ZENworks_® 10 Configuration Management SP2 (10.2) ZENworks 10 Asset Management SP2 (10.2)

Novell_® Software License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY. BY INSTALLING, DOWNLOADING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE AND, IF APPLICABLE, RETURN THE ENTIRE UNUSED PACKAGE TO THE RESELLER WITH YOUR RECEIPT FOR A REFUND. THE SOFTWARE MAY NOT BE SOLD, TRANSFERRED, OR FURTHER DISTRIBUTED EXCEPT AS AUTHORIZED BY NOVELL.

This Novell Software License Agreement ("Agreement") is a legal agreement between You (an entity or a person) and Novell, Inc. ("Novell"). The software product identified in the title of this Agreement, any media and accompanying documentation (collectively the "Software") is protected by the copyright laws and treaties of the United States ("U.S.") and other countries and is subject to the terms of this Agreement. Any update or support release to the Software that You may download or receive that is not accompanied by a license agreement expressly superseding this Agreement is Software and governed by this Agreement. If the Software is an update or support release, then You must have validly licensed the version and quantity of the Software being updated or supported in order to install or use the update or support release.

The Software may include or be bundled with other software programs licensed under different terms and/or licensed by a licensor other than Novell. Use of any software programs accompanied by a separate license agreement is governed by that separate license agreement. Any third party software that may be provided with the Software is included for use at Your option.

LICENSED USE

Commercial Software.

The following licenses apply to Your use of the Software depending on which product licenses You have purchased (ZENworks Configuration Management Standard, Advanced or Enterprise suite or the ZENworks Asset Management product) and whether You have purchased licenses to the Software on a User license model or an Instance license model. Please see the relevant section below. In the event of any conflict between this Agreement and a license agreement accompanying an individual product in the suite, this Agreement shall prevail.

"User" means a user object in a single directory tree (or other class of object that contains data representing a person, such as objects containing credit card information or PIN numbers) that has (a) access or use rights to any portion of the Software, or (b) access or use rights to products (devices, hardware, or software) being managed by the Software, regardless of whether the user object is assigned to a person or device. User objects (or other classes of objects) representing the same person that are linked to each other within a single tree and/or linked across multiple trees count as only one User.

"Instance" means the initial copy of the Software necessary for execution of the Software and each additional copy (or partial copy) of the Software stored or loaded in memory or virtual memory.

User License:

You must acquire a user license for each User. Each person who accesses or uses the Software must have at least one user object uniquely assigned to that person and access the Software through the user object. Provided that You comply with the above requirements, You are authorized to use an unlimited number of copies of the Software.

Instance License:

You must acquire an instance license for each Instance of the agent Software.

ZENworks 10 Patch Management SP2 (10.2). Please see terms and conditions in the attached Appendix.

Evaluation Software. If the Software is an evaluation version or is provided to You for evaluation purposes, then Your license to use the Software is limited solely to internal evaluation purposes and in accordance with the terms of the evaluation offering under which You received the Software and expires 90 days from installation (or such other period as may be indicated within the Software). Upon expiration of the evaluation period, You must discontinue use of the Software, return to an original state any actions performed by the Software, and delete the Software entirely from Your system. The Software may contain an automatic disabling mechanism that prevents its use after a certain period of time, so You should back up Your system and take other measures to prevent any loss of files or data.

RESTRICTIONS

<u>License Restrictions</u>. Novell reserves all rights not expressly granted to You. The Software is licensed for Your internal use only. You may not (1) reverse engineer, decompile, or disassemble the Software except and only to the extent it is expressly permitted by applicable law; (2) modify, alter, rent, timeshare host or lease the Software or sublicense any of Your rights under this Agreement; or (3) transfer the Software or Your license rights under this Agreement, in whole or in part, without written permission by Novell.

<u>Suite Licenses</u>. If Your license to use the Software is for a suite of products, then for each license only one user may use the products in the suite. The suite license does not allow use of individual products in the suite by multiple users if licensed on a user basis or multiple devices if licensed on a device or server basis.

<u>Upgrade Protection</u>. If You purchased upgrade protection or maintenance under a Novell program for this Software, the upgrade protection or maintenance only entitles You to upgrades of the Software as a whole and does not entitle You to upgrades of any component programs or products bundled with the Software or any individual products included in a suite if the Software is licensed as a suite of products. You may separately purchase upgrade protection for individual components of the Software if permitted by the applicable Novell policies and programs.

<u>Upgrade Software</u>. This section applies to You if You have purchased the Software based upon upgrade pricing. "Original Product" means the product from which You are upgrading. You are authorized to use the Software only if You are the authorized user of the Original Product and You meet the following conditions: (1) You have acquired the right to use the Software solely to replace the Original Product that You acquired legally and that is qualified to be upgraded with the Software under the Novell policies existing at the time You acquired the Software; (2) You installed and used the Original Product in accordance with the terms and conditions of the applicable license agreement; and (3) You will not sell or otherwise transfer possession of the Original Product.

Support. Novell has no obligation to provide support unless You purchase an offering that expressly includes support services. If You make such a purchase and no separate agreement specifically applies to the support services, then the terms of this Agreement will govern the provision of such support services ("Services"). For more information on Novell's current support offerings, see http://www.novell.com/support.

OWNERSHIP

No title to or ownership of the Software is transferred to You. Novell and/or its licensors retain all right, title and interest in and to all intellectual property rights in the Software and Services, including any adaptations or copies thereof. You acquire only a conditional license to use the Software.

LIMITED WARRANTY

For ninety (90) days from Your date of purchase, Novell warrants that (1) any media on which the Software is delivered is free from physical defects; and (2) the Software will substantially conform to the documentation accompanying the Software. If the defective items are returned to Novell or if You report the nonconformity to Novell within ninety (90) days from the date of purchase, Novell will at its sole discretion either resolve the nonconformity or refund the license fees You paid for the Software. Any unauthorized use or modification to the Software voids this warranty. THE FOREGOING WARRANTY IS YOUR SOLE AND EXCLUSIVE REMEDY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. (The foregoing warranty does not apply to Software provided free of charge. SUCH SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND.)

<u>Services</u>. Novell warrants that any Services purchased will be supplied in a professional manner in accordance with generally accepted industry standards. This warranty will be effective for ninety (90) days following delivery of the Services. Upon any breach of this warranty, Novell's only obligation is to either correct the Services so that they comply with this warranty or at its option refund the amount You paid to Novell for the portion of the Services that fail to comply with this warranty. As files may be altered or damaged in the course of Novell providing technical services, You agree to take appropriate measures to isolate and back up Your systems.

THE SOFTWARE IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE OR DISTRIBUTION WITH ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATION, OR CONTROL SYSTEMS, DIRECT LIFE SUPPORT MACHINES, WEAPONS SYSTEMS, OR OTHER USES IN WHICH FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

THE SOFTWARE IS ONLY COMPATIBLE WITH CERTAIN COMPUTERS AND OPERATING SYSTEMS. THE SOFTWARE IS NOT WARRANTED FOR NON-COMPATIBLE SYSTEMS. Call Novell or Your reseller for information about compatibility.

Non-Novell Products. The Software may include or be bundled with hardware or other software programs or services licensed or sold by an entity other than Novell. NOVELL DOES NOT WARRANT NON-NOVELL PRODUCTS OR SERVICES. ANY SUCH PRODUCTS OR SERVICES ARE PROVIDED ON AN "AS IS" BASIS. WARRANTY SERVICE IF ANY FOR NON-NOVELL PRODUCTS IS PROVIDED BY THE PRODUCT LICENSOR IN ACCORDANCE WITH THE APPLICABLE LICENSOR WARRANTY.

EXCEPT AS OTHERWISE RESTRICTED BY LAW, NOVELL DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. NOVELL MAKES NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THIS LIMITED WARRANTY. NOVELL DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL SATISFY YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED. Some jurisdictions do not allow certain disclaimers and limitations of warranties, so portions of the above limitations may not apply to You. This limited warranty gives You specific rights and You may also have other rights which vary by state or jurisdiction.

LIMITATION OF LIABILITY

Consequential Losses. NEITHER NOVELL NOR ANY OF ITS LICENSORS, SUBSIDIARIES, OR EMPLOYEES WILL IN ANY CASE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, TORT, ECONOMIC OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR SERVICES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. Direct Damages. IN NO EVENT WILL NOVELL'S AGGREGATE LIABILITY FOR DIRECT DAMAGES TO PROPERTY OR PERSON (WHETHER IN ONE INSTANCE OR A SERIES OF INSTANCES) EXCEED 1.25 TIMES THE AMOUNT PAID BY YOU FOR THE SOFTWARE OR SERVICES OUT OF WHICH SUCH CLAIM AROSE (OR \$50 (U.S.) IF YOU RECEIVED THE SOFTWARE FREE OF CHARGE). The above exclusions and limitations will not apply to claims relating to death or personal injury. In those jurisdictions that do not allow the exclusion or limitation of damages, Novell's liability shall be limited or excluded to the maximum extent allowed within those jurisdictions.

GENERAL TERMS

Term. This Agreement becomes effective on the date You legally acquire the Software and will automatically terminate if You breach any of its terms. If the Software is provided to You on a subscription basis, then Your right to possess or use the Software will terminate at the end of the applicable subscription period. Upon termination of this Agreement or any applicable subscription period, You must destroy the original and all copies of the Software or return them to Novell and delete the Software from Your systems.

Benchmark Testing. This benchmark testing restriction applies to You if You are a software developer or licensor or if You are performing testing on the Software at the direction of or on behalf of a software developer or licensor. You may not, without Novell's prior written consent not to be unreasonably withheld, publish or disclose to any third party the results of any benchmark test of the Software. If You are a licensor of products that are functionally similar to or compete with the Software ("Similar Products"), or are acting on behalf of such a licensor, and You publish or disclose benchmark information on the Software in violation of this restriction, then notwithstanding anything to the contrary in the Similar Product's end user license agreement, and in addition to any other remedies Novell may have, Novell shall have the right to perform benchmark testing on Similar Products and to disclose and publish that benchmark information and You hereby represent that You have authority to grant such right to Novell.

<u>Open Source</u>. Nothing in this Agreement shall restrict, limit or otherwise affect any rights or obligations You may have, or conditions to which You may be subject, under any applicable open source licenses to any open source code contained in the Software.

Transfer. This Agreement may not be transferred or assigned without the prior written approval of Novell.

<u>Law and Jurisdiction</u>. This Agreement is governed by the laws of the State of Utah, U.S. Any action at law relating to this Agreement may only be brought before the courts of competent jurisdiction of the State of Utah. If, however, Your country of principal residence is a member state of the European Union or the European Free Trade Association, this Agreement is governed by the laws of that country, and any action at law may only be brought before a court of competent jurisdiction of that country.

<u>Entire Agreement</u>. This Agreement sets forth the entire understanding and agreement between You and Novell and may be amended or modified only by a written agreement agreed to by You and an authorized representative of Novell. NO LICENSOR, DISTRIBUTOR, DEALER, RETAILER, RESELLER, SALES PERSON, OR EMPLOYEE IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY REPRESENTATION OR PROMISE THAT IS DIFFERENT FROM, OR IN ADDITION TO, THE TERMS OF THIS AGREEMENT.

<u>Waiver</u>. No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of the party to be bound. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.

Severability. If any provision in this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.

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 before exporting Novell products from the U.S. Please refer to http://www.novell.com/company/legal/ 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.

<u>U.S. Government Restricted Rights.</u> Use, duplication, or disclosure by the U.S. Government is subject to the restrictions in FAR 52.227-14 (June 1987) Alternate III (June 1987), FAR 52.227-19 (June (1987), or DFARS 252.227-7013 (b) (3) (Nov 1995), or applicable successor clauses. Contractor/Manufacturer is Novell, Inc., 1800 South Novell Place, Provo, Utah 84606.

Other. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

© 1993, 2000-2009 Novell, Inc. All Rights Reserved. (031309)

Novell and ZENworks are registered trademarks of Novell, Inc. in the United States and other countries.

LUMENSION END USER LICENSE AGREEMENT

NOTICE TO USERS: CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT. THE USE OF THE SOFTWARE PROVIDED WITH THIS AGREEMENT (THE "SOFTWARE") CONSTITUTES YOUR ACCEPTANCE OF THESE TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PROMPTLY REMOVE THE SOFTWARE TOGETHER WITH ALL COPIES FROM YOUR COMPUTER. THIS SOFTWARE IS PROVIDED TO YOU AS A PART OF A MULTI-PRODUCTS SUITE AND THIS SOFTWARE IS PROVIDED TO YOU WITH A NINETY (90) DAY EVALUATION PERIOD TO THE LICENSED SERVICE. AFTER THE EVALUATION PERIOD, YOU ARE REQUIRED TO PURCHASE A SUBSCRIPTION TO THE LICENSED SERVICE OR YOU WILL LOSE ALL PRIVILEGES TO ACCESS NEW OR ADDITIONAL INFORMATION AND DATA REQUIRED TO USE THE SOFTWARE. YOU ASSUME RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE INSTALLATION, USE, AND RESULTS OBTAINED FROM THE SOFTWARE.

1. DEFINITIONS.

- a. "Use" means, without limitation, installing, executing, displaying, loading, viewing, storing or copying (for backup or archival purposes provided that all titles, trademark symbols, copyright symbols and legends, and other proprietary markings of the Software are reproduced on the copy) the Software for Licensee's internal business purposes only.
- b. "SOFTWARE" is understood to mean the COMPANY computer software program (in object code form only), including documentation, together with any modifications, corrections, improvements, enhancements and releases to which Licensee is entitled pursuant to this License Agreement.
 - c. "You," "Your," and "Licensee" shall mean the person(s) or entity that purchased the SOFTWARE.
- 2. LICENSE GRANT. Lumension Security, Inc. ("COMPANY") grants to You a nonexclusive, nontransferable right to Use the SOFTWARE on file servers or user computers, (i) in a quantity not exceeding the number of computers allowed by any technological measure associated with the SOFTWARE, or (ii) in the event no such measure exists, in a quantity that is unlimited. You will have rights to updates of this product and the information this product uploads from COMPANY for as long as You have a SUBSCRIPTION to the services described in the SUBSCRIPTION section hereunder. This Agreement entitles You to a perpetual ownership of a license for this product but it is conditioned upon Your compliance with the terms of this Agreement. You agree that You will only copy the SOFTWARE into any machine-readable or printed form as necessary to Use it in accordance with this license or for backup purposes in support of Your Use of the SOFTWARE. This license is effective until terminated. You may terminate it at any point by destroying the SOFTWARE together with all copies of the SOFTWARE. In addition, COMPANY has the option to terminate if You fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy the SOFTWARE together with copies of the SOFTWARE.
- 3. LICENSE RESTRICTIONS. COMPANY reserves all rights not expressly granted to You. You, Your agents, employees, affiliates and any other person or entity under Your control shall not have the right under this Agreement or otherwise to: (1) reverse engineer, decompile, disassemble, re-engineer, modify, translate, make any other attempt to discover the source code of the SOFTWARE, or otherwise create or attempt to create or permit, allow, or assist others to create the source code, methods, documentation, updates or their structural framework; or (2) to use the Licensed programs/Client SOFTWARE in whole or in part for any purpose except as expressly provided under this Agreement, (3) use, copy, modify, or transfer the software, or any copy, modification, or merged portion, in whole or in part except as expressly provided for in this Agreement; write or develop any derivative works based on the SOFTWARE, its documentation or any training received by COMPANY; (4) use the SOFTWARE to provide processing services to third parties, to provide commercial timesharing, rental or sharing arrangements to third parties, on a "service bureau" basis, or to otherwise allow any third party to use the SOFTWARE for the benefit of any third party; (5) provide, disclose, divulge or make available to, or permit use of or access to the SOFTWARE by other persons or entities or (6) remove, efface or obscure any copyright notices or proprietary notices or legends from the Software or any Confidential Information provided by COMPANY. Licensee agrees to safeguard all Software against use, copying, transfer, or inspection by any third party.
- 4. OWNERSHIP RIGHTS. No title to or ownership of the Software is conveyed to You. The SOFTWARE and any/all documentation is protected by copyright, trademark, patent ant trade secret laws. You must prevent any unauthorized use or copying of the SOFTWARE and documentation. Company owns and retains all title and ownership of all intellectual property rights in the SOFTWARE and documentation, including any adaptations or copies. You acquire only a license to use the Software.
- 5. SUBSCRIPTION. The SUBSCRIPTION service entitles the subscriber to the download of the current data necessary for the complete operation of the Software and the computer system that relies upon the SOFTWARE. The owner of the license granted pursuant to this Agreement is entitled to purchase a SUBSCRIPTION for the SOFTWARE. The purchase of a SUBSCRIPTION will enable connection to the computer systems that publish the current information and data by the SOFTWARE. Note that the ownership of a license for the SOFTWARE does not entitle You to a SUBSCRIPTION, as the SUBSCRIPTION is a subscriber service that requires payments. For further information on the Subscription Service, please call Novell, Your Novell reseller, or go to www.novell.com/zenworks.
- 6. EVALUATION PERIOD. This SOFTWARE is provided to You as part of a suite of products and the SOFTWARE is an evaluation copy of the complete version of the Company's SOFTWARE. This evaluation copy will give You full access to the SOFTWARE and SUBSCRIPTION service for ninety (90) days. Your license to use the SOFTWARE is limited solely to internal evaluation purposes in accordance with the terms of this Agreement. Upon expiration of the ninety (90) days, the SUBSCRIPTION SERVICE will no

longer accept inquiries and data from the SOFTWARE. The SOFTWARE will continue to function without any current updates, information or data. Use of the Software after the Evaluation period is entirely at YOUR OWN RISK.

- 7. LIMITED WARRANTY. For ninety (90) days from the date of purchase, Company warrants that the media (for example, diskettes or CD-ROMS) on which the SOFTWARE is contained will be free from defects in materials or workmanship.
- 8. CUSTOMER REMEDIES. If the SOFTWARE does not conform to the limited warranty in Section 7 above ("Limited Warranty"), Your sole remedy shall be to return the media with a description of the problem to Novell. Novell will replace the defective media in which the SOFTWARE is contained at no additional charge to You. The Limited Warranty is void if failure of the SOFTWARE has resulted from accident, abuse or misapplication. Any replacement SOFTWARE will be warranted for the remainder of the original Limited Warranty period.
- 9. NO OTHER WARRANTIES. THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND WITH THE EXCEPTION OF THE LIMITED WARRANY PROVIDED IN SECTION 7 ("LIMITED WARRANTY"), COMPANY DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTIBILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU, THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.
- 10. LIMITATION OF LIABILITIES. IN NO EVENT WILL COMPANY BE LIABLE TO YOU FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF RECREATING LOST DATA, COST OF COVER, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OUT OF THE USE OR INABLITY TO USE SUCH SOFTWARE, SUBSCRIPTION SERVICE OR SAID ITEMS OR SERVICES EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM BY ANY OTHER PARTY. COMPANY'S LIABILITY FOR DAMAGES, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABLITY, REGARLESS OF WHETHER COMPANY HAS BEEN NOTIFIED OF THE POSSIBLITY OF SUCH ACTION SHALL NOT EXCEED THE AGGREGATE CHARGES PAID BY YOU, IF ANY, FOR THE (1) AMOUNT OF THE LICENSE FEES PAID TO COMPANY BY LICENSEE OR OTHER THIRD PARTY PROVIDER IF THE PRODUCT IS BUNDLED BY A THIRD PARTY (PROVIDED THAT SUCH LOSS OR DAMAGES IS NOT RELATED TO THE SUBSCRIPTION SERVICES). THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11. GENERAL TERMS.

- a. Term of Agreement. This Agreement becomes effective on the date You legally acquire the SOFTWARE and will automatically terminate if You breach any of its terms. Upon termination of this Agreement, You must destroy the original and all copies of the SOFTWARE or return them to Company and delete the SOFTWARE from Your Systems.
- b. Severability. In the event of invalidity of any provision of this License, the parties agree that such invalidity shall not affect the validity of the remaining portions of this License.
- c. Governing Law. This License shall be governed by the internal laws of the State of Arizona with the exception of its choice of laws provisions.
- d. Government End Users. If You are acquiring the Software and Documentation on behalf of any unit or agency of the United States Government, the following provisions apply. The Government agrees:
- i. if the Software and Documentation are supplied to the Department of Defense (DoD), the Software, and Documentation are classified as "Commercial Computer Software" and the Government is acquiring only "restricted rights" in the Software and Documentation as that term is defined in Clause 252.227-7013(c)(1) of the DFARS; and
- ii. if the Software and Documents are supplied to any unit or agency of the United States Government other than DoD, the Government's rights in the Software and its Documentation will be defined in Clause 52.227-19(c)(2) of the FAR or, in the case of NASA, in Clause 18-52.227-86(d) of the NASA Supplement to the FAR.
- e. Assignment. The Licensee may not transfer or assign this Agreement without the prior written consent of the Company (or Novell).
 - f. Captions. Captions contained in this Agreement are for reference purposes only and are not part of this Agreement.
- g. Entire Agreement. This Agreement represents the entire Agreement between the parties with respect to the Software licensed under this End User License Agreement. All prior proposals, understandings, and other agreements, whether oral or written, between the parties that relate to this subject matter are hereby superceded and merged into this Agreement. This Agreement may not be modified or altered except in writing by an instrument duly executed by authorized officers of both parties.
 - h. Waiver. The failure of either party to enforce at any time any of the provisions hereof or exercise any right or option

hereunder shall not be construed to be a waiver of the right of such party thereafter to enforce any such provisions or exercise such right or option. Any consent by any party to, or waiver of, a breach by the other, shall not constitute consent to, waiver of, or excuse of any other, different or subsequent breach.

i. Compliance with Export and Other Laws. Licensee shall not export, ship, transmit or re-export any part of the Software or Documentation in violation of any applicable law or regulation including, without limitation, the Export Administration Act of 1979 or the Export Administration Regulations issued by the United States Department of Commerce.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDTIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES THAT SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN US RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.