL.
4. This Agreement and its Supplements set forth the entire agreement and understanding between the parties as to the subject matter hereof and merge all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein or as duly set forth on or subsequent to the date of acceptance hereof in writing and signed by a proper and duly authorized representative of the party to be bound thereby. No provision appearing on any form originated by LICENSEE shall be applicable unless such provision is expressly accepted in writing by an authorized representative of NOVELL.
5. Initially, Supplement(s) numbered 1^{CL} are included in and made part of this Agreement.

LICENSEE:

Super Computers INTERNATIONAL
(Company Name)

Delaware
(State or Country of Incorporation)

1414 W. HAMILTON AVE.
(Corporate Address)

EAN CHARE, WI 54701
(Corporate Address)

[Signature]
(By)

STEVE S. CHEN
(Print or Type Name)

PRESIDENT
(Title)

2/3/95
(Date)

1414 W. HAMILTON AVE
(Notice Address)

EAN CHARE, WI 54701
(Notice Address)

NOVELL, INC.

By: [Signature]
S. T. Baker

Director, Software Licensing

2/16/95
(Date)

I. DEFINITIONS

- 1.01 CPU means central processing unit.
- 1.02 COMPUTER PROGRAM means any instruction or instructions, in source-code or object-code format, for controlling the operation of a CPU.
- 1.03 DESIGNATED CPU means any CPU listed as such for a specific SOFTWARE PRODUCT in a Supplement to this Agreement.
- 1.04 SOFTWARE PRODUCT means materials such as COMPUTER PROGRAMS, information used or interpreted by COMPUTER PROGRAMS and documentation relating to the use of COMPUTER PROGRAMS. Materials available from NOVELL for a specific SOFTWARE PRODUCT are listed in the Schedule for such SOFTWARE PRODUCT. Certain SOFTWARE PRODUCTS available under this Agreement may contain materials prepared by other developers.
- 1.05 SUBSIDIARY of a company means a corporation or other legal entity (i) the majority of whose shares or other securities entitled to vote for election of directors (or other managing authority) is now or hereafter controlled by such company either directly or indirectly; or (ii) the majority of the equity interest in which is now or hereafter owned and controlled by such company either directly or indirectly; but any such corporation or other legal entity shall be deemed to be a SUBSIDIARY of such company only so long as such control or such ownership and control exists.
- (b) Any claim, demand or right of action arising on behalf of a contractor from the furnishing to it or use by it of SOFTWARE PRODUCTS shall be solely against LICENSEE.
- (c) Contractors shall agree to the same responsibilities and obligations and other restrictions pertaining to the use of SOFTWARE PRODUCTS as those undertaken by LICENSEE under this Agreement.
- (d) When a contractor's work for LICENSEE is completed, all copies of SOFTWARE PRODUCTS furnished to such contractor or made by such contractor and all copies of any modifications or derivative works made by such contractor based on such SOFTWARE PRODUCT shall be returned to LICENSEE or destroyed, including any copies stored in any computer memory or storage medium.
- (e) A contractor may not acquire any ownership interest in any modification or derivative work prepared by such contractor based on or using a SOFTWARE PRODUCT subject to this Agreement unless such contractor also becomes a licensee of NOVELL for such SOFTWARE PRODUCT.
- (f) LICENSEE and any such contractor shall enter into a written agreement before or at the time of permitting access to or allowing use of any SOFTWARE PRODUCT by a contractor or furnishing a SOFTWARE PRODUCT to a contractor. Such written agreement shall be consistent with the requirements of this Section 2.02. Copies of such agreements shall be provided to NOVELL on request; however, portions of such agreements not required by this Section may be deleted from such copies.

II. GRANT OF RIGHTS

- 2.01 NOVELL grants to LICENSEE a personal, nontransferable and nonexclusive right to use in the United States each SOFTWARE PRODUCT identified in the one or more Supplements hereto, solely for LICENSEE's own internal business purposes and solely on or in conjunction with DESIGNATED CPUs for such SOFTWARE PRODUCT. Such right to use includes the right to modify such SOFTWARE PRODUCT and to prepare derivative works based on such SOFTWARE PRODUCT, provided that any such modification or derivative work that contains any part of a SOFTWARE PRODUCT subject to this Agreement is treated hereunder the same as such SOFTWARE PRODUCT. NOVELL claims no ownership interest in any portion of such a modification or derivative work that is not part of a SOFTWARE PRODUCT.
- 2.02 (a) LICENSEE may permit access to SOFTWARE PRODUCTS by its contractors and allow use of SOFTWARE PRODUCTS by its contractors on DESIGNATED CPUs, provided such access and use is exclusively for LICENSEE in connection with work called for in written agreements between LICENSEE and such contractors in accordance with Section 2.02(f) of this Agreement. LICENSEE may designate contractors' CPUs as DESIGNATED CPUs pursuant to Section 2.04 and furnish SOFTWARE PRODUCTS to contractors for use on such CPUs.
- 2.03 A single back-up CPU may be used as a substitute for a DESIGNATED CPU without notice to NOVELL during any time when such DESIGNATED CPU is inoperative because it is malfunctioning or undergoing repair, maintenance or other modification.
- 2.04 LICENSEE may at any time notify NOVELL in writing of any changes, such as replacements or additions, that LICENSEE wishes to make to the DESIGNATED CPUs for a specific SOFTWARE PRODUCT. NOVELL will prepare additional Supplements as required to cover such changes. Changes covered by a Supplement shall become effective after execution of such Supplement by LICENSEE, if required, acceptance thereof by NOVELL and, in the case of each additional CPU, receipt by NOVELL of the appropriate fee.
- 2.05 On NOVELL's request, but not more frequently than annually, LICENSEE shall furnish to NOVELL a statement, certified by an authorized representative of LICENSEE, listing the location, type and serial number of all DESIGNATED CPUs hereunder and stating that the use by LICENSEE of SOFTWARE PRODUCTS subject to this Agreement has been reviewed and that each such SOFTWARE PRODUCT is being used solely on DESIGNATED CPUs (or temporarily on back-up CPUs) for such SOFTWARE PRODUCTS in full compliance with the provisions of this Agreement.
- 2.06 No right is granted by this Agreement for the use of SOFTWARE PRODUCTS directly for others, or for any use of SOFTWARE PRODUCTS by others, except LICENSEE's contractors pursuant to Section 2.02, unless such uses are permitted for a particular

SOFTWARE PRODUCT by a specific provision in the Schedule for such SOFTWARE PRODUCT. For example, use of a SOFTWARE PRODUCT in a time-sharing service or a service-bureau operation is permitted only pursuant to such a specific provision.

III. DELIVERY

- 3.01 Within a reasonable time after NOVELL receives the fee specified in the first Supplement for a SOFTWARE PRODUCT, NOVELL will furnish to LICENSEE one (1) copy of such SOFTWARE PRODUCT in the form identified in the Schedule for such SOFTWARE PRODUCT.
- 3.02 Additional copies of SOFTWARE PRODUCTS covered by this Agreement will be furnished to LICENSEE after receipt by NOVELL of the then-current distribution fee for each such copy.
- 3.03 From time to time, and at its sole discretion, NOVELL may provide additional deliveries of SOFTWARE PRODUCTS or (elements of SOFTWARE PRODUCTS) to LICENSEE at no additional charge which will consist of the following:
- (a) Revised source and/or object code for a SOFTWARE PRODUCT.
 - (b) New or modified documentation or information regarding such documentation.

All such additional deliveries of SOFTWARE PRODUCTS furnished to LICENSEE with respect to a SOFTWARE PRODUCT shall be deemed to be part of such SOFTWARE PRODUCT and, shall be governed by the terms and conditions of this Agreement including the applicable Supplement for such SOFTWARE PRODUCT.

IV. EXPORT

- 4.01 LICENSEE agrees that it will not, without the prior written consent of NOVELL, export, directly or indirectly, SOFTWARE PRODUCTS covered by this Agreement to any country outside of the United States. LICENSEE also agrees that it will obtain any and all necessary export licenses for any such export or for any disclosure of a SOFTWARE PRODUCT to a foreign national.

V. FEES AND TAXES

- 5.01 Within sixty (60) days after acceptance of this Agreement by NOVELL, LICENSEE shall pay to NOVELL the fees required by the Supplement(s) initially attached hereto for the DESIGNATED CPUs listed in such Supplement(s).
- 5.02 Within sixty (60) days after acceptance of each additional Supplement by NOVELL, LICENSEE shall pay to NOVELL any fee required by such additional Supplement for the DESIGNATED CPUs listed in such additional Supplement.
- 5.03 Payments to NOVELL shall be made in United States dollars to NOVELL at the address specified in Section 7.10(a).
- 5.04 LICENSEE shall pay all taxes, including any sales or use tax (and any related interest or penalty), however designated, imposed as a result of the existence or operation of this Agreement, except any income tax

imposed upon NOVELL by any governmental entity within the United States proper (the fifty (50) states and the District of Columbia). Fees specified in Supplement(s) to this Agreement and in Schedule(s) attached to Supplement(s) do not include taxes. If NOVELL is required to collect a tax to be paid by LICENSEE, LICENSEE shall pay such tax to NOVELL on demand.

VI. TERM

- 6.01 This Agreement shall become effective on and as of the date of acceptance by NOVELL.
- 6.02 LICENSEE may terminate its rights under this Agreement by written notice to NOVELL certifying that LICENSEE has discontinued use of and returned or destroyed all copies of SOFTWARE PRODUCTS subject to this Agreement.
- 6.03 If LICENSEE fails to fulfill one or more of its obligations under this Agreement, NOVELL may, upon its election and in addition to any other remedies that it may have, at any time terminate all the rights granted by it hereunder by not less than two (2) months' written notice to LICENSEE specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied; upon such termination LICENSEE shall immediately discontinue use of and return or destroy all copies of SOFTWARE PRODUCTS subject to this Agreement.
- 6.04 In the event of termination of rights under Sections 6.02 or 6.03, NOVELL shall have no obligation to refund any amounts paid to it under this Agreement.
- 6.05 LICENSEE agrees that when a SUBSIDIARY's relationship to LICENSEE changes so that it is no longer a SUBSIDIARY of LICENSEE, (i) all rights of such former SUBSIDIARY to use SOFTWARE PRODUCTS subject to this Agreement shall immediately cease, and (ii) such former SUBSIDIARY shall immediately discontinue use of and return to LICENSEE or destroy all copies of SOFTWARE PRODUCTS subject to this Agreement. No fees paid to NOVELL for use of SOFTWARE PRODUCTS on DESIGNATED CPUs of such former SUBSIDIARIES shall be refunded; however, LICENSEE may substitute other CPUs for such DESIGNATED CPUs in accordance with Section 2.04.

VII. MISCELLANEOUS PROVISIONS

- 7.01 This Agreement shall prevail notwithstanding any conflicting terms or legends which may appear in a SOFTWARE PRODUCT.
- 7.02 NOVELL warrants for a period of ninety (90) days from furnishing a SOFTWARE PRODUCT to LICENSEE that any magnetic medium on which portions of a SOFTWARE PRODUCT are furnished will be free under normal use from defects in materials, workmanship or recording. If such a defect appears within such warranty period LICENSEE may return the defective medium for replacement without charge. Replacement is LICENSEE's sole remedy with respect to such a defect. NOVELL also warrants that it is empowered to grant the rights granted herein. NOVELL and other developers make no other representations or warranties, expressly or impliedly. By way of

example but not of limitation, NOVELL and other developers make no representations or warranties of merchantability or fitness for any particular purpose, or that the use of any SOFTWARE PRODUCT will not infringe any patent, copyright or trademark. NOVELL and other developers shall not be held to any liability with respect to any claim by LICENSEE, or a third party on account of, or arising from, the use of any SOFTWARE PRODUCT.

- 7.03 No right is granted herein to use any identifying mark (such as, but not limited to, trade names, trademarks, trade devices, service marks or symbols, and abbreviations, contractions or simulations thereof) owned by, or used to identify any product or service of, NOVELL or a corporate affiliate thereof. LICENSEE agrees that it will not, without the prior written permission of NOVELL, (i) use any such identifying mark in advertising, publicity, packaging, labeling or in any other manner to identify any of its products or services or (ii) represent, directly or indirectly, that any product or service of LICENSEE is a product or service of NOVELL or such an affiliate or is made in accordance with or utilizes any information or documentation of NOVELL or such an affiliate.
- 7.04 Neither the execution of this Agreement nor anything in it or in any SOFTWARE PRODUCT shall be construed as an obligation upon NOVELL or any other developer to furnish any person, including LICENSEE, any assistance of any kind whatsoever, or any information or documentation other than the SOFTWARE PRODUCTS to be furnished by NOVELL pursuant to Sections 3.01 and 3.02.
- 7.05 (a) LICENSEE agrees that it shall hold all parts of the SOFTWARE PRODUCTS subject to this Agreement in confidence for NOVELL. LICENSEE further agrees that it shall not make any disclosure of any or all of such SOFTWARE PRODUCTS (including methods or concepts utilized therein) to anyone, except to employees and contractors of LICENSEE to whom such disclosure is necessary to the use for which rights are granted hereunder. LICENSEE shall appropriately notify each employee to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by such employee. If information relating to a SOFTWARE PRODUCT subject to this Agreement at any time becomes available without restriction to the general public by acts not attributable to LICENSEE, its contractors or employees of either, LICENSEE's obligations under this section shall not apply to such information after such time.
- (b) Notwithstanding the provisions of Section 7.05(a), LICENSEE may distribute copies of a SOFTWARE PRODUCT, either in modified or unmodified form, to third parties having licenses of equivalent scope herewith from NOVELL (or a corporate affiliate or authorized distributor thereof) for the same SOFTWARE PRODUCT, provided that LICENSEE first verifies the status of the recipient by calling NOVELL at 800-828-8649 (or other number specified by NOVELL). NOVELL will give oral verification of the recipient's status for recipients in the United States and written verification for recipients outside the United States. LICENSEE shall maintain a record of each such distribution and, for each quarterly period (ending on March 31st, June

30th, September 30th and December 31st) during which any such distribution occurs, forward a copy of such record for such period to NOVELL at the correspondence address specified in Section 7.10(b) within thirty (30) days of the end of such period. Such record shall include, for each such distribution, the identity of the recipient, the date of verification, the name of the person at NOVELL providing verification and the date of distribution. LICENSEE may also obtain materials based on a SOFTWARE PRODUCT subject to this Agreement from such a third party and use such materials pursuant to this Agreement, provided that LICENSEE treats such materials hereunder the same as such SOFTWARE PRODUCT.

- 7.06 The obligations of LICENSEE, its employees and contractors under Section 7.05(a) shall survive and continue after any termination of rights under this Agreement or cessation of a SUBSIDIARY's status as a SUBSIDIARY.
- 7.07 LICENSEE agrees that it will not use SOFTWARE PRODUCTS subject to this Agreement except as authorized herein and that it will not make, have made or permit to be made any copies of such SOFTWARE PRODUCTS except for use on DESIGNATED CPUs for such SOFTWARE PRODUCTS (including backup and archival copies necessary in connection with such use) and for distribution in accordance with Section 7.05(b). Each such copy shall contain any copyright notice, proprietary notice or notice giving credit to another developer, which appears on or in the SOFTWARE PRODUCT being copied. Specific instructions regarding such notices may also appear in the Schedules for certain SOFTWARE PRODUCTS.
- 7.08 Neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by LICENSEE and any purported assignment or transfer shall be null and void.
- 7.09 Except as provided in Section 7.05(b), nothing in this Agreement grants to LICENSEE the right to sell, lease or otherwise transfer or dispose of a SOFTWARE PRODUCT in whole or in part.
- 7.10 (a) Payments to NOVELL under this Agreement shall be made payable and sent to:
NOVELL, INC.
P.O. Box 65080
Charlotte, North Carolina 28265
- (b) Correspondence with NOVELL relating to this Agreement shall be sent to:
NOVELL, INC.
P.O. Box 4000
Summit, New Jersey 07901
Attention: Licensing Operations
- (c) Any statement, notice, request or other communication shall be deemed to be sufficiently given to the addressee and any delivery hereunder deemed made when sent by certified mail addressed to LICENSEE at its office specified in this Agreement or to NOVELL at the appropriate address specified in this Section 7.10. Each party to this Agreement may change an address relating to it by written notice to the other party.

- 7.11 If LICENSEE is not a corporation, all references to LICENSEE's SUBSIDIARIES shall be deemed deleted.
- 7.12 The construction and performance of this Agreement shall be governed by the law of the State of New Jersey.

**NOVELL, INC.
SUBLICENSING AGREEMENT**

1. NOVELL, INC., a Delaware corporation ("NOVELL"), having an office at 190 River Road, Summit, New Jersey 07901, and LICENSEE, as defined in the signature block of this Agreement, for itself and its SUBSIDIARIES, (collectively referred to herein as ("LICENSEE")) agree that, after execution of this Sublicensing Agreement by LICENSEE and acceptance of this Sublicensing Agreement by NOVELL, the terms and conditions set forth in this Sublicensing Agreement shall apply to the SOFTWARE PRODUCTS subject to LICENSEE's Software Agreement with NOVELL as specified below by Software Agreement Number between NOVELL and LICENSEE ("the Software Agreement").
2. Except as otherwise specifically provided herein, all the provisions of the Software Agreement remain in full force and effect.
3. This Sublicensing Agreement, together with the Software Agreement and its Supplement(s), sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein or as duly set forth on or subsequent to the effective date hereof in writing and signed by a proper and duly authorized representative of the party to be bound thereby. No provision appearing on any form originated by LICENSEE shall be applicable unless such provision is expressly accepted in writing by an authorized representative of NOVELL.
4. (a) The Initial Period (See Section 3.01) shall begin on: _____.
- (b) The estimated GROSS AMOUNT for the Initial Period is: US\$_____.
- (c) The DISCOUNT PERCENTAGE corresponding to such estimated GROSS AMOUNT for use during the Initial Period (See Section 4.02) is: _____%.
5. The Software Agreement Number applicable to this Sublicensing Agreement is: 507-0567 (11)

6. The Sublicensing Agreement Number applicable to this Sublicensing Agreement is:

503-0527707

LICENSEE:

Super Computers International

(Company Name)

1414 W. Hamilton Ave

(Corporate Address)

Eau Claire, WI 54601

(Corporate Address)

[Signature]

(By)

Steve S. Chen

(Print or Type Name)

PRESIDENT

(Title)

2/3/95

(Date)

1414 W. Hamilton Ave.

(Notice Address)

Eau Claire, WI 54601

(Notice Address)

NOVELL, INC.

[Signature]

By:

Stephen T. Baker
Director, Software Licensing

2/16/95

(Date)

I. DEFINITIONS

- 1.01 The terms "CPU", "COMPUTER PROGRAM", "SOFTWARE PRODUCT" and "SUBSIDIARIES" are defined in the Software Agreement.
- 1.02 AUTHORIZED COPIER means a DISTRIBUTOR authorized by LICENSEE to make copies of SUBLICENSSED PRODUCTS.
- 1.03 The DISCOUNT PERCENTAGE for a period (or portion thereof) during which the GROSS AMOUNT equals or exceeds \$100,000.00 is the percentage calculated from such GROSS AMOUNT by using the following formula:
- $$\text{DISCOUNT PERCENTAGE} = \frac{\text{GROSS AMOUNT}}{\text{GROSS AMOUNT} + \$3.75 \text{ million}} \times 100\%$$
- up to a maximum of eighty percent (80%). The DISCOUNT PERCENTAGE for a period (or portion thereof) during which the GROSS AMOUNT is less than \$100,000.00 is zero percent (0%).
- 1.04 DISTRIBUTOR means an entity authorized by LICENSEE or another DISTRIBUTOR to receive copies of SUBLICENSSED PRODUCTS from LICENSEE or another DISTRIBUTOR and furnish such copies to customers and/or other DISTRIBUTORS.
- 1.05 EVALUATION COPY means a copy of a SUBLICENSSED PRODUCT provided to an end-user for an evaluation period not to exceed ninety (90) days.
- 1.06 GROSS AMOUNT for a period (or portion thereof) means the total amount of per-copy sublicensing fees accrued during such period (or portion thereof).
- 1.07 NET AMOUNT for a period (or portion thereof) means the amount determined from the GROSS AMOUNT for such period (or portion thereof) by multiplying such GROSS AMOUNT by the DISCOUNT PERCENTAGE for such period (or portion thereof) and subtracting the result from such GROSS AMOUNT.
- 1.08 SUBLICENSSED PRODUCT means (i) COMPUTER PROGRAMS in object-code format based on a SOFTWARE PRODUCT subject to the Software Agreement and (ii) any other materials identified in the "Sublicensing" section of the Schedule for such SOFTWARE PRODUCT.

II. GRANT OF RIGHTS

- 2.01 Notwithstanding any provisions to the contrary in the Software Agreement, NOVELL grants to LICENSEE personal, nontransferable and nonexclusive rights:
- (a) to make copies of SUBLICENSSED PRODUCTS and to furnish, either directly or through DISTRIBUTORS, such copies of SUBLICENSSED PRODUCTS to customers anywhere in the world (subject to LICENSEE or its DISTRIBUTORS satisfying U.S. government export requirements) for use on customer CPUs solely for each such customer's internal business purposes, provided that the entity (LICENSEE or a DISTRIBUTOR) furnishing the SUBLICENSSED PRODUCTS obtains agreement as specified in Section 2.02 from such a customer, before or at the time of furnishing each copy of a SUBLICENSSED PRODUCT, that:

- (i) only a personal, nontransferable and nonexclusive right to use such copy of the SUBLICENSSED PRODUCT on one CPU at a time is granted to such customer;
- (ii) no title to the intellectual property in the SUBLICENSSED PRODUCT is transferred to such customer;
- (iii) except as provided for in Section 2.10 below, such customer will not copy the SUBLICENSSED PRODUCT except as necessary to use such SUBLICENSSED PRODUCT on such one CPU;
- (iv) such customer will not transfer the SUBLICENSSED PRODUCT to any other party except as authorized by the entity furnishing the SUBLICENSSED PRODUCT;
- (v) such customer will not export or re-export the SUBLICENSSED PRODUCT without the appropriate United States or foreign government licenses;
- (vi) such customer will not reverse compile or disassemble the SUBLICENSSED PRODUCT;
- (vii) the SUBLICENSSED PRODUCT is derived from third-party software and that no such third party warrants the SUBLICENSSED PRODUCT, assumes any liability regarding use of the SUBLICENSSED PRODUCT or undertakes to furnish any support or information relating to the SUBLICENSSED PRODUCT;
- (b) to use SUBLICENSSED PRODUCTS on LICENSEE'S CPUs solely for LICENSEE'S own internal business purposes; and
- (c) subject to Section 2.11, to use, and to permit DISTRIBUTORS to use, SUBLICENSSED PRODUCTS without fee solely for testing CPUs that are to be delivered to customers and for demonstrating SUBLICENSSED PRODUCTS to prospective customers.
- 2.02 In the United States and in other jurisdictions where an enforceable copyright covering the COMPUTER PROGRAMS of the SUBLICENSSED PRODUCT exists, the agreement specified in Section 2.01(a) may be a written agreement signed by the customer or a written agreement on or accompanying the package containing the SUBLICENSSED PRODUCT that is fully visible to the customer before the package is opened, that the customer accepts by opening the package and that complies with applicable law relating to agreements of such type. In all other jurisdictions such agreement must be a written agreement signed by the customer. NOVELL does not undertake to inform LICENSEE of the jurisdictions where such copyright exists.
- 2.03 LICENSEE shall require each DISTRIBUTOR to enter into a written agreement with its supplier of SUBLICENSSED PRODUCTS (LICENSEE or another DISTRIBUTOR) before any SUBLICENSSED PRODUCT is furnished to such DISTRIBUTOR. Such agreement shall include provisions consistent with and containing the relevant substance of Sections 2.01, 2.02, 2.04, 2.07, this Section 2.03 and Section 3.05 of this

Sublicensing Agreement. For a DISTRIBUTOR who is also to be an AUTHORIZED COPIER, such agreement shall also include provisions consistent with and containing the relevant substance of Sections 2.05, 2.08, 2.09 and 5.01 of this Sublicensing Agreement.

- 2.04 DISTRIBUTORS who are not also AUTHORIZED COPIERS may not make copies of SUBLICENSED PRODUCTS, but may furnish to customers and other DISTRIBUTORS copies of SUBLICENSED PRODUCTS furnished to such DISTRIBUTOR by LICENSEE or other DISTRIBUTORS. In such cases the product name appearing on such copies shall not be deleted or altered by such a DISTRIBUTOR.
- 2.05 (a) A DISTRIBUTOR who is also an AUTHORIZED COPIER may modify and make copies of SUBLICENSED PRODUCTS, select a name for SUBLICENSED PRODUCTS to appear on such copies (consistent with the provisions of Section 2.09), and furnish such copies to customers and other DISTRIBUTORS.
- (b) It is recognized that a party obtaining a SUBLICENSED PRODUCT from LICENSEE and having rights to use the underlying SOFTWARE PRODUCT as a contractor of LICENSEE and/or as a licensee of NOVELL may use such SOFTWARE PRODUCT to modify such SUBLICENSED PRODUCT, thereby creating a new product. It is also recognized that such a party may wish to acquire an ownership interest in such new product and to distribute object-code copies of such new product. As a condition of acquiring such an ownership interest, a party having rights to use solely as a contractor must become a LICENSEE of NOVELL for such SOFTWARE PRODUCT. To distribute object-code copies of a new product in which it has acquired an ownership interest, a party must do so on its own account pursuant to a sublicensing agreement with NOVELL, and not as a DISTRIBUTOR hereunder.
- (c) LICENSEE may not authorize or permit any third party (including a contractor or another Source Code licensee) to be a DISTRIBUTOR, pursuant to this Sublicensing Agreement, with respect to any SUBLICENSED PRODUCT that is based, in whole or in part, on a SOFTWARE PRODUCT modified by or for such third party, its SUBSIDIARY, any entity ("parent") of which it is a SUBSIDIARY, or any other entity which is a SUBSIDIARY of such parent. Distribution of such a SUBLICENSED PRODUCT may be made by such third party only on its own account, pursuant to a Sublicensing Agreement with NOVELL, and not as a DISTRIBUTOR hereunder.
- 2.06 LICENSEE shall use its best efforts to enforce the agreements with DISTRIBUTORS and customers specified in this Sublicensing Agreement.
- 2.07 If a DISTRIBUTOR fails to fulfill one or more of its obligations under the agreement required by Section 2.03, NOVELL may, upon its election and in addition to any other remedies that it may have, at any time notify LICENSEE in writing of such breach and require LICENSEE to terminate all the rights granted in such agreement by not less than two (2) months' written notice to such DISTRIBUTOR specifying any such

breach, unless within the period of such notice all breaches specified therein shall have been remedied; upon such termination such DISTRIBUTOR shall within thirty (30) days immediately discontinue use of and return or destroy all copies of SUBLICENSED PRODUCTS in its possession.

- 2.08 (a) Any notice acknowledging a contribution of a third party appearing in a SOFTWARE PRODUCT shall be included in corresponding portions of SUBLICENSED PRODUCTS made by LICENSEE or AUTHORIZED COPIERS. Instructions regarding such notices may appear in the Schedules for certain SOFTWARE PRODUCTS.
- (b) Each portion of a SUBLICENSED PRODUCT shall include an appropriate copyright notice. Such copyright notice may be the copyright notice or notices appearing in or on the corresponding portions of the SOFTWARE PRODUCT on which such SUBLICENSED PRODUCT is based or, if copyrightable changes are made in developing such SUBLICENSED PRODUCT, a copyright notice identifying the owner of such changes.
- 2.09 No right is granted hereunder or under the Software Agreement to use any trademark of NOVELL (or a corporate affiliate thereof) in the name of the SUBLICENSED PRODUCTS offered or furnished to customers by LICENSEE or DISTRIBUTORS. However, LICENSEE and DISTRIBUTORS may state in advertising, publicity, packaging, labeling or otherwise that a SUBLICENSED PRODUCT is derived from NOVELL's software under license from NOVELL and identify such software (including any trademark, provided the proprietor of the trademark is appropriately identified). LICENSEE agrees, for itself and its DISTRIBUTORS, not to use a name or trademark for a SUBLICENSED PRODUCT that is confusingly similar to a name or trademark used by NOVELL (or a corporate affiliate thereof).
- 2.10 (a) Notwithstanding the provisions of Section 2.01 above, LICENSEE may, either directly or through its AUTHORIZED COPIERS, grant to each end-user customer of a SUBLICENSED PRODUCT, a personal, nontransferable and non-exclusive right to reproduce no more than a pre-authorized number of copies ("BLOCKSIZE COPIES") from a master of such SUBLICENSED PRODUCT, provided that the end-user license agreement required by Section 2.02 contains the following provisions in addition to those otherwise required by Section 2.01(a) of this Sublicensing Agreement:
- (i) such customer agrees to reproduce no more than the pre-authorized number of copies of the SUBLICENSED PRODUCT. Such pre-authorized number shall be set forth in a separate attachment to such end-user license agreement; and
- (ii) such customer agrees to afford to LICENSEE or NOVELL (the latter through a certified public accountant reasonably acceptable to the customer) the right to conduct periodic audits of the customer's books and records for the sole purpose of assuring compliance with the restrictions of the customer's license to reproduce and use

BLOCKSIZE COPIES. Such audits will not be made more frequently than annually and will be subject to customary safeguards of confidentiality.

- (b) NOVELL agrees that it will not conduct any end-user audit as authorized in the end-user license agreement unless and until it has afforded LICENSEE a reasonable opportunity to conduct its own audit and make the results available to NOVELL. In the event that NOVELL, consistent with the preceding sentence, conducts its own audit and determines that the number of BLOCKSIZE COPIES reproduced by customer exceeded the permissible number by at least five percent (5%), LICENSEE shall bear all reasonable expenses of such NOVELL audit.
- (c) Notwithstanding any other provision of this Sublicensing Agreement, the written end-user license agreement specified in Section 2.02 above shall be a formally executed document as opposed, e.g. to a "shrink-wrap" agreement.
- 2.11 LICENSEE may use, and permit DISTRIBUTORS to use, a limited number of EVALUATION COPIES of each SUBLICENSED PRODUCT per quarter, without fee solely for demonstrating such SUBLICENSED PRODUCTS to prospective customers under the following terms and conditions:
- (a) LICENSEE shall first execute a written end-user license agreement with each prospective customer of an EVALUATION COPY. Such agreement shall include all of the provisions of section 2.01(a)(i) - 2.01(a)(vii) of this Sublicensing Agreement. Notwithstanding any other provision of this Sublicensing Agreement, the written end-user license agreement specified in Section 2.02 above shall be a formally executed document as opposed, e.g. to a "shrink-wrap" agreement.
- (b) The prospective customer shall license or return the EVALUATION COPY to the LICENSEE at the end of a 90 day period that commences on the date the written end-user agreement is executed.
- (c) LICENSEE shall not charge any fee in connection with the distribution, use or support of the EVALUATION COPY.
- (d) LICENSEE shall not have outstanding at any time a number of EVALUATION COPIES of a particular SUBLICENSED PRODUCT which is greater than one percent (1%) of the number of copies of such SUBLICENSED PRODUCT which were reported during the previous four calendar quarters, subject to a maximum of 100 EVALUATION COPIES. The maximum number of EVALUATION COPIES that may be outstanding during the first four quarters in which a SUBLICENSED PRODUCT (or EVALUATION COPIES thereof) are distributed shall be 100.
- (e) LICENSEE shall keep full and complete records of the number and identification of EVALUATION COPIES distributed, outstanding and returned, including but not limited to information of the type contemplated in Section 5.02(b)(viii) below.

III. TERM

- 3.01 This Sublicensing Agreement shall become effective for an initial period that begins on the date specified in Paragraph 2 on Page 1 (or a date otherwise agreed to in writing by NOVELL and LICENSEE) and expires one year from the end of the quarter (ending March 31st, June 30th, September 30th or December 31st) during which such beginning date occurs.
- 3.02 Unless LICENSEE notifies NOVELL in writing at least thirty (30) days before the expiration date established in Section 3.01 that it does not wish renewal, this Sublicensing Agreement shall be renewed automatically for an additional one-year period and shall continue to be renewed in such a manner from year to year.
- 3.03 If LICENSEE fails to fulfill one or more of its obligations under this Sublicensing Agreement or the Software Agreement, NOVELL may, upon its election and in addition to any other remedies that it may have, at any time terminate all the rights granted by it hereunder and under the Software Agreement by not less than two (2) months' written notice to LICENSEE specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied; upon such termination LICENSEE shall immediately discontinue use of and return or destroy all copies of SOFTWARE PRODUCTS covered by the Software Agreement and immediately discontinue distribution and use of and destroy all copies of SUBLICENSED PRODUCTS in its possession.
- 3.04 Neither the expiration of this Sublicensing Agreement nor the termination of LICENSEE'S rights hereunder shall relieve LICENSEE of its obligation to pay any fee hereunder. In the event of termination of LICENSEE'S rights hereunder, all fees that LICENSEE has become obligated to pay hereunder shall become immediately due and payable.
- 3.05 LICENSEE agrees that when a SUBSIDIARY'S or a DISTRIBUTOR'S relationship to LICENSEE changes so that it is no longer a SUBSIDIARY or a DISTRIBUTOR of LICENSEE, all rights of such former SUBSIDIARY or DISTRIBUTOR under this Sublicensing Agreement shall immediately cease, and such former SUBSIDIARY or DISTRIBUTOR shall return to LICENSEE or destroy all copies of SUBLICENSED PRODUCTS for which per-copy fees have not been paid to NOVELL. However, such former SUBSIDIARY or DISTRIBUTOR may continue to use copies of SUBLICENSED PRODUCTS for which per-copy fees have been paid on the same basis that a customer may use copies of SUBLICENSED PRODUCTS pursuant to Section 2.01(a).

IV. FEES AND DISCOUNTS

- 4.01 (a) For rights granted under this Sublicensing Agreement, LICENSEE shall pay to NOVELL any initial sublicensing fee specified for the SOFTWARE PRODUCT on which a SUBLICENSED PRODUCT is based and a per-copy sublicensing fee for each copy of a SUBLICENSED PRODUCT either (i) furnished by LICENSEE to a customer or to a DISTRIBUTOR, (ii) made by an AUTHORIZED COPIER and furnished by such AUTHORIZED COPIER to a customer or to another DISTRIBUTOR or (iii) put into use by LICENSEE on a CPU of LICENSEE. The amounts of such

ublicensing fees are listed in the Schedule for each SOFTWARE PRODUCT. Initial sublicensing fees shall be paid as specified in Section 5.02(a). Per-copy sublicensing fees shall be paid quarterly as specified in Section 5.02(e).

- (b) A fee paid to NOVELL under this Sublicensing Agreement for a copy of a SUBLICENSSED PRODUCT furnished to a particular customer shall not be creditable toward any fee payable under any agreement between NOVELL (or between a corporate affiliate thereof) and such customer.
 - (c) Fees paid to NOVELL under this Sublicensing Agreement shall not be creditable toward fees that become payable under the Software Agreement. Fees paid under the Software Agreement shall not be creditable toward fees that become payable under this Sublicensing Agreement.
 - (d) No additional fee is payable for the transfer of a SUBLICENSSED PRODUCT from one customer to another customer in conjunction with the transfer of a CPU between such customers, provided that the first customer does not retain any portion of the SUBLICENSSED PRODUCT after such transfer and that agreement of the second customer is obtained in accordance with Sections 2.01 and 2.02. Such transfer of a SUBLICENSSED PRODUCT may result from, for example, a sale of a CPU by the first customer to the second customer or the termination of a lease with the first customer for a CPU and the execution of a new lease with the second customer for such CPU.
 - (e) No additional fee is payable for the transfer of a SUBLICENSSED PRODUCT from one CPU of LICENSEE to another or the transfer of a SUBLICENSSED PRODUCT from one CPU of a customer to another CPU of the same customer.
- 4.02 (a) LICENSEE may be entitled to a discount on per-copy sublicensing fees. For the initial period referred to in Section 3.01, such discount shall be based on the GROSS AMOUNT for such period. For each additional one-year period referred to in Section 3.02, such discount shall be based on either the GROSS AMOUNT for such period or the GROSS AMOUNT for the immediately preceding period, whichever yields the greater discount.
- (b) LICENSEE may estimate a GROSS AMOUNT for the initial period and use the DISCOUNT PERCENTAGE corresponding to such estimated GROSS AMOUNT in calculating quarterly payments during such period. LICENSEE may also make such an estimate for any additional one-year period in which LICENSEE expects the GROSS AMOUNT to be higher than that for the immediately preceding period. However, if LICENSEE calculates any quarterly payment during a period based on such an estimate, then the total amount paid after the first, second and third full quarters of such period must be, respectively, at least one quarter, one half and three quarters of the NET AMOUNT calculated using such estimated GROSS AMOUNT and such corresponding DISCOUNT PERCENTAGE. At the end of each period for which an estimated GROSS AMOUNT has been used, the actual

DISCOUNT PERCENTAGE and actual NET AMOUNT shall be determined from the actual GROSS AMOUNT for such period and the final quarterly payment shall be determined by subtracting the total of the quarterly payments previously made for such period from such actual NET AMOUNT. If such total exceeds the actual NET AMOUNT, the excess shall be credited against future quarterly payments for per-copy sublicensing fees. Such excess shall not be refunded.

- (c) If LICENSEE does not make an estimate pursuant to Section 4.02(b), then the payment for each quarter in a period shall be calculated by determining a NET AMOUNT from the GROSS AMOUNT for the portion of such period up to the end of such quarter and subtracting from such NET AMOUNT the total of any quarterly payments already made for such period. The DISCOUNT PERCENTAGE used in determining such NET AMOUNT shall either be that corresponding to the GROSS AMOUNT for such portion or that corresponding to the GROSS AMOUNT for the immediately preceding period, whichever percentage is greater.
 - (d) Examples of GROSS AMOUNTS and their corresponding DISCOUNT PERCENTAGES and NET AMOUNTS are shown in Attachment A.
- 4.03 The section of the Software Agreement relating to taxes shall apply to fees payable under this Sublicensing Agreement.

V. REPORTS AND PAYMENTS

- 5.01 (a) LICENSEE shall keep full, clear and accurate records sufficient to prepare the statements to NOVELL required by Section 5.02(b). Such records shall be retained by LICENSEE for a period of five (5) full calendar years.
- (b) Each AUTHORIZED COPIER shall keep full, clear and accurate records sufficient to prepare the statements to LICENSEE required by Section 5.01(c). Such records shall be retained by each such AUTHORIZED COPIER for a period of five (5) full calendar years.
- (c) Each AUTHORIZED COPIER shall furnish a statement at least quarterly to LICENSEE identifying the number of copies of each SUBLICENSSED PRODUCT furnished to customers or other DISTRIBUTORS since the previous such statement was furnished and the rights granted with respect to such copies to the extent such rights affect the per-copy sublicensing fees payable by LICENSEE to NOVELL for such copies.
- (d) LICENSEE shall keep full, clear and accurate records of the identities and locations of AUTHORIZED COPIERS.
- (e) NOVELL shall have the right through its accredited auditing representatives to make an examination and audit, during normal business hours, not more frequently than annually, of all records kept pursuant to this Section 5.01 by LICENSEE and AUTHORIZED COPIERS and such other records and accounts as may under recognized accounting practices contain

information bearing upon the amounts of fees payable to it under this Sublicensing Agreement. Prompt adjustment shall be made by the proper party to compensate for any errors or omissions disclosed by such examination or audit. Neither such right to examine and audit nor the right to receive such adjustment shall be affected by any statement to the contrary, appearing on checks or otherwise, unless such statement appears in a letter, signed by the party having such right and delivered to the other party, expressly waiving such right.

- 5.02 (a) LICENSEE shall notify NOVELL in writing when it begins furnishing copies of a SUBLICENSSED PRODUCT to customers or DISTRIBUTORS or putting any such copies into use on LICENSEE'S CPUs. At the same time as such notification, LICENSEE shall pay to NOVELL any initial sublicensing fee specified for the SOFTWARE PRODUCT on which such SUBLICENSSED PRODUCT is based. DISCOUNT PERCENTAGES established under Section 4.02 do not apply to initial sublicensing fees.
- (b) Within thirty (30) days after the end of each quarter ending on March 31st, June 30th, September 30th or December 31st, commencing with the quarter during which this Sublicensing Agreement first becomes effective, LICENSEE shall furnish to NOVELL a written statement signed by an authorized representative of LICENSEE identifying:
- (i) the number of copies of each SUBLICENSSED PRODUCT put into use by LICENSEE during such quarter, furnished by LICENSEE to customers or DISTRIBUTORS during such quarter or reported to LICENSEE during such quarter as having been made and furnished to customers and other DISTRIBUTORS by AUTHORIZED COPIERS;
 - (ii) the SOFTWARE PRODUCT on which each such SUBLICENSSED PRODUCT is based;
 - (iii) the per-copy sublicensing fees for such copies and, if applicable, whether such fees are based on such factors as a limitation on number of users, a fee for a combination of products or a right granted to a customer to use a copy of a SUBLICENSSED PRODUCT on multiple CPUs;
 - (iv) the NET AMOUNT of the quarterly payment;
 - (v) the DISCOUNT PERCENTAGE used in calculating such NET AMOUNT;
 - (vi) any estimated GROSS AMOUNT used pursuant to Section 4.02(b); and
 - (vii) any AUTHORIZED COPIER added or terminated during the quarter covered by such statement.
 - (viii) the number of EVALUATION COPIES for each SUBLICENSSED PRODUCT:
 - (1) distributed during such quarter;
 - (2) outstanding at the end of each such quarter, irrespective of when

distributed;

- (3) returned to LICENSEE during such quarter, irrespective of when distributed; and
- (4) which, during such quarter, became subject to normal per-copy fee treatment.

Each SUBLICENSSED PRODUCT for which LICENSEE has given notice to NOVELL pursuant to Section 5.02(a) shall be covered by such statement.

- (c) Each BLOCKSIZE COPY of a SUBLICENSSED PRODUCT authorized to be reproduced by a customer pursuant to Section 2.10 above shall be deemed to be a copy of a SUBLICENSSED PRODUCT distributed by LICENSEE. The per-copy fee payable by LICENSEE to NOVELL for each such BLOCKSIZE COPY shall accrue as of the effective date of the end-user license agreement authorizing the reproduction of such copy. LICENSEE shall, in its quarterly reports to NOVELL, provide breakdowns of the applicable BLOCKSIZE COPIES separate from the reporting of other copies actually distributed by LICENSEE or its AUTHORIZED COPIERS.
 - (d) No refunds or credits will be issued by NOVELL to either LICENSEE or the end-user customer, even if audit reveals that the customer has reproduced less than the pre-authorized number of BLOCKSIZE COPIES at the time of such audit.
 - (e) Within such thirty (30) days, LICENSEE shall, irrespective of its own business and accounting methods, pay to NOVELL the quarterly payment for such quarter as shown in the statement required by Section 5.02(b).
 - (f) LICENSEE shall furnish whatever additional information NOVELL may reasonably prescribe from time to time to enable NOVELL to ascertain the amounts of fees payable pursuant hereto.
- 5.03 Payments provided for in this Sublicensing Agreement shall, when overdue, be subject to a late payment charge calculated at an annual rate of three percent (3%) over the posted prime rate or successive posted prime rates in effect in New York City during delinquency; provided, however, that if the amount of such late payment charge exceeds the maximum permitted by law for such charge, such charge shall be reduced to such maximum amount.

VI. MISCELLANEOUS PROVISIONS

- 6.01 Neither this Sublicensing Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by LICENSEE and any purported assignment or transfer shall be null and void.

- 6.02 (a) Payments to NOVELL under this Sublicensing Agreement shall be made payable and sent to:
- Novell, Inc.
P.O. Box 65080
Charlotte, North Carolina 28265
- (b) Correspondence with NOVELL relating to this Sublicensing Agreement shall be sent to:
- Novell, Inc.
P.O. Box 4000
Summit, New Jersey 07901
Attention: Licensing Operations
- (c) Any statement, notice, request or other communication shall be deemed to be sufficiently given to the addressee and any delivery hereunder deemed made when sent by certified mail addressed to LICENSEE at its office specified in this Sublicensing Agreement or to NOVELL at the appropriate address specified in this Section 6.02. Each party to this Sublicensing Agreement may change an address relating to it by written notice to the other party.
- 6.03 If LICENSEE is not a corporation, all references to LICENSEE'S SUBSIDIARIES shall be deemed deleted.
- 6.04 The construction and performance of this Sublicensing Agreement shall be governed by the law of the State of New York.