

EXHIBIT 1

Strategic Development Agreement
Between
Novell, Inc. and The Santa Cruz Operation, Inc.

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Strategic Development Agreement for NetWare Software
between
Novell, Inc. and The Santa Cruz Operation, Inc.

This Strategic Development Agreement ("SDA"), having an effective date of December 6, 1995, is agreed to by The Santa Cruz Operation, Inc. (hereinafter referred to as "SCO"), a California corporation having a principal place of business at 400 Encinal Street, Santa Cruz, California 95060 and Novell, Inc. (hereinafter referred to as "Novell"), a Delaware corporation with principal offices at 122 East 1700 South, Provo, Utah 84606.

1 OVERVIEW. Each Statement of Work shall be deemed to incorporate by reference this Section 1 unless the Statement of Work explicitly states otherwise.

1.1 Purpose. Novell and SCO are interested in satisfying the needs of their respective customers and in increasing the ease of use and interoperability of Novell and SCO products. Novell and SCO have developed and intend to continue to develop products to achieve such ease of use and interoperability. Novell and SCO desire to establish through this SDA the terms and conditions for use by them with regard to the development, licensing, sales or other activities of such products.

1.2 Description Of This SDA. This SDA contains terms and conditions for all business transactions between Novell and SCO that are within its scope. Novell and SCO intend to implement all individual business transactions that are within the scope of this SDA through individual Statements of Work under this SDA. This SDA, by itself, does not implement any specific business transaction and does not create an obligation on either party to enter into any Statement of Work or to develop, license, purchase or sell any product or service, or to refrain from doing so.

1.3 Functional Coordination. The parties intend to coordinate activities under this SDA through Executive Coordinators, who shall be individuals of rank of vice president or higher within each company. Novell and SCO designate the following individuals as their Executive Coordinators under this SDA. Each party will advise the other in writing of any changes regarding its Executive Coordinator.

The SCO Executive Coordinator is:

Scott McGregor
Executive Vice President
The Santa Cruz Operation, Inc.
400 Encinal Street
Santa Cruz, California 95061-1900
Telephone: (408) 427-7762 Fax: (408) 427-5417

The Novell Executive Coordinator is:

Richard King
Executive Vice President
Novell, Inc.
122 East 1700 South
Provo, Utah 84606
Telephone: (801) 429-7799 Fax: (801) 429-3951

2 DEFINITIONS. This SDA, and each of the Statements of Work, incorporates by reference the definitions stated in this Section 2.

2.1 Change of Control - shall mean when (1) any person or group (within the meaning of Rule 13d-5 under the Securities Exchange Act as in effect on the date hereof) shall come to own, directly or indirectly, beneficially or of record, voting securities representing more than 50% of the total voting power of one of the parties, or (2) one of the parties becomes a subsidiary of some third-party.

2.2 Code - shall mean computer programming code. Unless specifically stated otherwise, Code shall include Binary Code and Source Code.

2.3 Binary Code - shall mean Code that loads and executes without further processing by a software compiler or linker or that results when Source Code is processed by a software compiler.

2.4 Source Code - shall mean the human-readable form of the Code and related system documentation, including all comments and any procedural language.

2.5 SCO Code, Novell Code, or Third-Party Code - shall mean Code in which SCO, Novell, or a third party, respectively is the copyright owner.

2.6 Deliverable - shall mean any Materials procured or prepared by one party under a Statement of Work for delivery to the other party. Whether or not actually delivered to the other party, Deliverables shall in all cases include all Code, Documentation, media and other objects identified as Deliverables in the Statement of Work.

2.7 Derivative Work - shall mean a work that is based on one or more preexisting works (such as a revision, enhancement, modification, translation, abridgement, condensation, expansion, or any other form in which such preexisting work may be recast, transformed, or adapted) and that, if prepared without authorization of the copyright owner of such preexisting work, would constitute copyright infringement under US law.

2.8 Development Environment - shall mean any non-commercially available device, Code, Documentation, media or development tool (including compilers, workbenches, tools, and higher-level or proprietary languages) that are used or required by a party for the development, maintenance or implementation of any Deliverable.

2.9 Documentation - shall mean user manuals and other written materials that relate to particular Code, including materials useful for design (for example, logic manuals, flow charts, and principles of operation), and including machine-readable text or graphic files subject to display or print-out. Documentation shall include any Maintenance Modifications or Enhancements, in existence from time to time, to prior Documentation and shall also include new versions of prior Documentation.

2.10 Enhancements - shall mean changes, additions or new releases, other than Maintenance Modifications, to Code and to related Documentation that are provided to existing end-users without charge and that improve functions, add new functions, or improve performance by changes to system design or coding.

2.11 Error - shall mean a Code Error: a program function that is described in a user Documentation or a Statement of Work but is omitted from the Code, or a program function or user interface that does not operate or that gives incorrect results when measured against its design specifications, or a Documentation Error: a failure of the Documentation to accurately describe a program function contained in a Statement of Work; or, a failure of the Documentation to meet the requirements of the Statement of Work; or, a failure of the Documentation to enable reasonably competent users to correctly operate the associated Code.

2.12 General Availability and Generally Available - shall mean, with respect to a particular Material, the date that the Material is made available to members of the general public.

2.13 Licensed Work - shall mean any Materials that are licensed by one party to the other party under a Statement of Work.

2.14 Maintenance Modification - shall mean any modification or revision to Code or to Documentation, other than an Enhancement, that corrects an Error or provides an other incidental correction.

2.15 Materials - shall mean Code, Documentation and other written materials or tangible media (including machine-readable media with Code or Documentation recorded thereon), or any combination of the foregoing. SCO Materials, Novell Materials, or Third-Party Materials shall mean Materials in which SCO, Novell, or a third party, respectively, is the copyright owner.

2.16 Subsidiary - shall mean a corporation, company or other entity (1) more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or (2) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, but more than fifty percent (50%) of whose ownership interest representing the right to make the decisions for such corporation, company or other entity is, now or hereafter, owned or controlled, directly or indirectly, by a party hereto. However, such corporation, company or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists.

3 ADMINISTRATION OF A STATEMENT OF WORK. Each Statement of Work shall be deemed to incorporate by reference this Section 3 unless the Statement of Work explicitly states otherwise.

3.1 Procedure For Entering Into A Statement of Work. The persons at Novell and SCO who are responsible for individual business transactions that are within the scope of this SDA shall advise their respective Executive Coordinators before executing a Statement of Work and shall provide the Executive Coordinators with copies of the executed Statement of Work. An individual Statement of Work shall only become effective upon execution by authorized representatives of both parties.

3.2 Identification Of An Individual Statement of Work. Each individual Statement of Work will be identified by a numerical or alphanumeric sequence, as determined by the parties, its title and effective date such as, for example, "Statement of Work No. 1 for ABC Development Effective On 1/1/96".

3.3 Required Contents Of Each Statement of Work. Each Statement of Work shall contain (or incorporate as attachments or by reference):

- 3.3.1 A title identifying the Statement of Work and an effective date on which the Statement of Work becomes effective between the parties.
- 3.3.2 A brief description describing the scope of the Statement of Work.
- 3.3.3 Designation of a Novell Project Manager and a SCO Project Manager and their addresses, telephone numbers and telefax numbers.
- 3.3.4 Description of Novell's responsibilities, including work or services to be performed, and schedules for any development or delivery. A Statement of Work need not contain sections entitled "Novell Responsibilities" or "SCO Responsibilities."
- 3.3.5 Description of SCO's responsibilities, including work or services to be performed, and schedules for any development or delivery.
- 3.3.6 Description or specification of any item to be developed or delivered.
- 3.3.7 Description of payments to be made, if any, by one party to the other as consideration under the Statement of Work, including the amount, method of calculation, schedule of payments, and address to which such payments are to be made.

3.4 Optional Contents Of Each Statement of Work. In addition, a Statement of Work may contain (or incorporate as attachments or by reference):

- 3.4.1 Ownership terms between the parties.
- 3.4.2 Grant of a copyright license by one party to the other by identifying the specific Licensed Work to be licensed and either (i) by incorporating one or more specific licenses described in Section 5 below, or (ii) by stating other license terms. No copyright license shall be presumed if the Statement of Work does not contain an explicit grant.
- 3.4.3 Grant of a trademark license by one party to the other. The trademark license will specify detailed license terms and must be approved by the Legal Departments of both Novell and SCO. No trademark license shall be presumed if the Statement of Work does not contain an explicit grant.
- 3.4.4 Covenant not to sue under patent by one party to the other by identifying the specific Licensed Work to which the covenant applies and either (i) by incorporating one or more specific covenants not to sue described in Section 8.2 below, or (ii) by stating other. No patent license or covenant not to sue shall be presumed if the Statement of Work does not contain an explicit grant.
- 3.4.5 Warranty provisions, such as scope, nature, term, or limitations.
- 3.4.6 Provision for progress reports by the Project Manager(s).
- 3.4.7 A commitment on each party to provide to the other party, at no charge and as part of the License Work, Enhancements and Maintenance Modifications to the Licensed Work on selected platforms before their becoming generally available to the public.
- 3.4.8 Additional specifications, such as acceptance criteria, documentation specifications and standards, quality standards, performance specifications, or usability and architecture requirements.
- 3.4.9 Resource requirements, such as training or assignment of key personnel.
- 3.4.10 Special term or termination provisions.

3.4.11 Other appropriate terms.

3.5 Project Managers. Unless otherwise specified in a Statement of Work, each party's Project Manager shall be responsible for managing that party's performance under the Statement of Work and for all necessary coordination with the other party's Project Manager. Each party's Project Manager will provide periodic progress reports to the other party's Project Manager. Each party will advise the other in writing of any change regarding its Project Manager.

4 OWNERSHIP UNDER A STATEMENT OF WORK. Each Statement of Work shall be deemed to incorporate by reference this Section 4 unless the Statement of Work explicitly states otherwise. A Statement of Work shall be presumed not to change the ownership terms stated in Section 8.1 below in patents and inventions, the rights of ownership arising under copyright, or any pre-existing ownership rights unless explicitly stated otherwise in a Statement of Work.

5 COPYRIGHT LICENSE IN A STATEMENT OF WORK. A Statement of Work may contain a grant by one party ("Copyright Licensor") to the other party ("Copyright Licensee") of a copyright license to a Licensed Work identified in the Statement of Work. As stated above in Section 3.4.2, the Statement of Work may specifically incorporate one or more of the copyright licenses described in this Section 5 or it may recite other license terms. If the Statement of Work incorporates a copyright license described in this Section 5, the Statement of Work may include additional terms that add to or modify the terms of the incorporated copyright license.

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5.1.6 To use all Development Environment Materials that accompany the Licensed Work to produce Binary Code that is identical to that produced by the Copyright Licensor.

5.1.7 To sublicense the Licensed Work in Source Code Form subject to the confidentiality requirements contained in Section 10.3 and the individual Statement of Work.

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5.4.2 To distribute externally to end-users, either directly or through distributors, copies in Binary Code form only of the Licensed Work and copies of the Documentation of the Licensed Work in combination with the Licensed Work. Except as explicitly stated in the Statement of Work, such distribution shall be in accordance with the Copyright Licensee's standard software distribution license practices as set forth in Section 5.1.4 above.

5.4.3 To exercise all rights to the Licensed Work with regard to pictorial, graphic or audio/visual works, including icons, screens, music and characters, that are created as a result of execution of the Code of the Licensed Work but only as necessary to in the licensed use of the Licensed Work.

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5.5.2 To distribute externally to end-users, either directly or through distributors, copies of the Licensed Work obtained from the Copyright Licensor, in accordance with the Copyright Licensor's standard licensing and distribution practices.

5.6 Internal Use License. Internal use means use within the Copyright Licensee and its Subsidiaries by its employees and its individual human contractors and not with another entity outside of the Copyright Licensee and its Subsidiaries. Under an Internal Use License, the Copyright Licensor grants to the Copyright Licensee a license under the terms of a Maintenance Source License (if Source Code is provided to the Copyright Licensee) as provided above in Section 5.3, or under the terms of an OEM License (if no Source Code is provided to the Copyright Licensee) as provided above in Section 5.4, except that the Copyright Licensee may use the Materials received or developed under the Statement of Work only internally within the Copyright Licensee and shall not transfer, sell or in any way distribute such Materials outside of the Copyright Licensee.

6 TRADEMARK LICENSE IN A STATEMENT OF WORK. A Statement of Work may contain a grant by one party to the other of a trademark license to one or more Licensed Marks identified in the Statement of Work. As stated above in Section 3.4.3, the Statement of Work will specify detailed trademark license terms and must be approved by the Legal Departments of both Novell and SCO. No trademark license shall be presumed if the Statement of Work does not contain an explicit grant.

7 COMPENSATION DUE UNDER A STATEMENT OF WORK. Each Statement of Work shall be deemed to incorporate by reference this Section 7 unless the Statement of Work explicitly states otherwise.

7.1 Payments And Royalties. A Statement of Work may specify that one party is to pay the other certain compensation for the other party's performance under the Statement of Work or for rights or licenses granted under the Statement of Work. The payments specified in the Statement of Work are in consideration of the other party's performance and grant of rights or licenses under the Statement of Work. Such payments may include, for example, a one-time payment and/or per-copy or percentage of sales price royalties based on the use or distribution of Licensed Works. All payments shall be made to the address below:

Novell Inc.
122 East 1700 South
Provo, Utah 84606

The Santa Cruz Operation, Inc.
400 Encinal Street
Santa Cruz, CA 95061-1900

Attn: Accounts Receivable

Attn: Accounts Receivable

7.2 No Royalties for Certain Uses. Except as specifically stated in a Statement of Work, no royalty or other charge shall be payable by either party for any copies of Licensed Works that are used, executed, reproduced, displayed, performed and/or distributed only:

7.2.1 For a party's internal development, maintenance or support activities pertaining to the Licensed Work, or

7.2.2 For sales demonstrations or temporary customer testing, maintenance or support activities, or

7.2.3 For training or educational purposes that are directly related to the sale and licensing of the Licensed Works, or

7.2.4 As back-up or archival copies.

7.3 Payment of Royalties. If a Statement of Work specifies that a royalty shall be paid periodically or on the basis of sales, then such payments shall be made in US dollars for each calendar quarter and shall be due (i) within forty-five (45) days after the end of the calendar quarter for royalties based on US transactions, or (ii) within sixty (60) days after the end of the calendar quarter for royalties based on non-US transactions. A brief summary of the basis for determination of the amount due shall be provided along with each payment. Licensee may take a credit against the per-copy royalties for un-opened and unused copies of Licensed Works returned by an End User within ninety (90) days of the End User's purchase of the Licensed Work.

7.4 Audit. The parties shall maintain complete and accurate accounting records, in accordance with generally accepted accounting practices, to support and document amounts due under a Statement of Work and shall retain such records for three (3) years after payment is made. A party shall, upon written request of the other party, provide audit access to such records to a mutually acceptable independent accounting firm that is chosen and compensated by the other party. Such access shall be granted only during normal business hours and no more frequently than once in each calendar year. The accounting firm shall be required to hold all information received during the audit in confidence and shall be authorized to report to the other party only the amount of royalties actually due under the Statement of Work for the period examined.

7.5 Tax Consequences. Unless otherwise explicitly stated in this SDA or in a Statement of Work, the party making a payment to the other party shall be responsible for all sales or equivalent taxes arising out of the payment and shall either include such taxes with the payment or shall provide the other party with a resale certificate or other documentation to successfully claim exemption from the tax. Each party shall be responsible for payment of all income or equivalent taxes based upon that party's net income.

7.6 Late Payments. For any payment made later than the appropriate payment date, the party making the payment shall pay the other party a late fee in the form of simple interest on the debt equal to 3% above the annual prime interest rate published at the time the debt comes due.

8 INVENTIONS AND PATENTS UNDER A STATEMENT OF WORK. Each Statement of Work shall be deemed to incorporate by reference this Section 8 unless the Statement of Work explicitly states otherwise.

8.1 Ownership Of Inventions. If an invention, whether or not patentable, is conceived or reduced to practice by one or more employees of one of the parties, then that party shall own such invention and all patents and patent applications on the invention. If an invention, whether or not patentable, is conceived or reduced to practice jointly by one or more employees of each of the parties, then each party shall own such invention and all patents and patent applications on the invention jointly with the other party without any duty to account for profits to the other party, and each party may freely license third parties.

8.2 Covenants Not To Sue. A Statement of Work may contain a covenant not to sue by one party ("Patent Covenantor") to the other party ("Patent Covenantee"). As stated above in Section 3.4.4, the Statement of Work may specifically incorporate one or more of the covenants not to sue described in this Section 8.2 or it may recite other terms. If the Statement of Work incorporates a covenant not to sue as described in this Section 8.2, the Statement of Work may include additional terms that add to or modify the terms of the incorporated covenant not to sue.

8.2.1 Development Assistance. Typically, under a Statement of Work that incorporates a Development Assistance covenant not to sue, one party ("Covenantee") delivers preexisting Materials to the other party ("Covenantor") to leverage that party's particular experience and competence and the other party enhances the Materials in order to promote the Covenantor's products or services. Under a Development Assistance covenant not to sue, the Covenantor covenants not to sue or otherwise assert a claim against the Covenantee, or its licensees and customers in the chain of distribution, based upon the allegation that the licensed manufacturing, use or distribution of Materials specifically referenced in the Statement of Work and Enhancements to the Materials specifically required to be provided by the Covenantor infringes a patent owned by the Covenantor which is necessary to exercise the copyright granted in such Enhancements, as specifically stated in the Statement of Work ("Covenant Materials"). Such covenant extends to the Covenant Materials alone or in combination with other hardware or software, but only to the extent such combination would have a substantial non-infringing use without incorporation of the Covenant Materials.

8.2.2 Joint Development. Typically, under a Statement of Work that incorporates a Joint Development covenant not to sue, both parties are cooperating to develop Materials that both parties expect to enhance their products or services, but which require new development, i.e., neither party will accept preexisting Materials that it is obligated to enhance and license back to the other party. Under a Joint Development covenant not to sue, the Covenantor covenants not to sue or otherwise assert a claim against the Covenantee, or its licensees and customers in the chain of distribution, based upon the allegation that the licensed use or distribution of Materials specifically referenced in the Statement of Work and required to be delivered by the Covenantor infringes a patent owned by the Covenantor which is necessary to exercise the copyright granted in such Materials ("Covenant Materials"). Such covenant extends to the Covenant Materials alone or in combination with other hardware or software, but only to the extent such combination would have a substantial non-infringing use without incorporation of the Covenant Materials.

8.2.3 Over The Wall. Typically, under a Statement of Work that incorporates an Over The Wall covenant not to sue, one party has developed Materials that it is willing to license to the other party without an obligation to enhance and license back, or without any cooperative development efforts. Under an Over The Wall covenant not to sue, the Covenantor covenants not to sue or otherwise assert a claim against the Covenantee, or its licensees and customers in the chain of distribution, based upon the allegation that the licensed use or distribution of Materials specifically referenced in the Statement of Work by the Covenantor infringes a patent owned by the Covenantor which is necessary to exercise the copyright granted in such Materials ("Covenant Materials"). Such covenant extends to the Covenant Materials alone or in combination with other hardware or software, but only to the extent such combination would have a substantial non-infringing use without incorporation of the Covenant Materials.

8.3 Apparent Infringement of Patent. If a party learns of an apparent infringement of such party's patent rights through the examination of confidential Materials received by such party from the other party pursuant to a Statement of Work under this SDA (an "Apparent Infringement") then such party shall use its best efforts to resolve any dispute relating to such apparent infringement as follows:

8.3.1 The party contending that there is an Apparent Infringement (the "Patentee") shall notify the other party (the "Responder") of such Apparent Infringement in writing, including an identification of the patent and materials involved.

8.3.2 Within five (5) business days of receipt of the Patentee's notice, the Responder shall indicate whether or not it is willing to engage in good-faith discussions with the Patentee regarding the Apparent Infringement. If the Responder does provide such notice, then the appropriate business and legal representatives of the parties shall meet in a good-faith attempt to resolve the matter. If, by the twentieth business day after the original notice, such business and legal representatives have not resolved such matter, then at the request of either party, each party shall designate a senior executive, of the Vice-President level or higher, who shall meet with the other in discussions at a mutually agreeable time and place. All discussions between the parties may include, without limitation, whether or not an infringement may be present, possible licensing terms, and possible methods of alternative dispute resolution.

8.3.3 If the parties have failed to resolve their differences within ten (10) days after a party has requested a meeting at the Vice-President level as provided herein, or if the Responder does not give written notice of its willingness to engage in such discussions, the Patentee shall be free from any further obligations under this Section.

8.3.4 Except in the case of the imminent release of an infringing product by the Responder for which preliminary injunctive relief is required to protect against irreparable injury, the patentee shall not commence a suit against the Responder for an Apparent Infringement until the discussions commenced pursuant to this Section have been completed. The notices delivered under this Section shall be identified as delivered hereunder and shall not be deemed a "charge of infringement" or a threat of a suit for any purpose, including the award of damages or the commencement of a declaratory judgment action. The time elapsed between the Patentee's first notice referenced in this Section and the termination of discussions hereunder shall not be considered in the determination of any issue of laches, estoppel, or the appropriateness of injunctive relief.

8.4 Right of Rescission. In any Statement of Work in which a party ("Covenantor") receives Materials, undertakes to provide Enhancements of those Materials, and is required to provide the other party ("Covenantee") a covenant not to sue that extends to such Materials and Enhancements, the Covenantor shall have a period of thirty (30) days within which to review such Materials (as well

as a functional description of the Materials, methods of operation embodied within the Materials, and such other information as may be reasonably required to understand the manner in which the Materials are to be used) for Apparent Infringement. If within such thirty (30) day period, the Covenantor learns of an Apparent Infringement by such Materials, the Covenantor may elect to rescind the Statement of Work under which such Materials were received upon written notice to the Covenantee, whereupon such Statement of Work shall cease to exist *ab initio*. Upon rescission of a Statement of Work under this provision, each party shall return all Materials received from the other party and destroy any Materials developed under the Statement of Work. Such rescission shall not supercede or otherwise diminish the Covenantor's obligations under Section 8.3.

9 TERM AND TERMINATION. Each Statement of Work shall be deemed to incorporate by reference this Section 9 unless the Statement of Work explicitly states otherwise.

9.1 SDA.

9.1.1 Stated Term. This SDA shall be effective upon the date specified at the beginning of this SDA, and shall remain in force for a period of three (3) years, unless otherwise terminated as provided in Sections 9.3, 9.4 and or 9.5. After this initial term of three years, this SDA shall automatically renew for consecutive one (1) year periods, unless ninety (90) days or more prior to the end of either the initial term or any subsequent term either party provides the other party with written notice terminating this SDA.

9.2 Statements of Work.

9.2.1 Term Of A Statement of Work. The Statement of Work shall enter into effect upon its effective date and shall continue in effect for the term specified in the Statement of Work unless earlier extended, terminated by mutual written agreement of the parties, or terminated for cause in accordance with Section 9.3 below. In the event that a Statement of Work fails to contain a term, the Statement of Work shall be deemed to have a term of three (3) years and shall be subject to the termination provisions provided in Sections 9.2.2 and 9.3.

9.2.2 Earlier Termination of the SDA. A termination of the SDA shall have no effect upon a Statement of Work that is itself still in effect.

9.3 Termination for Cause. Either party may terminate this SDA or a Statement of Work for the substantial breach by the other party of a material term. The terminating party shall first give the other party written notice of the alleged breach and a reasonable period of at least sixty (60) days in which to cure the alleged breach. If a cure is not achieved during the cure period, then the parties shall enter into the dispute resolution procedures specified in Section 10.6 below. Termination of the Statement of Work shall occur upon the expiration of the cure period and the subsequent unsuccessful completion of the dispute resolution procedures specified in Section 10.6 below.

9.4 Default. In addition to any other rights or remedies available at law or in equity, either may terminate this Agreement upon any of the following:

9.4.1 A party is in default of any obligation hereunder and default continues for sixty (60) days following receipt of written notice.

9.4.2 A party is dissolved, is involved in a reorganization, or attempts to assign this Agreement or any of its rights under this Agreement without prior written consent.

9.4.3 A party is not paying its debts as the debts become due, becomes insolvent, files or has filed against it a petition under any Bankruptcy Law, proposes any dissolution, liquidation, composition, financial reorganization or recapitalization with creditors, makes an

assignment or trust mortgage for the benefit of creditors, or if a receiver trustee, custodian or similar agent is appointed or takes possession of any property or business.

9.5 Change of Control or Acquisition. If a Change of Control to one of the parties to this SDA occurs, where the acquiring entity or new owner is any entity which is a direct competitor of the other party or which otherwise poses a reasonable threat to the ownership interest of the other party's intellectual property, the other party shall have the option upon written notice to immediately terminate this SDA and some or all of its associated Statements of Work and have returned any or all Confidential Information then in the possession of the other party and any Materials delivered under this SDA or associated Statements of Work.

9.6 Survival Of Terms. In the event of a termination of a Statement of Work, all obligations of confidentiality (including those specified in Section 10.3 below) shall continue in effect in accordance with their terms. In addition, the terms of Section 10.11 (Intellectual Property Indemnity), Section 10.14 (Limitation Of Liabilities), and Section 10.17 (Representations And Warranties) shall continue in effect in accordance with their terms.

10 GENERAL TERMS. Each Statement of Work shall be deemed to incorporate by reference this Section 10 unless the Statement of Work explicitly states otherwise.

10.1 Assignment. Neither party may transfer or assign any right or obligation set forth in this SDA or in a Statement of Work without the prior written consent of the other party except as provided for in Section 10.19. Any such attempted transfer or assignment without prior approval shall be void.

10.2 Changes To This SDA Or To A Statement of Work. This SDA or a Statement of Work may only be modified in a writing that is executed by authorized representatives of both parties. A change to this SDA shall not affect any Statement of Work that is already in effect when the SDA is changed unless the parties agree in writing that the change to this SDA shall affect that Statement of Work. The parties shall indicate the level of revision to this SDA by assigning each revised SDA a new SDA agreement number.

10.3 Confidentiality Information Exchange. It is the intention of SCO and Novell to transfer and/or exchange information, including confidential information, as may be necessary under the Statements of Work. Unless otherwise specified in the Statement of Work, the confidentiality of such information shall be governed by the terms of the attached Corporate Non-Disclosure Agreement (the "CNDA"). Novell and SCO agree that all Source Code received under a Statement of Work (or developed from Source Code received under a Statement of Work) shall be considered to be confidential information for the purposes of this Section 10.3 and under the CNDA. However, the parties may mutually agree that some source files shall be non-confidential such as header files that are necessary for third party development and distributable with binaries.

10.4 Construction. The headings in this SDA and in the Statements of Work are provided for reference only and shall not be used as a guide to interpretation. When used in this SDA or in a Statement of Work, the singular includes the plural and the plural includes the singular, and gender related pronouns include the feminine, masculine and neuter.

10.5 Copyright Notices. Each party shall ensure that all copyright notices of the other party that are marked on or included in any portion of Materials received under a Statement of Work shall be marked on or included at least once in each copy or Derivative Work of the Materials.

10.6 Dispute Resolution. The parties agree to negotiate in good faith to resolve all disputes arising under this SDA or under any Statement of Work in accordance with this Section 10.6.

Primary responsibility for resolving any dispute arising under any provision of this SDA, including any Statement of Work, shall reside in the parties' Executive Coordinators or their designees. Notwithstanding this Section 10.6, Project Managers shall, prior to escalating any dispute arising under a Statement of Work in which they are identified as Project Managers, shall negotiate in good faith to resolve the dispute in accordance with this Section 10.6.

10.6.1 If negotiations between the Project Managers fail to resolve any such dispute to the satisfaction of both parties then the Executive Coordinators from each party shall meet and shall attempt to reach a mutually agreeable resolution of the dispute.

10.6.2 If negotiations between the Executive Coordinators fail to resolve any such dispute to the satisfaction of both parties then each party shall nominate one senior officer of the rank of Vice President or higher as its representative. These representatives shall meet in person and alone (except for one assistant allowed for each party) and shall attempt in good faith to resolve the dispute. This meeting shall be a required prerequisite before either party may terminate this SDA or any Statement of Work pursuant to Section 9.3, or may seek judicial or governmental resolution of the dispute. The foregoing notwithstanding, this Section 10.6 shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including temporary restraining orders. The parties may agree to pursue any other additional mutually acceptable dispute resolution method but such pursuit shall not modify the prerequisite stated in this Section 10.6.

10.7 Entire Agreement. A Statement of Work, including the incorporated portions of this SDA, sets forth the entire agreement and understanding between the parties as to its specific subject matter and merges all prior discussions between them with regard to such specific subject matter. Neither of the parties shall be bound by any conditions, definitions, warranties, understandings, agreements, or representations, whether written or oral, with respect to such specific subject matter other than as expressly provided in the Statement of Work or as duly set forth on or subsequent to its effective date, in a written document that is signed by a duly authorized representative of each party. However, the parties acknowledge that they do not intend, at the present time, to merge any independent written agreements existing between them and executed prior to the execution of this SDA, and such independent agreements shall not be considered merged into this SDA or into any Statement of Work except as specifically set forth in a Statement of Work executed under this SDA.

10.8 Export of Technical Data. Regardless of any disclosure made by Licensee or its OEMs to Novell of an ultimate destination of any Licensed Works under a Statement of Work, Licensee and its OEMs will not export or transfer, whether directly or indirectly, the Licensed Works, or any portion thereof, or any system containing such Licensed Works or portion thereof, to anyone outside the United States (including further export if Licensee took delivery of the Program outside the United States) without first complying strictly and fully with all export controls that may be imposed on the Licensed Works by the United States Government or any country or organization of nations within whose jurisdiction Licensee or its OEM operates or does business. In particular, Licensee assures and Licensee's OEMs must first assure Novell that, absent any required prior authorization from the Bureau of Export Administration, U.S. Department of Commerce, 14th and Constitution Avenue, Washington DC 20230, Licensee or its OEM will not export or reexport (as defined in Section 779 of the Export Administration Regulations, as amended ("Regulations")) the Licensed Works or any technical data or other confidential information, or direct product of any of the foregoing to Iran, Iraq, Syria, the People's Republic of China, Yugoslavia (Serbia and Montenegro), or to any country in Country Groups Q, S, W, Y, or Z as defined in the supplement No. 1 to Section 770 of the Regulations, or such other countries as come under restriction by action of the United States Government, or to nationals from or residing in the foregoing countries, without first obtaining permission from the appropriate United States Government authorities. The countries subject to restriction by action of the United States Government are subject to change, and it is Licensee's and

its OEMs' responsibility to comply with the United States Government requirements as they may be amended from time to time.

10.9 Force Majeure. Neither party shall be liable in damages or have the right to cancel or terminate this SDA or any Statement of Work for any delay or default in performance if such delay or default is caused by unforeseen conditions or conditions beyond the control of the delaying or defaulting party, including but not limited to acts of God, government restrictions, continuing domestic or international problems such as wars or insurrections, strikes, fires, floods, work stoppages and embargoes. Either party shall have the right to terminate a Statement of Work upon sixty (60) days prior written notice if the delay or default of the other party due to any of the above-mentioned causes continues for a period of six (6) months. Each party shall give the other party prompt written notice of any such condition likely to cause any delay or default.

10.10 Freedom Of Action. This SDA and the Statements of Work shall not prevent either party from (i) entering into any agreement similar to this SDA or any Statement of Work with any corporation in any industry or any non-profit body such as a university or a government, or (ii) developing, manufacturing and/or selling any product or service that can compete with the other party's products or services in the marketplace.

10.11 Intellectual Property Indemnity.

10.11.1 If, under a Statement of Work, one party ("Licensor") transfers Materials to the other party ("Licensee"), the Licensor, except as otherwise provided below, shall defend or settle any claim made or any suit or proceeding brought against the Licensee so far as it is based on an allegation that any Materials furnished under the Statement of Work infringes a patent or copyright of the country in which the Licensee takes delivery of the product (or the country in which an end-user takes delivery of the product), if the Licensor is notified promptly in writing and is given information, assistance and the sole authority to defend or settle same at the Licensor's expense. The Licensor shall pay all damages and costs finally awarded therein against the Licensee.

10.11.2 In case the Materials are in such suit held to infringe and use of the Materials are enjoined or the case is settled, as referred to above, or if, in the reasonable opinion of the Licensor, the continue right to use the Materials cannot be secured upon commercially reasonable terms, the Licensor shall have the option, at its expense, to procure for the Licensee the right to continue using the Materials, to replace or modify such Materials so that they become non-infringing materials which have the same or additional functionality and comparable or better performance characteristics, or, only if it is consistent with Licensor's practices with other OEMs, to terminate the license with respect to the Materials that are allegedly infringing.

10.11.3 The Licensor shall have no liability for any infringement of patents, copyrights, trademarks or other intellectual property rights that result from (a) the Licensor's compliance with the Licensee's designs, specifications, or instructions, (b) modifications of the Materials that were not requested or authorized by the Licensor, (c) use of the Materials other than as specified in relevant Licensor publications, (d) use of the Materials with any other goods or software not supplied by the Licensor, (e) the furnishing of any intangible information, service or technical support to the Licensee, or (f) any use or distribution of the Materials in violation of the license granted to the Licensee.

10.11.4 This Section 10.11 shall represent the entire and exclusive obligation of one party to the other regarding any claim of intellectual property infringement arising under a Statement of Work, except as explicitly stated otherwise in the Statement of Work.

10.12 Independent Contractors. Each party is and shall remain an independent contractor with respect to all performance under this SDA and the Statements of Work. No employee of either party shall be considered an employee or agent of the other party for any purpose. Each party assumes sole responsibility for the supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), worker's compensation, disability benefits and the like of its employees. Nothing in this agreement shall be construed to prevent either party from delegating performance under this SDA or any resultant Statement of Work to independent contractors who have entered into agreements consistent with the provisions contained in this SDA. However, the contracting party shall remain primarily responsible for the performance of its subcontractors and hereby waives any defense alleging that it has no liability as a result of a claim of breach by any such permitted subcontractors.

10.13 Laws. The validity, construction, and performance of this SDA and the Statements of Work will be governed by the substantive law of the State of California without regard to any choice of law provisions. The parties agree that any dispute relating to this SDA or to a Statement of Work in which SCO is a defendant shall be subject to the courts within the the State of California after satisfaction of any condition precedent stated in this SDA or the Statement of Work. Further, the parties agree that any dispute relating to this SDA or to a Statement of Work in which Novell is a defendant shall be subject to the courts within the State of Utah after satisfaction of any condition precedent stated in this SDA or the Statement of Work. If either party initiates legal proceedings to enforce a term of this SDA or a Statement of Work, the prevailing party shall be entitled to recover reasonable attorneys' fees as the court may determine. Each party shall, at its own expense, comply with any governmental law, statute, ordinance, administrative order, rule or regulation relating to its duties, obligations or performance under this SDA and the Statements of Work.

10.14 Limitation Of Liabilities. THE REMEDIES, IF ANY, PROVIDED IN THIS SDA AND THE STATEMENTS OF WORK ARE THE SOLE AND EXCLUSIVE REMEDIES OF THE PARTIES. NEITHER PARTY SHALL IN ANY EVENT BE LIABLE TO THE OTHER, OR TO ANY LICENSEE, SUBLICENSEE, OR CUSTOMER OF THE OTHER UNDER THIS SDA OR ANY STATEMENT OF WORK FOR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR OF DATA, OR FOR INTERRUPTION OF BUSINESS. NEITHER PARTY SHALL IN ANY EVENT BE LIABLE FOR INDIRECT, SPECIAL, RELIANCE, INCIDENTAL, COVER, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND ARISING UNDER OR OUTSIDE OF THIS SDA OR ANY STATEMENT OF WORK, WHETHER IN A CONTRACT, TORT OR OTHER ACTION FOR OR ARISING OUT OF ALLEGED BREACH OF WARRANTY, ALLEGED BREACH OF CONTRACT, DELAY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. In no event shall either party be liable under this SDA and associated Statements of Work to the other, its successors and assigns for any damages exceeding \$10,000,000.

10.15 Notices. All notices to a party under this SDA shall be delivered to that party's Executive Coordinator at the address stated in Section 1.3 above. All notices to a party under a Statement of Work shall be delivered to that party's Project Manager at the address specified in the Statement of Work. All notices required or permitted to be given under this SDA or a Statement of Work shall be in writing. A notice shall be validly given upon the earlier of confirmed receipt by the recipient's Executive Coordinator (for a notice under this SDA) or by the recipient's Project Manager (for a notice under a Statement of Work) or fourteen (14) days after deposit, postage prepaid, with the US Postal Service as first class mail unless such notice is not actually received. Notices may be delivered by telefax or by courier and shall be validly given upon confirmed receipt by the recipient's Executive Coordinator or Project Manager, as stated above.

10.16 Order of Precedence. In the event of any conflict between this SDA and a Statement of Work, the terms of the Statement of Work shall control. In the event of any conflict between this SDA

or a Statement of Work and any Purchase Order or Acknowledgement, this SDA or the Statement of Work shall take precedence over any written or typed instructions in a written or electronic Purchase Order or Acknowledgement. The pre-printed provisions of any written or electronic Purchase Order or Acknowledgement shall be void and of no effect.

10.17 Representations And Warranties.

10.17.1 Each party represents and warrants that, to the best of its knowledge, it has full and sufficient right to perform under this SDA and the Statements of Work, including the right to grant any licenses or rights stated in this SDA or in the Statements of Work.

10.17.2 EXCEPT AS EXPRESSLY SET FORTH IN THIS SDA OR IN A STATEMENT OF WORK, NEITHER PARTY MAKES ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO DELIVERABLES, LICENSED WORKS, MATERIALS, INVENTIONS, INFORMATION OR ANY OTHER WORK OR OTHERWISE UNDER THIS SDA OR THE STATEMENTS OF WORK, AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

10.18 Severability. Each Statement of Work is intended to constitute an independent and distinct agreement of the parties, notwithstanding the fact that a Statement of Work may incorporate provisions of this SDA. If any provision of this SDA or a Statement of Work is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall remain in full force and effect and shall be interpreted, to the extent possible, to achieve the purpose of this SDA and any affected Statements of Work as originally expressed.

10.19 Subsidiaries. A subsidiary of a party is a company the majority of whose stock entitled to vote for election of directors is now or hereafter owned by that party either directly or indirectly, but such company shall be deemed to be a subsidiary only so long as such control exists. All rights and licenses granted to a party under this SDA and the Statements of Work shall apply to that party's subsidiaries so long as such subsidiaries agree to comply fully with the obligations imposed on that party by this SDA and the Statements of Work. Each party shall remain fully liable for the actions and omissions of its subsidiaries relative to rights granted under this Section 10.19. The parties agree, however, that they may not seek to enforce any obligation of the other party (or its Subsidiaries) through a legal action brought against a Subsidiary except to the extent that such action seeks injunctive relief against that particular Subsidiary.

10.20 Volume Obligations. Except as explicitly stated in a Statement of Work, neither party shall have an obligation under any Statement of Work (i) to offer any product or service to any third party by way of sale, license or otherwise, or (ii) to use any minimum level of effort in the promotion, marketing, licensing or sales of any products or services, including products or services of the other party, or (iii) to purchase or license any minimum amount of products or services from the other party.

10.21 Mutual Drafting. This Agreement is the joint product of SCO and Novell, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of SCO and Novell, and shall not be construed for or against either party.

10.22 Compliance with Laws. The parties shall comply, at their own expense, with all statutes, regulations, rules, ordinances, and orders of any governmental body, department or agency which apply to or result from the parties' obligations under any Statement of Work under this Agreement. SCO hereby agrees that it and its subsidiaries and affiliates do not intend and will not knowingly, without prior written consent, if required, of the office of Export Administration of the U.S. Department

of Commerce, Washington D.C. 20230, export or transmit directly or indirectly the technology to any country in group Q, S, W, Y, or Z country specified in of the Export Administration Regulations issued by the U.S. Department of Commerce or to any country to which transmission is restricted by applicable regulations or statutes.

11 SIGNATURES IN WITNESS WHEREOF, each party has executed this Strategic Development Agreement by signature of its authorized representative.

NOVELL, INC.

The Santa Cruz Operation, Inc.

Signature: 

Signature: 

Name: R. Duff Phares

Name: Alok Mohan

Title: Senior Vice President - Corporate Development

Title: Chief Executive Officer

Statement of Work No. 1 for NetWare Software

This Statement of Work No. 1 is made by and between Novell and SCO pursuant to the terms and conditions of that certain Strategic Development Agreement dated December 6, 1995 ("SDA").

1 **STATEMENT OF PURPOSE.** Novell has developed and is the owner of, or otherwise has authority to license, NetWare services and other programs, defined below as "NetWare Software." NetWare Software is intended to facilitate the use of NetWare services with SCO's version of UnixWare and follow on technology based upon UnixWare, (hereinafter known collectively as "UnixWare"). NetWare Software is licensed to SCO for integration with UnixWare for sublicensing to end users, distributors, resellers (including VARs) as well as to original equipment manufacturers ("OEMs"). SCO and Novell are strategically aligned to make NetWare Software available with UnixWare on certain hardware platforms. This Agreement describes the relative rights and obligations of Novell and SCO with respect to making NetWare services available.

Project Managers for the purpose of this Agreement are:

Linda Shelton
Novell, Inc.
122 East 1700 South
Mail Stop A-121
Provo, Utah 84606

Richard Sniderman
The Santa Cruz Operation, Inc.
400 Encinal Street
Santa Cruz, CA 95061-1900

2 **DEFINITIONS.** Unless the context clearly requires otherwise, the capitalized terms used within this Agreement are in addition to the definitions in the SDA and shall have the meaning ascribed to the terms below. The term "Section" within this Agreement refers to the identified section of this Agreement.

- 2.1 **Client** - A computing device that allows the user to attach to and utilize the shared resources of a communications network.
- 2.2 **Client Software** - The software programs and Upgrades and Updates thereto in binary form that run on a Client and which Novell makes generally available to Novell OEM's.
- 2.3 **Effective Date** - The latter of the date upon which Novell or SCO executes this Agreement.
- 2.4 **End User** - Any entity which acquires UnixWare, directly or indirectly, for its own internal business use under the terms and conditions of a Sublicense.
- 2.5 **Internal Use** - Use of any quantity of NetWare Software by SCO for SCO's own internal purposes under the terms and conditions of this Agreement.
- 2.6 **Platform** - Any host hardware on which a binary compatible version of UnixWare in its native form or ported by a SCO OEM will operate.
- 2.7 **Point of Sale Report (POS Report)** - A written report provided by SCO which lists the versions of UnixWare licensed or transferred (including when applicable, the number of Clients supported by such version) directly by SCO or its OEM to End Users, the quantities of UnixWare versions sold, the royalties due and/or paid to Novell for the versions of UnixWare sold and/or sublicensed and the zip code of the acquiring entity directly acquiring UnixWare from SCO, if within the United States, or by country, if the acquiring entity is outside the United States. POS Reports need not include the name of any customer. Novell recognizes that SCO's contractual commitments to its current distributors, at the time this Agreement is executed, may not permit full compliance with the terms of this section, and

Execution Original

agrees that to the extent SCO's incomplete compliance with this section is solely the result of such contractual commitments, it shall not be considered a breach of this agreement. SCO agrees to use commercially reasonable efforts to modify its standard contracts with its distributors so that future compliance with this section is possible.

- 2.8 NetWare Software - The software and programs set forth on Exhibit A which are being licensed to SCO pursuant to this Statement of Work in both source code and binary code forms, unless otherwise noted, for integration into UnixWare and porting to other Platforms for use with UnixWare. For the purpose of this Agreement, NetWare Software shall include portions of NetWare network operating system software found in UnixWare version 2.01 as licensed by Novell in order for SCO to provide support for UnixWare 2.01 customers. Restricted Source Code means code for which Novell cannot grant unlimited source code license rights to third parties. Restricted Source Code is set forth on Exhibit A along with an explanation of its license rights under this Section 2.8. SCO and its OEMs accept all licenses subject to the restrictions set forth for the Restricted Source Code.
- 2.9 UnixWare - That certain technology provided to SCO by Novell pursuant to the Asset Purchase Agreement dated December 6, 1995 and described therein as UnixWare 2.1 (Eiger) and any follow on technology based upon that code. UnixWare shall exclude, however, the deliverables set forth in Exhibit A to this Statement of Work and defined as NetWare Software.
- 2.10 Reference Port - The port made by Novell of UnixWare 2.1 to an Intel hardware platform.
- 2.11 Reseller - Any entity authorized by SCO or its OEMs to market and distribute binary code copies of UnixWare to End Users either directly or via sub-distributors subject to a written license agreement.
- 2.12 Server - A single computing device that offers shared access to a communications network.
- 2.13 Sublicense - A software license agreement between SCO or its OEM and an End User for UnixWare which at minimum;
- 2.13.1 restricts the number of copies of Server Software to one operating copy per Server;
 - 2.13.2 restricts the number of copies of Client Software concurrently connected to a Server to no more than the number allowed by the Server Software with which the Client Software is bundled;
 - 2.13.3 permits only those number of backup and archival copies of the software as are reasonably needed to back up use of the software;
 - 2.13.4 states that no title to the intellectual property contained in the software is transferred to the sublicensee and is retained by SCO and/or its licensor;
 - 2.13.5 represents that the source code of the software is not sublicensed;
 - 2.13.6 restricts sublicensees from de-compiling and reverse assembling the software to discover the source code;
 - 2.13.7 prohibits time-sharing, sub-lease, rental, or distribution of the software without prior written consent and prohibits transfer of the software without prior written notice;
 - 2.13.8 complies with US export regulations and in the U.S., includes a statement similar to the following (updated as necessary):

U.S. Government Restricted Rights. Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in FAR § 52.227-14 (June 1987) Alternate III(g)(3) (June 1987), FAR § 52.227-19 (June 1987), or DFARS § 52.227-7013 (c)(1)(ii) (June 1988), as applicable. Contractor/Manufacturer is Novell Inc., 122 East 1700 South, Provo, Utah 84606; and

- 2.13.9 In foreign countries, includes a statement similar to the statement included above in Section 2.13.8, as appropriate, to protect Novell's rights in the software from the governments of such countries.
- 2.14 User Upgrade - A copy of a license or licensing diskette sublicensed or transferred by Novell (directly or indirectly) to an end user to increase the number of Clients supported for NetWare Software in a licensed version of UnixWare.
- 2.15 Update - Software fix or compilation of fixes to correct operational defects (program bugs) in NetWare Software and/or Client Software.
- 2.16 Upgrade - Revision of NetWare Software and/or Client Software to add new and different functions and/or to increase the capacity of such to process information.

3 Software Licenses.

- 3.1 Novell Grant. Subject to the terms and conditions specified in this Agreement, Novell hereby grants, and SCO hereby accepts, a non-exclusive, world-wide, non-transferable (except as otherwise provided herein) Confidential Full Source License in the NetWare Software. SCO's rights under the foregoing license is limited to a grant for use of the NetWare Software in connection with SCO's marketing and licensing of UnixWare. Such software shall grant an enduser a 1 user count of the NetWare Software whether made available by SCO or by any of SCO's OEMs. Novell grants to SCO the right to distribute, and at Novell's option manufacture, User Upgrades pursuant to the royalty provisions set forth in this Agreement. Subject to the payment of royalties for User Upgrades under this Agreement, Novell grants SCO the right to distribute NetWare Software for use with UnixWare in other user count configurations. Except as otherwise granted herein with respect to User Upgrades, no rights are granted hereunder for a greater number of users to access the NetWare Software and any attempt to circumvent the user restriction shall result in termination of this license grant. Novell grants no rights to SCO for the use, licensing, sublicensing or distribution of the NetWare Software in an unbundled state or in separable modules unless specifically set forth in this Agreement. With the one exception set forth immediately below, nothing in this Agreement shall supersede existing rights and obligations between the parties in the NetWare Transport Software Agreement dated November 19, 1991 and the NetWare Client License Agreement dated April 29, 1993. The \$25,000 annual fee payable by SCO to Novell pursuant to the NetWare Transport Software Agreement is subsumed by the NetWare Software License Fees set forth in Section 13.1 of this Agreement.

Novell further grants to SCO the right to bundle with a UnixWare single-user, desktop or workstation version only those modules necessary to provide a client-only or workstation version of the NetWare Client and to distribute in binary form to resellers, distributors or endusers. The workstation software is licensed solely for use as a requester of services and cannot be used to provide services to any computing device. Further Novell grants to SCO the right to sublicense to OEMs the workstation version of the NetWare Client bundled with a workstation version of UnixWare as provided to a SCO OEM. All rights granted by SCO to its OEMs with regard to a workstation version of UnixWare shall be consistent with all restrictions set forth in this Agreement regarding bundling, certification, use, etc.

Documentation. Novell grants and SCO accepts a Confidential Full Source License in the associated NetWare Software documentation to revise, modify, enhance, adapt or recast Documentation solely to provide and distribute NetWare Software Documentation to UnixWare licensees. These grants are subject to all terms and conditions set forth in this Agreement with respect to protection of Confidential Information and the payment of all related fees and royalties. SCO's OEMs shall only have the right to adapt the Documentation for Platform specific and computing environment issues without any other right to change the

content of the Documentation. OEM's translations of the Documentation may be reviewed by Novell and any inconsistencies or inaccuracies in the translations discovered by Novell shall be remedied in the next release of the translated Documentation at OEM's expense. There shall be no extra charge for distribution by SCO or its OEMs for stand alone documentation to licensees of NetWare Software pursuant to this Agreement.

- 3.2 OEM Sublicense Rights. Novell grants to SCO the right to grant sublicenses to OEMs defined in the SDA as a Limited Source License to the NetWare Software with the exception of Restricted Source Code as identified on Exhibit A wherein such Limited Source License is further limited to the right of SCO's OEM to make modifications to NetWare Software solely for the purpose of porting the NetWare Software in conjunction with UnixWare source code to a different Platform. The resulting binary version of NetWare Software must be associated with UnixWare and may only be made available as contemplated in section 3.1. Notwithstanding the above provisions, Novell grants to SCO the right under a Limited Source License the right to sublicense the NetWare Client modules necessary for a client only or workstation version of UnixWare as set forth in 3.1 above. Any entity to whom SCO sublicenses such rights shall be bound by an agreement with SCO containing terms and conditions which provide substantially the same protection for NetWare Software, Client Software and for Novell as are provided in this Agreement wherein such terms and conditions will in no case be less restrictive. SCO agrees to indemnify and hold Novell harmless against any and all costs, including reasonable attorneys' fees incurred by Novell resulting from SCO exercising the right to sublicense granted in this Section 3.2.
- 3.3 Reseller and End User Sublicense Rights. SCO agrees to require each SCO Reseller of UnixWare to enter into a written agreement with SCO before any UnixWare product is provided to the Reseller. The agreement shall include provisions consistent with the terms of this Agreement.
- 3.3.1 End User Agreements. SCO agrees to license each copy of UnixWare to End Users by means of a Sublicense, which may include a "shrink-wrapped," "box-top" or equivalent license.
- 3.3.2 Internal Use. Except as expressly provided otherwise in this Agreement, SCO agrees to abide by the terms and conditions of an End User Sublicense when using UnixWare for Internal Use and agrees to require all OEMs and resellers to be bound by the same terms and conditions.
- 3.3.3 Enforcement. SCO agrees to use legally and commercially reasonable efforts to enforce the agreements contemplated by this Statement of Work, including Reseller Agreements and OEM Agreements.
- 3.4 Ownership. No title to or ownership of NetWare Software or Derivative Works is transferred to SCO or to any SCO OEM. Title to all applicable rights and patents, copyrights and trade secrets in such shall remain in Novell. Novell shall own all derivative works and modifications made to the NetWare Software by any entity or individual. Consistent with the foregoing, SCO shall retain all right, title and interest in and to any works that are not Derivative Works of NetWare Software and/or have not been created by Novell or its affiliates.
- 3.5 Conditional Source Code License. Conditional upon termination of this Agreement for reasons other than a material breach, Novell grants, and SCO accepts, a terminable, non-exclusive, non-transferrable, fully paid-up, worldwide license to use NetWare Software solely to support SCO's then installed base of UnixWare. This conditional license shall automatically expire ten years from the date of last customer shipment of UnixWare, which shall not extend by inference the rights granted in Section 3.1 beyond termination or expiration of this Agreement. Except as otherwise specifically provided in this Agreement.

Novell, shall not be required to provide support to SCO beyond expiration or termination of this Agreement.

- 3.6 Reservation of Rights. Except as expressly provided in this Section 3, this Section 3 does not grant any right, title, ownership or interest in NetWare Software, Novell Documentation Confidential Information or Derivative Works, whether by implication, estoppel or otherwise. All rights not specifically granted herein are reserved by Novell.

4 Trademark Licenses.

- 4.1 License. Conditional upon SCO's or its OEM's compliance with Certification requirements under Section 8.1, Novell hereby grants to SCO and its OEMs a non-exclusive, world-wide license to use the "NetWare" trademarks (the "Mark") solely in connection with marketing, distributing and sublicensing NetWare Software licensed pursuant to this Statement of Work for use with UnixWare. Upon Certification, SCO or its OEM may use the Mark on such promotional display and advertising materials as may reasonably promote NetWare Software for use with UnixWare. SCO or its OEM may only combine and use the Mark with SCO's own marks after obtaining the prior written approval of Novell. All provisions set forth in sections 4.2 through 4.8 shall apply to SCO and any OEMs. SCO agrees to require that the obligations set forth in this Section 4 are part of any OEM agreement it may make with a SCO OEM.

Conditional upon SCO's or its OEM's compliance with the Certification requirements under Section 8.1, Novell hereby grants to SCO and its OEMs a non-exclusive, world wide license to use the icons identified in Exhibit A solely in connection with NetWare Software for use with native or ported UnixWare. Any such use of the icons shall be consistent with Novell's use of the icons and applied to the same functionality as found in NetWare. No right is granted to modify, combine, or in any way alter the icons. No other rights are granted to SCO or its OEMs with respect to the icons. The parties acknowledge that look and feel issues associated with the use of NetWare icons may arise in the context of a SCO or OEM desktop user environment. The parties agree to work cooperatively in good faith to modify icons, if desirable, to provide consistency between NetWare and desktop user environments.

- 4.2 Advertisements and Promotional Material. All advertisements and promotional materials using the Mark shall comply with Novell's then-current Trademark Usage Guide, which is incorporated by reference. A copy of the then current Trademark Usage Guide may be obtained upon request of Novell's Legal Department.
- 4.3 Approvals. SCO acknowledges that it is of fundamental importance to Novell that the NetWare Software bundled with UnixWare in connection with which SCO uses the Mark is of comparable quality to the NetWare products of Novell. Accordingly, SCO acknowledges that Novell retains the right to determine in its discretion whether the versions of NetWare Software bundled with UnixWare in connection with which SCO uses the Mark are comparable to Novell's standards of merchantability. In the event that Novell reasonably determines that SCO is no longer meeting accepted levels of quality, Novell agrees to so advise SCO and to provide SCO with reasonable guidance and a commercially reasonable time of no less than one hundred twenty (120) days to meet the above-referenced standards of quality and integrity.

Novell's accepted levels of quality shall be those applied to all OEMs of NetWare Software. Novell shall employ its Novell Labs certification requirements as acceptable level of functionality. Issues of the look and feel of the NetWare Software shall be based solely upon Novell's discretion as it is applied to all Novell OEMs. SCO agrees to pass all requirements regarding such approval through to each of its OEMs.

- 4.4 Reservation of Rights and Goodwill. Novell retains all rights not expressly conveyed to SCO by this Section 4. SCO acknowledges that all goodwill which accrues in use of the Mark by SCO shall exclusively inure to the benefit of, and belong to, Novell. SCO has no rights of any kind whatsoever with respect to the Mark licensed under this Agreement except to the extent of the license granted in Section 4.1.
- 4.5 No Registration by SCO. SCO agrees that it shall refrain from filing any trademark and/or service mark application(s), in any class and in any country, for any trademark and/or service mark which is the same as, similar to, or which contains the Mark without the prior written consent of Novell. Novell shall consider in good faith any request of SCO to register the Mark in particular countries. The provisions of this Section 4.5.2 shall survive the expiry or other termination of this Statement of Work.
- 4.6 Protection of Rights. SCO shall assist Novell, at Novell's expense, to protect or to obtain protection for any of Novell's rights to the Mark. Novell, if it so desires, may commence or prosecute any applications to register the Mark, in the name of Novell, for the Mark throughout the world. Novell shall also have the right, in its discretion, to commence or prosecute claims or suits in its own name or to join SCO upon SCO's consent unless otherwise provided by law, where appropriate, as a party or parties thereto. Novell shall promptly reimburse SCO for its reasonable out-of-pocket costs and expenses. SCO shall promptly notify Novell in writing of any known or suspected abuses of the Mark. Novell shall have the sole right to determine whether or not any action shall be taken on account of such uses by others. SCO shall not institute any suit or take any action on account of such use by others except with Novell's prior written consent.
- 4.7 Indemnification by SCO. SCO hereby agrees to indemnify and hold Novell harmless against any loss, liability, damage, cost or expense (including reasonable legal fees) arising out of any claims or suits, whatever their nature and however arising, which may be brought or made against Novell (i) by reason of SCO's material breach of this Section 4 and/or (ii) arising out of the use by SCO of the Mark in any manner whatsoever except in the form expressly licensed hereunder. In the event Novell seeks indemnification under this Section 4.7, it shall immediately notify SCO, in writing, of any claim or proceeding brought against it for which it seeks indemnification hereunder. SCO shall have the sole control of the defense of the claim or proceeding and all negotiations for its settlement or compromise. In no event may SCO enter into any third party agreements which would in any manner whatsoever affect the rights of, or bind, Novell in any manner to the third party, without the prior written consent of Novell.
- 4.8 Indemnification by Novell. Novell hereby agrees to indemnify and hold SCO harmless against any loss, liability, damage, cost or expense (including reasonable legal fees) arising out of any claims or suits, whatever their nature and however arising, which may be brought or made against SCO arising out of the use by SCO of the Mark in the form expressly licensed hereunder. In the event SCO seeks indemnification under this Section 4.8, it shall immediately notify Novell, in writing, of any claim or proceeding brought against it for which it seeks indemnification hereunder. Novell shall have the sole control of the defense of the claim or proceeding and all negotiations for its settlement or compromise. Novell reserves the right to replace or modify the Mark at any time should use of the Mark become, or in Novell's opinion be likely to become, the subject of an allegation of infringement.
- 5 TERM. The term of this Agreement shall be perpetual from the Effective Date. Notwithstanding the foregoing, the Agreement is revocable for unremedied material breach of the Agreement as set forth in the SDA.
- 6 DELIVERY & DELIVERABLES. Novell will ship a set of deliverables as identified on Exhibit A to SCO in the same time frame as the UnixWare deliverables are made available to SCO pursuant to the

closing of that certain Asset Purchase Agreement between the parties scheduled for December 6, 1995.

7 PORTING INFORMATION AND ASSISTANCE.

7.1 Support. Novell will provide porting, integration or other engineering support, including development level support and related information and assistance to SCO at no charge on a commercially reasonable basis.

8 TESTING AND CERTIFICATION.

8.1 Testing. SCO agrees to submit each Major Release version of UnixWare (defined by SCO as a first digit in a three digit release number system e.g. 3.0.0 or 4.0.0 release) to Novell for testing and certification by Novell Labs or its equivalent group within Novell and that the release must pass Novell's then-current testing and certification policies and procedures prior to shipment. The parties agree that for each Upgrade of any UnixWare version (defined by SCO as a second digit roll in a three digit release number e.g. 3.1.0, 3.2.0, 4.1.0 etc.) if the NetWare Software has been upgraded by Novell then the product will require Novell certification prior to release. Where the software upgraded is other than NetWare Software SCO shall conduct self certification prior to release of the product using the NetWare Test Suites provided to SCO by Novell. In the case of an Update Release of UnixWare involving bug fixes (defined by SCO as a third digit roll in a three digit release number e.g. 3.1.1, 3.1.2, or 4.1.1 etc.) SCO shall conduct self certification prior to release using the NetWare Test Suites provided to SCO by Novell. All Novell testing of each version shall be controlled by the then-current Novell testing and certification policies and procedures including current certification fees. SCO agrees that upon availability of NetWare Test Suites, SCO will conduct self testing using such NetWare Test Suites provided to SCO at no charge prior to submitting any version of UnixWare to Novell for Testing.

Testing and certification for SCO's first version of the NetWare Software for use with UnixWare will be conducted for SCO at no cost to SCO. SCO may request a copy of the then current Novell Testing and Certification policies and procedures at any time. SCO agrees that it will require any OEM of NetWare Software associated with UnixWare to submit each version of ported NetWare Software to Novell for testing by Novell Labs or its equivalent group within Novell under the terms and conditions of this Section and that all requirements for testing and certification shall be imposed upon SCO OEMs

Novell's testing and certification fees are set forth in Exhibit B and are subject to change annually. Novell agrees that for SCO and its OEMs, Novell's testing and certification fees shall not increase more than 15% annually. In no case will SCO or its OEMs be assessed fees in excess of what Novell is routinely charging other Novell OEMs for similar testing and certification services.

In the case of self certification by SCO for Update Releases, should Novell determine under reasonable commercial standards that the SCO or OEM product does not meet Novell's quality standards Novell agrees to so advise SCO and to provide SCO with reasonable guidance and a commercially reasonable time of no less than one hundred twenty (120) days to meet the above-referenced standards. In the event that the UnixWare product fails certification after SCO has made commercially reasonable attempts to remedy the deficiencies, SCO reserves the right to ship UnixWare without the NetWare Software, or with the NetWare Software disabled, but with a user license, which will allow the certified NetWare Software to be installed or enabled for use with UnixWare by an end-user at a later date. All royalty fee obligations and reporting requirements by SCO to Novell shall remain in full force and effect.

- 8.2 Certification Requests. Novell shall only receive requests for certification and testing from a single designee with SCO or SCO OEM at any given time. SCO acknowledges that Novell will handle all requests for Novell testing and certification on a first-come first-served queuing basis for SCO and its OEMs. Novell agrees that it will treat SCO's requests for testing and certification as favorably as it treats any other request of a Novell OEM. Upon at least sixty (60) days advance notice by SCO, Novell agrees to provide to SCO a test date within thirty (30) days of the requested SCO date. In the event that Novell cannot provide to SCO a test date within a thirty (30) day window of SCO's requested test date, SCO reserves the right to self certify its product prior to release.
- 8.3 Localized Versions. In the event SCO desires to localize NetWare Software for certain markets and Novell does not offer certification services for such localizations SCO may request authorization to exercise the grant of rights provided in Section 3.1 using a Novell approved self certification scheme for the resulting UnixWare version. In the event that Novell authorizes SCO's request, the following shall apply:
- 8.3.1 Self Testing. SCO agrees to perform its own testing designed in accordance with Novell policies to verify that each localized version of NetWare Software meets Novell's minimum quality requirements.
- 8.3.2 No Trademark Rights. SCO acknowledges that the rights granted in Section 4.1 shall not apply to any localized version of NetWare Software made available by SCO under this Section 8.3. SCO agrees to rename its localized versions in a manner acceptable to Novell to avoid market confusion or inferences of compatibility or interoperability with certified versions of UnixWare and/or Novell's other NetWare product offerings.
- 8.3.3 Revocation of Authorization. SCO acknowledges that Novell may revoke authorization under this Section 8.3 with respect to any localization at any time if Novell begins providing certification services for such localization or if, Novell, in its reasonable discretion, determines that any such localization fails to meet Novell's minimum standards of merchantability for such products. In the event that Novell determines that SCO is no longer meeting accepted levels of quality, Novell agrees to so advise SCO and to provide SCO with reasonable guidance and a commercially reasonable time of no less than one hundred twenty (120) days to meet the above-referenced standards.
- 9 UPDATES AND UPGRADES. Novell agrees to provide SCO with the periodic Updates and Upgrades to NetWare Software which (i) in Novell's sole discretion are commercially reasonable, desirable or practicable or (ii) are provided to Novell's other NetWare Software OEM's. Novell agrees to provide to SCO any and all Upgrades and Updates made to the Reference Port no later than when made available to Novell's other NetWare Software OEM's. In the event that Novell provides SCO pre-release versions of NetWare Software, SCO acknowledges that such pre-release versions shall be deemed to be Novell Confidential Information and further acknowledges that Novell may change such pre-release versions at any time and for any reason without notice to SCO.
- 10 MARKETING OBLIGATION. SCO agrees to make NetWare Software generally available with its next release of UnixWare. SCO agrees to make NetWare Software generally available with every subsequent release of UnixWare. The foregoing notwithstanding, SCO may discontinue marketing any version of UnixWare and may discontinue marketing every version of UnixWare at any time without breaching this Agreement. In the event that SCO discontinues offering UnixWare, Novell may terminate this Statement of Work for convenience upon providing SCO sixty (60) days or more written notice.
- 11 EDUCATION AND TRAINING. Novell agrees to provide education and training to SCO's engineering,

support and sales organizations in accordance with this Section 11. The purpose of this training is to allow SCO to begin the integration process and to begin course development of classes designed to educate SCO's personnel on NetWare Software as it is implemented for UnixWare. The following training will be offered by Novell at no charge. All training and training materials provided under this Agreement shall be used to create SCO training programs for NetWare. Training and training materials furnished hereunder do not qualify SCO to offer or provide Novell authorized training for any Novell products to the general public. Novell hereby authorizes SCO to videotape the training sessions to provide training to SCO employees.

11.1 Technical Education. Novell will provide engineering level training materials designed to explain the internal architecture of NetWare Software. The materials are not intended to be a comprehensive course on NetWare Software, but rather an overview which will allow experienced software engineers to begin work on development of NetWare Software bundled with UnixWare. Should Novell offer classroom instruction for the NetWare Software, the intended audience is a maximum of 10 software engineers who are experienced with the target operating system, are familiar with the functional characteristics of NetWare, and are or will be responsible for the design and implementation of UnixWare.

11.2 Support Education. Novell will provide support level training which will explain techniques used to install and support NetWare networks and provide for daily set-up and operation of a NetWare system. This course is not intended to train SCO's support technicians nor field personnel. The target audience is a maximum of 10 individuals who are or will be responsible for the development of courseware, and delivery of internal training to SCO's support personnel. This class will be conducted one-time for each major release of NetWare at a mutually agreed upon site and at a mutually agreeable time.

12 Error Correction and Support.

12.1 End Users and Resellers. Under this Agreement, Novell shall have no obligation to provide support directly to SCO's OEMs, resellers, distributors, sub-distributors, and/or End Users for UnixWare. For NetWare Software, SCO agrees to take front line support calls and source code has been provided to SCO for those support efforts. After an initial isolation of a problem as a NetWare Software problem which SCO cannot resolve, SCO will initiate help desk-to-help desk calls with Novell's Technical Support Organization to resolve the problem.

12.2 Reference Port Support. Novell shall have no obligation to provide other than error correction for the Reference Port in accordance with Section 12.3. Additional Technical Support may be available through separate agreements with Novell and/or its subsidiaries. The parties contemplate entering into a separate support agreement for Novell's support of SCO which sets forth response times, fees and various support levels.

12.3 Error Correction of Reference Port. Novell agrees to commit commercially reasonable resources to correct all errors, defects and malfunctions isolated to the Reference Port arising for a period of two (2) years following each major functional revision or release of NetWare Software in accordance with this Section 12.3. Such support shall include development level support - i.e. problems reported and verified on the reference platform will be addressed in a queuing system by Novell on a commercially reasonable basis by Novell development support engineers. Priority will be given to problems found in the UnixWare 2.1 version of the NetWare software over the 2.01 or earlier versions. Where practical, SCO agrees to encourage its customers to move to the newest release of the NetWare Software in order to address these support problems. Except as provided below, the foregoing support services shall be provided without cost to SCO.

12.3.1 Novell Support Encyclopedia. Novell will provide SCO, at no charge or cost, a copy of Novell's Novell Support Encyclopedia ("NSE") for each SCO support site upon that

site verifying in writing to Novell that at least two individuals who will be primarily responsible for providing customer support for UnixWare have received certification from Novell as CNE's. NSE is a database of problems reported to Novell and their corrections or work-arounds. Volumes of the NSE that are not made generally available by Novell to the public shall be deemed to be Novell Confidential Information.

- 12.3.2 Error Reports. When escalating support calls to Novell, SCO agrees to provide Novell with sufficient information (Error Reports) to attempt to resolve the error. Error Reports shall provide a brief description of the error being reported, including the error classification, the date upon which the error was first encountered, the date the error is being reported, the manner in which the error was isolated and reproduced, and, if available, the name of the test program that exhibits the error.
- 12.3.3 SCO Assistance. SCO agrees to make available to Novell, free of charge, all necessary information, facilities and services required by Novell for the purpose of fulfilling its support obligations under Subsection 12.3, including, but not limited to, such computer time and associated facilities as are reasonable to enable Novell to undertake any work which it considers necessary to provide to SCO the services detailed herein.
- 12.3.4 Novell Assistance. Novell agrees to make available to SCO, free of charge, all necessary information required by SCO to recreate an error on the Reference Port. To the extent other facilities and services are necessary, Novell will make commercially reasonable efforts to assist SCO. Other assistance from Novell will require an agreement by the parties as to the sharing of costs for such assistance.
- 12.3.5 Support Exclusions. Novell support shall not extend to (i) any fault caused by misuse, (ii) any fault resulting from unauthorized modification of any Novell product, (iii) any error caused by products not provided by Novell, or (iv) any malfunction or error resulting from misuse of hardware upon which the NetWare Software operates.
- 12.3.6 Support After This Agreement. Novell agrees to provide technical support to SCO for a period of one (1) year after termination or expiration of this Statement of Work (for reason other than material breach) in accordance with Novell's then current policies and prices.

13 LICENSE FEES, REPORTS AND ROYALTIES. This Section 13 contains the terms of compensation to be paid by SCO to Novell (on behalf of both SCO and its OEMs) under this Statement of Work. These fees and royalties have been set at the following amounts to reflect Novell's investment in SCO and the strategic nature of the parties' relationship.

- 13.1 NetWare Software License Fees. As part of its financial obligation to Novell for a license to the NetWare Software (including the royalties set forth in Section 13.5.1 and the Marketing obligations of Section 14.1) SCO agrees to pay to Novell the amount of \$210,000 upon execution of this Agreement and on each anniversary date thereafter as a license fee for NetWare Software for use with UnixWare. Payment of the fees and royalties associated with NetWare Software to Novell gives SCO a paid up license granting SCO the right to make Basic NetWare Technology, as defined in Exhibit A, available with UnixWare and, at SCO's option, with OpenServer. The NetWare Software License Fee also covers Novell upgrades to the latest versions of the Basic NetWare Technology. Upgrades to the latest versions of the NetWare Software for use with UnixWare will be delivered to SCO as part of NetWare Software. Novell does not guarantee any price or the availability of new versions of the Basic NetWare Technology which either use third party licensed technology or include substantial new features.

- 13.2 Novell Support Fees. SCO agrees to pay to Novell upon execution of this Agreement and on each anniversary date thereafter, at SCO's option, a Novell Support Fee of \$150,000 for an annual support agreement which will cover all the licensed NetWare technology which is the subject of this SOW. Both parties agree to negotiate in good faith a separate support agreement that will allow SCO to meet its current obligations to its customers.
- 13.3 Royalty Reports & POS. Within forty-five (45) days following the end of each quarter, SCO (for itself and for its OEMs) shall furnish to Novell a royalty report and a POS Report for the preceding quarter. POS Reports are intended to assist Novell in allocating support resources and to concentrate marketing activities to promote greater sales. POS Reports containing sales into the U.S. Government must clearly identify such sales.
- 13.4 OEM Source License Fees. Within fifteen days after SCO OEM's receipt of the licensed NetWare Software deliverables as set forth on Exhibit A, SCO shall pay to Novell a non-refundable license fee equal to 50% of Novell's then-current list price for NetWare source code licensing.

Upon each anniversary date of the OEM source code license agreement between SCO and its OEM, SCO shall pay to Novell (within 15 days) an annual non-refundable license fee equal to fifty (50%) of Novell's then-current list price for its annual maintenance fee for NetWare source code licensing. Such fee shall apply to each Platform on which OEM offered a version of NetWare Software during the preceding year.

- 13.5 Per-copy Royalty. Royalties to Novell for NetWare Software licenses shall accrue and be payable to Novell within forty-five (45) days after the end of each quarter and shall be determined as provided below.
- 13.5.1 NetWare Software Per Copy Royalty. The royalty due from SCO (for itself and its OEMs) to Novell for each Sublicense of NetWare Software granted to a Reseller or an End User pursuant to this Agreement shall be a royalty of \$5 for each sublicense of a 1 user version of NetWare. This \$5 per copy fee for NetWare Software technology shall apply to each 1 user license of the NetWare Software which includes the Basic NetWare Technology and NetWare Services Technology. Notwithstanding the foregoing, no \$5 per copy fee shall be due from SCO for the following product categories which do not include NetWare Services Technology as defined in Exhibit A: (i) Embedded Systems; (ii) Embedded Telephony Systems; (iii) Desktop systems. SCO recognizes the desirability to include NetWare Services Software Technology, in particular NDS, in both embedded and desktop systems, and will actively work with Novell to include, promote and sell this functionality at which time such technology shall become royalty bearing.
- 13.5.2 Increased User Count. The parties intend that OEMs and End Users may upgrade the user count of their version of NetWare Software bundles with UnixWare by means of a licensing diskette or other licensing mechanism developed by Novell to increase the user count of the software. In the event that the user count diskettes are made available by Novell through SCO, its sales channel or its OEMs, the royalty due from SCO to Novell for each Increased User Count licensing diskette shall be equal to 20% of Novell's list price for its native NetWare versions of similar user count Upgrades.
- 13.5.3 Upgrade. The royalty due from SCO (for itself or its OEM) to Novell for each Upgrade sublicensed or transferred to an End User shall be equal to twenty percent (20%) of Novell's list price for a similar version upgrade or user count upgrade published by Novell for its native NetWare offering.

13.5.4 Returned Copies. SCO and its OEMs may take a credit against the per-copy royalties specified above for un-opened and unused copies of UnixWare returned by a Reseller and for copies of UnixWare returned by an End User within ninety (90) days of the End User's purchase of UnixWare.

13.6 Proposed Change in Licensing Schema. The royalty and fee structure above is intended to cover the period from execution of this Agreement until the earlier of: (i) the general availability of an "NDS lite" technology (as defined below) or (ii) the general availability of a merged UnixWare/Open Server Product from SCO. The parties agree to begin discussions as soon as possible on a proposed split of technology for layered licensing and the structure of pricing for the subsequent period. Any new pricing model will reflect all fees and royalty obligations payable by SCO to Novell as set forth in this Section 13 and marketing obligations set forth in Section 14.

In the event that the two companies are unable to agree on a business model and fee structure in a timeframe which enables "NDS lite" to be utilized in a merged UnixWare/Open Server product ("Merged Product"), and Novell's final proposal is significantly different from the current fee and royalty structure for the same level of NetWare Software functionality, SCO will have then right to make NDS and the NetWare File & Print Services a layered product for licensing for use with the Merged Product. Should Novell's final proposal not significantly differ from the current fee and royalty structure for the same level of NetWare Software functionality, SCO shall remain obligated to make NDS Services available on UnixWare as well as on the Merged Product. Nothing in this Section grants SCO the right to make NDS lite available on its OpenServer product alone. The terms and conditions of the licensing of those layered products will be mutually agreed upon by the parties. In the event that the layered products are made available by SCO, the terms set forth above for the royalties due for user count upgrades, support fees and NetWare Software License fees (in Section 13.1 above) shall remain in full force and effect.

13.6.1 SCO's Proposed Definition of NDS Lite for Novell's Consideration. "NDS lite" is defined as an implementation of NDS that is full and complete with respect to NDS features with the exception of the ability to communicate server to server. This single server version of NDS will not permit cross-server directory content sharing or synchronizing. NDS lite will allow SCO and third party developers to develop applications that use NDS lite, or full NDS, with no perceived differences to the application. SCO and Novell will work together to develop and market a "Full NDS" add-on product which will upgrade "NDS lite" to full multi-server directory sharing and synchronization. It is SCO's intent to make NDS a key part of SCO's distributed administration schema so that customers requiring multi-server 'single-system' administration will need to license the Full NDS.

13.7 Demonstration and Internal Use Copies.

13.7.1 Demonstration Use by SCO and its OEMs. SCO and its OEMs may duplicate and use, but not sublicense, transfer, loan, rent or lease, as many copies of the NetWare Software for use with UnixWare as are reasonably necessary for customer demonstration, internal training and other similar activities in connection with the promotion and distribution of UnixWare. Except as may become necessary under Section 13.8.1, these copies shall not be subject to a royalty or other fee.

13.7.2 SCO's Internal Use. SCO may duplicate and use, but not sublicense, transfer, loan, rent or lease as many copies of Novell's native NetWare product as are reasonably necessary for SCO to conduct self certification and carry out technical support and maintenance of NetWare Software for its customers. Except as may become necessary under Section 13.8.1, these copies shall not be subject to a royalty or

other fee. SCO may duplicate and use, but not sublicense, transfer, loan, rent or lease as many copies of NetWare Software for use with UnixWare as SCO deems necessary or desirable for its own internal use.

13.8 Price Changes. Novell reserves the right to change the list price of its native NetWare offering or User Count Upgrades at any time upon providing SCO sixty (60) days or more prior written notice. Changes in the list price of user count upgrades shall be in proportion to the percentage changes in Novell's list prices of NetWare user counts.

13.8.1 Third Party Royalty Charges. Should Novell be forced to pay third party royalties for its sale or licensing of the NetWare Software, such third party royalty fees shall be passed through to SCO for the purposes of this Agreement. SCO shall only be required to pay to Novell the same third party royalty assessed to Novell without any additional fee. SCO shall pay to Novell only that amount required by Novell from all similarly situated NetWare Software OEMs. Novell agrees to use its best efforts not to incur such third party royalties and where necessary try to come to agreement with the third party for a one time royalty buy-out.

13.9 Most Favored Customer. All royalties and fees payable by SCO to Novell will reflect Novell's most favored customer status for similarly situated OEMs and licensors.

14 MARKETING

14.1 Marketing Funds. SCO agrees to spend an amount equivalent to 5% of its NetWare user upgrade revenues, but no less than \$900,000, during each of the two years following the execution of this Statement of Work No. 1 for the marketing of NetWare services on UNIX systems.

14.2 Marketing Message. SCO agrees to actively endorse Novell's Net2000 and NDS efforts by announcing SCO's endorsement of those efforts as part of SCO's announcement of Elger and future NetWare related product announcements. SCO agrees to support Novell in industry groups including those groups setting standards for technology related to Novell's Net2000 initiatives and directory services.

15 LIMITED WARRANTY

15.1 Novell represents and warrants that NetWare Software does not infringe any copyright or trade secret and that Novell has no reason to believe that an infringement claim may, will or can be assessed against Novell or its licensees.

15.2 To the best of Novell's knowledge, the NetWare Software does not infringe any U.S. patent and no material claim is pending or threatened against Novell or any Novell licensor that would adversely affect the right of SCO or any SCO customer to use UnixWare for its intended purposes.

15.3 NOVELL EXPRESSLY DISCLAIMS ALL WARRANTIES EXCEPT THE LIMITED WARRANTIES SET FORTH ABOVE INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE.

15.4 The foregoing warranties and commitments are for the benefit and apply only to SCO and its customers. These warranties do not apply if an alleged defect or error arises out of accident, neglect, misuse, failure of electric power, air conditioning, humidity control, causes

other than ordinary use, or causes beyond Novell's control.

16 INTELLECTUAL PROPERTY INDEMNIFICATION

- 16.1 Indemnification. Novell agrees to indemnify, defend and hold SCO harmless from any and all damages, liabilities, costs and expenses incurred by SCO as a result of any claims, judgments or adjudication against SCO that NetWare Software infringes any patent, copyright or trade secret arising under the laws of the United States of any third party, provided: (i) SCO shall promptly notify Novell in writing of the claim; and (ii) Novell shall have the sole control of the defense of the action and all negotiations for its settlement and compromise; provided, however, that SCO shall have the right to approve counsel selected by Novell and any settlement or compromise which may adversely affect SCO's rights under this Section 17, which approval shall not be unreasonably withheld.
- 16.2 Exclusions. Should NetWare Software, or the operation, marketing or distribution thereof in accordance with the rights granted in this Statement of Work become, or in Novell's opinion be likely to become, the subject of infringement of any copyright, patent or other intellectual property right of any third party, SCO shall permit Novell, at its option and expense, to either (i) procure for SCO the right to continue using NetWare Software, or (ii) replace or modify NetWare Software so that it becomes non-infringing, provided such replaced or modified NetWare Software retains comparable functionality. Novell shall have no liability to SCO under any provision of this Statement of Work with respect to any claim of infringement which is based on the combination or utilization of software, equipment or devices not made or recommended by Novell pursuant to any specifications other than, or in addition to, Novell's specifications, or the unauthorized modification of NetWare Software or product specifications furnished under this Statement of Work where the claim could not have been based on the use of software, equipment or devices made or recommended by Novell.
- 16.3 Entire Liability. THE ABOVE STATES THE ENTIRE LIABILITY OF NOVELL WITH RESPECT TO INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS OR ANY OTHER FORM OF INTELLECTUAL PROPERTY BY ANY PRODUCT SUPPLIED BY NOVELL.

17 TERMINATION

- 17.1 Effect of Termination on Obligations. Termination of this Agreement shall not affect any of SCO's pre-termination obligations to SCO customers. Notwithstanding termination of this Agreement, 1) SCO and its subsidiaries may distribute the copies of NetWare Software for use with UnixWare in stock or fill orders placed by End Users or Resellers prior to termination of this Agreement during the subsequent ninety (90) days after such termination, 2) those copies of NetWare Software for use with UnixWare in possession of Resellers for which royalty payments are made may be distributed in accordance with the terms and conditions of this Agreement, and 3) End User Sublicense granted pursuant to this Statement of Work shall not be revoked by the termination of this Statement of Work.
- 17.2 Survival of Terms. The provisions of this Agreement which by their nature extend beyond the termination of this Agreement, including Sections 1, 2, 3, 4, 8, 13, 15, and 16, will survive and remain in effect until all obligations are satisfied.

Execution Original

Novell, Inc.

Signature 

Print Name R. Duff Thompson

Print Title Senior Vice President - Corporate Development

Date December 6, 1995

The Santa Cruz Operation, Inc.

Signature 

Print Name Alok Mohan

Print Title Chief Executive Officer

Date 6 December 1995

Exhibit A: NetWare Software

All components listed will be provided in source and binary form unless otherwise indicated. Novell intends to grant to SCO rights to NetWare Software in the Eiger release of UnixWare. Should the modules and/or files set forth below not explicitly include all elements of the NetWare Software in the Eiger release of UnixWare as contemplated under this Agreement, Novell grants to SCO the rights to those elements in source and binary form pursuant to the provisions of Section 3 of this Agreement. Notwithstanding the above, should Novell have restricted rights to the source code for any of those non-listed elements, Novell agrees to grant to SCO the broadest rights in those elements as permitted under Novell's license agreements.

Pursuant to the grant provisions set forth in Section 3 of this Agreement, Novell grants to SCO the rights to all Unix executable files in the NetWare Software in source code form. Pursuant to the grant provisions set forth in Section 3 of this Agreement, Novell grants to SCO the rights to all non-Unix executable files in binary form only.

I. Basic NetWare technologies

There will be several versions of the software listed in this section that will be licensed including UnixWare 1.1 (and updates), UnixWare 2.0, UnixWare 2.01 (and updates), and UnixWare 2.1 (Eiger).

NetWare Protocols

- IPX
- SPX(2)
- ODI drivers (Binary only)
- Installation for nwnet package

NetWare UNIX client

- NUC File System
- NUC driver (with requester)
- NUC.NLM for native NetWare (binary only)
- NetWare Client APIs (NWCalls, NWNet for UnixWare, etc.)
- DOS client utilities for UnixWare
- NetWare Access GUI and icons
- NetWare Settings GUI and icons
- Nprinter (2.0, 2.01, and 2.1 versions only)
- Installation for nuc package
- Remote applications GUI and icons
- Application sharing GUI and icons
- XAuto
- LPnet

Unix Access Software for DOS/Windows

- TNVT (Binary only)
- Host Presenter (Binary only)

NetWare Access Software for Unix Workstations

- Xconsole

Windows emulation - NetWare components

- DR DOS (For use with UnixWare Merge, Boot and driver configuration)
- This code will not include any portions that are royalty bearing and will include only those portions necessary to carry out the Merge, Boot and driver configuration functionality.

- Merge Redirector

MHS Gateway
MHS Setup GUI and icons

UnixWare TSA for use with SMS Backup Systems

Documentation

Test Suites

II. NetWare Services technologies

Only the UnixWare 2.1 version of the listed software will be licensed under this agreement.

Upper protocol stack (NCP dispatcher)
File, Print, and Directory service modules
Printer Setup GUI and icons
Installation script, DSInstall
Volume Manager utility, GUI, and icons
User Upgrade Utility, GUI, and icons
NetWare Setup, GUI and icons
NetWare Status GUI and icons
DSAdmin and TSAAdmin
NetWare Services Network Management MIBs and associated daemons
NetWare file and directory Backup & Restore extensions used by cpio and Disaster Recovery
Client Kit Utility, GUI, and Icons
All associated diagnostic, statistical, and repair tools (e.g. DSRepair)
NWSNUT interface for DSRepair and DSInstall
SYS Volume (binary only)
Client utilities
NetWare clients for DOS, Windows, and OS/2 (binary only)
NetWare Certification Test Suites for Internal use when available from Novell.
User documentation
Technical documentation
Test Suites

III. Restricted Source Code:

A. RSA Source Code. The license of the RSA source code grants SCO the right to use, modify, compile and link the RSA modules in connection with the operating system. The resulting binary code may be distributed directly or indirectly world wide to its OEMs, resellers, VARs and End Users. No right is granted to SCO to further sublicense the RSA source code to its OEMs.

B. DSDump

Exhibit B

Novell Testing and Certification Fees

\$15,000 per Platform - per Release