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**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

CALDERA SYSTEMS, INC, d/b/a/ THE SCO

GROUP,

Plaintiff,

-against-

INTERNATIONAL BUSINESS MACHINES

CORPORATION,

Defendant.

Civil No. 2:03cv0294

Honorable Dale A. Kimball

DECLARATION OF A. ALLISON AMADIA

I, A. Allison Amadia, declare as follows:

1. I am an independent consultant specializing in intellectual property law and technology licensing and in counseling technology companies on matters pertaining to the procurement, manufacture, sale and licensing of technology. I am also a Lecturer in Law at Santa Clara University School of Law.

2. This declaration is submitted in connection with the lawsuit filed by Caldera Systems, Inc., a Delaware corporation doing business as The SCO Group ("Caldera"), against International Business Machines Corporation, a New York corporation ("IBM"), styled Caldera Systems, Inc. v. International Business Machines Corporation, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003). More specifically, this declaration concerns negotiations and agreements that I was involved with while I was employed at Novell, Inc., a Delaware corporation ("Novell"), relating to UNIX software.

3. In Section I below, I describe the negotiations leading up to an amendment to a UNIX software agreement and certain related agreements, entered into on April 26, 1996 between IBM and Novell, which was acting on its own behalf and on the behalf of The Santa Cruz Operation, Inc. (now known as Tarantella, Inc.) ("Tarantella"). In Section II, I describe certain provisions of the April 26 amendment, as it was executed, and my understanding of the intent of those provisions. In Section III, I describe the negotiations leading up to an amendment entered into on October 17, 1996 between IBM, Novell and Tarantella, replacing the April 26 amendment. In Section IV, I

describe certain provisions of the October 17 amendment, as it was executed, and my understanding of the intent of those provisions. Finally, in Section V, I state my understanding of the intent of those provisions in the context of the litigation between Caldera and IBM.

4. Except as stated otherwise, this declaration is based upon personal knowledge and review of the documents referenced herein.

L. Negotiation of the April 1996 Amendment

5. I was employed as in-house corporate counsel for Novell from 1995 until 1997. During that time, I was known by the name A. Allison Lisbonne.

6. After I joined Novell, Novell sold certain UNIX system related assets, which Novell had acquired by virtue of its acquisition of UNIX Systems Laboratories, Inc., to Tarantella on December 6, 1995 pursuant to an Asset Purchase Agreement dated September 19, 1995, as amended, between Tarantella and Novell (the "Asset Purchase Agreement"), a true and correct copy of which is attached hereto as Exhibit 1. Although I was not involved in the sale by Novell to Tarantella, I reviewed the Asset Purchase Agreement in connection with the negotiations described below. Novell retained certain rights in connection with the sale of these UNIX related assets to Tarantella, including the right to amend certain UNIX license agreements in certain circumstances. In addition, subject to certain exceptions, Tarantella agreed to collect and pass through to Novell 100% of the royalties, fees and other amounts due under these UNIX license agreements. Novell agreed to pay Tarantella an administrative fee of 5% of these amounts.

7. Thereafter, in early 1996, IBM and Novell negotiated changes to the following agreements between IBM and AT&T Technologies, Inc., whose rights had been acquired by Novell, relating to UNIX software:

- the Software Agreement (Agreement Number SOFT-00015) dated February 1, 1985 (the "Software Agreement");
- the Sublicensing Agreement (Agreement Number SUB-00015A) dated February 1, 1985 (the "Sublicensing Agreement");
- the Substitution Agreement (Agreement Number XFER-00015B) dated February 1, 1985 (the "Substitution Agreement");
- the letter agreement dated February 1, 1985 (the "Side Letter"); and
- Software Agreement Supplement 170, as amended by a letter agreement dated on or about January 25, 1989 ("Supplement 170").

True and correct copies of these agreements are attached hereto as Exhibits 2 through 6. These agreements, as amended, and together with any other Supplements that pertain to prior versions or releases of UNIX System V Release 3.2 ("SVR3.2"), are referred to herein as the "Related Agreements".

8. Among other things, the Related Agreements included provisions:

- requiring the payment by IBM of per copy fees for the distribution of sublicensed products subject to the Related Agreements (Paragraph 1 of Supplement 170);
- permitting the termination of IBM's rights in certain circumstances following a breach by IBM of the Related Agreements (Section 6.03 of the Software Agreement; Section 3.03 of the Sublicensing Agreement; and Paragraph A.5 of the Side Letter);
- permitting certain IBM contractors who have been granted the right to use software products subject to the Related Agreements (in accordance with the requirements of AT&T Technologies, Inc.) to modify and distribute sublicensed products to customers, subject to the payment of fees for copies of such modified sublicensed products pursuant to the Sublicensing Agreement or pursuant to a separate sublicensing agreement between the contractor and AT&T Technologies, Inc. (Paragraph B.5 of the Side Letter);

- requiring IBM to hold software products subject to the Related Agreements in confidence, subject to certain exceptions (Section 7.06 of the Software Agreement and Paragraphs A.3, A.9, A.10, A.11 and A.14 of the Side Letter); and
- permitting IBM to develop and market products and services employing ideas, concepts, know-how or techniques relating to data processing embodied in UNIX System V software provided that (i) IBM does not copy any code from such software into any such product or in connection with any such service and (ii) IBM employees do not refer to the physical documents and materials comprising such software when they are developing any such products or service or providing any such service (Paragraph A.9 of the Side Letter).

9. Larry Bouffard and I represented Novell in the negotiations leading to the modification of the Related Agreements in an amendment entered into on April 26, 1996. Mr. Bouffard was the lead business person, and I was the lead counsel, for Novell in these discussions. The IBM representatives included William Sandve, Jr. and Paul D. Vineis, Esq.

10. It was my understanding from my involvement in the negotiations that IBM was seeking to amend the Related Agreements to effect a royalty buy-out and to make IBM's rights under the Related Agreements irrevocable, fully paid-up and perpetual. In addition, in the course of the negotiations, IBM also sought to make it easier to redistribute licensed source code to contractors and customers for limited purposes and to reduce the confidentiality restrictions in the Related Agreements. IBM was prepared to pay Novell a lump sum payment in the amount of \$10,125,000 if the Related Agreements were amended to effect a royalty buy-out and to eliminate any rights that Novell or Tarantella had to terminate IBM's rights under the agreements. IBM also negotiated for the right to provide the licensed source code to contractors and customers for limited purposes (e.g., adapting the software to support unique hardware or providing temporary fixes) and to loosen the confidentiality provision in the Related Agreements,

which was hampering IBM's business activities.

11. Initially, Mr. Bouffard and I, on behalf of Novell, did not agree to IBM's proposal regarding irrevocability. A draft of a proposed amendment (the "April 18 Draft"), a true and correct copy of which is attached hereto as Exhibit 7, included a royalty buy-out provision which would have eliminated per copy fees for distribution of binary copies of SVR3.2 and previous releases. However, the April 18 Draft did not include a provision that would have made IBM's rights under the agreements irrevocable. The April 18 Draft also included a provision that would have permitted "IBM's continued use of contractors to develop portions of UNIX System derivative works under the Related Agreements", but that provision would not have addressed IBM's concern regarding the redistribution of the licensed source code to customers. The April 18 Draft did not include a provision that would have reduced the confidentiality restrictions in the Related Agreements.

12. On April 22, 1996, I received a letter from Mr. Vineis of IBM (the "April 22 Letter"), a true and correct copy of which is attached hereto as Exhibit 8, providing comments on a draft of the proposed amendment. Among other things, the April 22 Letter addressed (i) irrevocability, (ii) redistribution of source code to contractors and customers and (iii) reduction of the confidentiality restrictions in the agreements. Specifically, the April 22 Letter included the following comment regarding irrevocability:

Section 1. Modify section 2 to read:

"Upon payment to Novell of the consideration in the section entitled "Consideration", IBM will have the irrevocable, fully paid-up, royalty-free, perpetual right to exercise all its rights under the Related Agreements beginning January 1, 1996."

The April 22 Letter proposed revised language relating to redistribution of licensed source code to contractors, and new language regarding redistribution to customers. The April 22 Letter proposed the following language to relax the confidentiality provision in the Software Agreement:

In addition, the last sentence of paragraph 9 of the February 1, 1985 amendment to SUB-00015A is modified by deleting the words: "and employees of LICENSEE shall not refer to the physical documents and materials comprising SOFTWARE PRODUCTS subject to this Agreement when they are developing any such products or services or providing any such service."

13. I understood from IBM's comments in the April 22 Letter that IBM was proposing to change the Related Agreements (i) to ensure that the underlying agreements could never be terminated under any circumstances; (ii) to facilitate the redistribution of licensed source code to contractors and customers; and (iii) to permit IBM employees to actually refer to the licensed documents and materials, including source code, while they are developing or providing products or services.

14. Thereafter, Mr. Bouffard and I participated in conversations with IBM representatives Messrs. Sandve and Vineis regarding IBM's proposed changes, including in particular IBM's proposal concerning irrevocability. IBM stated that in order to justify a \$10,125,000 non-refundable payment for what was at this time very old software, IBM's rights under the agreements could never be terminated under any circumstances. I understood IBM's proposal to mean that neither Novell nor Tarantella (nor their successors or assigns) could terminate IBM's rights under the Related Agreements, demand any additional royalty payments beyond the agreed upon amount of \$10,125,000 in connection with IBM's distribution of its AIX operating system product on specified architectures (and, after five years, other sublicensed products), or interfere with the proper exercise of IBM's rights under the Related Agreements. With respect to

irrevocability, the only limitation on these rights to which IBM was amenable was, as proposed by Novell, that Novell would retain the limited right to enjoin or otherwise prohibit IBM from violating Novell's rights under the amendment, the Related Agreements or under general patent, copyright or trademark law, provided that Novell could satisfy the standards for obtaining such relief.

15. What I understood IBM's proposed change regarding irrevocability to mean, in view of the parties' respective rights under the proposed amendment, is that IBM would acquire an irrevocable, fully paid-up, perpetual right to use the licensed code and products that would preclude Novell or Tarantella (or their respective successors or assigns) from terminating or otherwise interfering with IBM's right to copy and furnish, including market, license and distribute, sublicensed products, such as IBM's AIX operating system product, or to demand additional royalties in connection with IBM's distribution of its AIX operating system product on specified architectures (and, after five years, other sublicensed products). After giving effect to IBM's proposal regarding confidentiality, IBM would be subject to very few confidentiality restrictions, since IBM was already permitted to use ideas, concepts, know-how and techniques from SVR3.2 in developing or providing products or services. Therefore, there would be very little conduct relating to confidentiality with respect to the licensed code and products that Novell could seek to enjoin.

16. I, and I believe all who participated in the discussions, understood that, under IBM's proposal, if IBM were to publish the licensed source code under circumstances constituting a breach of the Related Agreements, for example, then, while

Novell could not terminate IBM's rights under the Related Agreements, it could enjoin the publication, provided that Novell could satisfy the standards for obtaining such relief.

17. With respect to the redistribution provision, IBM explained its desire to redistribute the licensed source code to contractors and customers for limited purposes (e.g., adapting the software to support unique hardware or providing temporary fixes). With respect to the confidentiality provision, IBM explained that it wanted its employees to be free to look at the licensed source code and documentation when the employees were engaged in product development or providing services.

18. Ultimately, Novell agreed to accept IBM's proposed changes concerning irrevocability (i.e., that IBM's rights under the agreements could never be terminated under any circumstances) on the understanding that the irrevocable nature of IBM's rights would not prevent Novell from seeking to enjoin conduct that breached the provisions of the Related Agreements, provided that Novell could satisfy the standards for obtaining such relief. In other words, IBM would obtain the irrevocable rights it was seeking, subject only to Novell's right to enjoin IBM from violating Novell's rights under the Related Agreements or under general patent, copyright or trademark law (but not to terminate IBM's rights), provided that Novell could satisfy the standards for obtaining such relief. Novell also agreed to accept (1) IBM's proposal regarding redistribution of the licensed source code to contractors and customers on the understanding that the redistribution was for limited purposes and that IBM's customers themselves would have no right to distribute the licensed source code and (2) IBM's proposal that IBM employees be permitted to refer to the licensed code while they are developing or providing products or services.

19. Following the parties' meeting of the minds, IBM and Novell, acting on its own behalf and on the behalf of Tarantella, executed an amendment to the Related Agreements as is discussed below.

II. Execution of the April 1996 Amendment

20. On April 26, 1996, Novell, acting on its own behalf and on the behalf of Tarantella, and IBM entered into an amendment to the Related Agreements (the "April 1996 Amendment"), a true and correct copy of which is attached hereto as Exhibit 9.

21. Paragraph 4 (Consideration) and Paragraph 1 (No Additional Royalty) of the April 1996 Amendment set forth IBM's and Novell's agreement to modify the Related Agreements, with IBM making non-refundable payments totaling \$10,125,000 in return for the Related Agreements becoming, among other things, irrevocable, fully paid-up and perpetual.

22. Specifically, Paragraph 4 of the April 1996 Amendment provides as follows:

4. *Consideration.* As consideration for the above modifications to the terms and conditions of the Related Agreements, IBM agrees to pay SCO a nonrefundable fee of \$10,125,000 per the following payment schedule: \$4,860,000 due on the Effective Date of this Amendment (net 30 days), and \$5,265,000 due on January 1, 1997 (net 15 days).

The relevant language from Paragraph 1 provided that:

Upon payment to SCO of the consideration in the section entitled "Consideration", IBM will have the irrevocable, fully paid-up, perpetual right to exercise all of its rights under the Related Agreements beginning January 1, 1996 at no additional royalty fee. . . . Notwithstanding the above, the irrevocable nature of the above rights will in no way be construed to limit Novell's rights to enjoin or otherwise prohibit IBM from violating any and all of Novell's rights under this Amendment, the Related Agreements, or under general patent, copyright, or trademark law.

The first sentence of Paragraph 1 is identical to the language proposed by Mr. Vineis except that the phrase "royalty-free" was deleted from the middle of the sentence and the phrase "at no additional royalty fee" was added at the end of the sentence. This phrase was "belt and suspenders" in that it means the same thing as "fully paid-up", which appears earlier in the same sentence. Both phrases mean that no additional royalty payment is required to make IBM's rights under the Related Agreements irrevocable and perpetual. As discussed above, the purpose of the last sentence of Paragraph 1 was to make clear that, although Novell no longer had a termination right, it still had the right to seek to enjoin conduct that breached the provisions of the Related Agreements, provided that Novell could satisfy the standards for obtaining such relief. So, for example, if IBM were to publicly disclose the licensed source code under circumstances constituting a breach of the Related Agreements, Novell had contracted away the right to terminate IBM's rights to copy and furnish, including market, license and distribute, sublicensed products based on SVR3.2 and previous releases, including its AIX operating system product, in accordance with the Related Agreements but retained the right to enjoin IBM from such disclosure, provided that Novell could satisfy the standards for obtaining such relief.

23. As requested by Mr. Vineis in the April 22 Letter, the April 1996 Amendment includes language relaxing the confidentiality provision in the Software Agreement by permitting IBM employees to actually refer to the licensed source code while they are developing or providing products or services. The last sentence of Paragraph 6 of the April 1996 Amendment provides:

The second to last sentence of paragraph 9 of the February 1, 1985 amendment to SOFT-00015 is modified by deleting the words: "and employees of LICENSEE

shall not refer to the physical documents and materials comprising SOFTWARE PRODUCTS subject to this Agreement when they are developing any such products or services or providing any such service.”

24. The April 1996 Amendment includes language providing for the redistribution of software products, including source code, to contractors and customers for limited purposes, provided that IBM's customers themselves have no right to distribute the software product (Paragraphs 2 and 3 of the April 1996 Amendment).

III. Negotiation of Amendment No. X

25. After the April 1996 Amendment was executed, Tarantella objected to the amendment. In a letter dated May 1, 1996 to Novell, a true and correct copy of which is attached hereto as Exhibit 10, Scott D. Lester, Esq., of Brobeck Phleger & Harrison LLP, counsel for Tarantella, asserted that execution of the April 1996 Amendment by Novell constituted a breach of the Asset Purchase Agreement and represented an invalid exercise of Novell's authority.

26. Pursuant to a “standstill agreement” with Tarantella, a true and correct copy of which is attached hereto as Exhibit 11, IBM and Novell agreed to refrain from acting under certain sections of the April 1996 Amendment for a period of 30 days. The standstill agreement was extended several times pending negotiations with Tarantella. True and correct copies of the agreements extending the standstill agreement are attached hereto as Exhibits 12 through 14.

27. In an effort to resolve Tarantella's concerns, Mr. Bouffard and I had a number of discussions with representatives of Tarantella, including Steven M. Sabbath, Esq., regarding the April 1996 Amendment. Christopher Hogan of Novell also participated in these discussions. I understood that Mr. Sabbath was in contact with Alok Mohan, Tarantella's Chief Executive Officer.

28. On or about May 21, 1996, Mr. Bouffard of Novell sent to Mr. Sandve of IBM a letter (the "May 21 Letter"), a true and correct copy of which is attached hereto as Exhibit 15, attaching revisions to the April 1996 Amendment proposed by Tarantella. In the May 21 Letter, Mr. Bouffard, on behalf of Novell, stated that Novell believed it would prevail if Tarantella were to pursue legal action. Pursuant to Section 4.16(b) of the Asset Purchase Agreement, Novell retained the right to cause Tarantella to amend in any manner or respect certain agreements that had been transferred to Tarantella, including the Related Agreements. Nevertheless, Mr. Bouffard stated in the May 21 Letter that Novell preferred to attempt to resolve Tarantella's concerns without litigation. Tarantella requested changes to Paragraph 1 of the April 1996 Amendment, but it did not request any changes to the "irrevocable, fully paid-up, perpetual" language in that paragraph. Tarantella proposed other revisions to the April 1996 Amendment to that effect. Tarantella proposed, among other things, to impose right-to-use fees on IBM contractors and customers who were provided licensed source code and to prohibit IBM employees who may have retained intangible information in the form of ideas, concepts, know-how or techniques after having access to licensed source code from making any attempt to preserve such information by reducing it to writing or otherwise memorializing it.

29. Novell generally negotiated separately with IBM and with Tarantella in an effort to resolve Tarantella's concerns. At some point during these negotiations, Christopher Hogan replaced Larry Bouffard as the lead business person for Novell in the negotiations.

30. As reflected in the amendment entered into on October 17, 1996, IBM was unwilling to agree to a provision imposing fees on IBM contractors and customers who are provided licensed source code (as proposed by Tarantella). However, IBM was willing to limit its right to provide contractors and customers with copies of licensed source code to a specified number of copies. Ultimately it was agreed that the number of copies would be limited to 50 copies at any one point in time. IBM also agreed to record-keeping, audit and other similar provisions related to the 50-copy limitation.

31. As discussed above, Tarantella proposed to revise the language of the irrevocability provision, making it "subject to the provisions of this Amendment" and adding the phrase "to distribute Sublicensed Products specified in Section 6 below." IBM rejected these proposed changes. IBM also rejected the revision requested by Tarantella that would have prohibited IBM employees who may have retained intangible information in the form of ideas, concepts, know-how or techniques after having access to licensed source code from making any attempt to preserve such information by reducing it to writing or otherwise memorializing it.

32. Based on IBM's willingness to accept some of Tarantella's proposed changes and Tarantella's willingness to let stand the irrevocability and confidentiality provisions on which IBM insisted, the parties reached an agreement, which was substantially similar to the April 1996 Amendment. Based on the fact that the parties reached such an agreement, it is my belief that Tarantella was less concerned with irrevocability or the confidentiality provision than it was with redistribution of licensed source code to contractors and customers, and the 50-copy limitation and related

provisions were sufficient to address these concerns. IBM accepted some of Tarantella's changes, as described above, in exchange for Novell's agreement to accept \$350,000 less than it otherwise was entitled to as royalty payments, pursuant to an October 16, 1996 Letter Agreement between IBM and Novell, a true and correct copy of which is attached hereto as Exhibit 16.

33. Following the parties' meeting of the minds, IBM, Novell and Tarantella executed an amendment to the Related Agreements to replace the April 1996 Amendment as is discussed below.

IV. Execution of Amendment No. X

34. On October 17, 1996, Novell, Tarantella and IBM executed an amendment ("Amendment No. X"), which replaced the April 1996 Amendment, a true and correct copy of which is attached hereto as Exhibit 17.

35. Amendment No. X, like the April 1996 Amendment, provides that IBM's rights under the Related Agreements are irrevocable, fully paid-up and perpetual. The relevant language from Paragraph 1 of Amendment No. X states:

Upon payment to SCO of the consideration in the section entitled "Consideration", IBM will have the irrevocable, fully paid-up, perpetual right to exercise all of its rights under the Related Agreements beginning January 1, 1996 at no additional royalty fee. Notwithstanding the above, the irrevocable nature of the above rights will in no way be construed to limit Novell's or SCO's rights to enjoin or otherwise prohibit IBM from violating any and all of Novell's or SCO's rights under this Amendment No. X, the Related Agreements, or under

I, and I believe all the parties involved in the negotiation of Amendment No. X, understood this language to mean that Novell and Tarantella no longer had any termination right with respect to IBM's rights under the Related Agreements, though Novell and Tarantella retained the right to seek to enjoin or otherwise prohibit conduct

that violated the provisions of Amendment No. X, the Related Agreements, or Novell's or Tarantella's rights under general patent, copyright or trademark laws, provided that they could satisfy the standards for obtaining such relief. So, for example, if IBM were to publicly disclose the licensed source code under circumstances constituting a breach of the Related Agreements, Novell and Tarantella had contracted away the right to terminate IBM's rights to copy and furnish, including market, license and distribute, sublicensed products based on SVR3.2 and previous releases, including IBM's AIX operating system product, but retained the right to enjoin IBM from such disclosure, provided that Novell or Tarantella could satisfy the standards for obtaining such relief. I, and I believe all who participated in negotiating Amendment No. X, understood this language to mean that IBM has the irrevocable, fully paid-up, perpetual right to use the licensed code and products in accordance with the Related Agreements, precluding Novell or Tarantella (or their respective successors or assigns) from terminating or otherwise interfering with IBM's right to copy and furnish, including market, license and distribute, sublicensed products, such as IBM's AIX operating system product, or to demand additional royalties in connection with IBM's distribution of its AIX operating system product on specified architectures (and, after five years, other sublicensed products). Neither Novell nor Tarantella (nor their successors or assigns) can enjoin or otherwise prohibit IBM from using the licensed code in accordance with the Related Agreements, but Novell or Tarantella may enjoin or otherwise prohibit IBM from violating Novell's or Tarantella's rights under Amendment No. X, the Related Agreements or under general patent, copyright or trademark laws, provided that Novell or Tarantella can satisfy the standards for obtaining such relief. Insofar as this language concerns the Related Agreements, what

I understood it to mean and what I understood all of the parties who participated in the discussion to understand it to mean is that Novell's or Tarantella's only equitable remedy if IBM were to publicly disclose the licensed source code under circumstances constituting a breach of the Related Agreements would be to seek an injunction preventing such disclosure, provided that Novell or Tarantella could satisfy the standards for obtaining such relief.

36. Amendment No. X, like the April 1996 Amendment, permits IBM employees to actually refer to the licensed source code while they are working on other projects. The last sentence of Paragraph 6 of Amendment No. X follows:

The second to last sentence of paragraph 9 of the February 1, 1985 amendment to SOFT-00015 is modified by deleting the words: "and employees of LICENSEE shall not refer to the physical documents and materials comprising SOFTWARE PRODUCTS subject to this Agreement when they are developing any such products or services or providing any such service."

I, and I believe all the parties involved in the negotiation of Amendment No. X, understood this language to mean that IBM employees could actually refer to the licensed documents and materials, including source code, while they are developing or providing products or services. After the execution of Amendment No. X, IBM was subject to very few confidentiality restrictions, since IBM was already permitted to use ideas, concepts, know-how and techniques from SVR3.2 in developing or providing products and services.

V. Caldera Does Not Have the Right to Terminate IBM's Rights

37. I have been advised that Caldera purports to have acquired some but not all rights to UNIX System V. I have also been advised that Caldera, which was not involved in negotiating the April 1996 Amendment or Amendment No. X, has threatened to terminate IBM's rights under the Related Agreements based on alleged

breaches by IBM of the Related Agreements. For the reasons discussed above, I do not believe that IBM's rights under the Related Agreements are terminable. To my mind, any argument that IBM's rights are terminable is inconsistent with the language of Amendment No. X and the understanding of the parties who negotiated the April 1996 Amendment and Amendment No. X. The termination right was contracted away in both the April 1996 Amendment and Amendment No. X, so termination is no longer a remedy.

38. I declare under penalty of perjury that the foregoing is true and correct.

Executed: June 9, 2003.

Watsonville, California


A. Allison Amadia

ASSET PURCHASE AGREEMENT
BY AND BETWEEN
THE SANTA CRUZ OPERATION, INC.
AND
NOVELL, INC.

Dated as of September 19, 1995.

3P#A1\RB\0147381.06
09/19/95

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Exhibit

Description

Exhibit 5.1(c)

**Form of Proposed Operating Agreement, including Exhibit A
and Exhibit B thereto and Eiger Development.**

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of September 19, 1995 by and between The Santa Cruz Operation, Inc., a California corporation ("Buyer") and Novell, Inc., a Delaware corporation ("Seller").

RECITALS

A. Seller is engaged in the business of developing a line of software products currently known as Unix and UnixWare, the sale of binary and source code licenses to various versions of Unix and UnixWare, the support of such products and the sale of other products which are directly related to Unix and UnixWare (collectively, the "Business").

B. The Boards of Directors of each of Seller and Buyer believe it is in the best interests of each company and their respective stockholders that Buyer acquire certain of the assets of, and assume certain of the liabilities of Seller comprising the Business (the "Acquisition").

C. In connection with the Acquisition Buyer will issue to Seller 6,127,500 shares of Common Stock of Buyer (the "Shares").

D. In connection with the acquisition by Seller of the Shares, Buyer and Seller desire to set forth certain agreements with respect to the governance of Buyer following the closing of the Acquisition.

NOW, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the parties agree as follows:

ARTICLE I

THE ACQUISITION

1.1 Purchase of Assets.

(a) Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, Seller will sell, convey, transfer, assign and deliver to Buyer and Buyer will purchase and acquire from Seller on the Closing Date (as defined in Section 1.7), all of Seller's right, title and interest in and to the assets and properties of Seller relating to the Business (collectively the "Assets") identified on

Business Condition of the Business. As of the date hereof, there are no judgments or orders, injunctions, decrees, stipulations or awards (whether rendered by a court or administrative agency or by arbitration) against Seller with any continuing effect that reasonably would be expected to have a material adverse effect on the Business Condition of the Business. To the knowledge of Seller, there is no investigation by any Governmental Entity with respect to Seller pending against Seller which is reasonably likely to have a material adverse effect on the Business Condition of the Business.

2.5 No Defaults. To the knowledge of Seller, Seller is not, nor has it received written notice that it would be with the passage of time, (i) in violation of any provision of its Certificate of Incorporation or Bylaws or (ii) in default or violation of any term, condition or provision of (A) any judgment, decree, order, injunction or stipulation applicable to the Business or (B) any agreement, note, mortgage, indenture, contract, lease or instrument, permit, concession, franchise or license to which Seller is a party (with respect to the Business) or by which the Business may be bound, in any such case in a manner that reasonably would be expected to have a material adverse effect on the Business Condition of the Business.

2.6 Litigation. There is no action, suit, proceeding, claim or governmental investigation pending or, to the knowledge of Seller, threatened, against Seller that reasonably would be expected to have a material adverse effect on the Business Condition of the Business. There is no action, suit, proceeding, claim or governmental investigation pending against Seller as of the date hereof that in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the transactions contemplated hereby.

2.7 Absence of Certain Changes. Since July 31, 1995, Seller has conducted the Business in the ordinary course and, except for the execution, delivery and performance of this Agreement or as required hereby, there has not occurred: (a) any material adverse change in the Business Condition of the Business; (b) any entry into any material commitment or transaction by Seller relating to the Business, other than in the ordinary course of business; (c) any damage, destruction or loss, whether covered by insurance or not, materially and adversely affecting the Business Condition of the Business; (d) any acquisition or disposition of a material amount of property or assets of Seller relating to the Business outside of the ordinary course of business; (e) any transfer or grant by Seller of a right under any Seller Intellectual Property Rights (as defined in Section 2.10 hereof), other than those transferred or granted in the ordinary course of business.

2.8 Agreements. With respect to the Business, Seller is not a party to, and the Business is not subject to:

(a) Any union contract or any employment contract or arrangement providing for future compensation, written or oral, with any officer,

consultant, director or employee which is not cancelable by Seller on 30 days' notice or less without penalty or obligation to make payments related to such termination, other than (A) (in the case of employees other than executive officers of Seller) such agreements as are not materially different from standard arrangements offered to employees generally in the ordinary course of business consistent with Seller's past practices and (B) such agreements as may be imposed or implied by law;

(b) Any plan, contract or arrangement, the obligations under which exceed \$100,000, written or oral, providing for bonuses, pensions, deferred compensation, severance pay or benefits, retirement payments, profit-sharing, or the like;

(c) As of the date hereof, any existing OEM agreement, distribution agreement, volume purchase agreement, or other similar agreement in which the annual amount paid or received by Seller during the twelve-month period ended July 31, 1995 exceeded \$1,500,000 or pursuant to which Seller has granted most favored nation pricing provisions or exclusive marketing rights related to any product, group of products or territory to any person;

(d) Any lease or month-to-month tenancy for real or personal property in which the amount of payments which Seller is required to make on an annual basis exceeds \$100,000;

(e) Any contract containing covenants purporting to limit Seller's freedom to compete in any line of business in any geographic area; or

(f) Any license to a third party involving Seller Intellectual Property Rights (as such term is defined in Section 2.10 hereof) source or binary code which includes a right to sublicense such source or binary code without additional payment.

Each agreement, contract, mortgage, indenture, plan, lease, instrument, permit, concession, franchise, arrangement, license and commitment listed in the Seller Disclosure Schedule pursuant to this Section is valid and binding on Seller, and is in full force and effect, and Seller has not breached any provision of, nor is it in default under the terms of, any such agreement, contract, mortgage, indenture, plan, lease, instrument, permit, concession, franchise, arrangement, license or commitment except for such failures to be valid and binding or in full force and effect and such breaches or defaults as reasonably would not be expected to have a material adverse effect on the Business Condition of the Business.

2.9 Tax Returns and Reports.

(a) Definition of Taxes. For the purposes of this Agreement, "Tax" or "Taxes" refers to any and all federal, state, local and foreign taxes, assessments

and other governmental charges, duties, impositions and liabilities relating to taxes, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts and any obligations under any agreements or arrangements with any other person with respect to such amounts and including any liability for taxes of a predecessor entity.

(b) Tax Returns and Audits. Except as reasonably would not be expected to have a material adverse effect on the Business Condition of the Business:

(i) Seller has timely filed all federal, state, local and foreign returns, estimates, information statements and reports ("Returns") relating to Taxes required to be filed by it, except such Returns which are not material to the Business, and has paid all Taxes shown to be due on such Returns or is contesting them in good faith.

(ii) Seller has withheld with respect to its employees all federal and state income taxes, FICA, FUTA and other Taxes required to be withheld.

(iii) Seller has not been delinquent in the payment of any Tax nor is there any Tax deficiency outstanding, proposed or assessed against Seller, nor has Seller executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax.

(iv) No audit or other examination of any Return of Seller is presently in progress, nor has Seller been notified of any request for such an audit or other examination.

(v) None of the Assets are treated as "tax-exempt use property" within the meaning of Section 168(h) of the Code.

(vi) Seller is not, and has not been at any time, a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code.

2.10 Technology. To the knowledge of Seller, as of the date hereof, Seller owns, co-owns or is licensed or otherwise entitled to use rights to all patents, trademarks, trade names, service marks, copyrights, mask work rights, trade secret rights, and other intellectual property rights and any applications therefor, and all maskworks, net lists, schematics, technology, source code, know-how, computer software programs and all other tangible information or material, that are used in the Business as currently conducted (the "Seller Intellectual Property Rights").

The Seller Disclosure Schedule lists, as of the date hereof, (i) all patents, registered copyrights, trademarks, service marks, mask work rights, and any applications therefor, included in the Seller Intellectual Property Rights; (ii) the jurisdictions in which each such Seller Intellectual Property Right has been issued or registered or in which an application for such issuance and registration has been filed, including the respective registration or application numbers; and (iii) which, if any, of such products have been registered for copyright protection with the United States Copyright Office and any foreign offices. The Seller Disclosure Schedule also sets forth a list of license agreements which, to Seller's knowledge, constitutes all license agreements under which Seller licenses as licensee the intellectual property rights of third parties relating to technology or software which is incorporated in existing products of the Business for which products Seller has received revenues in excess of \$2,000,000 in the twelve-month period ended July 31, 1995. To Seller's knowledge, Seller is not in material violation of any such license agreement.

With respect to the Business, Seller is not a party to nor is the Business subject to (i) any joint venture contract or arrangement or any other agreement that involves a sharing of profits with other persons other than the payment or receipt of royalties by Seller; (ii) any agreement pursuant to which Seller was obligated to make payment of royalties in the twelve-month period ended July 31, 1995 of \$1,000,000 or more; or (iii) any agreement pursuant to which Seller utilizes the intellectual property rights of others in any products currently marketed by Seller and which is either non-perpetual or terminable by the licensor thereunder in the event of the Acquisition and which, if terminated, reasonably would be expected to have a material adverse effect on the Business Condition of the Business.

No claims with respect to the Seller Intellectual Property Rights have been communicated in writing to Seller (i) to the effect that the manufacture, sale or use of any product of the Business as now used or offered by Seller infringes on any copyright, patent, trade secret or other intellectual property right of a third party or (ii) challenging the ownership or validity of any of the Seller Intellectual Property Rights, any or all of which claims reasonably would be expected to have a material adverse effect on the Business Condition of the Business. To the knowledge of Seller, as of the date hereof, all patents and registered trademarks, service marks and registered copyrights held by Seller in connection with the Business are valid and subsisting except for failures to be valid and subsisting that reasonably would not be expected to have a material adverse effect on the Business Condition of the Business. Seller does not know of any unauthorized use, infringement or misappropriation of any of the Seller Intellectual Property Rights by any third party that reasonably would be expected to have a material adverse effect on the Business Condition of the Business.

2.11 Title to Properties; Absence of Liens and Encumbrances.

(a) The Seller Disclosure Schedule sets forth a list of all real property owned or, as of the date hereof, leased by Seller for use in connection with the Business and the aggregate annual rental or mortgage payment or other fees payable under any such lease or loan.

(b) Seller has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of the tangible properties and assets, real, personal and mixed, which are material to the conduct of the Business, free and clear of any liens, charges, pledges, security interests or other encumbrances, except for such of the foregoing as (A) are reflected in the Seller Financial Statements, or (B) arise out of taxes or general or special assessments not in default and payable without penalty or interest or the validity of which is being contested in good faith by appropriate proceedings, or (C) such imperfections of title and encumbrances, if any, which are not substantial in character, amount or extent, and which do not materially detract from the value, or interfere with the present use, of the property subject thereto or affected thereby.

2.12 Governmental Authorizations and Licenses. Seller is the holder of all licenses, authorizations, permits, concessions, certificates and other franchises of any Governmental Entity required to operate the Business, the failure to hold which reasonably would be expected to have a material adverse effect on the Business Condition of the Business (collectively, the "Licenses"). The Licenses are in full force and effect. There is not now pending, or to the knowledge of Seller is there threatened, any action, suit, investigation or proceeding against Seller before any Governmental Entity with respect to the Licenses, nor is there any issued or outstanding notice, order or complaint with respect to the violation by Seller of the terms of any License or any rule or regulation applicable thereto, except in any such case as reasonably would not be expected to have a material adverse effect on the Business Condition of the Business.

2.13 Environmental Matters. To Seller's knowledge, Seller has at all relevant times with respect to the Business been in material compliance with all environmental laws, and has received no potentially responsible party ("PRP") notices or functionally equivalent notices from any governmental agencies or private parties concerning releases or threatened releases of any "hazardous substance" as that term is defined under 42 U.S.C. 9601(14).

2.14 Customers. The Seller Disclosure Schedule sets forth each customer of the Business that paid Seller royalties and licensee fees in an aggregate amount in excess of \$1,000,000 during the twelve-month period ended July 31, 1995.

2.15 Proprietary Information and Inventions and Confidentiality Agreements. To the knowledge of Seller, each employee, consultant, and officer of Seller (exclusively with respect to the Business) has executed a proprietary information and inventions and confidentiality agreement, copies of which have been made available

to counsel to Buyer, and it is Seller's policy that such agreements be executed by each new employee, consultant, officer and director of Seller in the ordinary course of Seller's business.

2.16 Inventory. The Seller Disclosure Schedule sets forth the estimated amount of UnixWare inventory (as defined thereon), including pre-paid royalties, that was held by Seller's resellers as of the date of this Agreement.

2.17 Investment Intent. The purchase of the Shares pursuant to this Agreement is for the account of Seller for the purpose of investment and not with a view to or for sale in connection with any distribution thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act") and the rules and regulations promulgated thereunder, and that Seller has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, Seller further represents that it does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Shares.

2.18 Reliance Upon Seller's Representations. Seller understands that the Shares are not registered under the Securities Act on the ground that the sale provided for in this Agreement and the issuance of the Shares hereunder is exempt from registration under the Securities Act pursuant to section 4(2) thereof, and that Buyer's reliance on such exemption is predicated on Seller's representations set forth herein. Seller realizes that the basis for the exemption may not be present if, notwithstanding such representations, Seller has in mind merely acquiring the Shares for a fixed or determinable period in the future, or for a market rise, or for sale if the market does not rise. Seller presently does not have any such intention.

2.19 Receipt of Information. Seller believes it has received all the information it considers necessary or appropriate for deciding whether to purchase the Shares. Seller further represents that it has had an opportunity to ask questions and receive answers from Buyer regarding the terms and conditions of the offering of the Shares and the business, properties, prospects and financial condition of Buyer and to obtain additional information (to the extent Buyer possessed such information or could acquire it without unreasonable effort or expense) necessary to verify the accuracy of any information furnished to it or to which it had access. The foregoing, however, does not limit or modify the representations and warranties of the Buyer in Article III of this Agreement or the right of Seller to rely thereon.

2.20 Accredited Investor. Seller is an "accredited investor" within the meaning of Securities and Exchange Commission ("SEC") Rule 501 of Regulation D, as presently in effect.

2.21 Restricted Securities. Seller understands that the Shares may not be sold, transferred, or otherwise disposed of without registration under the Securities Act or an exemption therefrom, and that in the absence of an effective registration statement covering the Shares or an available exemption from registration under the Securities Act, the Shares must be held indefinitely. In particular, Seller is aware that the Shares may not be sold pursuant to Rule 144 promulgated under the Securities Act unless all of the conditions of that Rule are met.

2.22 Legends. To the extent applicable, each certificate or other document evidencing any of the Shares shall be endorsed with the legends set forth below, and Seller covenants that, except to the extent such restrictions are waived by Buyer, Seller shall not transfer the shares represented by any such certificate without complying with the restrictions on transfer described in the legends endorsed on such certificate:

(a) The following legend under the Securities Act:

"THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, OR HYPOTHECATED ABSENT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR COMPLIANCE WITH RULE 144 PROMULGATED UNDER SUCH ACT, OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED."

2.23 No Implied Representations. It is the explicit intent of each party hereto that Seller is not making any representation or warranty whatsoever, express or implied, except those representations and warranties of Seller contained in this Agreement or in the Seller Disclosure Schedule.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BUYER

Except as described with reasonable particularity in the Buyer Disclosure Schedule (which shall cross-reference to the particular section below to which such description applies) delivered by Buyer to Seller simultaneously with the execution of this Agreement, as such Buyer Disclosure Schedule may be updated and/or amended pursuant to Section 4.11 hereof (the "Buyer Disclosure Schedule"), and except as

disclosed in Buyer's SEC Documents (as defined in Section 3.4), Buyer represents and warrants to Seller that:

3.1 Organization, Standing and Power. Buyer is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and has all requisite corporate power and authority to own, operate and lease its properties and to carry on its business as now being conducted. Buyer is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on the Business Condition of Buyer. Buyer has made available to Seller complete and correct copies of the Certificate of Incorporation and Bylaws of Buyer, as amended to the date hereof.

3.2 Authority. Buyer has all requisite corporate power and authority to enter into this Agreement and, to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, the performance by Buyer of its obligations hereunder and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Buyer, and have been approved by the Board of Directors of Buyer. No other corporate proceeding on the part of either Buyer is necessary to authorize the execution and delivery of this Agreement by Buyer or the performance of Buyer's obligations hereunder or the consummation of the transactions contemplated hereby. This Agreement has been duly executed and delivered by Buyer and constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally and except that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought. Subject to satisfaction or waiver of the conditions set forth in Article V, the execution and delivery of this Agreement does not, and the consummation of the transactions contemplated hereby will not, conflict with or result in any violation of any statute, law, rule, regulation, judgment, order, decree, or ordinance applicable to Buyer, or its properties or assets that, individually or in the aggregate, reasonably would be expected to have a material adverse effect on the Business Condition of Buyer, or conflict with any provision of the Certificate of Incorporation or Bylaws of Buyer or result in any breach or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a material benefit under, or result in the creation of a lien or encumbrance on any of the properties or assets of Buyer pursuant to any agreement, contract, note, mortgage, indenture, lease, instrument, permit, concession, franchise or license to which Buyer is a party or by which Buyer or its properties or assets may be bound that would reasonably be expected to have a material adverse effect on the Business Condition of Buyer. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to Buyer in connection with the execution and delivery of this Agreement or the consummation by

Buyer of the transactions contemplated hereby, except for (i) the filing of a pre-merger notification report under the HSR Act, (ii) those required to be made or obtained by Seller or any of its affiliates, (iii) filings following the Closing under federal and state securities laws relating to issuance of the Shares; and (iv) such consents, approvals, orders, authorizations, registrations, declarations and filings as would not have a material adverse effect on the ability of Buyer to issue the Shares to Seller and assume the Assumed Liabilities at the Closing.

3.3 Capitalization. The authorized capital stock of Buyer consists of 100,000,000 shares of Common Stock, no par value, and 20,000,000 shares of Preferred Stock, no par value, of which there were issued and outstanding as of the close of business on September 18, 1995, 30,791,674 shares of Common Stock and no shares of Preferred Stock. There are no other outstanding shares of capital stock or voting securities of Buyer other than shares of Buyer Common Stock issued after September 18, 1995 upon the exercise of options issued under the Buyer's Amended and Restated 1987 Stock Option Plan (the "Buyer Stock Option Plan"). All outstanding shares of the Common Stock of Buyer have been duly authorized, validly issued, fully paid and are nonassessable and free of any liens or encumbrances other than any liens or encumbrances created by or imposed upon the holders thereof. As of the close of business on September 18, 1995, Buyer has reserved 9,663,665 shares of Common Stock for issuance to employees, directors and independent contractors pursuant to the Buyer Stock Option Plan and the Buyer Employee Stock Purchase Plan, of which 5,256,103 shares are subject to outstanding, unexercised options. Other than this Agreement, there are no other options, warrants, calls, rights, commitments or agreements of any character to which Buyer is a party or by which it is bound obligating Buyer to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the capital stock of Buyer, or obligating Buyer to grant, extend or enter into any such option, warrant, call, right, commitment or agreement. The shares of Buyer Common Stock to be issued pursuant to this Agreement will be duly authorized, validly issued, fully paid, and non-assessable.

3.4 SEC Documents; Buyer Financial Statements. Buyer has made available to Seller a true and complete copy of each statement, annual, quarterly and other report, and definitive proxy statement filed by Buyer with the Securities and Exchange Commission ("SEC") since September 30, 1993 (the "Buyer SEC Documents"), which are all the documents (other than preliminary material) that Buyer was required to file with the SEC since such date. As of their respective filing dates, the Buyer SEC Documents complied in all material respects with the requirements of the Securities Exchange Act of 1934 (the "Exchange Act") or the Securities Act of 1933 (the "Securities Act"), as the case may be, and none of the Buyer SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading. The financial statements of Buyer included in the Buyer SEC Documents (the "Buyer Financial Statements") comply as to form in all

material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with generally accepted accounting principles (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) and fairly present the consolidated financial position of Buyer and its consolidated subsidiaries at the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal, recurring audit adjustments). Since September 30, 1994, there has been no material change in Buyer's accounting policies except as described in the notes to Buyer's Financial Statements.

3.5 Compliance with Law. Buyer has conducted its business so as to comply in all material respects with all laws, rules and regulations, judgments, decrees or orders of any Governmental Entity applicable to its operations except where the failure so to comply reasonably would not be expected to have a material adverse effect on the Business Condition of Buyer. As of the date hereof, there are no judgments or orders, injunctions, decrees, stipulations or awards (whether rendered by a court or administrative agency or by arbitration) against Buyer with any continuing effect that reasonably would be expected to have a material adverse effect on the Business Condition of Buyer. To the knowledge of Buyer, there is no investigation by any Governmental Entity with respect to Buyer pending against Buyer which is reasonably likely to have a material adverse effect on the Business Condition of Buyer.

3.6 No Defaults. To the knowledge of Buyer, Buyer is not, nor has received written notice that it would be with the passage of time, (i) in violation of any provision of its Certificate of Incorporation or Bylaws or (ii) in default or violation of any term, condition or provision of (A) any judgment, decree, order, injunction or stipulation applicable to Buyer or (B) any agreement, note, mortgage, indenture, contract, lease or instrument, permit, concession, franchise or license to which Buyer is a party or by which Buyer may be bound, in any such case in a manner that reasonably would be expected to have a material adverse effect on the Business Condition of Buyer.

3.7 Litigation. There is no action, suit, proceeding, claim or governmental investigation pending or, to the knowledge of Buyer, threatened, against Buyer which reasonably would be expected to have, a material adverse effect on the Business Condition of Buyer. There is no action, suit, proceeding, claim or governmental investigation pending against Buyer as of the date hereof which in any manner challenges or seeks to prevent, enjoin, after or materially delay any of the transactions contemplated hereby.

3.8 Absence of Certain Changes. Since June 30, 1995, Buyer has conducted its business in the ordinary course and, except for the execution, delivery and performance of this Agreement or as required hereby, there has not occurred: (a) any material adverse change in the Business Condition of Buyer; (b) any entry into any

material commitment or transaction by Buyer, other than in the ordinary course of business; (c) any damage, destruction or loss, whether covered by insurance or not, materially and adversely affecting the Business Condition of Buyer; or (d) any acquisition or disposition of a material amount of property or assets of Buyer outside of the ordinary course of business.

3.9 Agreements. Each agreement, contract, mortgage, indenture, plan, lease, instrument, permit, concession, franchise, arrangement, license and commitment that is an Exhibit to Buyer's most recent Form 10-Q is valid and binding on Buyer, and is in full force and effect, and Buyer has not breached any provision of, nor is it in default under the terms of, any such agreement, contract, mortgage, indenture, plan, lease, instrument, permit, concession, franchise, arrangement, license or commitment except for such failures to be valid and binding or in full force and effect and such breaches or defaults as reasonably would not be expected to have a material adverse effect on the Business Condition of Buyer.

3.10 Tax Returns and Reports. Except as reasonably would not be expected to have a material adverse effect on the Business Condition of Buyer:

(i) Buyer has timely filed all federal, state, local and foreign returns, estimates, information statements and reports (Returns) relating to Taxes required to be filed by it, except such Returns which are not material to Buyer, and has paid all Taxes shown to be due on such Returns or is contesting them in good faith.

(ii) Buyer has withheld with respect to its employees all federal and state income taxes, FICA, FUTA and other Taxes required to be withheld.

(iii) Buyer has not been delinquent in the payment of any Tax nor is there any Tax deficiency outstanding, proposed or assessed against Buyer, nor has Buyer executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax.

(iv) No audit or other examination of any Return of Buyer is presently in progress, nor has Buyer been notified of any request for such an audit or other examination.

(v) None of Buyer's assets are treated as "tax-exempt use property" within the meaning of Section 168(h) of the Code.

(vi) Buyer is not, and has not been at any time, a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code.

3.11 Technology. To the knowledge of Buyer, as of the date hereof, Buyer owns, co-owns or is licensed or otherwise entitled to use rights to all patents, trademarks, trade names, service marks, copyrights, mask work rights, trade secret rights, and other intellectual property rights and any applications therefor, and all maskworks, net lists, schematics, technology, source code, know-how, computer software programs and all other tangible information or material, that are used in its business as currently conducted (the "Buyer Intellectual Property Rights").

3.12 Governmental Authorizations and Licenses. Buyer is the holder of all licenses, authorizations, permits, concessions, certificates and other franchises of any Governmental Entity required to operate its business, the failure to hold which reasonably would be expected to have a material adverse effect on the Business Condition of Buyer (collectively, the "Buyer Licenses"). The Buyer Licenses are in full force and effect. There is not now pending, or to the knowledge of Buyer is there threatened, any action, suit, investigation or proceeding against Buyer before any Governmental Entity with respect to the Buyer Licenses, nor is there any issued or outstanding notice, order or complaint with respect to the violation by Buyer of the terms of any Buyer License or any rule or regulation applicable thereto, except in any such case as reasonably would not be expected to have a material adverse effect on the Business Condition of Buyer.

3.13 Environmental Matters. To Buyer's knowledge, Buyer has at all relevant times been in material compliance with all environmental laws, and has received no FRP notices or functionally equivalent notices from any governmental agencies or private parties concerning releases or threatened releases of any "hazardous substance" as that term is defined under 42 U.S.C. 9601(14).

3.14 Proprietary Information and Inventions and Confidentiality Agreements. To the knowledge of Buyer, each employee, consultant, and officer of Buyer has executed a proprietary information and inventions and confidentiality agreement, copies of which have been made available to counsel to Seller, and it is Buyer's policy that such agreements be executed by each new employee, consultant, officer and director of Buyer in the ordinary course of Buyer's business.

3.15 Status of Shares. When issued to Seller at the Closing, the Shares will be duly authorized, validly issued, fully paid and nonassessable, free and clear of any and all liens and encumbrances of any kind, except as may be imposed by Seller.

3.16 No Implied Representations. It is the explicit intent of each party hereto that Buyer is not making any representation or warranty whatsoever, express or implied, except those representations and warranties of Buyer contained in this Agreement or in the Buyer Disclosure Schedule.

ARTICLE IV

CERTAIN COVENANTS

4.1 Conduct of Business of Seller. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement and the Closing Date, Seller agrees (except to the extent that Buyer shall otherwise consent in writing), to carry on the Business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, including sales of products in a manner and on terms consistent with past practices, to pay or perform other obligations when due, and use all reasonable efforts consistent with past practice and policies to preserve intact the Business, keep available the services of its present officers and key employees and preserve their relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with it, all with the goal of preserving unimpaired the Business at the Closing Date. Except as contemplated by this Agreement, Seller shall not, with respect to the Business, without the prior written consent of Buyer (which shall be given, or reasonably withheld, within one business day after receipt of written request therefor) (a) enter into any commitment or transaction not in the ordinary course of business; or (b) enter into any strategic alliance or joint marketing arrangement or agreement.

4.2 Conduct of Business of Buyer. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement and the Closing Date, Buyer agrees (except to the extent that Seller shall otherwise consent in writing), to carry on its business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, to pay or perform other obligations when due, and use all reasonable efforts consistent with past practice and policies to preserve intact its business, keep available the services of its present officers and key employees and preserve their relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with it, all with the goal of preserving unimpaired its business at the Closing Date. Except as contemplated by this Agreement, Buyer shall not, without the prior written consent of Seller (which shall be given, or reasonably withheld, within one business day after receipt of written request therefor) (a) enter into any commitment or transaction not in the ordinary course of business; (b) enter into any strategic alliance or joint marketing arrangement or agreement; (c) declare or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any of its capital stock, or split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of capital stock of Buyer, or repurchase, redeem or otherwise acquire, directly or indirectly, any shares of its capital stock (or options, warrants or other rights exercisable therefor); (d) except for the issuance of shares of capital stock of Buyer upon exercise or conversion of options granted to employees, issue, deliver or sell or authorize or propose the issuance, delivery

or sale of, or purchase or propose the purchase of, any shares of its capital stock or securities convertible into, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating it to issue any such shares or other convertible securities; or (e) cause or permit any amendments to its Certificate of Incorporation or Bylaws.

4.3 No Solicitation. Until the earlier to occur of (i) the Closing Date and (ii) the date of termination of this Agreement pursuant to its terms, as the case may be, Seller will not (nor will Seller permit any of Seller's officers, directors, agents, representatives or affiliates to) directly or indirectly, take any of the following actions with any party other than Buyer and its designees: solicit, encourage, initiate or participate in any negotiations or discussions with respect to, any offer or proposal to acquire all or any portion of the Business. Until the earlier to occur of (i) the Closing Date and (ii) the date of termination of this Agreement pursuant to its terms, as the case may be, and except to the extent the Board of Directors of Buyer believes (after consultation with outside legal counsel) it necessary to comply with its fiduciary duties, Buyer will not (nor will Buyer permit any of Buyer's officers, directors, agents, representatives or affiliates to) directly or indirectly or indirectly take any of the following actions with any party other than Seller and its designees: solicit, encourage, initiate or participate in any negotiation or discussions with respect to, any offer or proposal to acquire all or any portion of the business of Buyer.

4.4 Access to Information. Seller and Buyer shall each afford the other and its accountants, counsel and other representatives, reasonable access during normal business hours during the period prior to the Closing Date to (a) all of its properties, books, contracts, commitments and records, and (b) all other information concerning the business, properties and personnel (subject to restrictions imposed by applicable law) of it as the other may reasonably request (it being understood that access to information concerning Seller shall pertain only to the Business).

4.5 Confidentiality. Each of the parties hereto hereby agrees to keep such information or knowledge obtained in any investigation pursuant to Section 4.4 confidential; provided, however, that the foregoing shall not apply to information or knowledge which (a) a party can demonstrate was already lawfully in its possession prior to the disclosure thereof by the other party, (b) is generally known to the public and did not become so known through any violation of law or this Agreement, (c) became known to the public through no fault of such party, (d) is later lawfully acquired by such party from other sources, (e) is required to be disclosed by order of court or government agency with subpoena powers or (f) which is disclosed in the course of any litigation between any of the parties hereto.

4.6 Expenses. Whether or not the Acquisition is consummated, all fees and expenses incurred in connection with the Acquisition including, without limitation, all legal, accounting, financial advisory, consulting and all other fees and expenses of

third parties ("Third Party Expenses") incurred by a party in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby, shall be the obligation of the respective party incurring such fees and expenses.

4.7 Public Disclosure. Buyer and Seller shall issue a joint press release with respect to the subject matter of this Agreement.

4.8 Consents. Seller shall use commercially reasonable efforts to obtain all necessary consents, waivers and approvals under any of the contracts of the Business as may be required in connection with the Acquisition so as to transfer to Buyer all rights of Seller thereunder as of the Closing.

4.9 Commercially Reasonable Efforts. Subject to the terms and conditions provided in this Agreement, each of the parties hereto shall use its commercially reasonable efforts to take promptly, or cause to be taken, all actions, and to do promptly, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations: to consummate and make effective the transactions contemplated hereby, to obtain all necessary waivers, consents and approvals and to effect all necessary registrations and filings, and to remove any injunctions or other impediments or delays, legal or otherwise, in order to consummate and make effective the transactions contemplated by this Agreement.

4.10 Notification of Certain Matters. Seller shall give prompt notice to Buyer, and Buyer shall give prompt notice to Seller, of (i) the occurrence or non-occurrence of any event, the occurrence or non-occurrence of which is likely to cause any representation or warranty of Seller or Buyer, respectively, contained in this Agreement to be untrue or inaccurate at or prior to the Closing Date and (ii) any failure of Seller or Buyer, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that subject to Section 4.11, the delivery of any notice pursuant to this Section shall not limit or otherwise affect any remedies available to the party receiving such notice.

4.11 Delivery of Schedules. It is understood that the Seller Disclosure Schedule and the Buyer Disclosure Schedule may not be complete as of the date hereof. Because of this, the parties agree that until 5:00 California time on October 15, 1995, Seller and Buyer shall each be permitted to amend its respective Disclosure Schedule so as to qualify the representations and warranties of such party contained in this Agreement (as each may be so amended, the "Subsequent Seller Disclosure Schedule" and the "Subsequent Buyer Disclosure Schedule", respectively). It is further understood that, to the extent that this Agreement is not terminated pursuant to Section 7.1 (d) or 7.1(e) after delivery of any such Subsequent Disclosure Schedule, the representations and warranties in this Agreement of the party delivering such Subsequent Disclosure

Schedule shall be qualified in their entirety by the modified or supplemented disclosures contained therein.

4.12 Additional Documents and Further Assurances. Each party hereto, at the request of another party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of this Agreement and the transactions contemplated hereby.

4.13 Treatment of Employees of the Business. Following the execution and delivery of this Agreement and prior to Closing, the person(s) responsible for the hiring of Buyer's personnel and the person(s) responsible for the hiring of Seller's personnel shall agree upon an employee benefits package (the "Benefits Package") which in their mutual opinion shall be sufficiently enticing to attract and retain a number of existing employees of the Business as new employees of Buyer. The Benefits Package shall credit Seller's employees who become employees of Buyer with all years of service accrued by such employee with Seller or any predecessor of Seller or the Business. Buyer shall offer employment consistent with the terms of the Benefits Package to any of the employees of the Business it shall so choose. Seller will use reasonable commercial efforts to assist Buyer to encourage such employees to become employees of Buyer and to support an orderly and successful transition. Except as may be agreed between Buyer and Seller in accordance with the preparation of the Benefits Package, Buyer shall not be required to assume any obligation of Seller with respect to liabilities relating to such employees, including without limitation, obligations for accrued vacation time, severance arrangements, workers' compensation or any liability for any insurance, medical or other welfare benefits, other than under Buyer's plans. In addition, all welfare or benefit claims relating to the period prior to midnight on the Closing Date shall be the responsibility of Seller. Buyer agrees to have completed all hiring of employees pursuant to this Section 4.13 prior to February 29, 1996.

Seller's employees shall continue to be employees of Seller through the Closing and through the Closing Seller shall continue in force all employee benefits and salaries in place as of the date of this Agreement, subject to such changes as may occur in the ordinary course of Seller's business.

Seller agrees to use its reasonable commercial efforts to support the transition of the Business to Buyer, including without limitation, cooperation between Seller's sales and field service personnel and Buyer's sales and field service personnel to help assure an orderly transition of customer accounts.

4.14 Tax Returns. Seller shall be responsible for and pay when due (i) all of Seller's Taxes attributable to or levied or imposed upon the Assets relating or pertaining to the period (or that portion of any period) ending on or prior to the Closing Date, except for Sales Taxes, if any, which are the responsibility of Buyer pursuant to

Section 1.2(d) hereof, and (ii) all Taxes attributable to, levied or imposed upon, or incurred in connection with the Seller's business operations, other than the Business, following the Closing Date.

4.15 Bulk Sales. Buyer hereby agrees to waive the requirement, if any, that Seller comply with any bulk transfer law which may be applicable to the transactions contemplated by this Agreement; provided, that Seller agrees to indemnify and hold harmless Buyer with respect to any noncompliance with such laws and Buyer's waiver with respect thereto.

4.16 SVRX Licenses.

(a) Following the Closing, Buyer shall administer the collection of all royalties, fees and other amounts due under all SVRX Licenses (as listed in detail under item VI of Schedule 1.1(a) hereof and referred to herein as "SVRX Royalties"). Within 45 days of the end of each fiscal quarter of Buyer, Buyer shall deliver to Seller or Seller's assignee 100% of any SVRX Royalties collected in the immediately preceding quarter. Buyer shall diligently seek to collect all such royalties, funds and other amounts when due (and shall investigate and perform appropriate auditing and enforcement under such licenses at Buyer's cost including auditing two (2) SVRX licensees identified by Seller during each quarter in which SVRX Royalties are collected). In consideration of such activities described in the preceding sentence, Seller shall pay to Buyer within 5 days of receipt of SVRX Royalties from Buyer as set forth in the preceding sentence, an administrative fee equal to 5% of such SVRX Royalties.

(b) Buyer shall not, and shall not have the authority to, amend, modify or waive any right under or assign any SVRX License without the prior written consent of Seller. In addition, at Seller's sole discretion and direction, Buyer shall amend, supplement, modify or waive any rights under, or shall assign any rights to, any SVRX License to the extent so directed in any manner or respect by Seller. In the event that Buyer shall fail to take any such action concerning the SVRX Licenses as required herein, Seller shall be authorized, and hereby is granted, the rights to take any action on Buyer's own behalf. Buyer shall not, and shall have no right to, enter into future licenses or amendments of the SVRX Licenses, except as may be incidentally involved through its rights to sell and license the Assets or the Merged Product (as such term is defined in the proposed Operating Agreement, attached hereto as Exhibit 5.1(c)) or future versions thereof of the Merged Product.

(c) Seller further covenants that immediately following the Closing Date neither it, nor any of its officers, directors or employees shall (i) take any material action designed to promote the sale of SVRX products or (ii) provide material compensation to any employee designed and intended to incentivize such employee to promote the sale of SVRX products, except for actions incidental to unrelated business activities of Seller.

4.17 Audited Financials. The parties shall work diligently together to prepare audited financial statements relating to the Business as may be required for Buyer's financial reporting requirements under the federal securities laws. The costs associated with preparation of any required audited financial statements shall be shared equally between Seller and Buyer.

4.18 Development of Merged Product. Following the Closing, Buyer shall diligently and vigorously market, sell and promote the Business. In addition, Buyer shall use its commercially reasonable efforts to complete the Merged Product (as such term is defined in the proposed Operating Agreement) by a date not later than December 31, 1997 to be agreed upon by Buyer and Seller. Buyer shall be entitled to modify the specifications of the Merged Product provided that any modification is previously reviewed by the Architecture Board described in Section 3(e) of the proposed Operating Agreement, and (i) does not impact upon the anticipated migration of Seller's customers to the Merged Product, or (ii) eases the anticipated migration of the Merged Product to the White Box Product (as such term is defined in the proposed Operating Agreement). Notwithstanding the foregoing, without the prior written approval of the Architecture Board, Buyer shall not change the specifications of the Merged Product such that the Merged Product will not include the "NetWare Services" specification set forth on Exhibit A of the proposed Operating Agreement.

4.19 License of Networking Services. Seller and Buyer acknowledge that Eiger contains, and future releases of UnixWare and/or Eiger will continue to contain, substantial networking services which form a part of and are currently sold in conjunction with Seller's product known as NetWare (the NetWare portion of such products to be referred to hereinafter as the "NetWare Portion"). Prior to the Closing Date, Seller and Buyer shall enter into a license agreement with respect to the NetWare Portion, such agreement to be on customary terms to be negotiated in good faith by Seller and Buyer.

ARTICLE V

CONDITIONS TO THE ACQUISITION

5.1 Conditions to Obligations of Each Party to Effect the Acquisition. The respective obligations of each party to this Agreement to effect the Acquisition shall be subject to the satisfaction at or prior to the Closing Date of the following conditions:

(a) No Injunctions or Restraints: Illegality. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Acquisition shall be in effect, nor shall any proceeding brought by an administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, seeking any of the foregoing be pending, nor shall

there be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Acquisition, which makes the consummation of the Acquisition illegal.

(b) The waiting period under the Hart-Scott-Rodino Antitrust Improvement Act shall have expired.

(c) The parties shall have entered into a mutually satisfactory Operating Agreement. Because certain terms contained herein are defined in the proposed Operating Agreement, a non-binding form of the proposed Operating Agreement is attached hereto as of the date hereof for definitional purposes only; notwithstanding the foregoing, Seller and Buyer have agreed upon the terms of Exhibit A and Exhibit B of the proposed Operating Agreement and the terms set forth in Exhibit S.1(c) regarding Eiger development, and will accordingly be bound thereby.

5.2 Additional Conditions to Obligations of Seller. The obligations of Seller to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any of which may be waived, in writing, exclusively by Seller:

(a) Representations, Warranties and Covenants. The representations and warranties of Buyer in this Agreement (as may be modified by the Subsequent Buyer Disclosure Schedule) shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties were made on and as of such time, and Buyer shall have performed and complied with all covenants, obligations and conditions of this Agreement required to be performed and complied with by it in all material respects as of the Closing Date.

(b) Certificate of Buyer. Seller shall have been provided with a certificate duly executed on behalf of Buyer to the effect that, as of the Closing Date:

(i) all representations and warranties made by Buyer in this Agreement are true and complete in all material respects;

(ii) all covenants, obligations and conditions of this Agreement to be performed by Buyer on or before such date have been so performed in all material respects; and

(iii) there are no pending negotiations with respect to any offer to acquire all or any portion of the business of Buyer.

(c) Legal Opinion. Seller shall have received a legal opinion from legal counsel to Buyer, in form and substance reasonably satisfactory to Seller, relating to due authority, execution, validity and similar matters.

(d) No Material Adverse Change. There shall not have occurred any material adverse change in the Business Condition of Buyer between the date of this Agreement and the Closing Date.

5.3 Additional Conditions to the Obligations of Buyer. The obligations of Buyer to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any of which may be waived, in writing, exclusively by Buyer:

(a) Representations, Warranties and Covenants. The representations and warranties of Seller in this Agreement (as may be modified by the Subsequent Seller Disclosure Schedule) shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties were made on and as of such time and Seller shall have performed and complied with all covenants, obligations and conditions of this Agreement required to be performed and complied with by it as of the Closing Date in all material respects.

(b) Certificate of Seller. Buyer shall have been provided with a certificate executed on behalf of Seller by its Chief Executive Officer to the effect that, as of the Closing Date:

(i) all representations and warranties made by Seller in this Agreement are true and complete in all material respects; and

(ii) all covenants, obligations and conditions of this Agreement to be performed by Seller on or before such date have been so performed in all material respects.

(c) Legal Opinion. Buyer shall have received a legal opinion from legal counsel to Seller, in form and substance reasonably satisfactory to Buyer, relating to due authority, execution, validity and similar matters.

(d) No Material Adverse Changes. There shall not have occurred any material adverse change in the Business Condition of the Business between the date of this Agreement and the Closing Date.

ARTICLE VI

CERTAIN CORPORATE GOVERNANCE MATTERS

6.1 Nomination of Director to Buyer's Board of Directors. As of the Closing and thereafter until such time as Seller together with its affiliates shall cease to own more than 5% of the outstanding shares of Common Stock of Buyer (the "Threshold

Date") and except as set forth further below, Buyer shall cause one individual designated by Seller (the "Seller Designee") to be nominated for election to the Board of Directors of Buyer, which Seller Designee shall be a Senior Executive Officer or outside board member of Seller and reasonably acceptable to Buyer. In the event that the Seller Designee shall be elected as a director of Buyer, but shall cease to serve as a director of Buyer prior to the Threshold Date, Seller shall have the right to designate another individual to fill the vacancy created by such cessation in order to serve as a member of the Board of Directors of Buyer. The right to nomination for election to Buyer's Board of Directors as set forth in this Section 6.1 shall terminate in the event that Seller's core products become directly competitive with Buyer.

6.2 Right to Maintain.

(a) Until the earlier to occur of (i) Threshold Date; (ii) Seller's core products becoming competitive with Buyer's core products or (iii) the expiration of three years from the date of this Agreement, in the event (including a public offering), Buyer desires to sell and issue shares of its capital stock or rights, options or other securities exercisable for or convertible into shares of its capital stock (directly or indirectly) and whether or not such right or option is immediately exercisable or convertible, then Buyer shall first notify Seller of the material terms of the proposed sale and shall permit Seller to acquire, at the time of consummation such proposed issuance and sale and on such terms as are specified in Buyer's notice to Seller, such number of the shares of capital stock or other securities of Buyer proposed to be issued as would be required to enable Seller to maintain its voting and ownership rights in Buyer following such issuance, on a percentage basis, at a level maintained by it immediately prior to such proposed issuance. Seller shall have ten (10) days after the date of any such notice to elect by notice to Buyer to purchase such shares or securities on such terms and at the time the proposed sale is consummated.

(b) The rights set forth in Section 6.2(a) shall not apply to (i) the issuance of shares or grant of options to purchase shares of Common Stock under Buyer's employee stock purchase and stock option plans, net of repurchases or cancellations and (ii) bona fide business acquisitions.

6.3 Right of First Refusal on Change of Control.

(a) First Refusal Right.

(i) Until the earlier of (i) Threshold Date and (ii) three (3) years from the Closing Date, in the event Buyer's Board of Directors has approved an intention to merge with, sell shares representing 50% or more of the voting power of Buyer to, or sell all or substantially all of Buyer's assets to any of the six (6) parties identified by Seller in Schedule 6.3(a) hereof, Buyer shall deliver a notice (an "Acquisition Notice") to Seller, which Acquisition Notice shall be kept confidential by

Seller, setting forth the proposed material terms of the merger, sale or acquisition, including the structure and price terms of the merger, sale or acquisition, the name and address of the party proposed to acquire or merge with Buyer and the date on or about which such sale or merger is proposed to be made (the date of such an Acquisition Notice being an "Acquisition Notice Date"). Seller shall have the right of first refusal to acquire or merge with Buyer on the terms set forth in the Acquisition Notice (subject to the valuation provisions of Section 6.3(b) below), as provided in this Section. If the terms in the Acquisition Notice contemplate a tax-free reorganization then Seller's right of first refusal may only be exercised if Seller proposes a tax-free reorganization.

(ii) Seller shall have until ten (10) days after the later of (i) receipt of an Acquisition Notice and (ii) the date Seller receives notice of the completion of the appraisal of any items included as part of the proposed consideration specified in the Acquisition Notice that are subject to valuation pursuant to Section 6.3(b), to elect by notice to Buyer to acquire or merge with Buyer on the terms set forth in the Acquisition Notice. If Seller notifies the Buyer within such time period of its election to so acquire or merge with Buyer, a closing with respect to such acquisition or merger shall be held at the principal office of Buyer (or at such other place as may be agreed upon by Buyer and Seller) on a date and at a time which are mutually agreeable to Buyer and Seller, but in no event later than the later to occur of (i) forty-five (45) days after receipt by Buyer of such notice of Seller's election and (ii) five (5) days after the receipt of any governmental consent or approval necessary for the consummation of such transaction, including, but not limited to, any such approval or consent required under the HSR Act.

(iii) In the event Seller elects not to exercise the foregoing right of first refusal, Buyer shall have six (6) months to sell Buyer on the same material terms as are set forth in the Acquisition Notice. If Buyer proposes to sell to or merge with one of the identified parties on terms more favorable to such party than those set forth in the notice, or proposes to sell to or merge with one of the identified parties after the six (6) month period, it shall first notify Seller and Seller shall have another opportunity to exercise its right of first refusal.

(b) Appraisal Procedure.

(i) Whenever the terms of a proposed sale or merger include forms of consideration other than cash or securities which are traded on a National Exchange (as defined below), Seller shall have the option to exercise its first refusal right under this section by paying the "Appraised Value" in cash of such proposed non-cash consideration. "Appraised Value" shall mean the fair saleable value of such non-cash consideration as of the Acquisition Notice Date, and shall be determined in the manner set forth in clause (ii) below. If an item of consideration constitutes securities which are traded on a National Exchange (as defined below), the value of such items shall be the average of the closing prices of such securities on such exchange during

(with reference to the principal trading market if such securities are traded on more than one National Exchange) each day within the fifteen (15) trading days on such National Exchange prior to the applicable Acquisition Notice Date. If the terms of the proposed sale or merger include securities which are traded on a National Exchange in a tax free reorganization, then Seller's right granted under this Section 6.3 may only be exercised by Seller paying in its own securities where the value is determined on the same basis as set forth in this Section 6.3(b)(ii). If the transaction specified in the Acquisition Notice is a taxable transaction and the form of consideration is in securities traded on a National Exchange, then Seller shall have the option of paying in cash in its own securities where the value is determined on the same basis as set forth in this Section 6.3(b)(ii).

For purposes of this provision, "National Exchange" means the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Stock Exchange or the National Market System of the National Association of Securities Dealers, Inc.

(ii) The determination of "Appraised Value" shall be made by an investment banking firm or other qualified consultant of nationally recognized standing, in accordance with this provision. Buyer and Seller shall endeavor to mutually agree upon the investment banking firm or other qualified consultant to undertake such determination. In the event Buyer and Seller fail to so agree within five (5) business days after the Acquisition Notice Date, within two (2) business days after such failure each of Buyer and Seller shall choose one such investment banking firm or other qualified consultant and within five (5) business days after such failure, the respective chosen firms shall be required to choose a third such investment banking firm or other qualified consultant to make such determination of the Appraised Value; and the determination of such third investment banking firm or other qualified consultant of the Appraised Value shall be binding. The investment banking firm or other qualified consultant selected pursuant hereto to make the determination of the Appraised Value shall be required to make such determination within twenty (20) business days after its selection. Buyer shall pay all costs and fees of up to the three such investment banking firms or other qualified consultants, and shall cooperate fully with the investment banking firm or other qualified consultant selected to make such determination by promptly providing such information as is requested by such firm.

(c) Expansion of Seller's Rights Relating to the Licensed Technology upon a Change of Control. Until two (2) years from the Closing Date, in the event Buyer has merged with, sold shares representing 50% or more of the voting power of Buyer to, sold all or substantially all of Buyer's assets to, or engaged voluntarily in any other change of control transaction with, any party identified by Seller on Schedule 6.3(a) hereof, or in the event any party identified by Seller on Schedule 6.3(a) hereof, shall acquire shares representing 50% or more of the voting power of Buyer,

Seller shall automatically have unlimited, royalty-free, perpetual rights to the Licensed Technology.

6.4 Registration Rights.

(a) Seller Demand Rights.

(i) Request for Registration. In case at any time from and after the Closing Buyer shall receive from Seller a written request that Buyer effect any registration with respect to all or a part of the Shares (or any securities issued or issuable in respect of the Shares, collectively, the "Registrable Securities"), provided that the number of Shares (or other securities) designated by Seller to be included in such registration would result in an anticipated aggregate offering price of at least \$5,000,000, Buyer will as soon as practicable, use its reasonable commercial efforts to effect such registration (including, without limitation, the execution of an undertaking to file pre-effective and post-effective amendments and supplements, appropriate qualification under the applicable blue sky or other state securities laws and appropriate compliance with exemptive regulations issued under the Securities Act and any other governmental requirements or regulations) as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of Registrable Securities as are specified in such request; provided, that Buyer shall not be obligated to take any action to effect any such registration after Buyer has effected two registrations pursuant to a request by Seller hereunder. A registration proceeding pursuant to this section which is subsequently withdrawn prior to effectiveness of a registration statement under the Securities Act shall not be considered an effected registration, qualification or compliance for purposes of the two demand registrations to which Seller is entitled.

Subject to the foregoing, Buyer shall file a registration statement covering the Registrable Securities so requested or otherwise elected to be registered as soon as practicable, but in any event within sixty (60) days, after receipt of the request of Seller, provided that Buyer shall have the right to defer such registration for a period of up to ninety (90) days following the receipt of such a request if in the opinion of the Board of Directors of Buyer, it would be seriously detrimental to Buyer for a registration statement to be filed.

(ii) Underwriting. If Seller intends to distribute the Registrable Securities covered by its request by means of an underwriting, it shall so advise Buyer as a part of its request made pursuant to Section 6.4(a)(i). Buyer shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by Seller, which underwriter or underwriters shall be reasonably acceptable to Buyer.

(b) Company Registration.

(i) Notice of Registration. If at any time or from time to time after the Closing Buyer shall determine to register any of its securities for its own account (other than a registration relating solely to employee stock option or purchase plans or relating solely to a Rule 145 transaction), Buyer will:

(A) promptly give to Seller written notice thereof (which shall include a list of the jurisdictions in which Buyer intends to attempt to qualify such securities under the applicable blue sky or other state securities laws); and

(B) include in such registration (and any related qualification under blue sky laws or other compliance), and in any underwriting involved therein, all the Registrable Securities specified in a written request or requests, made within thirty (30) days after the date of such written notice from Buyer to Seller, except as set forth in Section 6.4(b)(ii).

(ii) Underwriting. If the registration of which Buyer gives notice is for a registered public offering involving an underwriting, Buyer shall so advise Seller as a part of the written notice given pursuant to Section 6.4(b)(i)(A). In such event the right of Seller to registration pursuant to Section 6.4(b) shall be conditioned upon Seller's participation in such underwriting and the inclusion of Seller's Registrable Securities in the underwriting to the extent provided herein. If Seller proposes to distribute its securities through such underwriting it shall (together with Buyer and other holders distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by Buyer. Notwithstanding any other provision of this Section, if the managing underwriter determines that marketing factors require a limitation of the number of shares to be underwritten, the underwriter may limit the number of Registrable Securities to be included in the registration and underwriting but in no event shall (i) the amount of Registrable Securities of Seller included in the offering be reduced below twenty-five percent (25%) of the total amount of securities included in such offering or (ii) notwithstanding (i) above, any shares being sold by a shareholder exercising a demand registration right similar to that granted in Section 6.4(a) and granted by Buyer prior to the date of this Agreement be excluded from such offering, and in such situation Seller's shares may be completely excluded from registration. Buyer shall advise Seller of any such limitations, and the number of Registrable Securities that may be included in the registration. If Seller disapproves of the terms of any such underwriting, it may elect to withdraw therefrom by written notice to Buyer and the underwriter. Any Registrable Securities excluded or withdrawn from such underwriting shall not be included in such registration.

(iii) Notwithstanding anything to the contrary in this Section 6.4(b), Buyer shall not be obligated to effect any registration of securities under this Section 6.4(b) pursuant to a registration statement covering any of its securities to be issued in connection with mergers, acquisitions, exchange offers, dividend reinvestment plans or stock option or other employee benefit plans.

(c) Expenses of Registration.

(i) Subject to Sections 6.4(c)(ii) and 6.4(c)(iii), all expenses incurred in connection with any registration pursuant to Section 6.4(a) or 6.4(b), including, without limitation, all registration, filing and qualification fees, printing expenses, fees and disbursements of counsel for Buyer, expenses of complying with state securities or Blue Sky laws (including fees of counsel for Buyer and counsel for the underwriters), accountants' fees and expenses incident to or required by any such registration, expenses incident to the listing of securities on any exchange in which the Registrable Securities are to be listed, expenses of any special audits incidental to or required by such registration.

(ii) Buyer shall not be required to pay for expenses of any registration proceeding begun pursuant to Section 6.4(a), the request of which has been subsequently withdrawn by Seller, in which case, such expenses shall be borne by Seller; provided that Seller shall not be required to pay (a) for the cost of normal audits of Buyer that would have been performed in any event, and (b) for the time of any executives or other personnel of Buyer involved in the preparation of the registration statement; and provided further, however, that if at the time of such withdrawal, Seller shall have learned of a material adverse change in the Business Condition of Buyer from that known to Seller at the time of its request, then Seller shall not be required to pay any of such expenses.

(iii) Notwithstanding anything to the contrary elsewhere in this Section 6.4(c), all underwriters' discounts, commissions, or applicable stock transfer and documentary stamp taxes (if any) relating to the sale of Registrable Securities shall be borne by the seller of the Registrable Securities in all cases.

(d) Registration Procedures.

(i) In the case of each registration effected by Buyer pursuant to Section 6.4, Buyer will keep Seller advised in writing as to the initiation of each registration and as to the completion thereof. At its expense (except as otherwise provided in Section 6.4(c) above) Buyer will:

(A) keep such registration effective for a period of six months or until Seller has completed the distribution described in the registration statement relating thereto, whichever first occurs;

(B) furnish such number of prospectuses and other documents incident thereto as Seller from time to time may reasonably request; and

(C) notify Seller, (1) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and, with respect to the registration statement or any post-effective amendment, when the same has become effective; (2) of any request by the SEC or any other federal or state governmental authority during the period of effectiveness of the registration statement for amendments or supplements to the registration statement or related prospectus or for additional information relating to the registration statement, (3) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of the registration statement or the initiation of any proceedings for that purpose, (4) of the receipt by Buyer of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation of any proceeding for such purpose; or (5) of the happening of any event which makes any statement made in the registration statement or related prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or which requires the making of any changes in the registration statement or prospectus so that, in the case of the registration statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(e) Buyer may, upon the happening of any event (x) of the kind described in clauses (2), (3), (4), or (5) of Section 6.4(d)(i)(C) or (y) that, in the judgment of Buyer's Board of Directors, renders it advisable to suspend use of the prospectus due to pending corporate developments, public filings with the SEC or similar events, suspend use of the prospectus on written notice to Seller, in which case Seller shall discontinue disposition of Registrable Securities covered by the registration statement or prospectus until copies of a supplemented or amended prospectus are distributed to Seller or until Seller is advised in writing by Buyer that the use of the applicable prospectus may be resumed. Buyer shall use its reasonable efforts to ensure that the use of the prospectus may be resumed as soon as practicable. Buyer shall use every reasonable effort to obtain the withdrawal of any order suspending the effectiveness of the registration statement, or the lifting of any suspension of the qualification (or exemption from qualification) of any of the securities for sale in any jurisdiction, at the earliest practicable moment. Buyer shall prepare as soon as practicable a supplement or post-effective amendment to the registration statement or a supplement to the related prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, such prospectus will not contain an

untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(f) Indemnification.

(i) Buyer will indemnify and hold harmless Seller, each of its officers and directors, and each person controlling Seller, with respect to which a registration has been effected pursuant to this Section 6.4 and each underwriter, if any, and each person who controls any underwriter of the Registrable Securities held by or issuable to Seller, against all claims, losses, damages, costs, expenses and liabilities whatsoever (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, preliminary or final prospectus contained therein or any amendment or supplement thereto, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by Buyer of the Securities Act or any state securities law or of any rule or regulation promulgated under the Securities Act or any state securities law applicable to Buyer and relating to action or inaction required of Buyer in connection with any such registration, and will reimburse Seller, each of its officers and directors, and each person controlling Seller, each such underwriter and each person who controls any such underwriter, for any legal and any other expenses as reasonably incurred in connection with investigating or defending any such claim, loss, damage, cost, expense, liability or action, provided that Buyer will not be liable in any such case to the extent that any such claim, loss, damage, cost, expense, or liability arises out of or is based on any untrue statement or omission based upon written information furnished to Buyer by an instrument duly executed by Seller or any underwriter and stated to be specifically for use therein.

(ii) Seller will, if Registrable Securities held by or issuable to Seller are included in the securities as to which such registration is being effected, indemnify and hold harmless Buyer, each of its directors and officers who sign such registration statement, each underwriter, if any, of Buyer's securities covered by such registration statement, each person who controls Buyer within the meaning of the Securities Act against all claims, losses, damages, costs, expenses and liabilities whatsoever (or actions in respect thereof) arising out of or based on any untrue statement of a material fact contained in any such registration statement, preliminary or final prospectus contained therein or any amendment or supplement thereto, incident to any such registration, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by Seller of the Securities Act or of state securities laws or any rule or regulation promulgated under the Securities Act or any state securities law applicable to Seller and relating to action or inaction required of Seller in connection with any such registration and will reimburse Buyer, such directors, officers, persons or

underwriters for any legal or any other expenses as reasonably incurred in connection with investigating or defending any such claim, loss, damage, cost, expense, liability or action, in each case to the extent, but only to the extent, that such untrue statement or omission is made in such registration statement, prospectus, in reliance upon and in conformity with written information furnished to Buyer by an instrument duly executed by Seller and stated to be specifically for use therein; provided, however, that the foregoing indemnity agreement is subject to the condition that, insofar as it relates to any such untrue statement or omission made in the preliminary prospectus but eliminated or remedied in the amended prospectus on file with the SEC at the time the registration statement becomes effective or the amended prospectus filed with the SEC pursuant to Rule 424(b) (the "Final Prospectus"), such indemnity agreement shall not inure to the benefit of Buyer, any underwriter or any Holder, if there is no underwriter, if a copy of the Final Prospectus was not furnished to the person or entity asserting the loss, liability, claim or damage at or prior to the time such action is required by the Securities Act.

(iii) Each party entitled to indemnification under this Section 6.4(e) (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense at such party's expense. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. If any such Indemnified Party shall have been advised by counsel chosen by it that there may be one or more legal defenses available to such Indemnified Party which are different from or additional to those available to the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense of such action on behalf of such Indemnified Party and will promptly reimburse such Indemnified Party and any person controlling such Indemnified Party for the reasonable fees and expenses of any counsel retained by the Indemnified Party, it being understood that the Indemnifying Party shall not, in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for such Indemnified Party or controlling person, which firm shall be designated in writing by the Indemnified Party to the Indemnifying Party.

(g) Contribution. If the indemnification provided for in Section 6.4(e) is unavailable or insufficient to hold harmless an Indemnified Party thereunder, then each Indemnifying Party thereunder shall contribute to the account paid

or payable by such Indemnified Party as a result of the losses, claims, damages, costs, expenses, liabilities or actions referred to in Section 6.4(e)(i) or (ii), as the case may be in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other in connection with statements or omissions which resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Indemnifying Party or the Indemnified Party and the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statements or omission. The Parties hereto agree that it would not be just and equitable if contributions pursuant to this Section 6.4(f) were to be determined by pro rata or per capita allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the first sentence of this Section 6.4(f). The amount paid by an Indemnified Party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this Section 6.4(f) shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any action or claim which is the subject of this Section 6.4(f). Promptly after receipt by an Indemnified Party of notice of the commencement of any action against such party in respect of which a claim for contribution may be made against an Indemnifying Party under this Section 6.4(f), such Indemnified Party shall notify the Indemnifying Party in writing of the commencement thereof if the notice specified in Section 6.4(c)(iii) has not been given with respect to such action; provided that the omission so to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability which it may have to any Indemnified Party otherwise under this Section 6.4(f), except to the extent that the Indemnifying Party is actually prejudiced by such failure to give notice. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(h) Information by Holder. Seller shall furnish to Buyer such information regarding Seller and the distribution proposed by Seller as Buyer may reasonably request in writing and as shall be required in connection with any registration referred to in this Section 6.4.

(i) Rule 144 Reporting. With a view to making available to Seller the benefits of certain rules and regulations of SEC which may permit the sale of Registrable Securities to the public without registration, Buyer agrees to:

(i) make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act, at all times after ninety (90) days after the effective date of the first registration filed by Buyer which involves a sale of securities of Buyer to the general public;

(ii) file with the SEC in a timely manner all reports and other documents required of Buyer under the Securities Act and the Exchange Act; and

(iii) furnish to Seller so long as it owns any Registrable Securities forthwith upon request a written statement by Buyer that it has complied with the reporting requirements of said Rule 144 (at any time after ninety (90) days after the effective date of said first registration statement filed by Buyer), and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of Buyer, and such other reports and documents so filed by Buyer as may be reasonably requested in availing Seller of any rule or regulation of the SEC permitting the selling of any such securities without registration.

(i) Transfer of Registration Rights. Any registration rights granted by Buyer under this Section 6.4 may be assigned by Seller in connection with the sale by Seller of any Registrable Securities, to a transferee or assignee, who, after such assignment or transfer, holds at least 500,000 shares or all remaining shares of Buyer held prior thereto by Seller, and following such assignment, the assignee shall be entitled to all rights of Seller under this Section 6.4, provided that such assignee agrees in writing to be bound to the obligations of Seller under this Section 6.4.

(k) Termination of Registration Rights. All registration rights provided hereunder shall terminate upon the earlier to occur of (a) the tenth anniversary of the Closing and (b) such time as Seller is able to sell all of its Registrable Securities under Rule 144 during any two successive, three-month periods.

(l) Future Grants of Registration Rights. Buyer agrees for the benefit of Seller that it will not grant registration rights with respect to any of its securities upon terms more favorable to the holders of such securities than those contained herein.

6.5 Standstill Agreement.

(a) Standstill. Notwithstanding any other provision of this Agreement, subject to the exceptions set forth in Section 6.5(b), without the approval of the Board of Directors of Buyer (whether by written consent of the directors or pursuant to a resolution duly adopted by the directors at a meeting of the Board of Directors), Seller (which shall include any affiliate of Seller for purposes of this Section 6.5) shall not, after the Closing Date, acquire "beneficial ownership" (which, for purposes of this Section 6.5, shall have the meaning set forth in Rule 13d-3 of the Exchange Act) of any securities of Buyer entitled to vote with respect to the election of any directors of Buyer ("Voting Securities"), any security convertible into, exchangeable for, or exercisable for, or that may become any Voting Securities or any other right to acquire Voting Securities

(such Voting Securities and rights to acquire Voting Securities are collectively referred to herein as "Securities").

(b) Exceptions to Standstill Provision.

(i) Seller may acquire Securities without regard to the limitations set forth in Section 6.5(a) in accordance with the provisions of Section 6.2 or Section 6.3 hereof; and

(ii) Seller may, after written notice to Buyer, acquire Securities without regard to the limitations set forth in this Section 6.5 if a bona fide tender or exchange offer is made by any person or 13D Group to acquire Securities that, if added to the Securities (if any) already owned by such person or 13D Group, would represent ownership of Securities greater than fifty percent (50%) of Buyer's then outstanding Securities; provided, however, that Seller shall only be permitted to take such actions and make such offers as may be considered to be of the same nature and type of action or offer and directed to the same person or persons and within the same time period and for the same resulting amount of Securities as that which is being taken by such person or 13D Group; and provided further, that Seller may only acquire that amount of Securities that, when added to the amount of Securities already owned by Seller, shall not exceed the amount of Securities acquired or to be acquired (assuming any offers to purchase have been consummated) by such person or 13D Group. In proceeding with any action or offer permitted under this subsection 6.5(b)(ii), Seller shall be permitted to offer more favorable terms than those terms offered by such person or 13D Group, so long as such terms are substantially consistent with an offer of the same nature and type of consideration as that which is being proposed by such person or 13D Group.

(c) Notice of Securities Purchases and Sales. Seller shall advise Buyer as to its plans to acquire or dispose of beneficial ownership of Securities, or rights thereto, reasonably in advance of any such action.

(d) Acts in Concert with Others. Seller shall not join a partnership, limited partnership, syndicate or other group, or otherwise act in concert with any third person, for the purpose of acquiring, holding, voting or disposing of Securities, or rights thereto.

(e) Restrictions on Transfer of Securities. Seller shall not dispose of beneficial ownership or voting control of Securities or any right thereto, except (i) in accordance with the provisions of Section 6.7 hereof; (ii) to Buyer or any person or group approved by Buyer; (iii) pursuant to a bona fide public offering registered under the Securities Act (in which Seller does not have the ability to select the purchasers), including any offering pursuant to the registration rights granted in Section 6.4 hereof; (iv) pursuant to Rule 144 under the Securities Act; (v) in transactions not

described in (i), (ii), (iii) or (iv) hereof so long as such transactions do not, directly or indirectly, result in any person or group owning or having the right to acquire beneficial ownership of Securities with aggregate voting power of five percent (5%) or more of the aggregate voting power of all outstanding Securities (assuming the conversion, exchange and/or exercise of all convertible, exchangeable and exercisable securities); or (v) in response to an offer to purchase or exchange for cash or other consideration any Securities that (a) is made by or on behalf of Buyer, or (b) is made by another person or group to all holders of Securities and is not opposed by the Board of Directors of Buyer within the time such Board is required, pursuant to regulations under the Exchange Act, to advise Company shareholders of such Board's position on such offer.

6.6 Buyer's Right of First Refusal

(a) First Refusal Right

(i) In the event Seller proposes to sell any Securities, other than in a transaction described in Sections 6.5(e)(ii)-(v), Seller shall deliver a written notice to Buyer setting forth the terms of the proposed sale, including the name of the proposed purchaser and the date on or about which such sale is proposed to be completed. Buyer shall have the right of first refusal to acquire such Securities on the terms set forth in such notice (subject to the valuation provisions of Section 6.7(b) below), as provided in this Section.

(ii) Buyer shall have until twenty (20) days after the receipt of such a notice to elect by notice to Seller to acquire all or any portion of such Securities proposed to be sold by Seller on the terms set forth in such notice. If Buyer notifies Seller within such time period of its election to acquire any of such Securities, a closing with respect to such acquisition shall be held at the principal office of Buyer (or at such other place as may be agreed upon by Buyer and Seller) on a date and at a time which are mutually agreeable to Buyer and Seller, but in no event later than ten (10) days after receipt by Seller of such notice of Buyer's election.

(iii) In the event Buyer elects not to exercise the foregoing right of first refusal, Seller shall have ninety (90) days to sell such Securities on the same terms as are set forth in such notice. If Seller proposes to sell such Securities on terms different than those set forth in the notice, or proposes to sell such Securities after the ninety (90) day period, Seller shall first notify Buyer of such proposed sale, and Seller shall have another opportunity to exercise its right of first refusal under this Section.

(b) Appraisal Procedure

(i) Whenever the terms of a proposed sale of Securities include forms of consideration other than cash or securities which are traded on a National Exchange (as defined below), Seller shall have the option to exercise its first

refusal right under this section by paying the "Appraised Value" in cash of such proposed non-cash consideration. "Appraised Value" shall mean the fair saleable value of such non-cash consideration as of the date of the notice delivered pursuant to Section 6.7(a)(i) (the "First Offer Notice Date"), and shall be determined in the manner set forth in Section 6.7(b)(ii) below. If an item of consideration constitutes securities which are traded on a National Exchange (as defined below), the value of such items shall be the average of the closing prices of such securities on such exchange during (with reference to the principal trading market if such securities are traded on more than one National Exchange) each day within the fifteen (15) trading days on such National Exchange prior to the First Offer Notice Date.

For purposes of this provision, "National Exchange" means the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Stock Exchange or the National Market System of the National Association of Securities Dealers, Inc.

(ii) The determination of "Appraised Value" shall be made by an investment banking firm or other qualified consultant of nationally recognized standing, in accordance with this provision. Buyer and Seller shall endeavor to mutually agree upon the investment banking firm or other qualified consultant to undertake such determination. In the event Buyer and Seller fail to so agree within five (5) business days after the First Offer Notice Date, within two (2) business days after such failure each of Buyer and Seller shall choose one such investment banking firm or other qualified consultant and within five (5) business days after such failure, the respective chosen firms shall be required to choose a third such investment banking firm or other qualified consultant to make such determination of the Appraised Value; and the determination of such third investment banking firm or other qualified consultant of the Appraised Value shall be binding. The investment banking firm or other qualified consultant selected pursuant hereto to make the determination of the Appraised Value shall be required to make such determination within twenty (20) business days after its selection. Buyer shall pay all costs and fees of up to the three such investment banking firms or other qualified consultants, and shall cooperate fully with the investment banking firm or other qualified consultant selected to make such determination by promptly providing such information as is requested by such firm.

(c) Change of Control. For purposes of this Agreement, a "Change of Control" with respect to one party shall be deemed to have occurred whenever (i) there shall be consummated (1) any consolidation or merger of such party in which such party is not the continuing or surviving corporation, or pursuant to which shares of such party's common stock would be converted in whole or in part into cash, other securities or other property, other than a merger of such person in which the holders of such party's common stock immediately prior to the merger have substantially the same proportionate ownership of common stock of the surviving corporation immediately after the merger, or (2) any sale, lease, exchange or transfer (in one

transaction or a series of related transactions) of all or substantially all the assets of such party, or (ii) the stockholders of such party shall approve any plan or proposal for the liquidation or dissolution of such party, or (iii) any party, other than such party or a subsidiary thereof or any employee benefit plan sponsored by such party or a subsidiary thereof or a corporation owned, directly or indirectly, by the stockholders of such party in substantially the same proportions as their ownership of stock of such party, shall become the beneficial owner of securities of such party representing greater than fifty percent (50%) of the combined voting power of then outstanding securities ordinarily (and apart from rights accruing in special circumstances) having the right to vote in the election of directors, as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise, or (iv) at any time after the date of this Agreement, individuals who at the date hereof constituted the Board of Directors of such party shall cease for any reason to constitute at least a majority thereof, unless the election or the nomination for election by such party's stockholders of each new director was approved by a vote of at least two-thirds of the directors then still in office who were directors at the date hereof, or (v) any other event shall occur with respect to such party that would be required to be reported in response to Item 6(e) (or any successor provision) of Schedule 14A of Regulation 14A promulgated under the Exchange Act.

ARTICLE VII

TERMINATION, AMENDMENT AND WAIVER

7.1 Termination. Except as provided in Section 7.2 below, this Agreement may be terminated and the Acquisition abandoned at any time prior to the Closing Date:

- (a) by mutual consent of Seller and Buyer;
- (b) by Buyer or Seller if: (i) the Closing has not occurred by February 29, 1996; (ii) there shall be a final nonappealable order of a federal or state court in effect preventing consummation of the Acquisition; or (iii) there shall be any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Acquisition by any Governmental Entity that would make consummation of the Acquisition illegal;
- (c) by Buyer if it is not in material breach of this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Seller and such breach has not been cured within five (5) business days after written notice to Seller (provided that, no cure period shall be required for a breach which by its nature cannot be cured);
- (d) by Buyer at any time prior to November 1, 1995, if as a result of its due diligence review of the Business subsequent to the date of this Agreement it

discovers a fact or condition existing on the date of this Agreement and not disclosed to Buyer prior to or on the date of this Agreement that Buyer reasonably determines has a material adverse effect on the Business Condition of Seller;

(e) by Seller at any time prior to November 1, 1995 if as result of its due diligence review of Buyer subsequent to the date of this Agreement it discovers a fact or condition existing on the date of this Agreement not disclosed to Seller prior to or on the date of this Agreement that Seller reasonably determines has a material adverse effect on the Business Condition of Buyer;

(f) by Seller if it is not in material breach of this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Buyer and such breach has not been cured within five (5) business days after written notice to Buyer (provided that, no cure period shall be required for a breach which by its nature cannot be cured).

7.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 7.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Buyer or Seller, or their respective officers, directors or shareholders, provided that each party shall remain liable for any breaches of this Agreement prior to its termination.

7.3 Amendment. This Agreement may be amended by the parties hereto at any time by execution of an instrument in writing signed on behalf of each of the parties hereto.

7.4 Extension; Waiver. At any time prior to the Closing Date, Buyer on the one hand, and Seller, on the other, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations of the other party hereto, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto, and (iii) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

ARTICLE VIII

INDEMNIFICATION

8.1 Survival of Representations, Warranties and Agreements. Notwithstanding any investigation conducted at any time with regard thereto by or on behalf of either party, no representation or warranty by Seller shall survive the closing of this Agreement and no claim may be brought by any party with respect thereto other than the representation made by Seller in Section 2.10, including any schedules thereto, which shall survive the execution, delivery and performance of this Agreement, and be subject to the provisions of Section 8.2 below, until the first anniversary of the Closing Date.

8.2 Indemnification. Seller hereby agrees to indemnify and hold harmless Buyer against any and all losses, liabilities, damages, demands, claims, suits, actions, judgments or causes of action, assessments, costs and expenses, including, without limitation, interest, penalties, attorneys' fees, any and all out-of-pocket expenses incurred in investigating, preparing or defending against any litigation, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation, but only to the extent that the aggregate of the foregoing exceeds \$250,000, (collectively "Damages") asserted against, resulting to, imposed upon, or incurred or suffered by Buyer, directly or indirectly, as a result of or arising from any inaccuracy in or breach of the representation and warranty made by Seller in Section 2.10, including schedules thereto ("Identifiable Claims"). Seller's indemnity obligation pursuant to this Article VIII shall in no event exceed, either individually or in the aggregate, \$5,000,000.

8.3 Procedure for Indemnification with Respect to Third-Party Claims.

(a) If Buyer determines to seek indemnification under this Article VIII with respect to Identifiable Claims (the party seeking such indemnification hereinafter referred to as the "Indemnified Party" and the party against whom such indemnification is sought is hereinafter referred to as the "Indemnifying Party") resulting from the assertion of liability by third parties, the Indemnified Party shall give notice to the Indemnifying Party within thirty (30) days of the Indemnified Party becoming aware of any such Identifiable Claim or of facts upon which any such Identifiable Claim will be based; the notice shall set forth such material information with respect thereto as is then reasonably available to the Indemnified Party. In case any such liability is asserted against the Indemnified Party, and the Indemnified Party notifies the Indemnifying Party thereof, the Indemnifying Party will be entitled, if it so elects by written notice delivered to the Indemnified Party within twenty (20) days after receiving the Indemnified Party's notice, to assume the defense thereof with counsel reasonably satisfactory to the Indemnified Party. Notwithstanding the foregoing, (i) the Indemnified Party shall also have the right to employ its own counsel in any such case, but the fees and expenses of

such counsel shall be at the sole, unreimbursable expense of the Indemnified Party unless the Indemnified Party does not assume control or the Indemnified Party shall reasonably determine that there is a conflict of interest between Buyer and Seller with respect to such Identifiable Claim, in which case the fees and expenses of such counsel will be borne by the Indemnifying Party, (ii) the Indemnified Party shall not have any obligation to give any notice of any assertion of liability by a third party unless such assertion is in writing, and (iii) the rights of the Indemnified Party to be indemnified hereunder in respect of Identifiable Claims resulting from the assertion of liability by third parties shall not be adversely affected by its failure to give notice pursuant to the foregoing unless, and, if so, only to the extent that, the Indemnifying Party is prejudiced thereby. With respect to any assertion of liability by a third party that results in an Identifiable Claim, the parties hereto shall make available to each other all relevant information in their possession material to any such assertion.

(b) In the event that the Indemnifying Party, within thirty (30) days after receipt of the aforesaid notice of an Identifiable Claim, fails to assume the defense of the Indemnified Party against such Identifiable Claim, the Indemnified Party shall have the right to undertake the defense, compromise or settlement of such action on behalf of and for the account and risk of the Indemnifying Party.

(c) Notwithstanding anything in this Section to the contrary, (i) if there is a reasonable probability that an Identifiable Claim may materially and adversely affect the Indemnified Party, other than as a result of money damages or other money payments, the Indemnified Party shall have the right to participate in such defense, compromise or settlement and the Indemnifying Party shall not, without the Indemnified Party's written consent (which consent shall not be unreasonably withheld), settle or compromise any Identifiable Claim or consent to entry of any judgment in respect thereof unless such settlement, compromise or consent includes as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party a release from all liability in respect of such Identifiable Claim.

ARTICLE IX

GENERAL PROVISIONS

9.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via telecopy (with acknowledgment of complete transmission) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Buyer, to:
The Santa Cruz Operation, Inc.
400 Encinal Street
P.O. Box 1900
Santa Cruz, CA 95061-1900
Attention: Legal Department
Telecopy No.: (408) 427-5474

with a copy to:

Brobeck, Phleger & Harrison
Two Embarcadero Place
2200 Geng Road
Palo Alto, CA 94303
Attention: Edward M. Leonard
Telecopy No.: (415) 496-2921

(b) if to Seller, to:

Novell, Inc.
122 East 1700 South
Provo, Utah 84606
Attention: David R. Bradford, Esq.
Telecopy No.: (801) 228-7077

with a copy to:

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304
Attention: Larry W. Sonsini
Telecopy No.: (415) 496-4084

9.2 Survival. The representations and warranties contained in Section 2 and Section 3 hereof except for the representation of Seller set forth in Section 2.10 shall not survive the closing of the sale of assets and issuance of stock contemplated by this Agreement; provided, however, that the foregoing provision shall not eliminate the rights and remedies of the parties hereto in the case of a willful fraud by the other party provided that the agreed party shall establish all elements of the existence of such fraud by clear and convincing evidence.

9.3 Interpretation. When a reference is made in this Agreement to Schedules or Exhibits, such reference shall be to a Schedule or Exhibit to this Agreement unless otherwise indicated. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

9.4 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

9.5 Entire Agreement. This Agreement, and the Schedules and Exhibits hereto: (a) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; (b) are not intended to confer upon any other person any rights or remedies hereunder, unless expressly provided otherwise; and (c) shall not be assigned by operation of law or otherwise except as otherwise specifically provided.

9.6 Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

9.7 Other Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

9.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

9.9 Rules of Construction. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of

construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

IN WITNESS WHEREOF, Buyer and Seller have caused this Agreement to be signed by their duly authorized respective officers, all as of the date first written above.

THE SANTA CRUZ OPERATION, INC.

By: *Aick Holzen*
Name: Aick Holzen
Title: Chief Executive Officer

NOVELL INC.

By: *RJ*
Name: Robert J. Frankenberg
Title: Chairman of the Board,
President and Chief
Executive Officer

Schedule 1.1(a)

Assets

(Page 1 of 4)

- I. All rights and ownership of UNIX and UnixWare, including but not limited to all versions of UNIX and UnixWare and all copies of UNIX and UnixWare (including revisions and updates in process), and all technical, design, development, installation, operation and maintenance information concerning UNIX and UnixWare, including source code, source documentation, source listings and annotations, appropriate engineering notebooks, test data and test results, as well as all reference manuals and support materials normally distributed by Seller to end-users and potential end-users in connection with the distribution of UNIX and UnixWare, such assets to include without limitation the following:

UNIX Source Code Products

- A. UnixWare 2.0 as described in the UnixWare 2.0 Licensing Schedule and those products listed as "prior" products on such schedule (includes source code updates where appropriate - i.e. UnixWare product family).
- B. UNIX SVR4.1 ES as described in the UNIX SVR4.1 ES Licensing Schedule and those products listed as "prior" products on such schedule
- C. UNIX SVR4.0MP as described in the UNIX SVR4.0 MP Licensing Schedule and those products listed as "prior" products on such schedule.
- D. Ancillary SVRx Products (a final list of which shall be developed by the parties prior to the Closing)

Binary Product Releases

- A. UnixWare 2.01 Product Family as described by the Novell UnixWare 2.01 Part/Price List
- B. UnixWare 2.0.x update releases
- C. UnixWare 1.1 Product Family as described by the Novell UnixWare 1.1 Part/Price List
- D. UnixWare 1.1.x - update releases

Products Under Development

- A. UnixWare 2.1 (Eiger) - contains NetWare UNIX Client and Server capabilities
- B. UnixWare 2.1 Oracle Parallel Server (OPS)
- C. UnixWare 2.03 - maintenance update under development
- D. UnixWare 2.0.x/2.1 Enhanced Mode Merge
- E. UnixWare 2 Internet Server

Schedule 1.1(a)

Assets

(Page 2 of 4)

Other Technology

- A. **UnixWare system/HBA/etc. Test/Certification Suites Used by Novell Labs**
 - B. **UnixWare "OS Branding" Test Suites**
 - C. **UnixWare "OS Compatible" Requirements**
 - D. **Gaede Performance Test suite**
 - E. **ARTUS, Bart, Buster Internal UNIX Test suites and test harnesses**
 - F. **UnixWare Training/Education Courseware**
 - G. **Requirements, Design, and Test Specifications for UnixWare 2**
 - H. **Technical Support Update Manager**
 - I. **Marketing collateral/information in electronic form**
 - J. **ODI Transmogrification software**
- II. **All of Seller's claims arising after the Closing Date against any parties relating to any right, property or asset included in the Business.**
- III. **All of Seller's rights pertaining to UNIX and UnixWare under any software development contracts, licenses and any other contracts to which Seller is a party or by which it is bound and which pertain to the Business (to the extent that such contracts are assignable), including without limitation:**
- A. **Joint Development with third parties:**
 - 1. **In-Process development agreements**
 - 2. **Past development agreements with on-going pricing discounts**
 - 3. **Past development agreements without ongoing pricing discounts**
 - 4. **Joint development agreements in which Seller didn't get full rights to the code developed.**
 - B. **Third party software license agreements - Those agreements in which Seller pays per copy fees for technology/products which are shipped with or to be used with UNIX System and/or UnixWare.**
 - C. **Joint marketing agreements - Marketing programs with customers.**
 - D. **End user M.L.A. agreements - Agreements to allow end users to copy binary products for internal use only. Associated with these agreements are support requirements.**
 - E. **UNIX-only VAR agreements - UNIX Masters VARs**

Schedule I I(a)

Assets

(Page 3 of 4)

- F. Support agreements - End user support agreements (i.e., TMAC, NALCOMIS)
 - G. Microsoft agreement (Xenix Agreement) - Xenix compatibility and per copy fee agreement. Seller will agree to discuss with SCO Seller's interpretation of this agreement.
 - H. Microsoft Agreement (Extra-Ordinary Discount) - Microsoft's additional discount beyond 80%.
 - I. Strategic Relationship Agreements (i.e. MTA, ECPA, MBA, etc.)
 - J. Out-sourced development (i.e., India) - Development agreements with third parties (Wipro and HCL) and India Development Center. IDC is a Seller subsidiary.
 - K. Out-sourced Support Agreements
 - L. Software and Sublicensing Agreements - This includes the source code and sublicensing agreements that Seller has with its OEM, End User and Educational customers. The total number of these agreements is approximately 30,000.
 - M. OEM Binary Licensing Agreements - OEM distribution of UnixWare with Seller's agreement to include some OEM added value into future releases of UnixWare.
- IV. All copies of UNIX and UnixWare, wherever located, owned by Seller.
- V. Intellectual property - Trademarks UNIX and UnixWare as and to the extent held by Seller (excluding any compensation Seller receives with respect of the license granted to X/Open regarding the UNIX trademark).
- VI. All contracts relating to the SVRX Licenses listed below:
- UNIX System V Release 4.2 MP, Intel386 Implementation
 - #UNIX System V Release 4.2 MP International Edition, Intel386 Implementation
 - UNIX System V Release 4.2, Intel386 Implementation
 - #UNIX System V Release 4.2 International Edition, Intel386 Implementation
 - UNIX System V Release 4.1 ES, Intel386 Implementation
 - #UNIX System V Release 4.1 ES International Edition, Intel386 Implementation

Schedule 1.1(a)

Assets

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- UNIX System V Release 4.0 MP, Intel386 Implementation
- #UNIX System V Release 4.0 MP International Edition, Intel386 Implementation
- UNIX System V Release 4.0 MP, Intel386 Version 4 Implementation
- #UNIX System V Release 4.0 International Edition, Intel386 Version 4 Implementation
- UNIX System V Release 4.0, Intel386 Version 3 Implementation
- #UNIX System V Release 4.0 International Edition, Intel386 Version 3 Implementation
- UNIX System V Release 4.0, Intel386 Version 2 Implementation
- #UNIX System V Release 4.0 International Edition, Intel386 Version 2 Implementation
- UNIX System V Release 4.0, Intel386 Version 1 Implementation
- #UNIX System V Release 4.0 International Edition, Intel386 Version 1 Implementation
- UNIX System V/386 Release 3.2 and #UNIX System V/386 Release 3.2 International Edition
- UNIX System V Release 3.2 and #UNIX System V Release 3.2 International Edition
- UNIX System V Release 3.1 and #UNIX System V Release 3.1 International Edition
- UNIX System V Release 3.0 and #UNIX System V Release 3.0 International Edition
- All prior releases and versions of UNIX System V Release 2.1
- #All prior releases and versions of UNIX System V Release 2.1 International Editions
- All prior releases and versions of UNIX System V Release 2.0
- #All prior releases and versions of UNIX System V Release 2.0 International Editions
- All prior UNIX System releases and versions preceding UNIX System V Release 2.0
- #All prior UNIX System releases and versions preceding UNIX System V Release 2.0 International Editions

- VII. Such office furniture and personal computers or work stations as may be currently used by the employees of Seller hired by Buyer pursuant to Section 4.13 hereof.

Schedule 1.1(b)
Excluded Assets
(Page 1 of 2)

- I. Any asset not listed on Schedule 1.1(a), including without limitation any asset which pertains to NetWare which is not listed on Schedule 1.1(a)
- II. NetWare Operating System and Services
- III. TUXEDO Transaction Processing
- IV. Licensed technology, including:
 - A. NetWare and other Novell code contained in UnixWare 2.01 and Eiger:
 - 1. ODI Software contained in NetWare and UnixWare LAN Drive Test Kit
 - 2. Nprinter (for printing from NetWare to UnixWare Server)
 - 3. NUC (NetWare UNIX Client - for print, etc. from UnixWare to NetWare Server)
 - 4. TNVT, Host Presenter (Terminal Emulation to Log into UnixWare Server from NetWare Client)
 - 5. MHS Gateway (Mail Gateway)
 - 6. IPX/SPX (Re-Write of Native 4.1)
 - 7. ODI (Networking driver protocol; version 3.3 of assembly Spec and 1.0 of C Spec)
 - 8. Xconsole (Log-in to NetWare console)
 - 9. UnixWare TSA (SMS is back-up and restore, TSA is the 'agent' needed to do this)
 - 10. Some NetWare Client APIs
 - 11. DR-DOS
 - 12. Host Presenter (*Binary only*)
 - 13. TNVT (*Binary only*)
 - 14. cprint (*Binary only*)
 - 15. NetWare NLM (*Binary only*)
 - B. NetWare code contained in Eiger Only:
 - 1. NDS APIs
 - 2. NWS (Incl. NetWare File, Print and Directory Services)
 - C. NetWare 4.1 for UnixWare

Schedule 1.1(b)
Excluded Assets
(Page 2 of 2)

V. Intellectual Property:

- A. All copyrights and trademarks, except for the trademarks UNIX and UnixWare.
- B. All Patents

VI. Existing Master License Agreements with end users which include, in addition to other products of Seller, integrated delivery of UnixWare.

VII. All accounts receivable or rights to payment concerning the Assets arising prior to the Closing Date.

VIII. All right, title and interest to the SVRx Royalties, less the 5% fee for administering the collection thereof pursuant to Section 4.16 hereof.

Schedule 1.1(e)

Assumed Liabilities

1. All obligations, whether existing on the date hereof or arising hereafter, under the assigned contracts listed on Schedule 1.1(a).
2. All obligations relating to the Business which arise subsequent to the Closing Date.
3. Obligation of product support and customer service concerning UnixWare and Eiger.

SCHEDULE 1.2(b)

Buyer shall make payments of the royalties in accordance with the structure set forth below.

(a) Royalty-Bearing Products. Royalties shall be paid on sales of the following products by Buyer (the "Royalty-Bearing Products"):

(i) UnixWare

(ii) Eiger

(iii) MXU

(iv) White Box

(v) any derivative, upgrades, updates or new releases of (i) through (iv) above.

(b) Amount of Royalties. Concurrent with the execution of this Agreement, Seller has delivered to Buyer a business plan provided by Seller to Buyer on September 11, 1995 including an annual forecast by Seller of the potential estimated market for UnixWare, Eiger, MXU and White Box (the "Plan"). The amount of royalties shall be as follows:

(i) Royalties on UnixWare, Eiger, MXU and derivatives ("UW Products"):

(a) No royalties shall be payable in connection with any of the UW Products until Buyer shall have shipped or licensed, in any year, 40% of the units contemplated by the Plan for such year;

(b) Buyer shall pay royalties equal to \$30.00 per net unit in connection with each and every net unit of UW Products shipped or licensed by Buyer over and above 40% and less than 70% of the total units contemplated by the Plan for such year;

(c) Buyer shall pay royalties equal to \$60.00 per net unit in connection with each and every net unit of UW Products shipped or licensed by Buyer over and above 70% of the total units contemplated by the Plan for such year.

(i) The customer ships a binary copy of a Golden Master of UnixWare, Eiger, MXU or White Box, or

(ii) The product is derived from a source version of UnixWare, Eiger, MXU or White Box and (i) none of the original SVRx code provided by Novell to the customer, under the SVRx license, is included in the new product or (ii) Buyer shall demonstrate to Seller's reasonable satisfaction that an insignificant amount of original SVRx code is so included and the adoption of UnixWare is so substantial as to constitute a valid conversion.

In addition, an SVRx customer can be defined as having converted to UnixWare only if one of the above is satisfied and only if support is provided for NDS (client/server where appropriate) in the resulting product.

SELLER DISCLOSURE SCHEDULE

For convenience, section numbers refer to the Asset Purchase Agreement dated as of September 19, 1995 between Seller and The Santa Cruz Operation, Inc. However, the disclosure herein of any information which is relevant in connection with more than one section of such agreement shall be deemed adequate in all respects notwithstanding the fact that such information is disclosed herein only with reference to one section.

Section 2.6

Claims and threatened litigation:

Seller has been put on notice of a possible infringement of Unisys patent 4,558,302, covering the so-called LZW data-compression algorithm.

Section 2.8(c)

- (i) Contracts under which Seller paid \$1,500,000 or more in Business related royalties, additional license fees and revenue sharing during the period 8/1/94 - 7/31/95:
- (1) February 7, 1987 Development and License Agreement now in effect between Seller and Microsoft Corporation
 - (2) March 8, 1993 International OEM Distribution Agreement now in effect between Seller and Locus Computing Corporation
- (ii) Customers from whom Seller received \$1,500,000 or more in Business related royalties, additional license fees and revenue sharing during the period 8/1/94 - 7/31/95:-

See Attachment A

(iii) Contracts now in existence in which Seller granted most favored nation pricing or exclusive marketing rights related to any Business related product, group of products, or territory:

See Attachment B

**Pursuant to various Software Agreements and Sublicensing Agreements administered by Seller's Licensing Organization.*

Section 2.8(f)

(f) Contracts containing rights for a customer to sublicense Business related source or binary code without additional payments to Seller:

(1) January 1, 1994 Software License and Distribution Agreement now in effect between Seller and Sun Microsystems, Inc.

(2) June 9, 1986 Sublicensing Agreement now in effect between Seller and Silicon Graphics, Inc.

Section 2.10

(i) Intellectual Property:

Attachment C to this Schedule contains the most current listing of pending and issued applications for trademarks covering products of the Business.

Attachment D to this Schedule contains a listing of pending and issued applications for patents covering products of the Business.

Attachment E to this Schedule contains a listing of Seller's copyright registrations covering product(s) relating to the Business.

(ii) Contracts under which Seller received Business-related revenues in excess of \$2,000,000 in the twelve month period ending 7/31/95:

See Attachment A

(iii) Contracts pursuant to which Seller was obligated to pay Business-related royalties of \$1,000,000 or more over the period 8/1/94-7/31/95:

See Attachment F

(iv) Contracts containing Business-related rights which are non-perpetual or which are terminable in the event of acquisition:

See Attachment G

(v) Claims of infringement:

See entry for Section 2.6 above

Section 2.11(a)

Real property and leases:

The Business (excluding outside sales and support activities conducted in the ordinary course) is primarily concentrated in a facility leased from Exxon Corporation in Florham Park, New Jersey. A copy of the current lease covering such facility is appended hereto as Attachment H. Other facilities in which relatively minor portions of the Business are conducted are located in San Jose, California, Orem, Utah and Provo, Utah.

Section 2.14

See Attachment A

NOVELL-SCO-Proprietary (Restricted)
Not for disclosure to third parties

Section 2.16

Estimated level of UnixWare software inventory as of October 11, 1995:

U.S. / Canada	\$1,516,860
International	750,700
<hr/>	
Total	\$2,267,560

NOVELL-SCO-Proprietary (Restricted)
Not for disclosure to third parties

ATTACHMENT A

Largest Volume OEM Customers of Seller

Sales Over \$2 Million

Microsoft
AT&T
Hewlett-Packard
Fujitsu
NEC
Siemens-Nixdorf
ICL
Digital Equipment
IBM
Silicon Graphics

Sales Over \$1.5 Million

Microsoft
AT&T
Hewlett-Packard
Fujitsu
NEC
Siemens-Nixdorf
ICL
Digital Equipment
IBM
Silicon Graphics

Hitachi
Motorola

Sales Over \$1 Million

Microsoft
AT&T
Hewlett-Packard
Fujitsu
NEC
Siemens-Nixdorf
ICL
Digital Equipment
IBM
Silicon Graphics

Hitachi
Motorola

Cray
Stratus
Tandem
Mitsubishi

Attachment B

Agreements* with Most Favored Customer Pricing or Exclusive

Marketing Rights for Business Products or Territories

- February 21, 1986 Territorial Software Distribution Agreement between AT&T Information Systems, Inc. and AT&T UNIX Pacific Co., Ltd.
- Joint Venture Contract between Shenzhen Comtec Software, Ltd., China National Computer Software & Technology Service Corporation, China Great Wall Computer Group Co., Langchao Electronic Information Industrial Group Corporation, Changjiang Computer Union Corporation (Group), Beijing Modern Information Development Center, Daxcom (Holdings) Ltd., and UNIX System Technologies China Company, Ltd. for the Establishment of UNIX System Technologies Company, Ltd.
- Sales Agency Agreement between AUDILOG (France) and UNIX System Laboratories, Inc.
- Publication Agreement between UNIX System Laboratories, Inc. and Addison-Wesley Publishing Company, Inc.
- January 1, 1994 Software License and Distribution Agreement between Seller and Sun Microsystems, Inc.
- May 10, 1994 Trademark Relicensing Agreement between Seller and X/Open Company, Ltd.
- Publication Agreement dated December 17, 1986 between AT&T Information Systems Inc. and Prentice-Hall, Inc.

* Agreements originally entered into by one of Seller's predecessors in title are so identified.

NOVELL-SCO Proprietary (Registered)
Not for disclosure to third parties

TRADEMARK STATUS REPORT

TRADEMARK	COUNTRY	STATUS	CLASS	FILING DATE	REV. DATE	LOCATOR NO.
UNIX	Argentina	Registered	38	01/31/88	05/02/89	09062-T115156
UNIX	Argentina	Registered	42	06/05/88	07/04/89	09062-T115157
UNIX	Argentina	Registered	9	01/31/88	01/31/91	09062-T115158
UNIX	Australia	Registered	42	01/09/87	01/09/83	09062-T115161
UNIX	Australia	Registered	38	01/09/87	01/09/83	09062-T115160
UNIX	Australia	Registered	16	01/09/87	01/09/83	09062-T115159
UNIX	Australia	Registered	9	06/13/84	01/17/85	09062-T115158
UNIX	Australia	Registered	9, 38		05/04/83	09062-T115161
UNIX	Australia	Registered	9, 16, 37, 41, 42		01/19/87	09062-T115162
UNIX	Australia	Registered	38, 42		01/19/87	09062-T115163
UNIX	Belgium	Registered	9, 16	02/01/83	02/01/83	09062-T115164
UNIX	Belgium	Registered	9	03/06/86	03/06/86	09062-T115166
UNIX	Bolivia	Registered	38	02/17/89	11/04/88	09062-T115168
UNIX	Bolivia	Registered	9	02/17/86	11/04/86	09062-T115167
UNIX	Brazil	Registered	38	01/29/86	08/29/87	09062-T115171
UNIX	Brazil	Registered	9	05/19/83	07/31/84	09062-T115170
UNIX	Brazil	Registered	9	01/29/86	08/29/87	09062-T115169
UNIX	Canada	Registered	9	01/19/83	01/24/87	09062-T115172
UNIX	China	Registered	9, 38	03/19/86	10/16/92	09062-T115173
UNIX	China	Registered	16	11/11/83	11/30/86	09062-T115174
UNIX	Colombia	Registered	38	02/26/86	04/12/89	09062-T115176
UNIX	Colombia	Registered	9	02/26/86	12/09/88	09062-T115175
UNIX	Costa Rica	Registered	9	10/27/86	05/22/88	09062-T115171
UNIX	Costa Rica	Registered	16	01/19/87	11/27/88	09062-T115170
UNIX	Cyprus	Registered	9	09/27/92		09062-T115179
UNIX	Denmark	Registered	9, 38	09/02/90	09/27/92	09062-T115180
UNIX	Dominican Republic	Registered	20	03/29/84	03/11/88	09062-T115181
UNIX	Dominican Republic	Registered	22	03/07/88	09/16/88	09062-T115183
UNIX	Ecuador	Registered	9	03/09/86	09/02/86	09062-T115184
UNIX	Egypt	Registered	38	10/09/85	09/19/86	09062-T115185
UNIX	Egypt	Registered	9	01/07/85	02/23/84	09062-T115184
UNIX	El Salvador	Registered	42	01/07/85	11/12/86	09062-T115187
UNIX	Finland	Registered	9	08/22/86	07/12/89	09062-T115188
UNIX	Finland	Registered	9, 38	11/19/86	01/30/89	09062-T115189

ATTACHMENT C
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TRADEMARK STATUS REPORT

TRADEMARK	COUNTRY	STATUS	CLASS	FILING DATE	REG. DATE	LOCATOR NO.
UNIX	France	Registered	9, 38	10/26/84	10/28/84	09062-TM5190
UNIX	France	Registered	9, 16, 17, 21, 28, 30, 33	03/29/82	03/29/82	09062-TM5191
UNIX	Germany	Registered	9, 16, 37, 38, 42	11/27/80	07/30/91	09062-TM5192
UNIX	Germany	Registered	9, 16, 37, 38, 42	07/02/80	08/14/90	09062-TM5193
UNIX	Germany	Registered	9, 16, 42	03/22/83	11/17/83	09062-TM5194
UNIX	Greece	Registered	9	04/18/88	10/17/91	09062-TM5195
UNIX	Greece	Filed	38	11/17/82		09062-TM5196
UNIX	Guatemala	Registered	9	09/10/86	09/09/88	09062-TM5197
UNIX	Honduras	Registered	38	04/16/86	12/09/88	09062-TM5198
UNIX	Honduras	Registered	9	04/16/86	12/09/88	09062-TM5199
UNIX	Hong Kong	Registered	9	03/11/84	05/11/84	09062-TM5200
UNIX	Hong Kong	Registered	16	03/11/84	05/11/84	09062-TM5201
UNIX	Hong Kong	Registered	9	03/08/91	12/22/92	09062-TM5202
UNIX	Hungary	Registered	9	07/13/90	12/05/90	09062-TM5203
UNIX	Iceland	Registered	9	08/08/85	03/08/85	09062-TM5204
UNIX	India	Registered	9	01/01/85	02/01/85	09062-TM5205
UNIX	India	Rejected	9	08/09/83		09062-TM5206
UNIX	Indonesia	Registered	9	07/24/85	07/24/85	09062-TM5207
UNIX	Ireland	Registered	9	05/17/84	05/17/84	09062-TM5208
UNIX	Ireland	Registered	42	11/26/86	10/22/87	09062-TM5209
UNIX	Israel	Registered	38	01/27/83	08/08/87	09062-TM5210
UNIX	Israel	Registered	16	01/27/83	05/25/87	09062-TM5211
UNIX	Israel	Registered	5	01/27/83	05/25/87	09062-TM5212
UNIX	Italy	Registered	9, 38	03/22/84	05/23/86	09062-TM5213
UNIX	Samoa	Registered	9	02/13/86	06/08/92	09062-TM5214
UNIX	Japan	Filed	42	09/01/92		09062-TM5215
UNIX	Japan	Registered	11	12/26/89	01/31/95	09062-TM5216
UNIX	Japan	Registered	41		02/28/95	09062-TM5217
UNIX	Japan	Registered	26		01/29/99	09062-TM5218
UNIX	Jordan	Proposed				09062-TM5219
UNIX	Korea, South	Filed	9	09/13/94		09062-TM5220
UNIX	Korea, South	Registered	39	03/19/83	11/09/83	09062-TM5221
UNIX	Libertia	Registered	N/A	03/10/86	03/10/86	09062-TM5222
UNIX	Liechtenstein	Registered	9, 38	01/13/86	10/31/91	09062-TM5223
UNIX	Macao	Registered	38	12/22/87	12/13/91	09062-TM5224

ATTACHMENT C
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TRADEMARK STATUS REPORT

TRADEMARK	COUNTRY	STATUS	CLASS	FILING DATE	REG. DATE	LOCATOR NO.
UNIX	Macau	Registered	9	12/22/87	12/13/91	09062-TM5222
UNIX	Malaysia	Published	16	06/17/86		09062-TM5223
UNIX	Malaysia	Registered	9	01/02/86		09062-TM5225
UNIX	Malta	Registered	9	07/31/85	07/31/85	09062-TM5226
UNIX	Mexico	Registered	35	07/15/85	05/12/87	09062-TM5229
UNIX	Mexico	Registered	9	07/15/85	05/24/87	09062-TM5221
UNIX	Mexico	Registered	9	07/23/85	10/28/85	09062-TM5228
UNIX	Mexico	Registered	9	03/20/86	10/20/86	09062-TM5230
UNIX	Mexico	Registered	9, 38	01/20/86	01/20/86	09062-TM5231
UNIX	Mexico	Registered	9, 16, 38	10/08/84	10/08/84	09062-TM5234
UNIX	New Zealand	Registered	16	10/08/84	06/29/82	09062-TM5232
UNIX	New Zealand	Registered	9	06/29/82	06/17/85	09062-TM5233
UNIX	New Zealand	Registered	9	06/17/85	06/17/85	09062-TM5235
UNIX	Nicaragua	Registered	9	08/06/86	06/03/87	09062-TM5236
UNIX	Nigeria	Filed	9	03/21/86		09062-TM5237
UNIX	Norway	Registered	9, 38	05/11/84	12/22/87	09062-TM5239
UNIX	Pakistan	Filed	16	04/01/86		09062-TM5238
UNIX	Pakistan	Registered	9	04/01/86	04/01/86	09062-TM5241
UNIX	Panama	Registered	9	09/29/87	07/29/88	09062-TM5240
UNIX	Panama	Registered	5	04/28/86	02/27/87	09062-TM5242
UNIX	Panama	Registered	38	05/08/87	05/04/87	09062-TM5244
UNIX	Paraguay	Registered	9	04/05/86	04/05/86	09062-TM5244
UNIX	Paraguay	Registered	9	12/16/85	07/23/86	09062-TM5244
UNIX	Paraguay	Registered	16	11/17/86	10/07/87	09062-TM5245
UNIX	Paraguay	Registered	38	12/16/85	07/26/86	09062-TM5246
UNIX	Paraguay	Registered	9	12/23/85	04/24/86	09062-TM5247
UNIX	Paraguay	Registered	9	12/23/85	04/24/86	09062-TM5248
UNIX	Paraguay	Abandoned	38	04/17/86	05/29/89	09062-TM5249
UNIX	Paraguay	Registered	9	05/17/91	09/11/93	09062-TM5250
UNIX	Philippines	Registered	9	01/29/86	07/22/91	09062-TM5251
UNIX	Poland	Registered	9	06/17/86	09/03-TM5252	09062-TM5252
UNIX	Portugal	Filed	16	01/29/86	07/22/91	09062-TM5253
UNIX	Portugal	Registered	38	01/29/86	03/15/87	09062-TM5254
UNIX	Portugal	Registered	9	01/02/84	01/11/88	09062-TM5262
UNIX	Russ-al-Khalimah	Registered	9, 38	01/02/84	01/11/88	09062-TM5262
UNIX	Russia	Registered	9	06/23/85	06/23/85	09062-TM5265
UNIX	Singapore	Registered	9			09062-TM5265
UNIX	Slovenia	Proposed	9			09062-TM5265

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TRADEMARK STATUS REPORT

TRADEMARK	COUNTRY	STATUS	CLASS	FILING DATE	REG. DATE	LOCATOR NO.
UNIX	South Africa	Filed	16	02/07/86		09062-TMS257
UNIX	Spain	Filed	9	05/07/84		09062-TMS258
UNIX	Spain	Registered	38	05/07/84	05/06/85	09062-TMS259
UNIX	Sri Lanka	Registered	9	01/25/86	12/26/91	09062-TMS260
UNIX	Sudan	Filed	9	01/03/86		09062-TMS261
UNIX	Surinam	Registered	9	03/17/86	03/17/86	09062-TMS262
UNIX	Surinam	Registered	16	03/17/86		09062-TMS263
UNIX	Sweden	Registered	9, 16	10/24/83	12/11/87	09062-TMS264
UNIX	Sweden	Registered	9, 38	03/16/84	02/01/89	09062-TMS265
UNIX	Switzerland	Registered	9	03/15/84	05/31/85	09062-TMS266
UNIX	Syrian Arab	Registered	9, 38	09/02/86	09/13/91	09062-TMS267
UNIX	Taiwan	Registered	8	04/26/83	02/01/84	09062-TMS268
UNIX	Taiwan	Abandoned	8	04/26/83	12/01/83	09062-TMS269
UNIX	Taiwan	Registered	56	04/26/83	11/01/83	09062-TMS270
UNIX	Taiwan	Registered	80	04/26/83	07/30/84	09062-TMS271
UNIX	Taiwan	Registered	94	11/28/83	07/01/84	09062-TMS272
UNIX	Tanzania	Registered	9	09/13/86	11/13/86	09062-TMS273
UNIX	Thailand	Registered	8	07/16/85	05/12/86	09062-TMS274
UNIX	Thailand	Registered	8	01/09/88	05/23/88	09062-TMS275
UNIX	Tunisia	Registered	9	01/17/86	01/17/86	09062-TMS276
UNIX	Turkey	Registered	9	03/24/86	03/24/86	09062-TMS277
UNIX	United Arab Emi	Filed	9	03/19/85		09062-TMS278
UNIX	United Kingdom	Registered	9	06/24/83	06/24/83	09062-TMS279
UNIX	United Kingdom	Registered	16	06/24/83	06/24/83	09062-TMS280
UNIX	Uruguay	Registered	9, 16, 38	01/08/86	01/18/92	09062-TMS281
UNIX	Venezuela	Filed	26	09/26/89		09062-TMS282
UNIX	Vietnam	Registered	9, 38, 42	05/12/88	06/17/87	09062-TMS283
UNIX	Yugoslavia	Registered	9	08/02/90	04/08/92	09062-TMS284
UNIX	Zaire	Registered	9, 35, 38	02/10/86	02/10/86	09062-TMS285
UNIX	Zimbabwe	Registered	9	02/05/86	02/05/86	09062-TMS286
UNIX & DESIGN(NESTED CHEVRONS)	Australia	Filed	42			09062-TMS383
UNIX & DESIGN(NESTED CHEVRONS)	Australia	Filed	9	03/20/91		09062-TMS382
UNIX & DESIGN(NESTED CHEVRONS)	Zanzibar	Registered	9, 16, 35, 42	06/24/91	06/24/91	09062-TMS384
UNIX & DESIGN(NESTED CHEVRONS)	India	Proposed	9	06/24/91		09062-TMS385

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TRADEMARK	COUNTRY	STATUS	CLASS	FILING DATE	REG. DATE	LOCATOR NO.
UNIX & DESIGN (NESTED CHEVRONS)	Italy	Filed	9, 35, 38, 42	10/24/91		09062-TM5186
UNIX & DESIGN (NESTED CHEVRONS)	Spain	Filed	42	09/03/91		09062-TM5390
UNIX & DESIGN (NESTED CHEVRONS)	United Kingdom	Rejected	42	06/06/91		09062-TM5391
UNIX & DESIGN (NESTED CHEVRONS)	United Kingdom	Registered	16	06/06/91	06/06/91	09062-TM5392
UNIX & DESIGN (NESTED CHEVRONS)	United Kingdom	Registered	9	06/06/91	06/06/91	09062-TM5391
UNIX (KATAKANA VERSION)	Japan	Registered	42		02/31/95	09062-TM5417
UNIX (KATAKANA VERSION)	Japan	Filed	42	09/01/92		09062-TM5418
UNIX AND DESIGN (CREATED WAVE)	Argentina	Filed	9	05/10/93		09062-TM5280
UNIX AND DESIGN (CREATED WAVE)	Australia	Filed	9	04/02/93		09062-TM5289
UNIX AND DESIGN (CREATED WAVE)	Austria	Abandoned	9, 42	04/19/93		09062-TM5290
UNIX AND DESIGN (CREATED WAVE)	Azerbaijan	Proposed				09062-TM5291
UNIX AND DESIGN (CREATED WAVE)	Bahamas	Filed	9	02/03/93	02/03/93	09062-TM5292
UNIX AND DESIGN (CREATED WAVE)	Belgium	Registered	9			09062-TM5294
UNIX AND DESIGN (CREATED WAVE)	Bermuda	Proposed	9			09062-TM5295
UNIX AND DESIGN (CREATED WAVE)	Bolivia	Filed	9	04/05/93		09062-TM5296
UNIX AND DESIGN (CREATED WAVE)	Brazil	Published	9	03/03/93		09062-TM5297
UNIX AND DESIGN (CREATED WAVE)	Canada	Abandoned	9	02/02/93	07/29/93	09062-TM5298
UNIX AND DESIGN (CREATED WAVE)	Chile	Registered	9	04/29/93		09062-TM5299
UNIX AND DESIGN (CREATED WAVE)	China	Filed	9	03/02/93	02/23/94	09062-TM5300
UNIX AND DESIGN (CREATED WAVE)	Colombia	Registered	9			09062-TM5301
UNIX AND DESIGN (CREATED WAVE)	Costa Rica	Proposed	9	03/18/93		09062-TM5302
UNIX AND DESIGN (CREATED WAVE)	Croatia	Filed	9	02/12/93		09062-TM5470
UNIX AND DESIGN (CREATED WAVE)	Denmark	Filed	9	03/04/93	05/15/93	09062-TM5303
UNIX AND DESIGN (CREATED WAVE)	Dominican Republic	Registered	98	02/17/93		09062-TM5304
UNIX AND DESIGN (CREATED WAVE)	Ecuador	Filed	9	03/29/93		09062-TM5305
UNIX AND DESIGN (CREATED WAVE)	Egypt	Filed	9			09062-TM5306
UNIX AND DESIGN (CREATED WAVE)	El Salvador	Proposed	9	04/07/93		09062-TM5307
UNIX AND DESIGN (CREATED WAVE)	Estonia	Published	9	03/18/93		09062-TM5308
UNIX AND DESIGN (CREATED WAVE)	Finland	Filed	9			09062-TM5309
UNIX AND DESIGN (CREATED WAVE)	France	Proposed	9			09062-TM5310
UNIX AND DESIGN (CREATED WAVE)	Georgia	Filed	9	04/29/93		09062-TM5311
UNIX AND DESIGN (CREATED WAVE)	Germany	Registered	9, 16, 42	02/10/93	11/22/93	09062-TM5311
UNIX AND DESIGN (CREATED WAVE)	Greece	Abandoned	9	07/12/93		09062-TM5312

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TRADEMARK	COUNTRY	STATUS	CLASS	FILING DATE	APR. UNTE	LOCATOR NO.
UNIX AND DESIGN (CREATED NAME)	Guatemala	Filed	42	09/17/93		09062-115314
UNIX AND DESIGN (CREATED NAME)	Guatemala	Filed	9	09/17/93		09062-115315
UNIX AND DESIGN (CREATED NAME)	Honduras	Proposed	9			09062-115316
UNIX AND DESIGN (CREATED NAME)	Hong Kong	Abandoned	9	05/12/93	09/20/93	09062-115317
UNIX AND DESIGN (CREATED NAME)	Hungary	Registered	9, 16, 42	02/17/93	03/27/93	09062-115318
UNIX AND DESIGN (CREATED NAME)	Iceland	Registered	9	02/05/93		09062-115319
UNIX AND DESIGN (CREATED NAME)	India	Filed	9	02/11/93		09062-115320
UNIX AND DESIGN (CREATED NAME)	Indonesia	Proposed				09062-115321
UNIX AND DESIGN (CREATED NAME)	Ireland	Filed	9	02/09/93		09062-115322
UNIX AND DESIGN (CREATED NAME)	Israel	Filed	9	02/01/93		09062-115323
UNIX AND DESIGN (CREATED NAME)	Italy	Filed	9, 42	03/23/93		09062-115324
UNIX AND DESIGN (CREATED NAME)	Jamaica	Proposed				09062-115325
UNIX AND DESIGN (CREATED NAME)	Japan	Filed	42	09/13/93		09062-115326
UNIX AND DESIGN (CREATED NAME)	Japan	Filed	9	08/26/93		09062-115327
UNIX AND DESIGN (CREATED NAME)	Japan	Filed	5	09/12/93		09062-115328
UNIX AND DESIGN (CREATED NAME)	Japan	Filed	41			09062-115329
UNIX AND DESIGN (CREATED NAME)	Kazakhstan	Proposed				09062-115330
UNIX AND DESIGN (CREATED NAME)	Korea, South	Filed	33	02/23/93		09062-115331
UNIX AND DESIGN (CREATED NAME)	Latvia	Filed	9	09/09/93		09062-115332
UNIX AND DESIGN (CREATED NAME)	Liberia	Filed	9	02/23/93		09062-115333
UNIX AND DESIGN (CREATED NAME)	Lichtenstein	Registered	9	09/13/93		09062-115334
UNIX AND DESIGN (CREATED NAME)	Lithuania	Filed	9	01/15/93		09062-115335
UNIX AND DESIGN (CREATED NAME)	Macau	Published	9	03/11/93		09062-115336
UNIX AND DESIGN (CREATED NAME)	Malaysia	Filed	9	07/31/93		09062-115337
UNIX AND DESIGN (CREATED NAME)	Malta	Registered	9	02/02/93	01/06/94	09062-115338
UNIX AND DESIGN (CREATED NAME)	Maldives	Proposed	9			09062-115339
UNIX AND DESIGN (CREATED NAME)	Moldova	Abandoned	9	02/12/93		09062-115340
UNIX AND DESIGN (CREATED NAME)	Morocco	Registered	9	03/26/93		09062-115341
UNIX AND DESIGN (CREATED NAME)	New Zealand	Filed	9	02/19/93		09062-115342
UNIX AND DESIGN (CREATED NAME)	Nicaragua	Proposed	9			09062-115343
UNIX AND DESIGN (CREATED NAME)	Nigeria	Registered	9, 42	09/24/93	06/07/93	09062-115344
UNIX AND DESIGN (CREATED NAME)	Norway	Published	9	03/16/93		09062-115345
UNIX AND DESIGN (CREATED NAME)	Pakistan	Filed	9	03/30/93		09062-115346
UNIX AND DESIGN (CREATED NAME)	Panama	Proposed	9			09062-115347
UNIX AND DESIGN (CREATED NAME)	Paraguay	Filed	9	02/10/93		09062-115348

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TRADEMARK	COUNTRY	STATUS	CLASS	FILING DATE	REG. DATE	LOCATOR ID#
WIKI AND DESIGN (CREATED WAVE)	Peru	Abandoned	9	02/25/93		09062-1115340
WIKI AND DESIGN (CREATED WAVE)	Poland	Abandoned	9	02/05/93		09062-1115349
WIKI AND DESIGN (CREATED WAVE)	Portugal	Filed	9	02/13/93		09062-1115350
WIKI AND DESIGN (CREATED WAVE)	Singapore	Filed	9	02/13/93		09062-1115351
WIKI AND DESIGN (CREATED WAVE)	Slovenia	Filed	9	04/22/93		09062-1115352
WIKI AND DESIGN (CREATED WAVE)	South Africa	Withdrawn	9	04/01/93		09062-1115353
WIKI AND DESIGN (CREATED WAVE)	Spain	suspended	9	02/23/93		09062-1115354
WIKI AND DESIGN (CREATED WAVE)	Spain	published	16	03/15/93		09062-1115355
WIKI AND DESIGN (CREATED WAVE)	Spain	published	30	02/18/93		09062-1115356
WIKI AND DESIGN (CREATED WAVE)	Spain	published	39	03/16/93		09062-1115357
WIKI AND DESIGN (CREATED WAVE)	Spain	published	42	03/16/93		09062-1115358
WIKI AND DESIGN (CREATED WAVE)	Eti Banks	Filed	9	05/28/93		09062-1115359
WIKI AND DESIGN (CREATED WAVE)	Euden	Filed	9	10/25/93		09062-1115360
WIKI AND DESIGN (CREATED WAVE)	Guatemala	Proposed	9		11/26/93	09062-1115361
WIKI AND DESIGN (CREATED WAVE)	Sweden	Registered	9	02/08/93		09062-1115362
WIKI AND DESIGN (CREATED WAVE)	Switzerland	Registered	9	02/21/93		09062-1115363
WIKI AND DESIGN (CREATED WAVE)	Syrian Arab	Filed	9	02/24/93		09062-1115364
WIKI AND DESIGN (CREATED WAVE)	Taiwan	Proposed	9			09062-1115365
WIKI AND DESIGN (CREATED WAVE)	Tanganyika	Filed	9	02/31/93		09062-1115366
WIKI AND DESIGN (CREATED WAVE)	Thailand	Proposed	9		06/11/93	09062-1115367
WIKI AND DESIGN (CREATED WAVE)	Tunisia	Abandoned	9	06/17/93		09062-1115368
WIKI AND DESIGN (CREATED WAVE)	Turkey	Filed	9	02/17/93		09062-1115369
WIKI AND DESIGN (CREATED WAVE)	Ukraine	Filed	9	03/19/93		09062-1115370
WIKI AND DESIGN (CREATED WAVE)	United Arab Emi	Withdrawn	9			09062-1115371
WIKI AND DESIGN (CREATED WAVE)	United Kingdom	Filed	9	02/17/93		09062-1115372
WIKI AND DESIGN (CREATED WAVE)	Uruguay	Filed	9	05/30/93		09062-1115373
WIKI AND DESIGN (CREATED WAVE)	Uzbekistan	Abandoned	9		11/22/93	09062-1115374
WIKI AND DESIGN (CREATED WAVE)	Venezuela	Proposed	9, 38, 42	03/19/93		09062-1115375
WIKI AND DESIGN (CREATED WAVE)	Vietnam	Registered	9	02/24/93		09062-1115376
WIKI AND DESIGN (CREATED WAVE)	Yugoslavia	Filed	9	04/21/93		09062-1115377
WIKI AND DESIGN (CREATED WAVE)	Zaire	Filed	9, 16, 42	02/17/93		09062-1115378
WIKI AND DESIGN (CREATED WAVE)	Zimbabwe	Cancelled	9	03/05/93		09062-1115379
WIKI AND DESIGN (CREATED WAVE)	Zimbabwe	Cancelled	41	03/05/93		09062-1115380
WIKI AND DESIGN (CREATED WAVE)	Zimbabwe	Cancelled	41	03/05/93		09062-1115381

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TRADEMARK	COUNTRY	STATUS	CLASS	FILING DATE	REG. DATE	COMPTON ID.
UNIX AND DESIGN (PERSON)	Australia	Registered	9, 16, 17, 21, 28, 30, 33	12/24/60	12/24/60	09062-7115407
UNIX AND DESIGN (PERSON)	Australia	Registered	9, 16, 17, 21, 28, 30, 33	05/29/61	05/29/61	09062-7115407
UNIX AND DESIGN (PERSON)	Belgium	Registered	9, 16, 17, 21, 28, 30, 33	12/24/60	12/24/60	09062-7115400
UNIX AND DESIGN (PERSON)	Belgium	Registered	9, 16, 17, 21, 28, 30, 33	05/29/61	05/29/61	09062-7115400
UNIX AND DESIGN (PERSON)	Egypt	Registered	9, 16, 17, 21, 28, 30, 33	12/24/60	12/24/60	09062-7115409
UNIX AND DESIGN (PERSON)	Egypt	Registered	9, 16, 17, 21, 28, 30, 33	05/29/61	05/29/61	09062-7115409
UNIX AND DESIGN (PERSON)	France	Registered	9, 16, 17, 21, 28, 30, 33	04/10/66	04/10/66	09062-7115409
UNIX AND DESIGN (PERSON)	France	Registered	9, 16, 17, 21, 28, 30, 33	06/21/65	06/21/65	09062-7115404
UNIX AND DESIGN (PERSON)	International	Registered	9, 16, 17, 21, 28, 30, 33	12/24/60	12/24/60	09062-7115406
UNIX AND DESIGN (PERSON)	International	Registered	9, 16, 17, 21, 28, 30, 33	05/29/61	05/29/61	09062-7115406
UNIX AND DESIGN (PERSON)	Italy	Registered	9, 16, 17, 21, 28, 30, 33	05/29/61	05/29/61	09062-7115400
UNIX AND DESIGN (PERSON)	Italy	Registered	9, 16, 17, 21, 28, 30, 33	12/24/60	12/24/60	09062-7115400
UNIX AND DESIGN (PERSON)	Monaco	Registered	9, 16, 17, 21, 28, 30, 33	05/29/61	05/29/61	09062-7115402
UNIX AND DESIGN (PERSON)	Monaco	Registered	9, 16, 17, 21, 28, 30, 33	12/24/60	12/24/60	09062-7115402
UNIX AND DESIGN (PERSON)	Morocco	Registered	9, 16, 17, 21, 28, 30, 33	05/29/61	05/29/61	09062-7115401
UNIX AND DESIGN (PERSON)	Morocco	Registered	9, 16, 17, 21, 28, 30, 33	12/24/60	12/24/60	09062-7115401
UNIX AND DESIGN (PERSON)	Portugal	Registered	9, 16, 17, 21, 28, 30, 33	05/29/61	05/29/61	09062-7115413
UNIX AND DESIGN (PERSON)	Portugal	Registered	9, 16, 17, 21, 28, 30, 33	12/24/60	12/24/60	09062-7115413
UNIX AND DESIGN (PERSON)	Spain	Registered	9, 16, 17, 21, 28, 30, 33	12/24/60	12/24/60	09062-7115403
UNIX AND DESIGN (PERSON)	Spain	Registered	9, 16, 17, 21, 28, 30, 33	05/29/61	05/29/61	09062-7115414
UNIX AND DESIGN (PERSON)	Switzerland	Registered	9, 16, 17, 21, 28, 30, 33	12/24/60	12/24/60	09062-7115404
UNIX AND DESIGN (PERSON)	Switzerland	Registered	9, 16, 17, 21, 28, 30, 33	05/29/61	05/29/61	09062-7115415
UNIX AND DESIGN (PERSON)	Tunisia	Registered	9, 16, 17, 21, 28, 30, 33	12/24/60	12/24/60	09062-7115405
UNIX AND DESIGN (PERSON)	Tunisia	Registered	9, 16, 17, 21, 28, 30, 33	05/29/61	05/29/61	09062-7115416
UNIX SYSTEM TECHNOLOGIES	France	Registered	9, 16, 38	10/05/92	10/05/92	09062-7115414
UNIX NAME	Germany	Registered	9, 16, 37, 38, 42	02/09/93	05/12/93	09062-7115416
UNIX NAME (STANDARD)	Germany	Registered	9, 16, 37, 38, 42	04/01/93	06/17/93	09062-7115417
UNIX-UNION	Germany	Registered	9, 16, 37, 38, 42	03/31/93	09/30/93	09062-7115415
UNIXNAME	Australia	Filed	9	07/01/94		09062-7115417
UNIXNAME	Bangladesh	Filed	9	09/17/94		09062-7115414

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TRADEMARK	COUNTRY	STATUS	CLASS	FILING DATE	REG. DATE	EXPIRATION MO.
UNIKVARD	Bangladesh	Filed	16	03/17/94		09062-1115415
UNIKVARD	China	Filed	9	03/18/94		09062-1115413
UNIKVARD	Denmark	Registered	9	03/24/93	06/24/94	09062-1115416
UNIKVARD	France	Proposed				09062-1115437
UNIKVARD	Germany	Registered	9, 16, 37, 41, 42	04/29/93		09062-1115438
UNIKVARD	Indonesia	Filed	9	01/28/95		09062-1115481
UNIKVARD	Italy	Filed	9	12/02/93		09062-1115418
UNIKVARD	Japan	Filed	9	03/13/95		09062-1115419
UNIKVARD	Korea	Filed	9	12/10/93		09062-1115440
UNIKVARD	New Zealand	Filed	9	09/02/94		09062-1115441
UNIKVARD	Norway	Published	9	09/13/92		09062-1115443
UNIKVARD	Spain	Published	42	12/28/92		09062-1115442
UNIKVARD	Spain	Suspended	9	12/29/92		09062-1115444
UNIKVARD	Sweden	Registered	9	09/10/93	04/29/94	09062-1115444
UNIKVARD	United Kingdom	Registered	9	09/22/93	03/22/93	09062-1115445
UNIK	United States	Registered	9	05/13/89	04/22/86	09062-1114021
UNIK	United States	Registered	9	05/24/83	03/06/85	09062-1114021
UNIK PART	United States	Abandoned	9	07/09/91		09062-1114025
UNIK LABS	United States	Abandoned	9	07/09/91		09062-1114026
UNIK LABS	United States	Abandoned	9	06/01/90		09062-1114027
UNIK LIFE	United States	Abandoned	42	06/01/90		09062-1114027
UNIK PRESS	United States	Abandoned	9	07/09/91		09062-1114030
UNIK SVM4.2 AND DESIGN	United States	Registered	16	07/14/90	12/03/91	09062-1114031
UNIK UNIVERSITY	United States	Registered	9	06/23/92		09062-1114031
UNIK MIDONS	United States	Abandoned	41	04/07/92		09062-1114033
UNIKVARD	United States	Abandoned	9	06/04/93		09062-1114036
UNIKVARD	United States	Abandoned	9	11/29/91		09062-1114037
UNIKVARD	United States	Suspended	9	09/03/93		09062-1114038
UNIKVARD	United States	Registered	9	09/03/93	07/19/94	09062-1114039

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**Seller's Patents and Patent Applications
Affecting the Business**

<u>Inventor/Country</u>	<u>Status</u>	<u>Serial/Patent No.</u>	<u>Date</u>
A. <u>Owned by Seller</u>			
1. Wong 1			
USA	Filed	07/814,854	12/30/91
Canada	Mailed		11/12/92
2. Raye 1			
USA	Patented	4,580,218	4/1/86
Italy	Patented	1,205,650	3/23/89
West Germany	Patented	0155284	11/22/90
Great Britain	Patented	0155284	11/22/90
France	Patented	0155284	11/22/90
Japan	Filed	503,122,84	3/5/84
3. Wehr 2			
USA		7/574,380	6/30/92
Unintentionally Abandoned To Be Revived			
Canada	Filed	2,018,319-5	6/5/90
Japan	Filed	170,411	6/29/90
Belgium	Filed	90306750.2	6/20/90
France	Filed	90306750.2	6/20/90
Great Britain	Filed	90306750.2	6/20/90
West Germany	Filed	90306750.2	6/20/90
Italy	Filed	90306750.2	6/20/90
Netherlands	Filed	90306750.2	6/20/90
Sweden	Filed	90306750.2	6/20/90
4. Alecci			
1-1-1	Abandoned	07/468,435	8/1/91
Alecci			
2-2-2	Continuation Under Rule 1.62 of Alecci 1-1-1	07/742,149	1/14/93

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Inventor/Country	Status	Serial/Patent No.	Date
Canada	Filed	2030438-3	11/21/90
Italy	Filed	90313205.8	12/5/90
Sweden	Filed	90313205.8	12/5/90
Spain	Filed	90313205.8	12/5/90
Germany	Filed	90313205.8	12/5/90
Great Britain	Filed	90313205.8	12/5/90
France	Filed	90513205.8	12/5/90
Japan	Filed	16791/91	1/18/91
5. Andrade			
I-1-1			
USA	Filed	07/524,182	3/29/90
Canada	Filed	20388433-9	3/22/91
Japan	Filed	089094	3/29/91
Germany	Filed	91302438.6	3/20/91
Italy	Filed	91302438.6	3/20/91
Great Britain	Filed	91302438.6	3/20/91
France	Filed	91302438.6	3/20/91
6. Doshi-Sahs			
I-1			
USA	Filed	08/280,307	1/26/94
7. R.C. Pike			
One-Half			
Undivided			
Interest with AT&T	Patented	4,555-775	11/26/85

*Note: Seller and AT&T believe the Pike Patent is being infringed by third parties and certain of such parties have alleged that said patent is invalid.

ATTACHMENT E

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Selling Copyrights in Product(s) of Business

TITLE OF THIS WORK	REGISTRATION NUMBER
SYSTEM V BINARY COMPATIBILITY SPECIFICATION	TX 2 824 712
UNIX® SYSTEM V BINARY INTERFACE: WE® 32000 Processor Supplement	TX 2 824 713
SYSTEM V APPLICATION BINARY INTERFACE Intel386™ Processor Supplement	TXn 498 197
UNIX® SYSTEM V/386 RELEASE 4: Mouse Driver Administrator's Guide	TXn 455 747
UNIX SYSTEM V/386 RELEASE 4 Network User's and Administrator's Guide	TX 2-943-774
UNIX SYSTEM V/386 RELEASE 4 PC-Interface Administrator's Guide	TX 2-900-957
UNIX SYSTEM V/386 RELEASE 4 Programmer's Guide: SCSI Driver Interface	TX 2 902 865
UNIX SYSTEM V APPLICATION BINARY INTERFACE Motorola 33000 Processor Supplement	TX 2 902 556
UNIX SYSTEM V/386 RELEASE 4 MULTIBUS® Reference Manual	TX 2 902 542
UNIX® SYSTEM V RELEASE 4: Product Overview and Master Index	TX 2 902 862
UNIX® SYSTEM V RELEASE 4 PROGRAMMER'S GUIDE: XWIN™ Graphical Windowing System The X Toolkit	TX 2 902 861
UNIX® SYSTEM V RELEASE 4 Programmer's Guide: XWIN™ Graphical Windowing System Xlib-C Language Interface	TX 2-900-958
UNIX® SYSTEM V RELEASE 4 Programmer's Guide: XWIN™ Graphical Windowing System Addenda: Technical Papers	TX 2-0901-148
UNIX SYSTEM V/386 RELEASE 4 Integrated Software Development Guide	TX 2 931 646

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TITLE OF THIS WORK	REGISTRATION NUMBER
UNIX® SYSTEM V/386 RELEASE 4: Product Overview and Master Index	TX 2 925 901
UNIX® SYSTEM V RELEASE 4 PROGRAMMER'S GUIDE: X11/NeWS® Graphical Windowing System NeWS	TX 2-946-827
UNIX® SYSTEM V RELEASE 4 Programmer's Guide: X11/NeWS® Graphical Windowing System (N) Technical Reference Manual	TX 2-900-956
UNIX® SYSTEM V RELEASE 4 PROGRAMMER'S GUIDE: X11/NeWS® Graphical Windowing System Server Guide	TX 2 902 864
UNIX® SYSTEM V RELEASE 4 PROGRAMMER'S GUIDE: X11/NeWS® Graphical Windowing System XVIEW™	TX 2 907 117
UNIX® SYSTEM SOFTWARE READINGS	TX 3 300 3-6
UNIX® SYSTEM V RELEASE 4 Programmer's Reference Manual Operating System API for Intel Processors	TX 3 218 268
UNIX® SYSTEM V RELEASE 4 User's Reference Manual/System Administrator's Reference Manual for Intel Processors <u>Commands m-z</u>	TX 3 221 656
UNIX® SYSTEM V RELEASE 4 Integrated Software Development Guide for Intel Processors	TX 3 221 657
UNIX SYSTEM V RELEASE 4 User's Reference Manual/System Administrator's Reference Manual for Intel Processors <u>Commands a-l</u>	TX 3 227 639
UNIX® SYSTEM V RELEASE 4 Programmer's Guide: Streams for Intel Processors	TX 3 218 286

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TITLE OF THIS WORK	REGISTRATION NUMBER
UNIX® SYSTEM V RELEASE 4 Device Driver Interface/Driver Kernel Interface Reference Manual for Intel Processors	TX 3 232 578
UNIX® SYSTEM V RELEASE 4 Master Index for Motorola Processors	TX 3 221 653
UNIX SYSTEM V RELEASE 4 Device Driver Interface/Driver Kernel Interface Reference Manual for Motorola Processors	TX 3 220 500
UNIX® SYSTEM V RELEASE 4 User's Reference Manual/System Administrator's Reference Manual for Motorola Processors <u>Commands a-1</u>	TX 3 220 331
UNIX® SYSTEM V UTILITIES RELEASE NOTES	TX 2 123 158
UNIX® SYSTEM V STREAMS PROGRAMMERS GUIDE	TX 2 123 157
UNIX® SYSTEM V STREAMS PRIMER	TX 2-120-499
UNIX® SYSTEM V PROGRAMMER'S GUIDE	TX 2-120-502
UNIX SYSTEM V/386 RELEASE 4 MULTIBUS® Installation and Configuration Guide	TX 2 902 541
UNIX SYSTEM V/386 RELEASE 4 Transport Application Interface Guide	TX 2 881 542
UNIX SYSTEM V/386 RELEASE 4 Device Interface/Driver Kernel Interface (DD/DKI) Reference Manual	TX 2-883-235
UNIX SYSTEM V/386 RELEASE 4 Migration Guide	TX 2-890-470
UNIX SYSTEM V/386 RELEASE 4 System Administrator's Reference Manual	TX 2 881 543
UNIX SYSTEM V/386 RELEASE 4 PROGRAMMER'S REFERENCE MANUAL	TX 2-853-760

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TITLE OF THIS WORK	REGISTRATION NUMBER
UNIX SYSTEM V/386 RELEASE 4 User's Reference Manual	TX 2 890 471
UNIX SYSTEM V APPLICATIONS BINARY INTERFACE: <u>SPARC™ Processor</u> <u>Supplement</u>	TX 2 862 662
UNIX SYSTEM V APPLICATION BINARY INTERFACE: <u>Motorola 68000 Processor</u> <u>Family Supplement</u>	TX 2 870 036
UNIX® SYSTEM V RELEASE 4 User's Reference Manual	TX 2 820 791
UNIX® SYSTEM V RELEASE 4 USER'S GUIDE	TX 2 832 010
UNIX® SYSTEM V RELEASE 4 ANSI C TRANSITION GUIDE	TX 2 820 798
UNIX SYSTEM V RELEASE 3.2 SYSTEM ADMINISTRATOR'S GUIDE	TX 2 852 115
UNIX® SYSTEM V RELEASE 4 DEVICE DRIVER INTERFACE/DRIVER KERNEL INTERFACE (DDI/DKI) REFERENCE MANUAL	TX 2 820 792
UNIX® SYSTEM V RELEASE 4 PROGRAMMER'S GUIDE POSIC conformance	TX 2 820 885
UNIX® SYSTEM V RELEASE 4 PROGRAMMER'S GUIDE: Streams	TX 2 833 114
UNIX® SYSTEM V RELEASE 4 PROGRAMMER'S REFERENCE MANUAL	TX 2 852 009
UNIX® SYSTEM V RELEASE 4 NETWORK USER'S AND ADMINISTRATOR'S GUIDE	TX 2 832 008
UNIX® SYSTEM V RELEASE 4 SYSTEM ADMINISTRATOR'S REFERENCE MANUAL	TX 2 830 989

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TITLE OF THIS WORK	REGISTRATION NUMBER
UNIX® SYSTEM V RELEASE 4 PROGRAMMER'S GUIDE: Ansi C and Programming Support Tools	TX 2 820 849
UNIX® SYSTEM V RELEASE 4 PROGRAMMER'S GUIDE: System and Application Packaging Tools	TX 2 825 383
UNIX® SYSTEM V RELEASE 4 MIGRATION GUIDE	TX 2 820 886
UNIX® SYSTEM V RELEASE 4 PROGRAMMER'S GUIDE: Character User Interface (FMLI and ETI)	TX 2 825 299
UNIX® SYSTEM V RELEASE 4 BSD/XENIX® COMPATIBILITY GUIDE	TX 2-878-051
UNIX® SYSTEM V RELEASE 4 PROGRAMMER'S GUIDE: Networking Interfaces	TX 2 838 313
SYSTEM V APPLICATION BINARY INTERFACE	TX 2 847 222
AT&T UNIX System V/386, Release 3.2 Utilities Release Notes	TX 2 454 845
AT&T UNIX SYSTEM V/386 Release 3.2 Streams Primer	TX 2 454 847
UNIX SYSTEM V/386 Release 3.2 User's Guide	TX 2-488-749
AT&T UNIX SYSTEM V/386: Programmer's Guide, Vol. II	TX 2 454 884
UNIX SYSTEM v/386 Release 3.2 Programmer's Reference Manual	TX 2 494 658
UNIX SYSTEM V/386 Release 3.2 Streams Programmer's Guide	TX 2 497 054
UNIX SYSTEM V/386: Network Programmer's Guide	TX 2 366 626

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TITLE OF THIS WORK	REGISTRATION NUMBER
UNIX® SYSTEM V/386: Programmer's Reference Manual	TX 2 373 759
UNIX® SYSTEM V/386: User's Guide, 2nd edition	TX 2-363-829
UNIX® SYSTEM V/386: User's Reference Manual	TX 2 365 627
UNIX® SYSTEM V/386: System Administrator's Reference Manual	TX 2-371-952
UNIX® SYSTEM V/386: Streams Programmer's Guide	TX 2-367-657
UNIX® SYSTEM V/386: Programmers' Guide	TX 2-400-593
UNIX® SYSTEM V/386: Streams Printer	TX 2 366 645
UNIX® SYSTEM V/386: System Administrator's Guide	TX 2 378 091
UNIX® SYSTEM V/386: Utilities Release Notes	TX 2 366 532
UNIX® SYSTEM V NETWORK PROGRAMMERS GUIDE	TX 2 117 799
UNIX® SYSTEM V: User's Guide, 2/E	TX 2 052 293
UNIX® SYSTEM V RELEASE 3.2: Framed Access Command Environment (FACE) User's Guide	TX 2 611 527
UNIX® SYSTEM V RELEASE 3.2: Fortran and Main Language Interpreter (FMLI) Programmer's Guide	TX 2 605 294
UNIX® SYSTEM V RELEASE 3.2: Utilities Release Notes	TX 2-611-984
UNIX® SYSTEM V RELEASE 3.2: Programmer's Guide, Volume II	TX 2 595 940
UNIX® SYSTEM V RELEASE 3.2: System Administrator's Reference Manual	TX 2-611-860

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TITLE OF THIS WORK	REGISTRATION NUMBER
UNIX® SYSTEM RELEASE 3.2: User's Guide	TX 2-611-861
UNIX® SYSTEM V RELEASE 3.2: Programmer's Guide, Volume I	TX 2-611-862
UNIX® SYSTEM V BINARY COMPATIBILITY SPECIFICATION: WE® 32000 Processor Supplement	TX 2 824 711
UNIX® SYSTEM V RELEASE 4: OPEN LOOK™ Graphical User Interface Programmer's Reference Manual	TX 2-900-893
UNIX® SYSTEM V RELEASE 4: Programmer's Guide: OPEN LOOK™ Graphical User Interface	TX 2-900-966
UNIX® SYSTEM V RELEASE 4 OPEN LOOK™ GRAPHICAL USER INTERFACE USER'S GUIDE	TX 2-901-147
UNIX® SYSTEM V RELEASE 3.2: System Administrator's Guide	TX 2 611 530
UNIX® SYSTEM V RELEASE 3.2: Streams Programmer's Guide	TX 2 604 382
UNIX® SYSTEM V RELEASE 3.2: Programmer's Reference Manual	TX 2 605 292
UNIX SYSTEM V: Documentor's Workbench, Reference Manual	TX 2 986 119
UNIX SYSTEM V: Documentor's Workbench, User's Guide	TX 2 986 118
UNIX System V/386 Release 3.2 System Administrator's Guide	TX 2 454 792
AT&T UNIX System V/386 Release 3.2 Network Programmer's Guide	TX 2 454 846
THE UNIX™ SYSTEMS USER'S GUIDE	TX 1 788 418
UNIX® SYSTEM RELEASE 3.2: Programmer's Guide, Volume I	TX 2-511-862

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TITLE OF THIS WORK	REGISTRATION NUMBER
UNIX SYSTEM V/386: Programmer's Guide, Vol. II	TX2 454 884
UNIX® SYSTEM V RELEASE 4 User's Reference Manual/System Administrator's Reference Manual for Motorola Processors <u>Commands m-z</u>	TX3 218 267
UNIX® SYSTEM V RELEASE 4 System Files and Devices Reference Manual for Motorola Processors	TX3 221 654
UNIX® SYSTEM V RELEASE 4 Programmer's Reference Manual: Operating System API for Motorola Processors	TX3 221 655
Operating System Utility Programs	TXu 301 868
UNIX® Operating System Edition 5 and Instruction Manual	TXu 510 028
UNIX® Operating System Edition 6 and Instruction Manual	TXu 511 236
UNIX® Operating System Edition 32V and Instruction Manual	TXu 516 704
UNIX® Operating System Edition 7 and Instruction Manual	TXu 516 705

ATTACHMENT F

CERTAIN THIRD PARTY ROYALTY PAYMENTS

<u>THIRD PARTY VENDOR</u>	<u>PRODUCTS (OR COMPONENTS OF PRODUCT(S)) ON WHICH ROYALTY IS DUE</u>	<u>ROYALTY BASED ON</u>	<u>Royalties Paid 8/1/94 - 7/31/95</u>
(1) <u>Microsoft</u>	SVR3/SVR44UN wgt hw of 386/486 PE, AS	binary units binary units	Over \$1.5 Million
(2) <u>Veritas</u>	Veritas products AS, ODM	source binary revenue binary units	Over \$1.0 Million (< \$1.5)
(3) <u>OSF</u>	Motif product PE, AS, MOTIF KIT, SDK	source binary units reference binary units binary units	\$1M commitment thru 1997 (buy-out)
(4) <u>Lotus</u>	Lotus Merge 3.1 PE, AS, ADVMRG, SRVMRG	binary units binary units	Over \$1.5 Million

Attachment G

Seller Contracts Containing Business-Related Rights

which are Terminable in the Event of Acquisition

- October 16, 1992 Master Purchase and License Agreement between Seller and Electronic Book Technologies, Inc.
- June 1, 1995 CDE/MOTIF PST Joint Development Agreement among Seller and Digital Equipment Corporation; Hitachi, Ltd.; International Business Machines Corporation; Fujitsu Limited; Open Software Foundation, Inc.; X Consortium, Inc. and Sun Microsystems, Inc.
- May 10, 1994 Trademark Relicensing Agreement between Seller and X/Open Company, Ltd.
- February 23, 1995 Software License Agreement between Seller and Atria Software, Inc.
- February 7, 1987 Development and License Agreement now in effect between Seller and Microsoft Corporation.

**REPRESENTATIONS AND WARRANTIES OF BUYER
DISCLOSURE SCHEDULE**

3.3 Capitalization

Series C Agreement between The Santa Cruz Operation, Inc. and Microsoft Corporation.

The Company is in the process of granting Hambrecht & Quist warrants to purchase 50,000 shares of Common Stock at \$7.75 per share as partial consideration for services provided to the Company pertaining to the subject transaction.

Also see 3.8 below.

3.7 Litigation

In August 1993, a securities class action lawsuit was filed in Superior Court of San Francisco, California and is now pending in the Superior Court of Santa Clara County, California against the Company, Douglas Michels, Lars Turndal, Dan Steimle, Larry Michels and the Company's underwriters. The lawsuit alleges violations of the Securities Act of 1933, pertaining to alleged misrepresentations and omissions in the Company's Registration Statement and Prospectus in connection with its initial public offering. In May 1994, the case was dismissed. The plaintiffs filed a notice of appeal in June 1994.

In February 1995, Micro-Quick Systems, Inc., a software dealer, commenced legal action against the Company in the California Superior Court in San Bernadino County seeking to recover unspecified damages in excess of \$1,000,000. Micro-Quick alleges the Company failed to deliver conforming product and failed to support said product.

In May 1995, an action was filed in the Superior Court of Santa Cruz County, California by a former employee against the Company and two current employees alleging sexual harassment, employment discrimination, breach of contract and related claims.

In August 1995, JSB Computer Systems, Ltd., a software vendor, filed a complaint against the Company in the Superior Court of Santa Cruz County, alleging breach of contract for failure to make appropriate payments under the contract. JSB seeks to recover unspecified damages in excess of \$100,000.

The Company does not believe any of these lawsuits individually or in the aggregate will have a material adverse impact on the Company.

3.8 Absence of Certain Changes

The Company has held and continues to hold informal discussions with Microsoft Corporation regarding the purchase by the Company of Microsoft's equity in the Company, in whole or in part. No commitments have been made by either party.

3.10 Tax Returns and Reports

(i) SCO is in compliance with all material filing requirements. Those filing requirements that SCO may not be in compliance with will not have a material adverse effect on the business condition of SCO. Returns in this latter category include an IXI Corporation California return for 9/93, possible Arizona and Tennessee income tax returns, various sales tax returns in the states of Washington, Wisconsin, Tennessee, etc., and business license returns in Washington and Fairfax County, Virginia.

(ii) SCO is in compliance with all employer tax requirements.

(iii) No material tax delinquencies are outstanding against SCO. The items mentioned in (i) above may give rise to delinquencies, but not of a material amount. See (iv) below for waivers of the statute of limitation.

(iv) SCO is undergoing an IRS audit for the fiscal years 9/90 and 9/91 and has extended the statute of limitations for those years to 12/31/95. The IRS auditor has advised that he will also audit 9/92, but this has not been officially confirmed. SCO is undergoing a Texas sales tax audit and nexus queries have been received from Tennessee, Wisconsin and Washington. None of the audits or queries are expected to have a material adverse effect on the business condition of SCO.

(v) None of SCO's assets are treated as "tax-exempt use property" within the meaning of IRC 168(b).

(vi) SCO is not, and has not been, a "US real property holding corporation" within the meaning of IRC 897(c)(2).

AMENDMENT NO 1
TO ASSET PURCHASE AGREEMENT

As of the effective date indicated below, the September 19, 1995 Asset Purchase Agreement (the "Agreement") between Novell, Inc. ("NOVELL") and The Santa Cruz Operation, Inc. ("SCO") is amended in the following respects.

A. In the Recitals, Paragraph A, line 4 is amended to read as follows:

-- other products ("Auxiliary Products") which are directly related to UNIX and UnixWare (collectively, the --

B. In Section 1.1, the following new paragraph (d) is added:

-- (d) Right of First Refusal. The parties agree that, within a reasonable time after the Closing Date, they will enter into a separate agreement whereby Buyer will have a right of first refusal to purchase from Seller (i) all appropriate copies of publications relating to the Business and in the possession, custody or control of Seller's technical library located at its facility in Florham Park, New Jersey and (ii) physical assets, including lab equipment and financial accounting server(s), owned by Seller and used in the Business. Each such item will be valued at net book value as of November 1, 1995. Such right of first refusal shall be exercisable until (1) February 29, 1996 as to the financial accounting server(s) and (2) January 31, 1996 as to all other items. --

C. In Section 1.2, paragraph (b):

(1) The following clause is added at the beginning of the first sentence ("Buyer agrees ... Section 4.16 hereof":

-- Except as otherwise provided in paragraph (c) of this Section 1.2. --

(2) Lines 14-15 are amended to read as follows:

-- The amounts of additional royalties to be paid in connection with Buyer's sale of the UnixWare products are identified in detail in Schedule 1.2(b) hereto. Seller --

D. Section 1.2(d), is amended in its entirety to read as follows:

-- (d) Asset Transfer and Transfer Taxes. Notwithstanding any other provision of this Agreement, the Assets shall remain the property of Seller until expeditiously delivered to Buyer in the manner and at the locations prescribed as follows in this Section 1.2(d), or as subsequently agreed in writing.

Seller shall deliver and Buyer shall accept source code, object code, related documentation and other software assets described in Schedule 1.1(a) (collectively referred to as "Software Assets") only at Seller's facility in Florham Park, New Jersey.

In the event that Seller subsequently discovers Software Assets outside of New Jersey contemplated by this Agreement which have not heretofore been delivered to Buyer in New Jersey, Seller shall consult with Buyer to determine if Seller may destroy such assets in place without delivery to Buyer, or transport them to New Jersey or another location specified by Buyer for delivery to Buyer.

Seller represents that to its knowledge software documentation previously delivered to Buyer for the purpose of due diligence is the property of Seller, and Buyer agrees that it will destroy or return possession to Seller in New Jersey before title passes to Buyer.

Seller and Buyer agree that the license that Seller is entitled to exercise after Closing pursuant to Section 1.6 hereof is a right not sold to Buyer and as such is a right retained by Seller.

Buyer shall pay and promptly discharge when due the entire amount of any and all sales and use taxes ("Sales Taxes") imposed or levied by reason of the sale of the Assets to Buyer. The parties shall cooperate with each other to the extent reasonably requested and legally permitted to minimize any such Sales Taxes. If Seller is obligated to pay any of such Sales Taxes, Buyer shall reimburse Seller on demand for the amount of such payment. --

E. In section 1.2, the following new paragraphs (e) and (f) are added:

--(e) Revenues to be Retained by Buyer. Subject to the last sentence of paragraph (a) of Section 4.16 hereof, Buyer shall be entitled to retain 100% of the following categories of SVRX Royalties collected by Buyer:

- (i) fees attributable to stand-alone contracts for maintenance and support of SVRX products listed under Item VI of Schedule 1.1(a) hereof;
- (ii) source code right to use fees under existing SVRX Licenses from the licensing of additional CPU's and from the distribution by Buyer of additional source code copies;
- (iii) source code right to use fees attributable to new SVRX licenses approved by Seller pursuant to Section 4.16(b) hereof; and
- (iv) royalties attributable to the distribution by Buyer and its distributors of binary copies of SVRX products, to the extent such copies are made by or for Buyer pursuant to Buyer's own licenses from Seller acquired before the Closing Date through Software Agreement No. SOFT-000302 and Sublicensing Agreement No. SUB-000302A.

(f) Monthly Reports. Within one (1) calendar month following each calendar month in which SVRX Royalties [and royalties from Royalty-Bearing Products as contemplated in Schedule 1.2(b) hereof] are received by Buyer, Buyer shall provide to Seller, in electronic file format, a report detailing all such royalties. Such monthly reports shall be separately broken down by revenue type (i.e., source code right to use fees, gross and net binary per copy fees, and support fees), by product, by customer, by quarterly period by which distribution occurs, and by country (if provided by customer) of distribution. Each such report shall also detail, with respect to the revenues reported, any third party payments attributable to such revenues, broken down by the identity of such third parties and the applicable payments to each. Buyer shall provide Seller with a single point of contact to discuss specific additional revenue and unit information (by customer) which, in Seller's judgment, are appropriate to supplement such monthly reports. Buyer shall also provide to Seller, on a monthly basis, a report that reconciles monthly revenues reported (and accounts receivable) to cash remittances actually made to Seller by Buyer. --

F. In Section 1.4, line 8 is amended to read as follows:

-- in the loss or diminution thereof; provided, however, that Seller shall, as soon as practicable after the Closing Date and at its own expense, --

G. In Section 1.6, lines 1-2 are amended to read as follows:

-- 1.6 Seller's Licenses to Assets. Concurrent with the Closing, Buyer and Seller shall enter into a license agreement providing Seller with a royalty free, perpetual --

H. In Section 4.13:

(i) In the first paragraph, lines 5-6 are amended to read as follows:

-- is comparable to that offered by Seller. The Benefits Package --

(2) The following new paragraphs are added at the end of the section:

-- For purposes of this Section 4.13, the term "Type 1 employee" means a person who (1) as of the effective date of this Agreement was employed by Seller in any technical, business or financial (but not sales) capacity in Seller's Operating System Division in Floham Park, New Jersey, Provo, Utah or San Jose, California or otherwise in connection with the Business and/or the Assets and (2) whose employment with Seller thereafter terminates under circumstances under which such employee is given severance benefits from Seller including payment ("Severance Payment") calculated for a prescribed interval ("Severance Period").

Buyer agrees that it will not knowingly offer employment to, or offer to hire as a contractor, any Type 1 employee until the Severance Period for such employee is completed.

In the event that for any reason Buyer offers employment to, or offers to hire as a contractor, any such employee before the end of the period contemplated in the preceding sentence, Buyer shall remit to Seller a prorated portion of such Severance Payment applicable to the period between February 1, 1996 and the date of such offer. Such remittance shall be made to Seller within ten (10) days after such employee commences work on behalf of Buyer.

Seller agrees that prior to February 1, 1996, it will provide to Buyer a list of persons who are Type 1 employees.

Notwithstanding the above and except for normal attrition of previously hired employees, Buyer agrees not to hire any Type 1 employee for a period of 150 days from February 1, 1996. If Buyer does then Buyer will remit to Seller the full Severance Payment made to such Type 1 employees. --

I. In Section 4.16, paragraph (a):

1. The second sentence ("Within 45 days . . . preceding quarter") is amended to read as follows:

-- Within one (1) calendar month following each calendar month in which SVRX royalties (and royalties from Royalty-Bearing Products) are received by Buyer [except for those SVRX Royalties to be retained in their entirety by Buyer pursuant to paragraph (e) of Section 1.2 hereof] Buyer shall remit 100% of all such royalties to Seller or Seller's assignee. Buyer shall also provide to Seller, within six (6) days following the calendar month in which such royalties are received, and estimate of the total amount of such royalties. --

2. In the last sentence ("In consideration . . . SVRX Royalties") the following is added at the end before the period:

-- together with a remittance sufficient to cover applicable third party payments, (if any) which are attributable to distributions giving rise to such SVRX Royalties (and royalties from Royalty-Bearing Products) and for which Buyer has assumed Seller's obligation of payment to such third party. --

J. In Section 4.16, paragraph (b), the last sentence ("Buyer shall not . . . Merged Product") is amended to read as follows:

-- Notwithstanding the foregoing, Buyer shall have the right to enter into amendments of the SVRX Licenses (i) as may be incidentally involved through its rights to sell and license UnixWare software or the Merged Product (as such latter term is defined in a separate Operating Agreement between the parties to be effective as of the Closing Date, a copy of which is attached hereto as Exhibit 5.1(c)), or future versions of the Merged Product, or (ii) to allow a licensee under a particular SVRX License to use the source

code of the relevant SVRX product(s) on additional CPU's or to receive an additional distribution, from Buyer, of such source code. In addition, Buyer shall not, and shall have no right to, enter into new SVRX Licenses except in the situation specified in (i) of the preceding sentence or as otherwise approved in writing in advance by Seller on a case by case basis. --

K. In Schedule 1.1(a):

1. In Item I:

- (i) each occurrence of "UNIX and "UnixWare" is changed to read -- UNIX, UnixWare and Auxiliary Products --.
- (ii) line 3, before "technical" the word "appropriate" is added.
- (iii) line 5, before "engineering" the word "appropriate" is deleted.
- (iv) in the UNIX Source Code Products listing, the title is changed to "UNIX and UnixWare Source Code Products" and item D is amended to read as follows:

-- The following foreign versions of UnixWare software :

UnixWare 1.0 French

UnixWare 1.0 German

UnixWare 1.0 Italian

UnixWare 1.0 Spanish

UnixWare 1.1 French

UnixWare 1.1 German

UnixWare 1.1 Italian

UnixWare 1.1 Spanish

UnixWare 1.1 Japanese

UnixWare 1.1. Chinese

UnixWare 2.01 French

UnixWare 2.01 German

UnixWare 2.01 Italian

UnixWare 2.01 Spanish

UnixWare 2.01 Japanese

(v) in the Products Under Development listing, the following is added at the end:

-- F. Amadeus Software --

(vi) the following new listing is inserted between the Products Under Development listing and the Other Technology listing:

-- Auxiliary Products

[as listed in Attachment 1 to this Schedule I.1(a)] --

2. The following is added at the end of Item III:

-- N. Agreements for development and licensing of Amadeus Software. --

3. Item IV is changed to read:

-- All master copies of UNIX, UnixWare and Auxiliary Software owned by Seller, except as retained by Seller in connection with seller's licenses specified in Section 1.6 hereof. --

4. In Item VI:

(i) The first line is amended in its entirety to read as follows:

-- All contracts relating to the SVRX Licenses and Auxiliary Product Licenses (collectively "SVRX Licenses") listed below: --

(ii) The following is added to the list of SVR4 Licenses:

-- Auxiliary Products --

L. In Schedule 1.1(b), Item VII is amended to read as follows:

-- VII. All accounts receivable or rights to payment concerning the Assets arising prior to the Closing Date, subject to appropriate payments to Buyer in several situations involving (a) prepayments received by Seller prior to the Closing Date under its customer agreements which cover orders for licenses to and/or support for UnixWare products that remain unfulfilled as of the Closing Date or (b) any other rights to payments which accrued to Seller prior to the Closing Date under such agreements for such unfulfilled orders for UnixWare Products. Such situations are described in Attachment 1 to this Schedule 1.1(b). The parties agree to adapt more detailed procedures, where appropriate, to deal with such payments in each of such situations within ninety (90) days after the Closing Date.

M. In Schedule 1.2(b), paragraph (b), the first sentence is amended to read as follows:

-- (b) Amount of Royalties. Attachment 1 to this Schedule 1.2(b) represents Seller's annual forecast, as of the Closing Date, of the potential estimated market for units of Unix System V, UnixWare, Eiger, MXE and White Box software (the "Plan" or "Unit Plan"). --

N. In Exhibit 5.1(c) paragraph (b) is rewritten in its entirety as follows:

Commencing November 1, 1995, Seller shall be responsible for bearing a certain amount of the reasonable, auditable and fully burdened costs incurred on a combined basis by Buyer and Seller for the completion of the GA version of the Eiger product, as follows:

- (i) 100% of such costs incurred by SELLER from November 1, 1995 up to the Closing Date (estimated to be about \$2,600,000);
- (ii) 50% of the first \$5,000,000 of such costs incurred by both Companies after the Closing Date;
- (iii) 25% of the next \$10,000,000 of such costs incurred by both Companies after the Closing Date.

Buyer and Seller will separately maintain records of such costs incurred. On a calendar month basis after the Closing Date, Buyer and Seller will exchange information as to such development costs incurred in that month. Each party ("first party") will render payment to the other party for any amounts such first party is responsible for which are in excess of all amounts such first party has incurred. Each such payment shall be remitted by such first party within thirty (30) days after receipt from the other party of an invoice for such excess amount.

O. Attachments A, B and C to this Amendment No. 1 are incorporated as Attachment 1 to Schedule 1.1(a), Attachment 1 to Schedule 1.1(b), and Attachment 1 to Schedule 1.2(b), respectively.

All other terms and conditions of the Agreement shall remain in full force and effect.

The parties have executed this Amendment No. 1 through their duly authorized representatives on the respective dates indicated below. The effective date of this Amendment No. 1 shall be the later of such respective dates.

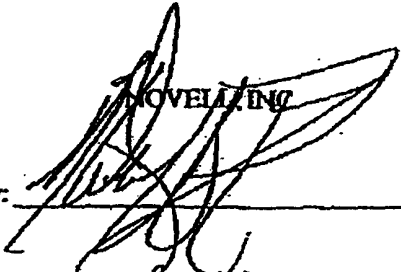
THE SANTA CRUZ OPERATION, INC.

By: 

Printed Name: Alok Mahan

Title: Chief Executive Officer

Date: December 6, 1995


By: NOVELL, INC.

Printed Name: R. Duff Thompson

Title: Senior Vice President - Corporate Development

Date: December 6, 1995

ATTACHMENT A

Listing of Auxiliary Products

Open Network Computing+

386 Implementation of UNIX System V Release 4

Multi-National Language Supplement

386 Implementation of UNIX System V Release 4

Multi-National Language Supplement

382 Implementation of UNIX System V Release 4

Multi-National Language Supplement

Application Source Verifier Release 2.0

Artus

C Compilation System for Motorola 68000

C Optimized Compilation System for UNIX System V

386/486

C++ Documents

C++ Language System Release 2.1

C++ Language System Release 3.0 and 3.0.1

C++ Language System Release 3.0.2

C++ Language System Release 3.0.3

C++ Object Interface Library Release 1.1

C++ Standard Components Release 2.0

C++ Standard Components Release 2.0.1

C++ Standard Components Release 3.0

C++ Standard Libraries Release 2.0

C++ Standard Libraries Release 3.0

C++ Standard Library Extension Release 1.0

C++LS 2.0

C++Translator

CFRONT Release 1.2

Chinese System Messages Implementation of UNIX

System V Release 4 System Messages

Distributed Manager/Framework & Host Manager

Release 1.0

Distributed Manager/Framework & Host Manager

Technology Licensing Program 1

Distributed Manager/Framework & Host Manager U.I.

Early Access

Distributed Manager/Print Manager Release 1.0

Distributed Manager/Print Manager Technology

Licensing Program 1
Distributed Manager/Print Manager Technology
Licensing Program 1
Distributed Manager/Print Manager U.I. Early
Access
DM/SM-TLP1
Documentation Reproduction Provision - UNIX System
V Handbook
Documentation Reproduction Provision - UNIX System
V Programming Books
Documentation Reproduction Provision - UNIX System
V Reference Books
Documentation Reproduction Provision - UNIX System
V User_s and Administrator_s Books
European Supplement Release 3.2
European System Messages Release 3.2
French Application Environment 1.0/3b2
French System Messages Implementation of UNIX
System V Release 4 System Messages
French System Messages Implementation of UNIX
System V Release 4.1 Enhanced Security System
Messages
German Application Environment
German System Messages Implementation of UNIX
System V Release 4 System Messages
German System Messages Implementation of UNIX
System V Release 4.1 Enhanced Security System
Messages
Hindi System Messages Implementation of UNIX
System V Release 4 System Messages
Intel386 Microprocessor Implementation of VERITAS
File System (VxFS) Release 1.0
Intel386 Microprocessor Implementation of VERITAS
Visual Administrator Release 1.01
Intel386 Microprocessor Implementation of VERITAS
Volume Manager (VxVM) Release 1.01
Intel386 Microprocessor Implementation of VERITAS
Volume Manager (VxVM) Release 1.1
Intel386 Microprocessor Implementation of VERITAS
Volume Manager (VxVM) Release 1.1.1
Italian System Messages Implementation of UNIX
System V Release 4.1 Enhanced Security System
Messages
Italian System Messages Implementation of UNIX
System V Release 4 System Messages

Japanese Application Environment I/O Rel 1.0
Japanese Application Environment Release 2.0
Japanese Application Environment Release 2.0
Japanese Application Environment Release 2.1
Japanese Environment for SVR4.2
Japanese Extension Implementation of UNIX System V
Release 4.2
Japanese I/O Release 1.0
Japanese System Messages Implementation of UNIX
System V Release 4 System Messages
Japanese System Messages Implementation of UNIX
System V Release 4.1 Enhanced Security System
Messages
Japanese System Messages Release 3.2
Korean System Messages Implementation of UNIX
System V Release 4 System Messages
Optimizing C Compiler for Intel, Release 3.0
Spanish System Messages Implementation of UNIX
System V Release 4 System Messages
Spanish System Messages Implementation of UNIX
System V Release 4.1 Enhanced Security System
Messages
System V Release 2.0 Machine Readable
Documentation
System V Release 3.0 Documentation Reproduction
Provision
System V Release 3.1 Documentation Reproduction
Provision
System V Release 3.2 Documentation Reproduction
Provision
System V Verification Suite Release 2
System V Verification Suite Release 3
System V Verification Suite Release 4
UNIX System V French System Messages Release 3.2
UNIX System V German System Messages Release 3.2
UNIX System V Release 1.0 for 386 Multi-National
Language Supplement
UNIX System V Release 1.0 for Intel 386 Multi-
National Language Supplement
UNIX System V Release 3.2 386 Doc. Reproduction
Provision
UNIX System V Release 3.2 for Intel 386 Multi-
National Language Supplement
UNIX System V Release 3.2 for Intel 386 Multi-
National Language Supplement

UNIX System V Release 3.2 Multi-National Language Supplement
UNIX System V Release 4 European Language Supplement
UNIX System V Release 4 STREAMS-Based Korean Input/Output Subsystem
UNIX System V Release 4.0 386 Doc. Reproduction Provision
UNIX System V Release 4.0 3B2 Doc. Reproduction Provision
UNIX System V Release 4.0 i860 Doc. Reproduction Provision
UNIX System V Release 4.2 European Language Supplement, Version 1
UNIX System V Release 4.2 MP Japanese Extension
UNIX Time Sharing Operating System Phototypesetter and C Compiler Edition #7
USL Standard C Development Environment for the 860 Implementation of UNIX System V Release 4.0
Veritas File System (VxFS) Release 1.3 for UNIX System V Release 4.2
XWIN Graphical Windowing System Release 3.0
XWIN Graphical Windowing System Release 4.0
XWIN Graphical Windowing System Release 4.0i

ATTACHMENT B

Treatment of Certain Prepayments and Rights

to Payment Specified in Item VII of Schedule 1.1(b)

Situation 1 - where the Seller customer contract (other than in Situation 3) involves a prepayment and/or an accrued right to payment (collectively "prepayment") that applies to a mix of UnixWare and non-UnixWare products.

Seller will send a notice requiring the customer to specify in writing (i) whether it wants any of the prepayment to be allocated to the UnixWare products and (ii) if so, how much of such prepayment should be so allocated. The notice shall state that if the customer does not respond

within 30 days after the date of transmission by Seller, none of such prepayment shall apply to the UnixWare products. The notice shall also specify that any future prepayment under the contract in question will not apply to UnixWare products, and that orders for UnixWare products after the prepayment allocation is used up must be directed to Buyer.

If the customer elects a UnixWare allocation of \$100,000 or more, or makes a UnixWare allocation of an unspecified amount, Buyer will fulfill all of such customer's orders of UnixWare products against the unused prepayment allocation (or prepayment, if no allocation is made). Buyer will receive from Seller a payment reflecting a pro-rated portion of such prepayment allocation (or such prepayment). Such payment shall be deemed to be royalties received by Buyer for the UnixWare products in question.

If the customer allocates less than \$100,000 of the prepayment to UnixWare products in response to such notice, Buyer will fulfill all of such customer's orders for UnixWare products against the prepayment and will receive from Seller its actual and reasonable costs (including third party royalties assumed by Buyer under this Agreement) of such fulfillment plus a markup of five percent (5%).

Situation 2 - where Seller's customer's contract (other than in Situation 3) calls for prepayments applicable to UnixWare products only.

If the prepayment is \$100,000 or more, the roles of Seller and Buyer set forth in Situation 1 for an allocation of \$100,000 or more shall apply.

If the prepayment is less than \$100,000, the roles of Seller and Buyer set forth in Situation 1 for an allocation of less than \$100,000 shall apply.

Situation 3 - Seller's customer contracts with Siemens-Rolm, TMAC, Microport, Tatung and Sysorex.

These contracts involve prepayments that may apply either to a mix of UnixWare and non-UnixWare products (TMAC and Sysorex) or to UnixWare products alone. Irrespective of the type of allocation, the roles of Seller and Buyer set forth for a UnixWare allocation of \$100,000 or greater shall apply.

Execution Copy

For a period of up to sixty (60) days after the Closing Date Buyer and Seller will cooperate to attempt to identify additional ones of Seller's customers who have prepayments which could be allocated to UnixWare products in the amount of \$100,000 or more. For each of such additional customers so identified, the roles of Buyer and Seller shall be as mutually agreed.

ATTACHMENT C

Unit Plan

Table A below represents Seller's forecast of the rates of shipments, through all appropriate channels, of units of the following offerings of Unix System V, UnixWare, Eiger, MXU and White Box software:

- o Single user and multi-user versions
- o Upgrades to existing units
- o Processor upgrades
- o Other components, specifically:
 - Software developers kit
 - OnLine Data Manager
 - Locus Merge
- o All Units which Buyer receives payment for, directly or indirectly

Table A
Units (in thousands)

	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
SCO Shipments	216.40	216.40	216.40	216.40	216.40	216.40	216.40	216.40
UnixWare Binary - Indirect	57.50	99.10	131.50	107.00	39.20	0.00	0.00	0.00
UnixWare - OEM	10.10	35.50	55.60	68.10	68.10	49.30	34.50	0.00
MXU Binary - Indirect	0.00	0.00	43.80	160.40	282.60	334.40	305.30	201.30
MXU - OEM	0.00	0.00	13.90	45.40	91.90	148.00	186.50	233.20
WBOS Binary - Indirect	0.00	0.00	0.00	0.00	70.60	222.90	457.90	805.40
WBOS - OEM	0.00	0.00	0.00	0.00	10.20	49.20	124.40	233.20
SVRX converted units	0.00	33.80	69.80	108.40	149.50	193.30	239.90	289.60
SVRX remaining	<u>1072.90</u>	<u>1091.80</u>	<u>1112.90</u>	<u>1132.90</u>	<u>1153.60</u>	<u>1174.90</u>	<u>1196.60</u>	<u>1218.80</u>
Total Unix Software Units	1356.00	1476.60	1643.00	1838.30	2082.10	2388.50	2761.50	3197.90

**AT&T TECHNOLOGIES, INC.
SOFTWARE AGREEMENT**

1. AT&T TECHNOLOGIES, INC., a New York corporation ("AT&T"), having an office at 222 Broadway, New York, New York 10038, and INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation, having an office at Old Orchard Road, Armonk, New York 10504,

for itself and its SUBSIDIARIES (collectively referred to herein as "LICENSEE") agree that, after execution of this Agreement by LICENSEE and acceptance of this Agreement by AT&T, the terms and conditions set forth on pages 1 through 6 of this Agreement shall apply to use by LICENSEE of SOFTWARE PRODUCTS that become subject to this Agreement.

2. AT&T makes certain SOFTWARE PRODUCTS available under this Agreement. Each such SOFTWARE PRODUCT shall become subject to this Agreement on acceptance by AT&T of a Supplement executed by LICENSEE that identifies such SOFTWARE PRODUCT and lists the DESIGNATED CPUs therefor. The first Supplement for a specific SOFTWARE PRODUCT shall have attached a Schedule for such SOFTWARE PRODUCT. Any additional terms and conditions set forth in such Schedule shall also apply with respect to such SOFTWARE PRODUCT. Initially, Supplement(s) numbered 1, 2 and 3----- are included in and made part of this Agreement.

3. Additional Supplements may be added to this Agreement to add additional SOFTWARE PRODUCTS (and DESIGNATED CPUs therefor) or to add or replace DESIGNATED CPUs for other SOFTWARE PRODUCTS covered by previous Supplements. Each such additional Supplement shall be considered part of this Agreement when executed by LICENSEE and accepted by AT&T.

4. This Agreement and its Supplements set forth the entire agreement and understanding between the parties as to the subject matter hereof and merge all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein or as duly set forth on or subsequent to the date of acceptance hereof in writing and signed by a proper and duly authorized representative of the party to be bound thereby. No provision appearing on any form originated by LICENSEE shall be applicable unless such provision is expressly accepted in writing by an authorized representative of AT&T.

Accepted by:

INTERNATIONAL BUSINESS
MACHINES CORPORATION

AT&T TECHNOLOGIES, INC.

By R. A. Mc Donough 2/1/85 O. L. Wilson 2/1-85
(Signature) (Date) (Signature) (Date)

R. A. Mc Donough
(Type or print name)

O. L. WILSON
(Type or print name)

COUNSEL - SYSTEMS PRODUCT
(Title)

Manager, Software Sales and Marketing
(Title)

I. DEFINITIONS

1.01 CPU means central processing unit.

1.02 COMPUTER PROGRAM means any instruction or instructions, in source-code or object-code format, for controlling the operation of a CPU.

1.03 DESIGNATED CPU means any CPU listed as such for a specific SOFTWARE PRODUCT in a Supplement to this Agreement.

1.04 SOFTWARE PRODUCT means materials such as COMPUTER PROGRAMS, information used or interpreted by COMPUTER PROGRAMS and documentation relating to the use of COMPUTER PROGRAMS. Materials available from AT&T for a specific SOFTWARE PRODUCT are listed in the Schedule for such SOFTWARE PRODUCT.

1.05 SUBSIDIARY of a company means a corporation or other legal entity (i) the majority of whose shares or other securities entitled to vote for election of directors (or other managing authority) is now or hereafter controlled by such company either directly or indirectly; or (ii) the majority of the equity interest in which is now or hereafter owned and controlled by such company either directly or indirectly; but any such corporation or other legal entity shall be deemed to be a SUBSIDIARY of such company only so long as such control or such ownership and control exists.

II. GRANT OF RIGHTS

2.01 AT&T grants to LICENSEE a personal, nontransferable and nonexclusive right to use in the United States each SOFTWARE PRODUCT identified in the one or more Supplements hereto, solely for LICENSEE'S own internal business purposes and solely on or in conjunction with DESIGNATED CPUs for such SOFTWARE PRODUCT. Such right to use includes the right to modify such SOFTWARE PRODUCT and to prepare derivative works based on such SOFTWARE PRODUCT, provided the resulting materials are treated hereunder as part of the original SOFTWARE PRODUCT.

2.02 A single back-up CPU may be used as a substitute for a DESIGNATED CPU without notice to AT&T during any time when such DESIGNATED CPU is inoperative because it is malfunctioning or undergoing repair, maintenance or other modification.

2.03 LICENSEE may at any time notify AT&T in writing of any changes, such as replacements or additions, that LICENSEE wishes to make to the DESIGNATED CPUs for a specific SOFTWARE PRODUCT. AT&T will prepare additional Supplements as required to cover such changes. Changes covered by a Supplement shall become effective after execution of such Supplement by LICENSEE, acceptance thereof by AT&T and, in the case of each additional CPU, receipt by AT&T of the appropriate fee.

2.04 On AT&T'S request, but not more frequently than annually, LICENSEE shall furnish to AT&T a statement, certified by an authorized representative of LICENSEE, listing the location, type and serial number of all DESIGNATED CPUs hereunder and stating that the use by LICENSEE of SOFTWARE PRODUCTS subject to this Agreement has been reviewed and that each such SOFTWARE PRODUCT is being used solely on DESIGNATED CPUs (or temporarily on back-up CPUs) for such SOFTWARE PRODUCTS pursuant to the provisions of this Agreement.

2.05 No right is granted by this Agreement for the use of SOFTWARE PRODUCTS directly for others, or for any use of SOFTWARE PRODUCTS by others.

III. DELIVERY

3.01 Within a reasonable time after AT&T receives the fee specified in the first Supplement for a SOFTWARE PRODUCT, AT&T will furnish to LICENSEE one (1) copy of such SOFTWARE PRODUCT in the form identified in the Schedule for such SOFTWARE PRODUCT.

3.02 Additional copies of SOFTWARE PRODUCTS covered by this Agreement will be furnished to LICENSEE after receipt by AT&T of the then-current distribution fee for each such copy.

IV. EXPORT

4.01 LICENSEE agrees that it will not, without the prior written consent of AT&T, export, directly or indirectly, SOFTWARE PRODUCTS covered by this Agreement to any country outside of the United States.

V. FEES AND TAXES

5.01 Within sixty (60) days after acceptance of this Agreement by AT&T, LICENSEE shall pay to AT&T the fees required by the Supplement(s) initially attached hereto for the DESIGNATED CPUs listed in such Supplement(s).

5.02 Within sixty (60) days after acceptance of each additional Supplement by AT&T, LICENSEE shall pay to AT&T any fee required by such additional Supplement for the DESIGNATED CPUs listed in such additional Supplement.

5.03 Payments to AT&T shall be made in United States dollars to AT&T at the address specified in Section 7.11(a).

5.04 LICENSEE shall pay all taxes, including any sales or use tax (and any related interest or penalty), however designated, imposed as a result of the existence or operation of this Agreement, except any income tax imposed upon AT&T by any governmental entity within the United States proper (the fifty (50) states and the District of Columbia). Fees specified in Supplement(s) to this Agreement and in Schedule(s) attached to Supplement(s) are exclusive of any taxes. If AT&T is required to collect a tax to be paid by LICENSEE, LICENSEE shall pay such tax to AT&T on demand.

VI. TERM

6.01 This Agreement shall become effective on and as of the date of acceptance by AT&T.

6.02 LICENSEE may terminate its rights under this Agreement by written notice to AT&T certifying that LICENSEE has discontinued use of and returned or destroyed all copies of SOFTWARE PRODUCTS subject to this Agreement.

6.03 If LICENSEE fails to fulfill one or more of its obligations under this Agreement, AT&T may, upon its election and in addition to any other remedies that it may have, at any time terminate all the rights granted by it hereunder by not less than two (2) months' written notice to LICENSEE specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied; upon such termination LICENSEE shall immediately discontinue use of and return or destroy all copies of SOFTWARE PRODUCTS subject to this Agreement.

6.04 In the event of termination of rights under Sections 6.02 or 6.03, AT&T shall have no obligation to refund any amounts paid to it under this Agreement.

6.05 LICENSEE agrees that when a SUBSIDIARY'S relationship to LICENSEE changes so that it is no longer a SUBSIDIARY of LICENSEE, (i) all rights of such former SUBSIDIARY to use SOFTWARE PRODUCTS subject to this Agreement shall immediately cease, and (ii) such former SUBSIDIARY shall immediately discontinue use of and return to LICENSEE or destroy all copies of SOFTWARE PRODUCTS subject to this Agreement. No fees paid to AT&T for use of SOFTWARE PRODUCTS on DESIGNATED CPUs of such former SUBSIDIARIES shall be refunded; however, LICENSEE may substitute other CPUs for such DESIGNATED CPUs in accordance with Section 2.03.

VII. MISCELLANEOUS PROVISIONS

7.01 Nothing contained herein shall be construed as conferring by implication, estoppel or otherwise any license or right under any patent or trademark. However, in respect of patents under which AT&T can grant rights, AT&T grants to LICENSEE all such rights necessary for the use by LICENSEE, pursuant to the rights granted herein, of SOFTWARE PRODUCTS, except to the extent that such patents apply (i) independently of the use of any such SOFTWARE PRODUCT, (ii) because a DESIGNATED CPU is used in combination with other hardware or (iii) because any such SOFTWARE PRODUCT is modified from the version furnished hereunder to LICENSEE by AT&T or is used in combination with other software.

7.02 This Agreement shall prevail notwithstanding any conflicting terms or legends which may appear in a SOFTWARE PRODUCT.

7.03 AT&T warrants that it is empowered to grant the rights granted hereunder. AT&T makes no other representations or warranties, expressly or impliedly. By way of example but not of limitation, AT&T makes no representations or warranties of merchantability or fitness for any particular purpose, or that the use of any SOFTWARE PRODUCT will not infringe any patent, copyright or trademark. AT&T shall not be held to any liability with respect to any claim by LICENSEE, or a third party on account of, or arising from, the use of any SOFTWARE PRODUCT.

7.04 LICENSEE agrees that it will not, without the prior written permission of AT&T, (i) use in advertising, publicity, packaging, labeling or otherwise any trade name, trademark, trade device, service mark, symbol or any other identification or any abbreviation, contraction or simulation thereof owned by AT&T (or a corporate affiliate thereof) or used by AT&T (or such an affiliate) to identify any of its products or services, or (ii) represent, directly or indirectly, that any product or service of LICENSEE is a product or service of AT&T (or such an affiliate), or is made in accordance with or utilizes any information or documentation of AT&T (or such an affiliate).

7.05 Neither the execution of this Agreement nor anything in it or in any SOFTWARE PRODUCT shall be construed as an obligation upon AT&T to furnish any person, including LICENSEE, any assistance of any kind whatsoever, or any information or documentation other than the SOFTWARE PRODUCTS to be furnished pursuant to Sections 3.01 and 3.02.

7.06 (a) LICENSEE agrees that it shall hold all parts of the SOFTWARE PRODUCTS subject to this Agreement in confidence for AT&T. LICENSEE further agrees that it shall not make any disclosure of any or all of such SOFTWARE PRODUCTS (including methods or concepts utilized therein) to anyone, except to employees of LICENSEE to whom such disclosure is necessary to the use for which rights are granted hereunder. LICENSEE shall appropriately notify each employee to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by such employee. If information relating to a SOFTWARE PRODUCT subject to this Agreement at any time becomes available without restriction to the general public by acts not attributable to LICENSEE or its employees, LICENSEE'S obligations under this section shall not apply to such information after such time.

(b) Notwithstanding the provisions of Section 7.06(a), LICENSEE may distribute copies of a SOFTWARE PRODUCT, either in modified or unmodified form, to third parties having licenses of equivalent scope herewith from AT&T (or a corporate affiliate thereof) for the same SOFTWARE PRODUCT, provided that LICENSEE first verifies the status of any such third party in accordance with specific instructions issued by AT&T. Such instructions may be obtained on request from AT&T at the correspondence address specified in Section 7.11(b). LICENSEE may also obtain materials based on a SOFTWARE PRODUCT subject to this Agreement from such a third party and use such materials pursuant to this Agreement, provided that LICENSEE treats such materials as if they were part of such SOFTWARE PRODUCT.

7.07 The obligations of LICENSEE and its employees under Section 7.06(a) shall survive and continue after any termination of rights under this Agreement or cessation of a SUBSIDIARY'S status as a SUBSIDIARY.

7.08 LICENSEE agrees that it will not use SOFTWARE PRODUCTS subject to this Agreement except as authorized herein and that it will not make, have made or permit to be made any copies of such SOFTWARE PRODUCTS except for use on DESIGNATED CPU's for such SOFTWARE PRODUCTS (including backup and archival copies necessary in connection with such use) and for distribution in accordance with Section 7.06(b). Each such copy shall contain the same copyright and/or proprietary notices or notice giving credit to a developer, which appear on or in the SOFTWARE PRODUCT being copied.

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

7.10 Except as provided in Section 7.06(b), nothing in this Agreement grants to LICENSEE the right to sell, lease or otherwise transfer or dispose of a SOFTWARE PRODUCT in whole or in part.

7.11 (a) Payments to AT&T under this Agreement shall be made payable and sent to:

AT&T TECHNOLOGIES, INC.
P.O. Box 65080
Charlotte, North Carolina 28265

(b) Correspondence with AT&T relating to this Agreement shall be sent to:

AT&T TECHNOLOGIES, INC.
Software Sales and Marketing Organization
P.O. Box 25000
Greensboro, North Carolina 27420

(c) Any payment, statement, notice, request or other communication shall be deemed to be sufficiently given to the addressee and any delivery hereunder deemed made when sent by certified mail addressed to LICENSEE at its office specified in this Agreement or to AT&T at the appropriate address specified in this Section 7.11. Each party to this Agreement may change an address relating to it by written notice to the other party.

7.12 If LICENSEE is not a corporation, all references to LICENSEE'S SUBSIDIARIES shall be deemed deleted.

7.13 The construction and performance of this Agreement shall be governed by the law of the State of New York.

Agreement Number SOFT-00015

Supplement Number 1

**AT&T TECHNOLOGIES, INC.
SOFTWARE AGREEMENT SUPPLEMENT**

The CPU(s) listed below are hereby made DESIGNATED CPUs for the following SOFTWARE PRODUCT: UNIX* System V, Release 2.0-----

subject to the referenced Agreement.

A Schedule for each SOFTWARE PRODUCT is attached to this Supplement.

A Schedule for each SOFTWARE PRODUCT was attached to Supplement No. _____

Location	DESIGNATED CPUs Type	Serial No.	Source or Object	Fee
----------	-------------------------	------------	---------------------	-----

All CPUs that are SOURCE CPUs under the prior January 1, 1982 Software Agreement, as Modified, Between Our Companies Relating to UNIX System V, Release 2.0 and other UNIX Operating Systems, for which agreement this agreement has been substituted. All fees for such CPUs have been paid pursuant to such prior agreement.

This Supplement is attached to and made a part of the referenced Agreement. Execution and acceptance of such Agreement also constitutes execution and acceptance of this Supplement.

Execution and acceptance of this Supplement follow.

Accepted by:

AT&T TECHNOLOGIES, INC.

By _____
(Signature) (Date)

By _____
(Signature) (Date)

(Type or print name)

(Type or print name)

(Title)

(Title)

*UNIX is a trademark of AT&T Bell Laboratories.

Schedule for
UNIX* System V, Release 2.0 Version 1
and
UNIX System V, Release 2.0 Version 1, International Edition**

1. Fees

(a) Right-to-use fees

- (i) First DESIGNATED CPU (Source) \$43,000***
- (ii) Each additional DESIGNATED CPU (Source) \$15,000
- (iii) Each of third and subsequent DESIGNATED CPUs (Source) after initial sublicensing fee has been paid
 - 1-32 user system \$ 1,000
 - 1-64 user system \$ 3,500
 - > 64 user system \$ 7,000(See Notes 1 and 3)
- (iv) DESIGNATED CPU (Object) \$ 4,800
(See Note 2)
- (v) Fees listed in items (iii) and (iv) do not include a distribution of software.

(b) Distribution fee for each additional copy \$ 400

(c) Sublicensing fees (applicable only to SUBLICENSSED PRODUCT under a Sublicensing Agreement)

- (i) Initial \$25,000***
- (ii) Per-Copy
 - 1-2 user system \$ 60
 - 1-8 user system \$ 125
 - 1-16 user system \$ 500
 - 1-32 user system \$ 1,000
 - 1-64 user system \$ 3,500
 - > 64 user system \$ 7,000(See Notes 1 and 3)

*UNIX is a trademark of AT&T Bell Laboratories
**Furnished to LICENSEES outside the United States
***Lower fees may apply to LICENSEES for other versions of UNIX System V

Schedule for
UNIX* System V, Release 2.0 Version 1
and
UNIX System V, Release 2.0 Version 1, International Edition**

(d) Upgrade Fees

LICENSEES for the following UNIX operating system(s)
may upgrade those systems for the fees shown:

UNIX System V Release 1.0 or Release 1.1	\$2,500
UNIX System III	\$3,500

Information on upgrade fees for other UNIX operating
systems is available upon request.

(e) Fees in this schedule are subject to change without notice.

Notes:

1. "User" means a terminal for entry of information and display or printing of information, such terminal being serviced on a time-sharing basis by a DESIGNATED CPU running UNIX System V, Release 2.0 Version 1 or UNIX System V, Release 2.0 Version 1, International Edition, or an end-user CPU running a SUBLICENSED PRODUCT based on UNIX System V, Release 2.0 Version 1 or UNIX System V, Release 2.0 Version 1, International Edition. An end-user must not be given the ability to increase the number of users supported by a SUBLICENSED PRODUCT.
2. All of UNIX System V, Release 2.0 Version 1 or UNIX System V, Release 2.0 Version 1, International Edition may be used on or in conjunction with a DESIGNATED CPU (Source). Only the materials that may be included in a SUBLICENSED PRODUCT pursuant to Section 4 of this Schedule may be used on or in conjunction with a DESIGNATED CPU (Object).
3. The number of users supported on a DESIGNATED CPU paid for under Paragraph 1(a) (iii) or supported by a SUBLICENSED PRODUCT may be increased from a lower number to a higher number on payment of the difference between the fee stated for the lower number and the fee stated for the higher number.

Schedule for
UNIX* System V, Release 2.0 Version 1
and
UNIX System V, Release 2.0 Version 1, International Edition**

2. Documentation Furnished

(a) Printed Documentation

Items marked with an asterisk (*) are supplied with UNIX System V, Release 2.0 Version 1, International Edition only

- UNIX System V - System Release Description
- UNIX System V - Portfolio
- UNIX System V - User Reference Manual
- UNIX System V - Administrator Reference Manual
- UNIX System V - Programmer Reference Manual
- UNIX System V - Error Message Reference Manual
- UNIX System V - Programming Guide
- UNIX System V - Support Tools Guide
- UNIX System V - Graphics Guide
- UNIX System V - User Guide
- UNIX System V - Operator Guide
- UNIX System V - Administrator Guide
- *UNIX System V - International Release Description

(b) On-Line Documentation

On-line documentation is provided for the UNIX System User Reference Manual, the Administrator Reference Manual and the Programmer Reference Manual.

NOTE: The printed documentation listed is general in nature and not intended to completely describe the COMPUTER PROGRAMS listed in Section 3; nor are all COMPUTER PROGRAMS described in such documentation necessarily included in the SOFTWARE PRODUCT.

3. COMPUTER PROGRAMS Furnished

The COMPUTER PROGRAMS listed in this section and the on-line documentation listed in Section 2(b) above will be supplied on four reels of nine track, 800 BPI (PDP** 11/70 only) or 1600 BPI magnetic tape; plus a diagnostic tape for tape transport.

(a) Tape Boot Loader and Initial System Load program for copying the system software from the distribution tape to the system disk.

(b) An executable copy of the cpio program.

**PDP is a trademark of Digital Equipment Corporation

Schedule for
UNIX* System V, Release 2.0 Version 1
and
UNIX System V, Release 2.0 Version 1, International Edition**

- (g) Source code for the graphics software.
Includes the graphics make file (graf.mk) and the following
directories and their associated files and subdirectories:

include
lib
src

- (h) Source code of the system software includes top level make
commands and the following directories and their associated
subdirectories and files:

cmd
games
head
lib
stand
uts

Note: The "crypt" command and associated documentation are not
included in UNIX System V, Release 2.0 Version 1,
International Edition.

4. Sublicensing (under a Sublicensing Agreement)

A SUBLICENSED PRODUCT based on UNIX System V, Release 2.0 Version 1
or UNIX System V, Release 2.0 Version 1, International Edition, may
include:

- (a) Copies of the documents listed in Section 2 of this schedule.
(b) COMPUTER PROGRAMS in object-code format. ALL COMPUTER
PROGRAMS may be treated as object-code except for files and
subdirectories under directory /usr/src.

Also, the following files in the /usr/src/cmd/spell directory

American	hash make
British	list
extra	html
list	local
hash check	

NOTE: Run-time Libraries

Routines from the following run-time libraries may be included
in customer-developed application software without payment of
a sublicensing fee to AT&T.

Standard C Library	/lib/libc.a
Math Library	/lib/libm.a
Object File Access Library	/lib/libld.a
Fortran Library	/usr/lib/libF77.a

Schedule for
UNIX* System V, Release 2.0 Version 1
and

UNIX System V, Release 2.0 Version 1, International Edition**

5. Other Software

The products listed below may be used in the United States on DESIGNATED CPUs for UNIX System V, Release 2.0 Version 1 and sublicensed for use in the United States as if they were that product. The products may be used outside the United States on DESIGNATED CPUs for UNIX System V, Release 2.0 Version 1, International Edition and sublicensed for use outside the United States as if they were that product. Only those products marked with a pound symbol (#) may be shipped outside the United States by AT&T. Versions of such products, except those marked with an asterisk (*), are available from AT&T for various types of CPUs at \$400 per copy.

- UNIX System V, Release 2.0 Version 1
- #UNIX System V, Release 1.0, International Edition
- #UNIX System V, Release 2.0 Version 1, International Edition
- UNIX System V, Release 1.0
- UNIX System V, Release 1.1
- UNIX System III
- UNIX 32V Time-Sharing System, Version 1.0
- UNIX Time-Sharing System, Seventh Edition
- *UNIX Time-Sharing System, Sixth Edition
- UNIX Programmer's Workbench System, Edition 1.0
- *UNIX Mini Time-Sharing System, Version 6

6. Time Sharing

UNIX System V, Release 2.0 Version 1 or UNIX System V, Release 2.0 Version 1, International Edition, may be used on a DESIGNATED CPU for such SOFTWARE PRODUCT to furnish a time-sharing service to third parties. A SUBLICENSED PRODUCT based on UNIX System V, Release 2.0 Version 1 or UNIX System V, Release 2.0 Version 1, International Edition, may also be used to furnish a time-sharing service to third parties.

Agreement Number SOFT-00015

Supplement Number 2

**AT&T TECHNOLOGIES, INC.
SOFTWARE AGREEMENT SUPPLEMENT**

The CPU(s) listed below are hereby made **DESIGNATED CPUS** for the following **SOFTWARE PRODUCT: UNIX[®] Documenter's Workbench^{**} Software**--

subject to the referenced Agreement.

A Schedule for such **SOFTWARE PRODUCT** is attached to this Supplement.

A Schedule for such **SOFTWARE PRODUCT** was attached to Supplement No. _____

Location	DESIGNATED CPU: Type	Serial No.	Source or Object	Fee
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All CPUS that are **SOURCE CPUS** under the prior January 1, 1982 Software Agreement, as Modified, Between our Companies relating to UNIX System V, Release 2.0 and other UNIX operating systems, for which agreement this agreement has been substituted. All fees for such CPUS have been paid pursuant to the prior agreement.

This Supplement is attached to and made a part of the referenced Agreement. Execution and acceptance of such Agreement also constitutes execution and acceptance of this Supplement.

Execution and acceptance of this Supplement follow.

Accepted by:

AT&T TECHNOLOGIES, INC.

By _____
(Signature) (Date)

By _____
(Signature) (Date)

(Type or print name)

(Type or print name)

(Title)

(Title)

*UNIX is a trademark of AT&T Bell Laboratories.
**Documenter's Workbench is a trademark of AT&T Technologies.

Schedule for
UNIX* Documenter's Workbench** Software
April 1, 1984

1. Fees

(a) Right-to-use fees

(i) First CPU	\$ 4,000
(ii) Each additional CPU	\$ 2,000

(b) Sublicensing fees (applicable only to
SUBLICENSSED PRODUCT under a Sublicensing
Agreement)

(i) Initial	\$ 3,000
(ii) Per-Copy	
1-2 user system	\$ 10
1-8 user system	\$ 15
1-16 user system	\$ 30
1-32 user system	\$ 45
1-64 user system	\$ 125
> 64 user system	\$ 250
(See Notes 1 and 2)	

(c) Fees in this schedule are subject to
change without notice.

Notes:

1. "User" means a terminal for entry of information and display or printing of information, such terminal being serviced on a time-sharing basis by an end-user CPU running a SUBLICENSSED PRODUCT based on Documenter's Workbench Software. An end-user must not be given the ability to increase the number of users supported by a SUBLICENSSED PRODUCT.

* UNIX is a trademark of AT&T Bell Laboratories
** Documenter's Workbench is a trademark of AT&T Technologies.

2. The number of users supported by a **SUBLICENSED PRODUCT** may be increased from a lower number to a higher number on payment of the difference between the fee stated for the lower number and the fee stated for the higher number.

2. Documentation Furnished

(a) Printed Documentation

- UNIX Documenter's Workbench Software System Release Description 1.0
- UNIX Documenter's Workbench Software Introduction and Reference Manual
- UNIX Documenter's Workbench Text Formatters Reference
- UNIX Documenter's Workbench Software Macro Packages Reference
- UNIX Documenter's Workbench Software Preprocessors Reference
- UNIX Documenter's Workbench Software MH Quick Reference
- UNIX Documenter's Workbench Software Text Processing Quick Reference

(b) On-Line Documentation

- UNIX Documenter's Workbench Software Introduction and Reference Manual
- UNIX Documenter's Workbench Software Text Formatters Reference
- UNIX Documenter's Workbench Software Macro Packages Reference
- UNIX Documenter's Workbench Software Preprocessors Reference

Note: The printed documentation listed in 2(a) is general in nature and not intended to completely describe the **COMPUTER PROGRAMS** listed in Section 3; nor are all **COMPUTER PROGRAMS** described in such documentation necessarily included in the **SOFTWARE PRODUCT**.

3. Computer Programs Furnished

The on-line documentation listed in section 2(b) and the **COMPUTER PROGRAMS** listed in Section 3 will be supplied on one reel of nine track, 1600 BPI magnetic tape (or on one reel of nine track, 800 BPI magnetic tape for PDP*** 11/70 only).

*** PDP is a trademark of Digital Equipment Corporation.

All text and programs included in the following directories and subdirectories and associated files:

catman/u man
catman/a man
catman/p man
src/cmd/text

4. Sublicensing (under a Sublicensing Agreement)

A SUBLICENSED PRODUCT may include:

- (a) Copies of the documents listed in Section 2 of this schedule.
- (b) COMPUTER PROGRAMS referenced in Section 3 of this schedule in object-code format only.

SS-Soft. Corp. Supp-090184

Agreement Number SOFT-00015

Supplement Number 3

**AT&T TECHNOLOGIES, INC.
SOFTWARE AGREEMENT SUPPLEMENT**

The CPU(s) listed below are hereby made DESIGNATED CPUs for the following
SOFTWARE PRODUCT: 370 DEVELOPMENT SYSTEM V-----

subject to the referenced Agreement.

- A Schedule for such SOFTWARE PRODUCT is attached to this Supplement.
- A Schedule for such SOFTWARE PRODUCT was attached to Supplement No. _____

Location	DESIGNATED CPU: Type	Serial No.	Source or Object	Fee
INTERNATIONAL BUSINESS MACHINES CORPORATION 220 Las Colinas Boulevard Irving, Texas 75062	IBM 4331-11	14439	SOURCE	443,000 16,000 <i>SD</i>

- This Supplement is attached to and made a part of the referenced Agreement. Execution and acceptance of such Agreement also constitutes execution and acceptance of this Supplement.
- Execution and acceptance of this Supplement follow.

Accepted by:

AT&T TECHNOLOGIES, INC.

By _____
(Signature) (Date)

By _____
(Signature) (Date)

(Type or print name)

(Type or print name)

(Title)

(Title)

Schedule for
370 DEVELOPMENT SYSTEM V

1. Fees

(a) Right-to-use fees

(i) First DESIGNATED CPU	\$43,000
(ii) Each additional DESIGNATED CPU	\$16,000
(iii) Each of third and subsequent DESIGNATED CPUs after initial sublicensing fee has been paid	
1-32 user system	\$ 1,000
1-64 user system	\$ 3,500
> 65 user system	\$ 7,000
(See Notes 1 and 2)	

(b) Sublicensing fees (applicable only to
SUBLICENSSED PRODUCTS under a Sublicensing
Agreement)

(i) Initial	\$25,000
(ii) Per-Copy	
1-2 user system	\$ 60
1-8 user system	\$ 125
1-16 user system	\$ 500
1-32 user system	\$ 1,000
1-64 user system	\$ 3,500
>64 user system	\$ 7,000
(See Notes 1 and 2)	

Notes:

1. "User" means a terminal for entry of information and display or printing of information, such terminal being serviced on a time-sharing basis by a DESIGNATED CPU running 370 Development System V or an end-user CPU running a SUBLICENSSED PRODUCT based on 370 Development System V. An end-user must not be given the ability to increase the number of users supported by a SUBLICENSSED PRODUCT.
2. The number of users supported on a DESIGNATED CPU paid for under Paragraph 1(a) (iii) or supported by a SUBLICENSSED PRODUCT may be increased from a lower number to a higher number on payment of the difference between the fee stated for the lower number and the fee stated for the higher number.

*UNIX is a trademark of AT&T Bell Laboratories.

**AT&T TECHNOLOGIES, INC.
SUBLICENSING AGREEMENT**

1. AT&T TECHNOLOGIES, INC., a New York corporation ("AT&T"), having an office at 222 Broadway, New York, New York 10038, and INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation,

having an office at Old Orchard Road, Armonk, New York 10504,

for itself and its SUBSIDIARIES (collectively referred to herein as "LICENSEE") agree that, after execution of this Sublicensing Agreement by LICENSEE and acceptance of this Sublicensing Agreement by AT&T, the terms and conditions set forth on pages 1 through 9 of this Sublicensing Agreement shall apply to the SOFTWARE PRODUCTS subject to Software Agreement Number SOFT-00015 between AT&T and LICENSEE ("the Software Agreement").

2. The discount percentage applicable to per-copy fees payable hereunder shall be % during the initial period. The advance commitment for the initial period shall be \$ (See Section 4.02).

3. Except as otherwise specifically provided herein, all the provisions of the Software Agreement remain in full force and effect.

4. This Sublicensing Agreement, together with the Software Agreement and its Supplement(s), sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein or as duly set forth on or subsequent to the effective date hereof in writing and signed by a proper and duly authorized representative of the party to be bound thereby. No provision appearing on any form originated by LICENSEE shall be applicable unless such provision is expressly accepted in writing by an authorized representative of AT&T.

INTERNATIONAL BUSINESS
MACHINES CORPORATION

By *R.A. McDonough III* 2/1/85
(Signature) (Date)

R.A. McDONOUGH III
(Type or print name)

Accepted by:

AT&T TECHNOLOGIES, INC.

By *O.L. Wilson* 2-1-85
(Signature) (Date)

O. L. WILSON
(Type or print name)

COUNSEL - SYSTEMS PRODUCT DIV. Manager, Software Sales and Marketing
(Title) (Title)

I. DEFINITIONS

1.01 The terms "CPU", "COMPUTER PROGRAM", "SOFTWARE PRODUCT" and "SUBSIDIARIES" are defined in the Software Agreement.

1.02 **AUTHORIZED COPIER** means a **DISTRIBUTOR** authorized by **LICENSEE** to make copies of **SUBLICENSSED PRODUCTS**.

1.03 **DISTRIBUTOR** means an entity authorized by **LICENSEE** or another **DISTRIBUTOR** to receive copies of **SUBLICENSSED PRODUCTS** from **LICENSEE** or another **DISTRIBUTOR** and furnish such copies to customers and/or other **DISTRIBUTORS**.

1.04 **SUBLICENSSED PRODUCT** means (i) **COMPUTER PROGRAMS** in object-code format based on a **SOFTWARE PRODUCT** subject to the Software Agreement and (ii) any other materials identified in the "Sublicensing" section of the Schedule for such **SOFTWARE PRODUCT**.

II. GRANT OF RIGHTS

2.01 Notwithstanding any provisions to the contrary in the Software Agreement, AT&T grants to **LICENSEE** personal, nontransferable and nonexclusive rights:

- (a) to make copies of **SUBLICENSSED PRODUCTS** and to furnish, either directly or through **DISTRIBUTORS**, such copies of **SUBLICENSSED PRODUCTS** to customers anywhere in the world (subject to U.S. government export restrictions) for use on customer CPUs solely for each such customer's internal business purposes, provided that the entity (**LICENSEE** or a **DISTRIBUTOR**) furnishing the **SUBLICENSSED PRODUCTS** obtains agreement as specified in Section 2.02 from such a customer, before or at the time of furnishing each copy of a **SUBLICENSSED PRODUCT**, that:
 - (i) only a personal, nontransferable and nonexclusive right to use such copy of the **SUBLICENSSED PRODUCT** on one CPU at a time is granted to such customer;
 - (ii) no title to the intellectual property in the **SUBLICENSSED PRODUCT** is transferred to such customer;
 - (iii) such customer will not copy the **SUBLICENSSED PRODUCT** except as necessary to use such **SUBLICENSSED PRODUCT** on such one CPU;

- (iv) such customer will not transfer the **SUBLICENSSED PRODUCT** to any other party except as authorized by the entity furnishing the **SUBLICENSSED PRODUCT**;
 - (v) such customer will not export or re-export the **SUBLICENSSED PRODUCT** without the appropriate United States or foreign government licenses;
 - (vi) such customer will not reverse compile or disassemble the **SUBLICENSSED PRODUCT**;
- (b) to use **SUBLICENSSED PRODUCTS** on **LICENSEE'S** CPUs solely for **LICENSEE'S** own internal business purposes; and
- (c) to use, and to permit **DISTRIBUTORS** to use, **SUBLICENSSED PRODUCTS** without fee solely for testing CPUs that are to be delivered to customers and for demonstrating **SUBLICENSSED PRODUCTS** to prospective customers.

2.02 In the United States and in other jurisdictions where an enforceable copyright covering the **COMPUTER PROGRAMS** of the **SUBLICENSSED PRODUCT** exists, the agreement specified in Section 2.01(a) may be a written agreement signed by the customer or a written agreement on the package containing the **SUBLICENSSED PRODUCT** that is fully visible to the customer and that the customer accepts by opening the package. In all other jurisdictions such agreement must be a written agreement signed by the customer. **AT&T** does not undertake to inform **LICENSEE** of the jurisdictions where such copyright exists.

2.03 **LICENSEE** shall require each **DISTRIBUTOR** to enter into a written agreement with its supplier of **SUBLICENSSED PRODUCTS** (**LICENSEE** or another **DISTRIBUTOR**) before any **SUBLICENSSED PRODUCT** is furnished to such **DISTRIBUTOR**. Such agreement shall include provisions consistent with and containing the relevant substance of Sections 2.01, 2.02, 2.04, 2.07, this Section 2.03 and Section 3.05 of this Sublicensing Agreement. For a **DISTRIBUTOR** who is also to be an **AUTHORIZED COPIER**, such agreement shall also include provisions consistent with and containing the relevant substance of Sections 2.05, 2.08, 2.10 and 5.01 of this Sublicensing Agreement.

2.04 **DISTRIBUTORS** who are not also **AUTHORIZED COPIERS** may not make copies of **SUBLICENSSED PRODUCTS**, but may furnish to customers copies of **SUBLICENSSED PRODUCTS** furnished to such **DISTRIBUTOR** by **LICENSEE** or other **DISTRIBUTORS**. In such cases the product name appearing on such copies shall not be deleted or altered by such a **DISTRIBUTOR**.

2.05 (a) A DISTRIBUTOR who is also an AUTHORIZED COPIER may modify and make copies of SUBLICENSED PRODUCTS, select a name for SUBLICENSED PRODUCTS to appear on such copies (consistent with the provisions of Section 2.10), and furnish such copies to customers and other DISTRIBUTORS.

(b) If an AUTHORIZED COPIER also has been granted a right to use a SOFTWARE PRODUCT, either as a licensee of AT&T (or of a corporate affiliate thereof) or as a contractor of LICENSEE (in accordance with requirements of AT&T), such AUTHORIZED COPIER may use such SOFTWARE PRODUCT to modify a SUBLICENSED PRODUCT derived from such SOFTWARE PRODUCT. If LICENSEE and such AUTHORIZED COPIER agree in writing that all right, title and interest in the resulting modifications belong to LICENSEE, then copies of such modified SUBLICENSED PRODUCT may be furnished to such customers and fees for such copies may be paid to AT&T pursuant to this Sublicensing Agreement. However, if all right, title and interest in the resulting modifications do not belong to LICENSEE then such AUTHORIZED COPIER must be a licensee of AT&T (or of a corporate affiliate thereof) for such SOFTWARE PRODUCT and copies of such modified SUBLICENSED PRODUCT must be furnished to customers and fees must be paid to AT&T only pursuant to a Sublicensing Agreement between AT&T and such AUTHORIZED COPIER, even if the version of such SOFTWARE PRODUCT used by such AUTHORIZED COPIER is furnished to such AUTHORIZED COPIER by LICENSEE. Regardless of which Sublicensing Agreement is involved in furnishing a copy of a SUBLICENSED PRODUCT to a customer, only one fee shall be collected by AT&T for such copy.

2.06 LICENSEE shall use its best efforts to enforce the agreements with DISTRIBUTORS and customers specified in this Sublicensing Agreement.

2.07 If a DISTRIBUTOR fails to fulfill one or more of its obligations under the agreement required by Section 2.03, AT&T may, upon its election and in addition to any other remedies that it may have, at any time notify LICENSEE in writing of such breach and require LICENSEE to terminate all the rights granted in such agreement by not less than two (2) months' written notice to such DISTRIBUTOR specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied; upon such termination such DISTRIBUTOR shall within thirty (30) days immediately discontinue use of and return or destroy all copies of SUBLICENSED PRODUCTS in its possession.

2.08 (a) Any notice acknowledging a contribution of a third party appearing in a SOFTWARE PRODUCT shall be included in corresponding portions of SUBLICENSED PRODUCTS made by LICENSEE or AUTHORIZED COPIERS.

(b) Each portion of a **SUBLICENSSED PRODUCT** shall include an appropriate copyright notice. Such copyright notice may be the copyright notice or notices appearing in or on the corresponding portions of the **SOFTWARE PRODUCT** on which such **SUBLICENSSED PRODUCT** is based or, if copyrightable changes are made in developing such **SUBLICENSSED PRODUCT**, a copyright notice identifying the owner of such changes.

2.09 In certain cases AT&T may make copies of software materials available on appropriate media for purchase by **LICENSEE** for distribution by **LICENSEE** as **SUBLICENSSED PRODUCTS**. However, purchase of such copies shall not relieve **LICENSEE** of its obligation to pay fees under this Sublicensing Agreement for such **SUBLICENSSED PRODUCTS**.

2.10 No right is granted hereunder or under the Software Agreement to use any trademark of AT&T (or a corporate affiliate thereof) in the name of the **SUBLICENSSED PRODUCTS** offered or furnished to customers by **LICENSEE** or **DISTRIBUTORS**. However, **LICENSEE** and **DISTRIBUTORS** may state in advertising, publicity, packaging, labeling or otherwise that a **SUBLICENSSED PRODUCT** is derived from AT&T'S software under license from AT&T and identify such software (including any trademark, provided the proprietor of the trademark is appropriately identified). **LICENSEE** agrees, for itself and its **DISTRIBUTORS**, not to use a name or trademark for a **SUBLICENSSED PRODUCT** that is confusingly similar to a name or trademark used by AT&T (or a corporate affiliate thereof).

III. TERM

3.01 This Sublicensing Agreement shall become effective for an initial period that expires one year from the end of the quarter (ending March 31st, June 30th, September 30th or December 31st) during which this Sublicensing Agreement is accepted.

3.02 Unless **LICENSEE** notifies AT&T in writing or AT&T notifies **LICENSEE** in writing at least thirty (30) days before the expiration date established in Section 3.01 that such party does not wish renewal, this Sublicensing Agreement shall be renewed automatically for an additional one-year period and shall continue to be renewed in such a manner from year to year. Alternatively, new one-year periods may be initiated as specified in Section 4.02(d).

3.03 If **LICENSEE** fails to fulfill one or more of its obligations under this Sublicensing Agreement or the Software Agreement, AT&T may, upon its election and in addition to any other remedies that it may have, at any time terminate all the rights granted by it hereunder and under the Software Agreement by not less than two (2) months' written notice to **LICENSEE** specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied; upon such termination **LICENSEE** shall immediately discontinue use of and return or destroy all copies of **SOFTWARE PRODUCTS** covered by the Software Agreement and immediately discontinue distribution and use of and destroy all copies of **SUBLICENSSED PRODUCTS** in its possession.

3.04 Neither the expiration of this Sublicensing Agreement nor the termination of LICENSEE'S rights hereunder shall relieve LICENSEE of its obligation to pay any fee hereunder. In the event of termination of LICENSEE'S rights hereunder, all fees that LICENSEE has become obligated to pay hereunder shall become immediately due and payable.

3.05 LICENSEE agrees that when a SUBSIDIARY'S or a DISTRIBUTOR'S relationship to LICENSEE changes so that it is no longer a SUBSIDIARY or a DISTRIBUTOR of LICENSEE, all rights of such former SUBSIDIARY or DISTRIBUTOR under this Sublicensing Agreement shall immediately cease, and such former SUBSIDIARY or DISTRIBUTOR shall return to LICENSEE or destroy all copies of SUBLICENSSED PRODUCTS for which per-copy fees have not been paid to AT&T. However, such former SUBSIDIARY or DISTRIBUTOR may continue to use copies of SUBLICENSSED PRODUCTS for which per-copy fees have been paid on the same basis that a customer may use copies of SUBLICENSSED PRODUCTS pursuant to Section 2.01(a).

IV. FEES AND DISCOUNTS

4.01 (a) For rights granted under this Sublicensing Agreement, LICENSEE shall pay to AT&T, in the manner and at the times specified in Article V, any initial sublicensing fee specified for the SOFTWARE PRODUCT on which a SUBLICENSSED PRODUCT is based and a per-copy fee for each copy of a SUBLICENSSED PRODUCT either (i) furnished by LICENSEE to a customer or to a DISTRIBUTOR, (ii) made by an AUTHORIZED COPIER and furnished by such AUTHORIZED COPIER to a customer or to another DISTRIBUTOR or (iii) put into use by LICENSEE on a CPU of LICENSEE. The amounts of such sublicensing fees are listed in the Schedule for each SOFTWARE PRODUCT.

(b) Amounts paid to AT&T under this Sublicensing Agreement for a copy of a SUBLICENSSED PRODUCT furnished to a particular customer shall not be creditable toward any fees payable under any agreement between AT&T (or between a corporate affiliate thereof) and such customer.

(c) Fees paid to AT&T under this Sublicensing Agreement shall not be creditable toward fees that become payable under the Software Agreement. Fees paid under the Software Agreement shall not be creditable toward fees that become payable under this Sublicensing Agreement.

(d) No additional fee is payable for the transfer of a SUBLICENSSED PRODUCT from one customer to another customer in conjunction with the transfer of a CPU between such customers, provided that the first customer does not retain any portion of the SUBLICENSSED PRODUCT after such transfer and that agreement of the second customer is obtained in accordance with Sections 2.01 and 2.02. Such transfer of a SUBLICENSSED PRODUCT may result from, for example, a sale of a CPU by the first customer to the second customer or the termination of a lease with the first customer for a CPU and the execution of a new lease with the second customer for such CPU.

(e) No additional fee is payable for the transfer of a SUBLICENSSED PRODUCT from one CPU of LICENSEE to another or the transfer of a SUBLICENSSED PRODUCT from one CPU of a customer to another CPU of the same customer.

4.02 (a) The discount percentage applicable during the initial period referred to in Section 3.01 shall be based on LICENSEE'S advance commitment to pay a specified minimum total amount of discounted per-copy fees for SUBLICENSSED PRODUCTS furnished or put into use during such initial period. If no such commitment is made, no discount shall be available during the initial period. The discount percentage and the advance commitment, if any, for the initial period are set forth on page 1 of this Sublicensing Agreement. The discount percentage applicable during each additional one-year period referred to in Section 3.02 shall be based either on LICENSEE'S advance commitment to pay a specified minimum total amount of discounted per-copy fees for such additional one-year period or on the actual total of such fees payable for the preceding period, as LICENSEE shall elect.

(b) Such discount percentage shall be two percent (2%) for each whole one hundred thousand dollars (\$100,000.00) of either the advance commitment or the actual total for the preceding period, as the case may be, up to a maximum of sixty percent (60%).

(c) If LICENSEE elects to base its discount percentage for a forthcoming additional period on its advance commitment, LICENSEE shall notify AT&T in writing of the amount of such advance commitment before the end of the preceding period. If such notification is not received by such time, such discount percentage shall be based on the actual total of discounted per-copy fees payable for the preceding period.

(d) An advance commitment may not be reduced. However, LICENSEE may at any time request of AT&T in writing that the then-current initial-period or additional one-year period be terminated and that a new one-year period be started, beginning with the next quarter, for which new period LICENSEE shall make an advance commitment corresponding to a higher discount percentage than that currently applicable. Such request will be subject to AT&T'S acceptance. In the case of such termination and start of a new period, the discount percentage for the terminated period shall apply to all transactions occurring before the end of such period.

4.03 The section of the Software Agreement relating to taxes shall apply to fees payable under this Sublicensing Agreement.

V. REPORTS AND PAYMENTS

5.01 (a) LICENSEE shall keep full, clear and accurate records of the number of copies of each SUBLICENSSED PRODUCT furnished by it and AUTHORIZED COPIERS to other DISTRIBUTORS and customers and put into use on LICENSEE'S CPUs.

(b) Each AUTHORIZED COPIER shall keep full, clear and accurate records of the number of copies of each SUBLICENSSED PRODUCT furnished by it to other DISTRIBUTORS and customers.

(c) Each AUTHORIZED COPIER shall furnish a statement at least quarterly to LICENSEE identifying the number of copies recorded according to Section 5.01(b) since the previous such statement was furnished.

(d) LICENSEE shall keep full, clear and accurate records of the identities and locations of AUTHORIZED COPIERS.

(e) AT&T shall have the right through its accredited auditing representatives to make an examination and audit, during normal business hours, not more frequently than annually, of all records kept pursuant to this Section by LICENSEE and AUTHORIZED COPIERS and such other records and accounts as may under recognized accounting practices contain information bearing upon the amounts of fees payable to it under this Sublicensing Agreement. Prompt adjustment shall be made by the proper party to compensate for any errors or omissions disclosed by such examination or audit. Neither such right to examine and audit nor the right to receive such adjustment shall be affected by any statement to the contrary, appearing on checks or otherwise, unless such statement appears in a letter, signed by the party having such right and delivered to the other party, expressly waiving such right.

5.02 (a) LICENSEE shall notify AT&T in writing at least thirty (30) days in advance of the date LICENSEE intends to begin furnishing copies of a SUBLICENSED PRODUCT to customers or DISTRIBUTORS or putting any such copies into use on LICENSEE'S CPUs. Before such date LICENSEE shall pay to AT&T any initial sublicensing fee specified for the SOFTWARE PRODUCT on which such SUBLICENSED PRODUCT is based. Discount percentages established under Section 4.02 do not apply to initial sublicensing fees.

(b) Within thirty (30) days after the end of each quarter ending on March 31st, June 30th, September 30th or December 31st, commencing with the quarter during which this Sublicensing Agreement first becomes effective, LICENSEE shall furnish to AT&T a statement, in form acceptable to AT&T, certified by an authorized representative of LICENSEE, identifying the number of copies of each SUBLICENSED PRODUCT furnished by it and AUTHORIZED COPIERS or put into use on LICENSEE'S CPUs, the SOFTWARE PRODUCT on which each such SUBLICENSED PRODUCT is based, the per-copy fees for such copies and the net fees payable after the applicable discount percentage is taken into account. If the per-copy fees for a particular SUBLICENSED PRODUCT are based on a characteristic such as number of users supported, information on such characteristic for the copies of such SUBLICENSED PRODUCT furnished or put into use shall also be included in such statement. Each SUBLICENSED PRODUCT for which LICENSEE has given notice to AT&T pursuant to Section 5.02(a) shall be covered by such statement. In each such statement, LICENSEE shall also fully identify any AUTHORIZED COPIER added or terminated during the quarter covered by such statement.

(c) Within such thirty (30) days LICENSEE shall, irrespective of its own business and accounting methods, pay to AT&T the net fees payable for such quarter as shown in the statement required by Section 5.02(b), except that if the applicable discount percentage is based on an advance commitment for a period, LICENSEE shall pay the net fees payable for such quarter plus any additional amount necessary for the total of amounts paid for such period after the first, second, third and fourth full quarters thereof to be, respectively, one-quarter, one-half, three-quarters and the full amount of such advance commitment. Any such additional amount paid during a period shall be creditable against net fees payable later in the same period, but no such additional amount remaining at the end of the fourth full quarter of a period shall be refunded or creditable against any other amounts payable to AT&T. If AT&T accepts a new one-year period pursuant to Section 4.02(d), no such additional amount remaining at the end of the last full quarter of the terminated period shall be refunded or creditable against any other amounts payable to AT&T.

(d) LICENSEE shall furnish whatever additional information AT&T may reasonably prescribe from time to time to enable AT&T to ascertain the amounts of fees payable pursuant hereto.

5.03 Payments provided for in this Sublicensing Agreement shall, when overdue, be subject to a late payment charge calculated at an annual rate of one percent (1%) over the posted prime rate or successive posted prime rates in effect in New York City during delinquency; provided, however, that if the amount of such late payment charge exceeds the maximum permitted by law for such charge, such charge shall be reduced to such maximum amount.

VI. MISCELLANEOUS PROVISIONS

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

6.02 (a) Payments to AT&T under this Sublicensing Agreement shall be made payable and sent to:

AT&T TECHNOLOGIES, INC.
P.O. Box 65080
Charlotte, North Carolina 28265

(b) Correspondence with AT&T relating to this Sublicensing Agreement shall be sent to:

AT&T TECHNOLOGIES, INC.
Software Sales and Marketing Organization
P.O. Box 25000
Greensboro, North Carolina 27420

(c) Any payment, statement, notice, request or other communication shall be deemed to be sufficiently given to the addressee and any delivery hereunder deemed made when sent by certified mail addressed to LICENSEE at its office specified in this Sublicensing Agreement or to AT&T at the appropriate address specified in this Section 6.02. Each party to this Sublicensing Agreement may change an address relating to it by written notice to the other party.

6.03 The limited grant of rights under patents in the Software Agreement applies to any use permitted under Section 2.01 of this Sublicensing Agreement.

6.04 If LICENSEE is not a corporation, all references to LICENSEE'S SUBSIDIARIES shall be deemed deleted.

6.05 The construction and performance of this Sublicensing Agreement shall be governed by the law of the State of New York.

AT&T TECHNOLOGIES, INC.
Substitution Agreement

CONFIDENTIAL

The following agreements ("the prior agreements") are in effect between AT&T TECHNOLOGIES, INC., a New York corporation ("AT&T"), or an affiliate thereof, and INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation ("LICENSEE"):

1. January 1, 1982 Software Agreement, as Modified, Relating to UNIX* System V, Release 2.0 and other UNIX Operating Systems.
2. June 2, 1983 Supplemental Agreement (Customer Provisions) relating to UNIX System V, Release 2.0 and other UNIX Operating Systems.

Agreement Numbers SOFT-00015 and SUB-00015A----- between AT&T and LICENSEE ("the new agreements") are hereby substituted for the prior agreements. Accordingly, the rights and obligations of the parties under the prior agreements are terminated and replaced by the rights and obligations of the parties under the new agreements. No other agreements between the parties hereto are affected by this Agreement.

The following provision is applicable
 not applicable:

The discount percentage for the initial period pursuant to Agreement No. _____ is _____ %, based on total per-copy fees of \$ _____ paid by LICENSEE under the prior Supplemental Agreement (Customer Provisions) listed above relating to UNIX* System III and/or UNIX System V.

INTERNATIONAL BUSINESS MACHINES CORPORATION

Accepted by:
AT&T TECHNOLOGIES, INC.

By [Signature] _____
(Signature) (Date)

By [Signature] _____
(Signature) (Date)

R. A. McDonald
(Type or print name)

O. L. WILSON
(Type or print name)

UNIX SYSTEMS DIVISION
(Title)

Manager, Software Sales and Marketing
(Title)

*UNIX is a trademark of AT&T Bell Laboratories.



AT&T
Technology Systems

O. L. Wilson
Manager, Software
Sales and Marketing

Guilford Center
P. O. Box 25000
Greensboro, N.C. 27420
919 279-7078

FEB 11 1985

INTERNATIONAL BUSINESS MACHINES CORPORATION
Old Orchard Road
Armonk, New York 10504

Gentlemen:

Re: Software Agreement Number SOFT-00015, Sublicensing
Agreement Number SUB-00015A and Substitution Agreement
Number XFER-00015B

This letter states understandings between our companies relating to the referenced agreements and amends certain sections in such agreements concerning SOFTWARE PRODUCTS subject to the referenced Software Agreement.

A. Software Agreement

1. Regarding Sections 2.01 and 4.01, we will consider extending rights granted under Section 2.01 to include use of SOFTWARE PRODUCTS in countries other than the United States and giving written consent under Section 4.01 to export SOFTWARE PRODUCTS to such countries when specific needs arise. In the case of additional DESIGNATED CPUs in such countries such extension and consents will be given by the Supplements for such CPUs prepared in accordance with Section 2.03. In the case of your export of modified SOFTWARE PRODUCTS to our source licensees in such countries such consents will be given by an appropriate writing consistent with Section 7.06(b). We are presently willing to grant such rights for the countries you have requested, namely, Australia, Austria, Belgium, Canada, Republic of China (Taiwan), Denmark, Finland, France, Federal Republic of Germany (West Germany), Greece, Hong Kong, Ireland, Israel, Italy, Japan, Republic of Korea (South Korea), Luxembourg, The Netherlands, New Zealand, Norway, Sweden, Switzerland, United Kingdom (England, Wales, Scotland, Northern Ireland), and Singapore. We will not unreasonably withhold such permission for such listed countries or for other countries that you may identify. Our concerns in this regard are the laws of the recipient country relating to protection of software and U. S. export control laws.

2. Regarding Section 2.01, we agree that modifications and derivative works prepared by or for you are owned by you. However, ownership of any portion or portions of SOFTWARE PRODUCTS included in any such modification or derivative work remains with us.
3. You have requested that your contractors be permitted to use SOFTWARE PRODUCTS pursuant to the referenced Software Agreement.

Accordingly, notwithstanding any provision to the contrary in the Software Agreement, including Section 7.06(a) as amended hereby, it is agreed that, subject to the conditions set forth herein, the rights granted in Section 2.01 of the Software Agreement be extended to permit you to provide access to and allow use of SOFTWARE PRODUCTS by your contractors.

Such use may be on your DESIGNATED CPUs or on such contractors' CPUs that you designate as additional DESIGNATED CPUs pursuant to Section 2.03 of the Software Agreement. Such use by contractors will be deemed to be for your own internal business purposes. If such use is on a contractor's CPU, you may furnish a copy of a SOFTWARE PRODUCT to such contractor. You shall secure from each such contractor, at the time of or before providing access to or furnishing any copy of a SOFTWARE PRODUCT, the agreement of such contractor in writing that any claim, demand or right of action arising on behalf of such contractor from access to or use of the SOFTWARE PRODUCT shall be solely against you and that such contractor agrees to the same obligations and responsibilities as to confidentiality and other restrictions pertaining to the use of the SOFTWARE PRODUCT as those undertaken by you under the Software Agreement. Each such agreement shall also provide that, when a contractor's work for you is completed, all copies of the SOFTWARE PRODUCT and any software derived from or developed with the use of a SOFTWARE PRODUCT shall be returned to you by such contractor and such contractor shall erase any such software from any storage element of apparatus. Copies of such agreements with contractors shall be provided to us at our request. However, portions of such agreements not specifically required by this paragraph may be deleted. Information furnished by LICENSEE relating to contractors shall be subject to Paragraph A15 in this Letter Agreement.

4. Regarding Section 5.04, we agree that you shall not be obligated to pay any tax based on our net income in the United States or elsewhere.

5. Regarding Section 6.03 of the Software Agreement and Sections 2.07 and 3.03 of the Sublicensing Agreement, we will not terminate your rights for breach, nor will we give notice of termination under such Sections, for breaches we consider to be immaterial. We agree to lengthen the notice period referenced in such Sections from two (2) months to one hundred (100) days. If a breach occurs that causes us to give notice of termination, you may remedy the breach to avoid termination if you are willing and able to do so. In the event that a notice of termination is given to you under either of such Sections and you are making reasonable efforts to remedy the breach but you are unable to complete the remedy in the specified notice period, we will not unreasonably withhold our approval of a request by you for reasonable extension of such period. We will also consider a reasonable extension under Section 2.07 of the Sublicensing Agreement in the case of a DISTRIBUTOR who is making reasonable efforts to remedy a breach.

We will consider arbitration if a dispute arises on payments.

In any event our respective representatives will exert their mutual good faith best efforts to resolve any alleged breach short of termination.

6. Regarding Section 6.05 of the Software Agreement and Section 3.05 of the Sublicensing Agreement, we will offer new software and sublicensing agreements to your former SUBSIDIARIES on the same basis as to any other prospective licensee. A former SUBSIDIARY would be unlicensed during the period between its ceasing to be your SUBSIDIARY and the effective date of such new agreements. Therefore, new agreements should be in effect before a SUBSIDIARY is divested.
7. Regarding Section 7.03, we are not aware of any patent or copyright infringement action against us relating to SOFTWARE PRODUCTS.
8. Regarding Section 7.05, we will cooperate with you in defending litigation arising from your use of SOFTWARE PRODUCTS (or sublicensing of SUBLICENSED PRODUCTS under the Sublicensing Agreement), but the extent of such cooperation cannot be determined until such litigation arises.
9. Amend Section 7.06(a) by replacing such section with the following:

--7.06(a) LICENSEE agrees that it shall hold SOFTWARE PRODUCTS subject to this Agreement in confidence for AT&T. LICENSEE further agrees that it shall not make any disclosure of such SOFTWARE PRODUCTS to anyone, except to employees of LICENSEE to whom such disclosure is necessary to the use for which rights are granted hereunder. LICENSEE shall appropriately notify each employee to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by such employee. Nothing in this agreement shall prevent LICENSEE from developing or marketing products or services employing ideas, concepts, know-how or techniques relating to data processing embodied in SOFTWARE PRODUCTS subject to this Agreement, provided that LICENSEE shall not copy any code from such SOFTWARE PRODUCTS into any such product or in connection with any such service and employees of LICENSEE shall not refer to the physical documents and materials comprising SOFTWARE PRODUCTS subject to this Agreement when they are developing any such products or service or providing any such service. If information relating to a SOFTWARE PRODUCT subject to this Agreement at any time becomes available without restriction to the general public by acts not attributable to LICENSEE or its employees, LICENSEE'S obligations under this section shall not apply to such information after such time.--.

10. Regarding Section 7.06(b), this section covers the situation where one of our licensees wishes to furnish its modified version of our source code for a SOFTWARE PRODUCT to another of our licensees for the same product. The last sentence of this section makes clear that you may receive source code from another such licensee, provided you treat such source code as if it were the source code we furnished to you. This language is not intended to refer to an object-code product that you obtain from another of our licensees pursuant to that licensee's sublicensing rights.
11. Regarding Section 7.06, we recognize that you may at some time be required to disclose a SOFTWARE PRODUCT to others (i) by law, (ii) by a valid order of a court or other governmental body, (iii) by your existing undertaking with the European Economic Community or (iv) in order to establish

your rights under the Software Agreement. You recognize the proprietary nature of SOFTWARE PRODUCTS and the need to protect SOFTWARE PRODUCTS from unrestricted disclosure. Accordingly, you agree not to make any such disclosure without giving notice to us so that we have an opportunity to intervene. We agree to respond to any such notice within a reasonable time, consistent with the requirement that you disclose. You agree to obtain, or assist us in obtaining, a protective order appropriately limiting the extent of any such disclosure that may eventually be made.

12. We agree that all SOFTWARE PRODUCTS, including enhancements to or new versions of existing SOFTWARE PRODUCTS, generally available under the Software Agreement will be made available to you at the fees and under terms, warranties and benefits equivalent to those offered to other licensees.
13. Regarding Section 1(e) of the "Schedule for UNIX* System V, Release 2.0, Version 1.0" attached to Supplement 1 of the Software Agreement, Section 1(c) of the "Schedule for UNIX Documenter's Workbench** Software" attached to Supplement 2 of the Software Agreement, and the "Schedule for 370 DEVELOPMENT SYSTEM V" attached to Supplement 3 of the Software Agreement, we agree that the fees in such Schedules are not subject to increase.
14. Regarding the documentation listed in Section 2 of the Schedule for UNIX System V, Release 2.0, Version 1.0, the documents entitled "UNIX System V System Release Description" and "UNIX System V-International Release Description" are not presently available without restriction to the general public. All other listed documents are available without restriction.
15. We agree that the identities of your contractors, DISTRIBUTORS and AUTHORIZED COPIERS, as well as the types and serial numbers of DESIGNATED CPUS of such parties, are confidential and need only be disclosed to us as specified under the referenced agreements, as modified hereby, and that such information will be used by us only for the purposes of administering and enforcing such agreements and will not be disclosed to anyone except those having a need to know for the purpose of administering the referenced agreements.

*UNIX is a trademark of AT&T Bell Laboratories.

**Documenter's Workbench is a trademark of AT&T Technologies.

B. Sublicensing Agreement

1. A DISTRIBUTOR may also be your contractor pursuant to the terms set forth in item A3 above.
2. We agree that "internal business purposes" in Sections 2.01(a) and 2.01(b) includes the right to offer data processing services to others.
3. Regarding the following IBM form agreements:

<u>Our Reference</u>	<u>Form No.</u>	<u>Title</u>
1.	Z125-3358-0	Agreement for IBM Licensed Programs
2.	Z125-3419-0	IBM Usage License Amendment to Agreement for IBM Licensed Programs
3.	Z125-3301-0	IBM Program License Agreement
4.	Z137-0075-0	IBM Instruments, Inc. Program License Agreement
5.	04-83	Amendment to Agreement for IBM Licensed Programs (Value Added Remarketer)
6.	04-83	Agreement for IBM Licensed Programs (Value Added Remarketer's Licensed End User)
7.	6172208	IBM Program License Agreement
8.	Unnumbered	IBM Personal Computer Retail Dealer Agreement, Software
9.	926-2661-0D	IBM Personal Computer Retail Dealer Agreement

We have reviewed such form agreements for use under the provisions of the Sublicensing Agreement and have no objections to such use, or the use of substantially similar forms, in the United States and Puerto Rico provided that:

(a) In using forms such as 1 and 6 (our references), you will not specify "Installation License Applies" or "Location License Applies";

(b) If your customer is permitted to make its own additional copies of "licensed program materials" for use on additional machines, as permitted under form 1, you treat such additional copies under the Sublicensing Agreement as if you had furnished such copies;

(c) In the next revision of form 3 you correct the language in the second paragraph relating to title to indicate that title may be retained by a third party (or by your licensor);

(d) In the next revision of forms 4 and 7 you include a provision prohibiting reverse assembly or reverse compilation, as appears in forms 1, 3 and 6; and

(e) In dealing with AUTHORIZED COPIERS you obligate such parties to include in copies they make of SUBLICENSED PRODUCTS the notices required by Section 2.08(a) of the Sublicensing Agreement.

4. Amend Section 2.02 by changing "written agreement on the package" to --written agreement on or accompanying the package--.

5. Amend Section 2.05(b) by replacing such Section with the following:

--(b) If an AUTHORIZED COPIER also has been granted a right to use a SOFTWARE PRODUCT, either as a licensee of AT&T (or of a corporate affiliate thereof) or as a contractor of LICENSEE (in accordance with requirements of AT&T), such AUTHORIZED COPIER may use such SOFTWARE PRODUCT to modify a SUBLICENSED PRODUCT derived from such SOFTWARE PRODUCT. If the resulting modifications are owned solely by LICENSEE, then fees for copies of such modified SUBLICENSED PRODUCT distributed to customers by such AUTHORIZED COPIER may be paid to AT&T pursuant to this Sublicensing Agreement or pursuant to a Sublicensing Agreement between AT&T and such AUTHORIZED COPIER, as LICENSEE shall elect. However, if such AUTHORIZED COPIER retains any ownership interest in such modifications, then fees for copies of such modified SUBLICENSED PRODUCT distributed to customers by such AUTHORIZED COPIER must be paid to AT&T only pursuant to a Sublicensing Agreement between AT&T and such AUTHORIZED COPIER. Regardless of which Sublicensing Agreement is involved, only one fee shall be collected by AT&T for such copy.--.

6. Regarding Section 2.06, "best efforts" need be no more than the efforts you would customarily use to enforce equivalent agreements (such as those listed in B3 above) with your customers, value added resellers, end users, and dealers.

7. Regarding Section 2.08(a), only bona fide notices need be included, not irrelevant comments that may appear in a SOFTWARE PRODUCT.

8. Regarding Section 2.09, we have not yet made any copies of software materials available under this Section. If we do so, you may elect whether to make your own copies or purchase such copies from us.
9. Regarding the references you are permitted to make to our trademark under Section 2.10, you are under no obligation to make such references.
10. Amend Section 3.02, first and second lines, by deleting "or AT&T notifies LICENSEE in writing", and, third line, by changing "such party" to --LICENSEE--.
11. The discount provisions in the Sublicensing Agreement are deleted. We will exert our good faith best efforts to propose a new discount provision by April 1, 1985. Such new discount provisions will be retroactive to the effective date of the Sublicensing Agreement and, at a minimum will:
 - (i) provide a discount percentage, applicable to essentially yearly discount periods, of at least two percent (2%) for each whole one hundred thousand dollars (\$100,000.00) of discounted per-copy fees up to a maximum of sixty percent (60%), or equivalent;
 - (ii) require advance payment of per-copy fees by you no more frequently than quarterly;
 - (iii) require no advance commitment by you regarding volume of SUBLICENSSED PRODUCTS furnished to customers or put into use; and
 - (iv) provide for no retention by us of advance payments made by you unless mutually agreed.
12. Regarding Section 5.01, we agree that neither you nor your AUTHORIZED COPIERS or DISTRIBUTORS will be required to provide or disclose the identity of customers to us or our accredited auditing representatives.
13. Regarding Section 5.02(a), we agree that the notification in writing required by such Section may be within thirty (30) days after the date you begin furnishing copies of a SUBLICENSSED PRODUCT to customers or DISTRIBUTORS or putting such copies into use on your CPUs, and that you may pay any Sublicensing Fee for the SOFTWARE PRODUCT on which such SUBLICENSSED PRODUCT is based at the time of such notification.

14. Regarding Section 5.02(c), you need not pay a per-copy fee for copies of SUBLICENSED PRODUCTS that are returned without having been used or are furnished in place of a defective copy. You are not required to pay an additional per-copy fee for an enhancement if the enhancement does not increase the number of users supported by a product into the next higher category. However, when we furnish later versions of a SOFTWARE PRODUCT with new features, we may require payment of additional sublicensing fees to upgrade your earlier SUBLICENSED PRODUCTS to include the new features.
15. Regarding the documentation you may furnish to a customer or end user, which documentation is defined as part of a SUBLICENSED PRODUCT, you may furnish the number of copies necessary to reasonably support the product without paying an additional sublicensing fee. You may also furnish to prospective customers the number of copies of such documentation necessary to reasonably support the marketing of the SUBLICENSED PRODUCT without paying a sublicensing fee for such copies.
16. Regarding your obligation under the Sublicensing Agreement to pay per-copy sublicensing fees for SUBLICENSED PRODUCTS furnished to customers (or put into use on your internal CPUs), we recognize that certain of your SUBLICENSED PRODUCTS may comprise a set of parts, with one major part being a prerequisite for the other, minor part(s), such that if you furnished (or put into use) all the parts together you would be obligated to pay only one per-copy fee. However, we understand that you wish to furnish (or put into use) the parts separately, paying the full per-copy fee when you furnish (or put into use) the major part and no fee at all when you furnish (or put into use) the minor part(s). We agree that you may do this, provided that you report, pursuant to Section 5.02 of the Sublicensing Agreement, the quantities of each major and minor part furnished (or put into use) and that such quantities be reconciled periodically to determine whether the quantity of any minor part ever exceeds the quantity of major parts, and that if there is such an excess, you pay an additional per-copy fee for each excess minor part. We will exert our good faith best efforts to propose by April 1, 1985 methods for such reconciliation and for determining such additional per-copy fees. We would expect such fees to be based on a proportional reduction of the full per-copy fee with the objective of achieving an equitable fee arrangement, taking into account the excess quantities of minor parts over major parts. The discount arrangement applicable to the full per-copy fees will also apply to the additional per-copy fees.

C. Substitution Agreement

Regarding **SUBLICENSSED PRODUCTS** based on **LICENSED SOFTWARE** under the prior Software Agreement listed in the Substitution Agreement, we agree that you may elect to pay per-copy sublicensing fees for some such **SUBLICENSSED PRODUCTS** at the rates set forth in Sections 4.01(a) and (b) of the prior Supplemental Agreement (Customer Provisions) ("the old rates") and other such **SUBLICENSSED PRODUCTS** at the rates set forth in Section 1(c) of the Schedule for UNIX System V, Release 2.0 ("the new rates"), provided:

(a) You pay the Initial Sublicensing Fee specified in Section 1(c)(i) of such Schedule when you begin paying some per-copy fees at the new rates while continuing to pay other per-copy fees at the old rates. (Such Initial Sublicensing Fee will be waived if you elect to pay all per-copy fees at the new rates.)

(b) Per-copy fees you pay under the old rates do not apply to the determination of any discount percentage under the new Sublicensing Agreement and per-copy fees you pay under the new rates do not apply to the "Cumulative Total of Fees Paid" under the prior Supplemental Agreement (Customer Provisions).

(c) In the statements furnished pursuant to Section 5.02(b) of the new Sublicensing Agreement you clearly distinguish whether you are applying the old rates or the new rates for relevant **SUBLICENSSED PRODUCTS**.

Capitalized terms in this letter agreement are defined in the referenced agreements.

INTERNATIONAL BUSINESS MACHINES
CORPORATION

11.

If you agree with the above understandings and amendments, please so indicate by signing and dating the attached copy of this letter agreement in the spaces provided therefor and returning such copy to us.

Very truly yours,

AT&T TECHNOLOGIES, INC.

By *J. O. L. Wilson*
Jr. O. L. Wilson

ACCEPTED AND AGREED TO:

INTERNATIONAL BUSINESS MACHINES CORPORATION

By *B. A. McDonald*
Title *Council - System Product Division*
Date *February 1, 1985*

INTERNATIONAL BUSINESS
MACHINES CORPORATION

Licensee

Agreement Number SOFT-00015

Supplement Number 170-----

AT&T INFORMATION SYSTEMS INC.
SOFTWARE AGREEMENT SUPPLEMENT

The CPU(s) listed below are hereby made DESIGNATED CPUs for the following SOFTWARE PRODUCT: UNIX® System V, Release 3.2 (as an upgrade from UNIX System V, Release 3.1)----- subject to the referenced Agreement. A Schedule for such SOFTWARE PRODUCT is attached to this Supplement.

Location	DESIGNATED CPUs	Source or	Fee
SEE ATTACHMENT A	Type Serial No.	Object	\$6,000.00*

*This fee covers use of UNIX System V, Release 3.2 on the DESIGNATED CPUs listed in Attachment A to this Supplement Number 170.

This Supplement is attached to and made a part of the referenced Agreement. Execution and acceptance of such Agreement also constitutes execution and acceptance of this Supplement.

Execution and acceptance of this Supplement follow.

Accepted by:

AT&T INFORMATION
SYSTEMS INC.

LICENSEE

By _____
(Signature) (Date)

By _____
(Signature) (Date)

(Type or print name)

O. L. WILSON

(Type or print name)

(Title)

Manager, UNIX® Software Licensing

(Title)



O. L. Wilson
Manager - UNIX® Software Licensing
Information Systems

P.O. Box 25000
Greensboro, NC 27420
Phone (919) 855-2720

JAN 25 1988

INTERNATIONAL BUSINESS MACHINES CORPORATION
11400 Burnet Road
Austin, TX 78758

Gentlemen:

Re: Software Agreement Number SOFT-00015; Supplement
Number 170 relating to UNIX® System V, Release 3.2

This letter responds to a November 29, 1988 letter from your Mr. R. L. Stephenson to our Mr. S. D. Vuksanovich and amends the referenced schedule for UNIX System V, Release 3.2 dated September 20, 1988.

Paragraph 1, Subsection (c) is deleted in its entirety and replaced with the following:

- (c) Any increase of right-to-use fees, upgrade fees and the distribution fees shall be no more frequent than annually. Any such annual increase of right-to-use fees, upgrade fees and the distribution fees will be no greater than the annual increase calculated by using the Unadjusted Consumer Price Index (CPI) for All Urban Consumers as published by the Bureau of Labor Statistics, U. S. Department of Commerce.

If you agree with the above proposed amendment, please so indicate by signing and dating the attached copy of this letter and returning such copy to us.

Very truly yours,

AT&T INFORMATION SYSTEMS INC.

By O. L. Wilson

ACCEPTED AND AGREED TO:

INTERNATIONAL BUSINESS MACHINES CORPORATION

By [Signature]

(Type or Print Name)

Title [Signature]

Date [Signature]

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Pg from
Attachment A

Upgrade Schedule for
Upgrades from UNIX* System V, Release 3.1
to UNIX System V, Release 3.2 or from
UNIX System V, Release 3.1 International Edition**
to UNIX System V, Release 3.2 International Edition**
September 20, 1988

1. Fees

(a) Upgrade Fees

From UNIX System V, Release 3.1 or UNIX System V,
Release 3.1 International Edition US\$ 6,000

(b) Distribution fee for each additional copy of this
SOFTWARE PRODUCT US\$ 2,000 ✓

(c) The fees specified in items 1(a) and (b) above are
subject to change upon ninety (90) days notice.

2. Documentation Furnished

(a) Printed Documentation

AT&T 3B2 Computer UNIX System V Release 3.2

- Release Notes
- Update to System Administrator's Guide
- Update to User's Reference Manual
- Update to System Administrator's Reference Manual
- Framed Access Command Environment User's Guide
- User Interface Utilities Release Notes
- Form and Menu Language Interpreter Programmer's Guide
- 2K File System Utilities Release Notes
- Network Support Utilities 1.2 Release Notes
- Update to the STREAMS Programmer's Guide
- Remote File Sharing Utilities 1.2 Release Notes
- Remote File Sharing Utilities Update to the System
Administrator's Guide
- Update to the User's Guide
- Update to the Programmer's Guide
- Update to the Programmer's Reference Manual
- Addendum to System V Porting Rules
- System Performance Analysis Utilities Guide

AT&T UNIX System V, Release 3.2 Source Code Provision Release Notes

*UNIX is a registered trademark of AT&T in the USA and other countries.

**Furnished to LICENSEES outside the United States.

**Upgrade Schedule for
Upgrades from UNIX* System V, Release 3.1
to UNIX System V, Release 3.2 or from
UNIX System V, Release 3.1 International Edition**
to UNIX System V, Release 3.2 International Edition**
September 20, 1988**

2. Documentation Furnished (Continued)

- (b) LICENSEE may reproduce no more than two (2) copies of the printed documentation per DESIGNATED CPU. Additional copies may be reproduced only upon execution of a Supplement for UNIX System V, Release 3.2 - Documentation Reproduction Provisions and payment of the appropriate fees.
- (c) AT&T UNIX System V, Release 3.2 Source Code Provisions Release Notes and AT&T 3B2 Computer UNIX System V, Release 3.2 - Addendum to System V Porting Rules are proprietary to AT&T and are only available to source code licensees for UNIX System V, Release 3.2 or UNIX System V, Release 3.2 International Edition.

3. COMPUTER PROGRAMS Furnished

The COMPUTER PROGRAMS listed in this section will be supplied on nine track, 1600 BPI magnetic tape or data cartridge for the AT&T 3B2/400.

Source code administration - includes the following directories and their associated files:

/etc/syslist
/etc/updlist
/etc/rlist

4. Sublicensing (under a Sublicensing Agreement)

- (a) The following documents are proprietary to AT&T and may not be distributed with a SUBLICENSSED PRODUCT:
 - AT&T UNIX System V, Release 3.2 Source Code Provision Release Notes
 - AT&T 3B2 Computer UNIX System V, Release 3.2 - Addendum to System V Porting Rules

Upgrade Schedule for
Upgrades from UNIX* System V, Release 3.1
to UNIX System V, Release 3.2 or from
UNIX System V, Release 3.1 International Edition**
to UNIX System V, Release 3.2 International Edition**
September 20, 1988

- (b) Not more than two (2) copies of the permitted printed documentation may be reproduced and distributed with each copy of a SUBLICENSED PRODUCT without execution of a Supplement for UNIX System V, Release 3.2 Documentation Reproduction Provision and payment of the appropriate fees.
- (c) The sublicensing per-copy fee specified in Section 1 of the Schedule for UNIX System V, Release 3.0 or UNIX System V, Release 3.1, as applicable, is waived if a SUBLICENSED PRODUCT based on UNIX System V, Release 3.2 is provided as an upgrade to a SUBLICENSED PRODUCT based on UNIX System V, Release 3.0 or UNIX System V, Release 3.1 previously distributed and paid for.

AT&T / Unix Licenses

INTERNATIONAL BUSINESS MACHINES CORPORATION
THE SANTA CRUZ OPERATION, INC.

Agreement to Amend Software Agreement SOFT-00015,
Sublicensing Agreement SUB-00015A, and
Software Agreement SOFT-00015 Supplement No. 170
and Supplement No. 157

This agreement ("Agreement") is between International Business Machines Corporation, a New York corporation, with a place of business at Old Orchard Road, Armonk, New York 10504 ("IBM") and Novell, Inc., a Delaware corporation, with a place of business at 2180 Fortune Drive, San Jose, California 95131 ("Novell") on behalf of The Santa Cruz Operation, Inc. ("SCO"). This Agreement becomes effective when executed by an authorized representative of Novell, on behalf of SCO and IBM (the "Effective Date").

RECITALS

Novell and IBM entered into various software license agreements concerning UNIX System V, Release 3.2 ("SVR3.2") and UNIX Documenter's Workbench 2.0, which are Software Agreement SOFT-00015, Sublicensing Agreement SUB-00015A, and Software Agreement SOFT-00015 Supplement No. 170 and Supplement No. 157 (the "Related Agreements"). Except for all right, title and interest to the SVR royalties (less an administration fee to SCO for administering the collection of such royalties), SCO purchased the Related Agreements in an Asset Purchase Agreement between Novell and IBM dated September 19, 1995 (the "SCO Agreement"). In the SCO Agreement, Novell has the right to amend the Related Agreements on behalf of SCO under certain circumstances applicable in this instance. In an effort to simplify the royalty requirements contained in the Related Agreements, the following modifications to the terms and conditions of the Related Agreements have been mutually agreed to by both parties. Capitalized terms in this Agreement will have the meanings assigned to them in this Agreement. All capitalized terms not defined herein will have the meanings assigned to them in the Related Agreements.

AGREEMENT

Novell, on behalf of SCO, and IBM agree as follows:

- 1 Per Copy Fees. IBM will have the right to distribute an unlimited number of binary copies of SVR3.2 and previous releases and UNIX Documenter's Workbench 2.0 and previous releases or portions thereof, beginning January 1, 1996 through the end of the term of the Related Agreements at no cost per copy as would otherwise be required per the terms and conditions of the Related Agreements.
- 2 Source Code Right to Use Fees. IBM will no longer owe SCO additional CPU fees for use of the source code to the SVR3.2 and previous releases and Documenter's

Workbench 2.0 and previous releases as would otherwise be required per the terms and conditions of the Related Agreements.

3 *Relief of Section 2.05(c) of SUB-00015A.* The following activities by IBM or relevant third parties will not violate Section 2.05(c) of SUB-00015A:

3.1 IBM's continued use of contractors to develop portions of UNIX System derivative works under the Related Agreements; provided, however, that if any such contractor is not a source code licensee of Novell for the relevant version of SVR3.2 and previous releases, IBM will require such contractor to certify in writing to SCO, upon SCO's request, that any use by such contractor of such source code is on behalf of IBM; and provided, further, that such Sublicensed Product will be targeted for use on IBM labeled or manufactured systems. For purposes of this exemption, "IBM manufactured systems" do not include sub-components of computer systems such as bare processors boards, but may include less than a fully functional computer system such as a complete computer on a board or a system processing unit without a display.

3.2 IBM's entering into relationships with third parties which do not have the effect of materially reducing the UNIX System per-copy fees which would otherwise have been owed by IBM to Novell for the distribution of Sublicensed Products based on UNIX System V software licensed to IBM in the Related Agreements.

4 *Consideration.* As consideration for the above modifications to the terms and conditions of the Related Agreements, IBM agrees to pay SCO, \$12,500,000 per the following payment schedule: \$6,000,000 due on the Effective Date of this Agreement (net 30 days); and \$6,500,000 due on January 1, 1997 (net 15 days).

5 Except as modified herein, all other terms and conditions of the Related Agreements will remain in effect.

INTERNATIONAL BUSINESS
MACHINES

By: _____

(Print or Type Name)

(Title)

(Date)

NOVELL, INC., on behalf of
THE SANTA CRUZ OPERATION, INC.

By: _____

(Print or Type Name)

(Title)

(Date)

International Business Machines Corporation
April 22, 1996

11400 Burnet Road
Austin, Texas 78768
512/823-0000

Novell
Worldwide Sales
2180 Fortune Drive, Building Six
San Jose, California 95131

Amendment distribution list =

Attention: Allison Lisbonne
Subject: Amendments to IBM/Novell Licensing Agreement

Thank you for the revised draft of the two Amendments that we have been discussing. In an effort to facilitate our meeting, we provide the following comments and suggested revisions. In the interest of brevity, we provide one set of comments for both Amendments; attempting to identify comments unique to a particular Amendment. We look forward to speaking with you and Larry later today.

✓ General comment: These are not a stand alone agreements, accordingly, it is probably more accurate to refer to these documents as "Amendments" and not "Agreements". We have done so where we have suggested new language.

✓ Changes to "Recitals":

"AT&T" should be changed to "AT&T Technologies, Inc."

After each reference to a contract, please insert "as amended".

Novell to contract

Include "Substitution Agreement, XFER-00015B", as a Related Agreement. The Substitution Agreement should also be added to the title.

With respect to the SCO Amendment: following the reference to Supplement 170, insert "or any other Supplements that pertain to prior versions or releases of UNIX, System V, Release 3."

With respect to the Novell Amendment: following the reference to Supplement 157, insert "or any other Supplements that pertain to prior versions or releases of UNIX Documenter's Workbench, Software Release 2.0."

Section 1. Modify section 2 to read:

issue

"Upon payment to Novell of the consideration in the section entitled "Consideration", IBM will have the irrevocable fully paid-up, royalty-free, perpetual right to exercise all its rights under the Related Agreements beginning January 1, 1996."

Novell to contract

Section 2. Modify section 2 to read:

"2. Relief of Section 2.05(b) and 2.05(c) of SUB-00015A. Section 2.05(b) and the second sentence of Section 2.05(c) of SUB-00015A shall not apply to Contractors to whom IBM has provided SOFTWARE PRODUCTS, provided that any use of such SOFTWARE PRODUCTS by

Novell
April 22, 1996
Page 2

IBM mainframe, business systems languages, VSP, VSP, VSP, VSP

CHANGE AGREEMENT

such Contractor is for Authorized Purposes in support of the Contractor's distribution and support of SUBLICENSSED PRODUCTS. For the purposes of this exemption, "Authorized Purpose" means making modifications to the SOFTWARE PRODUCTS, and furnishing such modifications in IBM and/or distribution of such modifications in SUBLICENSSED PRODUCTS form by the Contractor to customers directly or through other Distributors, provided that such modifications are solely to: (i) adapt the SUBLICENSSED PRODUCTS to support unique hardware features or devices (e.g., specialized graphics adapters or displays), or (ii) provide temporary fixes to customers of the SUBLICENSSED PRODUCT. If the Contractor is not a licensee of Novell or SCO for the relevant version of the SOFTWARE PRODUCT, then IBM will require such Contractor to certify in writing to SCO, upon SCO's request, that any use by such Contractor of such SOFTWARE PRODUCT is as a Contractor to IBM. Nothing in this Amendment shall be deemed to limit any of the rights otherwise available to IBM pursuant to Section 2.05(b) or 2.05(c) of SUB-00015A."

also apply to (w/ version markers)

Section 3. Add a new section 3 to read:

"A customer to whom IBM provides a SOFTWARE PRODUCT for use in support of the customer's use of a SUBLICENSSED PRODUCT received from IBM directly or through IBM's DISTRIBUTORS shall be deemed to be a Contractor of IBM if the customer's use of the SOFTWARE PRODUCT otherwise complies with the requirements of paragraph 3 of the February 1, 1985 amendment to SUB-00015A." ~~Provided that the customer shall not have the right to distribute the SOFTWARE PRODUCT.~~

Section 4. Modify existing section 4 to read:

"For a period of five (5) years from the effective date of this Amendment, the royalty relief described in Section 1 of this Amendment shall apply only to use or distribution of the SOFTWARE PRODUCTS and SUBLICENSSED PRODUCTS in the IBM operating system referred to currently as AIX, any prior version or releases of AIX and derivative or follow-on versions to AIX, ~~irrespective of the name of such versions for the hardware architecture on which such derivative or follow-on versions may be implemented.~~ During such five year period, any IBM distribution of SOFTWARE PRODUCTS or SUBLICENSSED PRODUCTS not covered by the preceding sentence, shall be subject to a royalty pursuant to the Related Agreements; with such royalty to be calculated at the aggregate discount percentage (eighty percent (80%) in the case of SUBLICENSSED PRODUCTS) in effect at the time of execution of this Amendment. After such five year period, the royalty relief described in Section 1 of this Amendment shall apply to any use or distribution of the SOFTWARE PRODUCTS or SUBLICENSSED PRODUCTS. In addition, the last sentence of paragraph 9 of the February 1, 1985 amendment to SUB-00015A is modified by deleting the words: "and employees of LICENSEE shall not refer to the physical documents and materials comprising SOFTWARE PRODUCTS subject to this Agreement when they are developing any such products or services or providing any such service."

on any POWERPC or POWERPC derivatives LOCAL AT PARIS

Section 5 to

Section 5. Add a new section 5 to read:

"Notwithstanding anything to the contrary in the Related Agreements, with respect only to SOFTWARE PRODUCTS and SUBLICENSSED PRODUCTS to which the paid up rights in Section I apply: (a) DESIGNATED CPUs are not required to be listed in a Supplement to SOFT-00015, and IBM may copy such SOFTWARE PRODUCTS as replacements or additions to DESIGNATED CPUs without notice to, or consent of, Novell or SCO; and (b) Section V of SUB-00015A shall not apply to such SUBLICENSSED PRODUCTS."

Novell
April 22, 1996
Page 3

OK
By Novell Section 6. Add a new section 6 to read:
With respect to Novell Amendment:

"Authority. Novell represents and warrants to IBM that it has the unrestricted right and authority to enter into and execute this Amendment."

Manual Rep
By Novell With respect to the SCO Amendment:

"Authority. Novell represents and warrants to IBM that it has the unrestricted right and authority to negotiate, enter into and execute this Amendment on behalf of SCO."


By Novell
→ made on behalf
of SCO.

HOLD
By Novell Section 7. Add a new section 7 to the SCO Amendment to read:

"7. Indemnification. Novell agrees to protect, defend, hold harmless and indemnify IBM and IBM Subsidiaries from and against any and all claims of any kind, actions, damages, liabilities, losses, costs and expenses arising out of: (1) any alleged or actual Novell breach of Novell's representations and warranty contained in section 6 of this Amendment or (2) IBM's exercise of the rights granted to IBM in section 1 of this Amendment."

Consideration. Renumber existing section 3, "Consideration", to be section 7 of the Novell Amendment and section 8 of the SCO Amendment.

Again, we look forward to speaking with you later today on this subject.
Sincerely,



Paul D. Vineis

8610
905
12:30 *4/24*

INTERNATIONAL BUSINESS MACHINES CORPORATION
THE SANTA CRUZ OPERATION, INC.

Amendment to Software Agreement SOFT-00015 as amended,
Sublicensing Agreement SUB-00015A as amended,
Software Agreement SOFT-00015 Supplement No. 170 as amended,
and Substitution Agreement XFER-00015B

This amendment ("Amendment") is between International Business Machines Corporation, a New York corporation, with a place of business at Old Orchard Road, Armonk, New York 10504 ("IBM") and Novell, Inc., a Delaware corporation, with a place of business at 2180 Fortune Drive, San Jose, California 95131 ("Novell") on behalf of itself and The Santa Cruz Operation, Inc. ("SCO"). This Amendment becomes effective when executed by an authorized representative of Novell, on behalf of SCO, and IBM (the "Effective Date").

RECITALS

AT&T Technologies, Inc. ("AT&T") and IBM entered into various software license agreements concerning the Software Product: UNIX System V, Release 3.2, which are Software Agreement SOFT-00015 as amended, Sublicensing Agreement SUB-00015A as amended, Software Agreement SOFT-00015 Supplement No. 170 as amended (or any other Supplements that pertain to prior versions or releases of the Software Product), and Substitution Agreement XFER-00015B (the "Related Agreements"). Novell acquired AT&T's rights under the Related Agreements. Except for all right, title and interest to the Software Product royalties (less an administration fee to SCO for administering the collection of such royalties), SCO purchased the Related Agreements in an Asset Purchase Agreement between Novell and SCO dated September 19, 1995 (the "SCO Agreement"). In the SCO Agreement, Novell has the right to amend the Related Agreements on behalf of SCO under certain circumstances applicable in this instance. In an effort to simplify the royalty requirements contained in the Related Agreements, the following modifications to the terms and conditions of the Related Agreements have been mutually agreed to by both parties. Capitalized terms in this Amendment will have the meanings assigned to them in this Amendment. All capitalized terms not defined herein will have the meanings assigned to them in the Related Agreements and such defined terms in the Related Agreements appear in all capitalized letters.

AMENDMENT

Novell, on behalf of SCO, and IBM agree as follows:

- I *No Additional Royalty.* Upon payment to SCO of the consideration in the section entitled "Consideration", IBM will have the irrevocable, fully paid-up, perpetual right to exercise all of its rights under the Related Agreements beginning January 1, 1996 at no additional royalty fee. However, if IBM requests delivery of additional copies of source code of the Software Product, IBM will pay the fees listed under Section 1(b) of SOFT-00015

Supplement No. 170. Notwithstanding the above, the irrevocable nature of the above rights will in no way be construed to limit Novell's right to enjoin or otherwise prohibit IBM from violating any and all of Novell's rights under this Amendment, the Related Agreements, or under general patent, copyright, or trademark law.

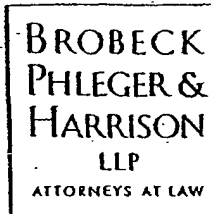
2. *Relief of Section 2.05 (b) and 2.05(c) of SUB-00015A.* Section 2.05(b) and the second sentence of Section 2.05(c) will not apply to contractors to whom IBM has provided Software Products, provided that: (i) any use of such Software Products by such contractor is for Authorized Purposes in support of the contractor's distribution and support of Sublicensed Products; and (ii) if any such contractor is not a source code licensee of Novell or SCO for the relevant version of Software Product and previous releases, IBM will require such contractor to certify in writing to SCO, upon SCO's request, that any use by such contractor of such source code is as a contractor of IBM. For the purposes of this exemption, "Authorized Purpose" means making modifications to the Software Products, and furnishing such modifications to IBM and/or distribution of such modifications in Sublicensed Products form by the contractor to customers directly or through other Distributors, provided that such modifications are not for purposes of adaptation of Sublicensed Products to other system manufacturers' hardware systems and are solely to: (i) adapt the Sublicensed Products to support unique hardware scanners or devices (e.g. specialized graphics, adapters, or displays) intended for use in vertical applications; or (ii) provide temporary fixes to customers of the Sublicensed Product.
3. *Customers.* A customer to whom IBM provides a Software Product for use in support of the customer's use of the Sublicensed Product received from IBM directly or through IBM's Distributors shall be deemed to be a contractor of IBM if the customer's use of the Software Product otherwise complies with the requirements of paragraphs 3 of the February 1, 1985 amendment to SOFT-00015 and provided that the customer has no right to distribute the Software Product.
4. *Consideration.* As consideration for the above modifications to the terms and conditions of the Related Agreements, IBM agrees to pay SCO a nonrefundable fee of \$10,125,000 per the following payment schedule: \$4,860,000 due on the Effective Date of this Amendment (net 30 days); and \$5,265,000 due on January 1, 1997 (net 15 days).
5. *Authority.* Novell represents and warrants to IBM that it has the unrestricted right and authority to enter into and execute this Amendment on behalf of SCO.
6. *Restriction on fully paid-up License.* For a period of five years from January 1, 1996, the royalty relief described in Section I of this Amendment shall apply only to use or distribution of the Software Products and Sublicensed Products in the IBM operating system referred to currently as AIX, any prior version or releases of AIX and derivative or follow-on version to AIX on the Power or PowerPC or Power2 architectures or derivative or follow-on architectures irrespective of the name of such versions. During such five year period, any IBM distribution of Software Products or Sublicensed Products not covered by the preceding sentence, shall be subject to a royalty pursuant to the

Related Agreements, with such royalty to be calculated at the aggregate discount percentage (80% in the case of Sublicensed Products) in effect at the time of execution of this Amendment. After such five year period, the royalty relief described in Section I of this Amendment shall apply to any use or distribution of the Software Products or Sublicensed Products; provided that if the Software Product is distributed as AIX or follow-on versions to AIX, then such use or distribution shall be in accordance with the provisions of Section 2.05(b) and 2.05(c) of SUB-00015A, as amended herein. The second to last sentence of paragraph 9 of the February 1, 1985 amendment to SOFT-00015 is modified by deleting the words "and employees of Licensee shall not refer to the physical documents and materials comprising Software Products subject to this Agreement when they are developing any such products or services or providing any such service."

7 Notwithstanding anything to the contrary in the Related Agreements, with respect only to Software Products and Sublicensed Products to which the paid up rights in Section I apply: (a) Designated CPUs are not required to be listed in a Supplement to SOFT-00015, and IBM may copy such Software Products as replacements or additions to Designated CPUs without notice to, or consent of, Novell or SCO; and (b) Section V of SUB-00015A shall not apply to such Sublicensed Products.

8 *Indemnification; Limitations on Liability.* Subject to the limitations on liability below, Novell agrees to indemnify and hold harmless IBM and IBM Subsidiaries from and against any and all losses, liabilities, judgments, and costs incurred as a result of any alleged or actual Novell breach of Novell's representations and warranty in Section 5 of this Amendment. Novell's indemnification of IBM shall be limited to the amount paid by IBM to SCO under this Amendment. In addition, provided that IBM has paid full consideration in accordance with this Amendment, Novell's indemnification of IBM shall also include the amount of any additional royalties paid to SCO by IBM if IBM would not have been obligated to pay such additional royalties absent such breach. Novell will defend at its sole expense any suits or proceedings related to the above indemnification provided that IBM gives Novell prompt notice and control of any claim of which it learns. Novell will have the right to choose legal counsel and IBM will have the right to participate in the defense of any such claim, provided that Novell will not be responsible for indemnifying IBM for the cost of IBM's attorney's fees. In no event will Novell be liable for any indirect, incidental, special, punitive or consequential damages, lost revenues, or profits, data, or use incurred by IBM however caused, no matter what theory

TELEPHONE: (415) 442-0900
FACSIMILE: (415) 442-1010
WRITER'S DIRECT DIAL:
(415) 442-1635



SPEAR STREET TOWER
ONE MARKET
SAN FRANCISCO
CALIFORNIA 94105

May 1, 1996

**VIA FACSIMILE (801-228-7077)
AND REGISTERED MAIL -
RETURN RECEIPT REQUESTED**

Novell, Inc.
122 East 1700 South
Provo, Utah 84606

Attention: David R. Bradford, Esq.

Re: The Santa Cruz Operation, Inc.

Dear Sirs:

We are writing on behalf of The Santa Cruz Operation, Inc. ("SCO") in connection with the Asset Purchase Agreement dated as of September 19, 1995 (the "Asset Purchase Agreement") by and between SCO and Novell, Inc. ("Novell").

SCO has recently received via facsimile an executed copy of an Amendment to Software Agreement SOFT-00015, as amended, Sublicensing Agreement SUR-00015A, as amended, Software Agreement SOFT-00015 Supplement No. 170, as amended, and Substitution Agreement XFER-00015B, dated April 26, 1996 and executed by International Business Machines ("IBM"), Novell and by Novell, purportedly on behalf of SCO (the "Amendment").

This letter constitutes notice on behalf of SCO that the execution of the Amendment by Novell constitutes a breach of the Asset Purchase Agreement and represents an invalid exercise of Novell's authority. The Amendment purports to grant certain rights to IBM and to modify pre-existing license agreements in a manner that contravenes the provisions of the Asset Purchase Agreement and potentially causes substantial harm and damages to SCO.

On behalf of SCO, we hereby request that Novell take no action under the Amendment, immediately inform IBM that the Amendment is not a valid exercise of Novell's authority and is in violation of the Asset Purchase Agreement, and immediately

BPRSF6\SDL\0230715.WP

SAN FRANCISCO PALO ALTO LOS ANGELES ORANGE COUNTY SAN DIEGO NEW YORK AUSTIN DENVER LONDON
* BROBECK HALE AND DORR INTERNATIONAL OFFICE

Novell, Inc.



May 1, 1996
Page 2

instruct IBM to take no action under the Amendment. We also request that Novell and IBM take all necessary action to terminate the Amendment and acknowledge that the Amendment shall have no force and effect, and confirm the foregoing to SCO in writing.

SCO believes that it has and will suffer substantial harm as a result of the execution of the Amendment and, as a result, is prepared to take any and all possible actions to enforce its rights under the Asset Purchase Agreement and applicable law and to seek appropriate remedies, including damages and injunctive relief.

Please confirm to us in writing immediately that Novell will not take any action under the Amendment and that Novell has informed IBM not to take any actions thereunder.

We are simultaneously delivering a copy of this letter to IBM.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott D. Lester", written over a horizontal line.

Scott D. Lester

cc: Alok Mohan (via facsimile)
President, Chief Executive Officer
The Santa Cruz Operation, Inc.

Steven Sabbath, Esq. (via facsimile)
Vice President, Law and Corporate Affairs
The Santa Cruz Operation, Inc.

Wilson, Sonsini, Goodrich & Rosati (via facsimile)
650 Page Mill Road
Palo Alto, California 94304
Attention: Larry W. Sonsini, Esq.

International Business Machines (via registered mail, return receipt requested)
Old Orchard Road
Armonk, New York 10504
Attention: R. L. Lee
Manager, IPS Contract Services

International Business Machines



May 3, 1996
Page 2

Alok Mohan (via facsimile)
President, Chief Executive Officer
The Santa Cruz Operation, Inc.

Steven Sabbath, Esq. (via facsimile)
Vice President, Law and Corporate Affairs
The Santa Cruz Operation, Inc.

Wilson, Sonsini, Goodrich & Rosati (via facsimile)
650 Page Mill Road
Palo Alto, California 94304
Attention: Larry W. Sonsini, Esq.

Novell, Inc. (via facsimile and registered mail, return receipt requested)
122 East 1700 South
Provo, Utah 84606
Attention: David R. Bradford, Esq.

SENT BY: SAN JOSE, PORTLAND : 6-20-86 : 12:28 : NOVELL LEGAL DEPT < 408 427 5474:0 2/ 3
1234567
P.02703

Stand Still Agmt

**LETTER AGREEMENT BETWEEN
THE SANTA CRUZ OPERATION, INC.
NOVELL, INC. AND
INTERNATIONAL BUSINESS MACHINES CORP.**

This letter agreement ("Agreement") is made between International Business Machines Corporation, a New York corporation ("IBM"), The Santa Cruz Operation, Inc., a California corporation ("SCO") and Novell, Inc., a Delaware corporation ("Novell"), (collectively the "Parties"). This Agreement shall be effective upon execution by all of the Parties and shall thereupon (the "Effective Date") be binding as between the Parties.

Whereas, IBM and Novell, on behalf of Novell and SCO, executed an amendment (the "Amendment") to Software Agreement SOFT-00015, as amended, Sublicensing Agreement SUN-00015A as amended, Software Agreement SOFT-00015 Supplement No. 170 as amended, and Substitution Agreement XFER-00015B, executed by IBM on April 26, 1996 and executed by Novell on behalf of Novell and SCO, on April 26, 1996 (such agreements and the Amendment, collectively referred to hereinafter as the "Related Agreements"); and

Whereas, SCO in a May 1, 1996 letter to Novell, signed by Scott D. Lester, has asserted that Novell did not have the authority to modify certain pre-existing license agreements and to agree to and execute the Amendment; and

Whereas, Novell has asserted that Novell had the appropriate authority to modify such pre-existing license agreements and to agree to and execute the Amendment; and

Whereas, SCO and Novell now wish to meet to resolve their dispute with respect to Novell's authority to enter into and execute the Amendment; and

Whereas, in order to accommodate SCO's and Novell's attempt to resolve their dispute, IBM is willing, for a limited period of time, to refrain from acting under Sections 2 and 3 and the last sentence of Section 6 of the Amendment, provided that IBM is permitted to refrain from making payments to Novell or SCO pursuant to certain agreements between IBM and Novell and IBM and SCO; and

Now, therefore, in consideration of the mutual covenants herein, the Parties agree as follows:

IBM shall not act under Section 2, entitled "Relief of Section 2.05 (b) and 2.05 (c) of SUN-00015A", Section 3 entitled "Outcomes" and the last sentence of Section 6 entitled "Restriction on fully paid-up License" of the Amendment until thirty (30) days from the Effective Date of this Agreement.

Novell and SCO agree that IBM shall have no obligation to make any payments to Novell or SCO with respect to UNIX System V, Release 3.2, and all previous releases, that may otherwise be due under the Related Agreements until thirty (30) days from Effective Date of this Agreement with respect to SCO's claim.

SENT BY: SAN JOSE, FORTUNE : 5-20-96 : 18:29 : NOVELL LEGAL DEPT -
1234567

408 427 5474:6 3/ 3

Novell agrees that IBM shall have no obligation to make any payments to Novell with respect to UNDC Documenter's Workbench 2.0, and all previous releases, that may otherwise be due under the Release Agreement and Software Agreement (SOFT-00015 Supplemental No. 157, as amended, until thirty (30) days from the Effective Date of this Agreement.

Novell hereby reaffirms Novell's obligation to indemnify and defend IBM under Section 8 of the Amendment with respect to SCO's claim.

The parties agree that this Agreement, and all discussions relating to the subject matter of this Agreement, are for purposes of avoiding possible litigation and therefore shall not be covered or disclosed as admissions by any Party, shall not be relied on, or introduced as evidence in any adversary proceeding or judicial forum (other than to enforce this Agreement itself) and shall not constitute the relinquishment by any Party of any rights such Party may have under the Release Agreements, including Software Agreement SOFT-00015 Supplemental 157, as amended.

THE SANTA CRUZ OPERATION, INC.

By: Steven M. Sabban

STEVEN M. SABBAN

(Print or type name)
VICE PRESIDENT,
LAW & CORPORATE AFFAIRS
(Title)

20 May 1996
(Date)

NOVELL, INC.

By: Maec Epstein

Maec Epstein

(Print or type name)
VP
(Title)

5/20/96
(Date)

INTERNATIONAL BUSINESS
MACHINES CORPORATION

By: Clay Schmitt

Clay Schmitt

(Print or type name)
SR Customer Administrator
(Title)

5-20-96
(Date)

SCAGREZ.DOC

2 OF 2

** TOTAL PAGE.003 **

MAY 20 '96 17:07

408 427 5474

PAGE.003

** TOTAL PAGE.004 **

** TOTAL PAGE.03 **

MAY 21 '96 10:46

1234567

PAGE.003



International Business Machines Corporation

11400 Burnet Road
Austin, Texas 78758
512/823-0000

June 14, 1996

Novell, Incorporated
Worldwide Sales
2180 Fortune Drive, Building Six
San Jose, California 95131

The Santa Cruz Operation, Incorporated
400 Encinal Street
P.O. Box 1900
Santa Cruz, California 95061

Attention: Allison Lisbonne (Novell) and Steven M. Sabbath (SCO)

Subject: Extension of Letter Agreement Between SCO, Novell, and IBM

The Letter Agreement between The Santa Cruz Operation, Incorporated ("SCO"), Novell, Incorporated ("Novell") and International Business Machines Corporation ("IBM") between SCO, Novell and IBM, with an effective date of May 20, 1996, is hereby extended in its entirety until 11:59 pm Pacific Daylight Savings Time, July 26, 1996.

Please execute this letter, signifying your acceptance, in the space provided below. This letter may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement binding on the executing parties. Delivery of this letter may be by mail or facsimile transmission of an executed copy to a designated party for retransmission to all of the other parties.

International Business
Machines Corporation

Novell, Incorporated

By: 

By: _____

Name: Craig Schneider

Name: _____

Title: SR. Contract Administrator

Title: _____

Date: 6-17-96

Date: _____

The Santa Cruz Operation, Incorporated

By: _____

Name: _____

Title: _____

Date: _____

International Business Machines Corporation

11400 Burnet Road
Austin, Texas 78758
512/823-0000

June 14, 1996

Novell, Incorporated
Worldwide Sales
2180 Fortune Drive, Building Six
San Jose, California 95131

The Santa Cruz Operation, Incorporated
400 Encinal Street
P.O. Box 1900
Santa Cruz, California 95061

Attention: Allison Lisbonne (Novell) and Steven M. Sabbath (SCO)

Subject: Extension of Letter Agreement Between SCO, Novell, and IBM

The Letter Agreement between The Santa Cruz Operation, Incorporated ("SCO"), Novell, Incorporated ("Novell") and International Business Machines Corporation ("IBM") between SCO, Novell and IBM, with an effective date of May 20, 1996, is hereby extended in its entirety until 11:59 pm Pacific Daylight Savings Time, July 26, 1996.

Please execute this letter, signifying your acceptance, in the space provided below. This letter may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement binding on the executing parties. Delivery of this letter may be by mail or facsimile transmission of an executed copy to a designated party for retransmission to all of the other parties.

International Business
Machines Corporation

By: _____

Name: _____

Title: _____

Date: _____

The Santa Cruz Operation, Incorporated

By: _____

Name: _____

Title: _____

Date: _____

Novell, Incorporated

By: David Bradford

Name: David Bradford

Title: General Counsel

Date: 6/17/96

SENT BY: SAN JOSE, FORTUNE : 6-17-96 : 13:48 : NOVELL LEGAL DEPT + 512 823 1670: # 3/ 3

SENT BY: SAN JOSE, FORTUNE : 6-14-96 : 17:00 : NOVELL LEGAL DEPT + 408 427 5474: # 3/ 3

International Business Machines Corporation

11400 Burnett Road
Austin, Texas 78708
612/423-0000

June 14, 1996

Novell, Incorporated
Worldwide Sales
2180 Fortune Drive, Building Six
San Jose, California 95131

The Santa Cruz Operation, Incorporated
400 Encinal Street
P.O. Box 1900
Santa Cruz, California 95061

Attention: Allison Liebman (Novell) and Steven M. Sabbath (SCO)

Subject: Extension of Letter Agreement Between SCO, Novell, and IBM

The Letter Agreement between The Santa Cruz Operation, Incorporated ("SCO"), Novell, Incorporated ("Novell") and International Business Machines Corporation ("IBM") between SCO, Novell and IBM, with an effective date of May 20, 1996, is hereby extended in its entirety until 11:59 pm Pacific Daylight Savings Time, July 26, 1996.

Please execute this letter, signifying your acceptance, in the space provided below. This letter may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement binding on the executing parties. Delivery of this letter may be by mail or facsimile transmission of an executed copy to a designated party for retransmission to all of the other parties.

International Business
Machines Corporation

Novell, Incorporated

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

The Santa Cruz Operation, Incorporated

By: Steven M. Sabbath

Name: STEVEN M. SABBATH

Title: VICE PRESIDENT, LAW & CORP. AFFAIRS

Date: 17 JUNE 1996

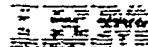
*** TOTAL PAGE 02 ***

JUL 25 '96 18:04 FR S-W CONTRACTS

512 823 1670

512 823 1670 TO 914084275474

P.02/02



International Business Machines Corporation
July 25, 1996

11400 Burnet Road
Austin, Texas 78758
512/823-0000

Novell, Incorporated
Worldwide Sales
2180 Fortune Drive, Building Six
San Jose, CA 95131

The Santa Cruz Operation, Incorporated
400 Encinal Street
P. O. Box 1900
Santa Cruz, CA 95061

ATTENTION: Allison Lisbonne (Novell) and Steven M. Sabbath (SCO)

SUBJECT: EXTENSION OF LETTER AGREEMENT BETWEEN SCO, NOVELL AND IBM

The Letter Agreement between The Santa Cruz Operation, Incorporated ("SCO"), Novell, Incorporated ("Novell") and International Business Machines Corporation ("IBM") with an effective date of May 20, 1996, was previously extended to July 26, 1996. The Letter Agreement is hereby extended further in its entirety until 11:59 PM Pacific Daylight Savings Time, August 30, 1996.

Please execute this letter, signifying your acceptance, in the space provided below. This letter may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement binding on the executing parties. Delivery of this letter may be by mail or facsimile transmission of an executed copy to a designated party for retransmission to all of the other parties.

International Business Machines Corporation

Novell, Incorporated

BY: David Bullis
Signature
NAME: David Bullis
TITLE: Contract Relationship Analyst
DATE: July 25, 1996

BY: James R. Tolonen
Signature
NAME: James R. Tolonen
TITLE: Executive VP & CFO
DATE: July 25, 1996

The Santa Cruz Operation, Incorporated

BY: Steven M. Sabbath
Signature
NAME: Steven M. Sabbath
TITLE: VP, Law & Corporate Affairs
DATE: 25 July 1996

NOVSCO:SAM

1234567

International Business Machines Corporation

11400 Burnet Road
Austin, Texas 78734
512/823-0000

August 27, 1996

Novell, Incorporated
Worldwide Sales
2180 Fortune Drive, Building Six
San Jose, CA 95131

The Santa Cruz Operation, Incorporated
400 Encinal Street
P. O. Box 1900
Santa Cruz, CA 95061

IBM 966K 1062

ATTENTION: Allison Lisbonne (Novell) and Steven M. Sabbath (SCO)

SUBJECT: Extension of Letter Agreement Between SCO, Novell and IBM

The Letter Agreement between The Santa Cruz Operation, Incorporated ("SCO"), Novell, Incorporated ("Novell") and International Business Machines Corporation ("IBM") with an effective date of May 20, 1996, has been extended twice (through July 26, 1996 and through August 30, 1996). The Letter Agreement is hereby extended further in its entirety until 11:59 PM Pacific Daylight Savings Time, September 30, 1996.

Please execute this letter, signifying your acceptance, in the space provided below. This letter may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement binding on the executing parties. Delivery of this letter may be by mail or facsimile transmission of an executed copy to a designated party for retransmission to all of the other parties.

International Business Machines Corporation

Novell, Incorporated

BY: Craig Schneider
Signature

BY: Michael V. Hoffman
Signature

NAME: CRAIG SCHNEIDER

NAME: MICHAEL V. HOFFMAN

TITLE: Sr. Contracts Administrator

TITLE: ASSOCIATE GENERAL COUNSEL

DATE: August 27, 1996

DATE: 6/27/96

The Santa Cruz Operation, Incorporated

BY: Steven M. Sabbath
Signature

NAME: Steven M. Sabbath

TITLE: VP, Law & Corporate Affairs

DATE: 8/28/96

NOV900.SAM

MAY 21 '96 10:30 FR IBM SITE GENERAL MGR 512 823 7676 TO 38712
MAY 21 '96 10:47 FR 5:28383862 5:28383882 TO 37855

P.10/22
P.02/07
P.02

Novell, Inc.
2180 Fortune Drive
San Jose, CA 95131
408-434-2300



May 21, 1996

Bill Sandvee
IBM Corp.
11400 Burnet Rd.
Austin, TX 78758

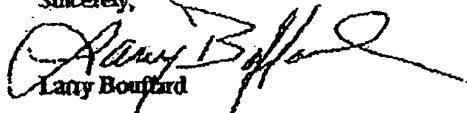
Dear Bill,

I would like to thank you for agreeing to the "stand-still" agreement while we attempt to resolve our differences with SCO. While we are sure Novell will prevail if SCO should pursue legal action, we would prefer to resolve the conflict more expeditiously. Attached is a copy of the changes SCO has requested. When you read them keep in mind that this is their "wish list". I know from meeting with SCO that many of their issues are actually wording, not intent changes, and are not unreasonable. Given what I know of the intent of our agreement I do not think we are as far off as a first reading of their requests might indicate.

Rather than sort through the issues via this letter, I am sending you SCO's letter for review prior to our meeting on Wednesday of this week. At that time I can help you understand what I believe are the substantive issues versus the "wish list" ones.

I look forward to our meeting and expect a timely resolution to this issue.

Sincerely,


Larry Bouffard

cc: Paul Vincis, Allison Lisbonne, Chris Hogan

MAY 21 '96 09:56

0004739597

PAGE 02

MAY 19 '96 16:01 FR IBM LEGAL - AUSTIN 512 823 7835 TO 72244339
MAY 21 '96 18:38 FR IBM SITE GENERAL MGR 512 823 7876 TO 38712
MAY 21 '96 18:47 FR 5128383882 5128383882 TO 37835

P.19/22
P.03/07
P.03

PRIVILEGED AND CONFIDENTIAL

(A) The first two sentences of Section 1 ("No Additional Royalty") are changed to read:

— Upon payment to SCO of the consideration in the Section entitled "Consideration" and subject to the provisions of this Amendment, IBM will have the irrevocable, fully paid up, perpetual right to exercise all of its rights under the Related Agreements, beginning January 1, 1996, to distribute Sublicensed Products specified in Section 6 below at no additional royalty fee. If IBM requests delivery of additional copies of the Software Product, IBM will pay the fees listed under Section 1(b) of SOFT-00015 Supplement No. 170. —

(B) Section 2 ("Relief of Section 2.05(b) and 2.05(c) of SUB-00015A") is changed to read as follows:

— Section 2.05(b) and the second sentence of Section 2.05(c) will not apply to contractors to whom IBM provides Software Products, provided that (i) any use of such Software Product is solely for Authorized Purposes in support of the contractor's distribution and support of Sublicensed Products; (ii) if any such contractor is not a source code licensee of Novell or SCO for the relevant version of Software Product and previous releases, IBM will require such contractor to certify in writing to SCO that any use by such contractor of such source code is as a contractor of IBM; and (iii) for each such contractor, IBM shall remit to SCO, on or before the date of providing the Software Product to such contractor ("Provision Date"), an initial right to use fee of \$25,000 for use by such contractor of the Software Product on an initial CPU and \$5000 for use on each additional CPU, and shall subsequently remit to SCO an annual renewal fee of \$10,000 on each anniversary of the Provision Date. Such \$5000 right to use fee for an additional CPU shall be waived for each such CPU which, before the date of this Amendment, was an ADDITIONAL DESIGNATED CPU of IBM under SOFT-00015.

For the purposes of this exemption, "Authorized Purpose" means making modifications to the Software Products and furnishing such modifications to IBM, and/or distribution of such modifications in binary (Sublicensed Products) form by the contractor to customers directly or through other distributors, provided that such modifications are not for purposes of adaptation of Sublicensed Products to hardware systems other than IBM computer systems carrying the IBM logo, and are solely to (i) adapt the Sublicensed Products to support unique hardware formats or devices (e.g., specialized graphics adapters, or displays) intended for use in vertical

MAY 21 '96 09:57

4884738697

PAGE 03

MAY 21 '96 18:38 FR IBM SITE GENERAL MGR 512 823 7876 TO 38712
MAY 21 '96 18:48 FR 5128383882 5128383882 TO 37835

P.28/22
P.04/07
P.04

applications, or (ii) provide temporary fixes to customers of such Sublicensed Products. --

(C) Section 3 ("Customers") is changed to read as follows:

-- IBM may provide, to a customer who has received a copy of a Sublicensed Product from IBM directly or through IBM's distributors, a copy of a Software Product solely for the customer's internal use in maintaining the Sublicensed Product, provided that (i) the customer has first undertaken in writing to comply with obligations regarding restrictions on disclosure and use of the Software Product that are no less stringent than SCO's own standard source code terms and conditions, and (ii) for each such customer, IBM shall remit to SCO, on or before the date of providing the Software Product to such customer ("Provision Date"), an initial right to use fee of \$15,000 for use by such customer of the Software Product on an initial CPU and \$3000 for use on each additional CPU, and shall subsequently remit to SCO an annual renewal fee of \$3000 on each anniversary of the Provision Date. Such \$3000 right to use fee for an additional CPU shall be waived for each such CPU which, before the date of this Amendment, was an ADDITIONAL DESIGNATED CPU of IBM under SOFT-00015. --

(D) Section 6 ("Restriction on Fully Paid Up License") is changed to read as follows:

-- The royalty relief described in Section 1 of this Amendment shall apply only to use or distribution of Sublicensed Products (i) on IBM UNIX operating systems, referred to currently as AIX, any prior version or release of AIX and derivative or follow-on version to AIX, that are certified as conforming to the Open Group UNIX Specification (UNIX 95 or a successor specification thereof, as the case may be) in effect twelve months prior to IBM's first customer ship date for the applicable Sublicensed Product; (ii) on the Power or Power PC or Power2 architectures or derivative or follow-on architectures, irrespective of the names of such versions; and (iii) adapted for use on IBM computer systems carrying the IBM logo. Any IBM distribution of Sublicensed Products not covered by the preceding sentence shall be subject to a royalty pursuant to the Related Agreements, with royalty to be calculated at an aggregate discount percentage of 80%. The second to last sentence of paragraph 9 of the February 1, 1995 amendment to SOFT-00015 is modified by deleting the words "and employees of Licensee shall not refer to the physical documents and materials comprising Software Products subject to this Agreement when they are developing any such products or services or providing any such service" and replacing them with the following:

-- and employees of Licensee who may have retained intangible information in the form of ideas, concepts, know-how or techniques after leaving account

MAR 19 2003 16:02 FR IBM LEGAL - AUSTIN 512 823 7035 TO 72244339
MAY 21 '96 10:31 FR IBM SITE GENERAL MGR 512 823 7876 TO 38712
MAY 21 '96 18:48 FR 5128383882 5128383882 TO 37035

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P.05/07
P.05

to such code shall make no attempt to preserve such information by reducing it to writing or otherwise memorializing it.

(E) Section 7 is changed to read as follows:

-- Notwithstanding anything to the contrary in the Related Agreements, with respect only to (a) Sublicensed Products to which the paid up rights in Section 1 apply and (b) Software Products, (a) Designated CPUs are not required to be listed in a Supplement to SOFT-00015, and IBM may copy such Software Products as replacements or additions to Designated CPUs without notice to, or consent of, Novell or SCO; and (b) Section V of SUB-00015A shall not apply to such Sublicensed Products. --

MAY 21 '96 09:57

4084739697

PAGE 05

** TOTAL PAGE 05 **

Letter Agreement between NOVELL, INC. and
INTERNATIONAL BUSINESS MACHINES CORPORATION
dated October __, 1996

This Letter Agreement (the "Agreement") is between Novell, Inc. ("Novell") and International Business Machines Corporation ("IBM"). Novell, SCO and IBM are parties to Amendment No. X to Software Agreement SOFT-00015 as amended, Sublicensing Agreement SUB-00015 as amended, Software Agreement SOFT-00015 Supplement No. 170 as amended, and Substitution Agreement XFER-00015B ("Amendment No. X"). IBM agreed to certain changes to Amendment No. X to accommodate Novell and SCO. In exchange for such accommodation, Novell has agreed that IBM may reduce by \$350,000 its fourth quarter 1995 royalty payment under SUB-00015, as amended, for the distribution of UNIX System V, Release 3.2 in object code form in the second, third, and fourth quarter of 1995, periods ending 6/30/95, 9/30/95 and 12/31/95 respectively.

This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one agreement binding on the executing parties. Delivery of this Agreement may be by mail or facsimile transmission of an executed copy.

NOVELL, INC.

INTERNATIONAL BUSINESS
MACHINES CORPORATION

By: James R. Tolomeo

By: _____

Name: James R. Tolomeo

Name: _____

Title: SVP & CFO

Title: _____

Date: 10/16/96

Date: _____

Letter Agreement between NOVELL, INC. and
INTERNATIONAL BUSINESS MACHINES CORPORATION
dated October __, 1996

This Letter Agreement (the "Agreement") is between Novell, Inc. ("Novell") and International Business Machines Corporation ("IBM"). Novell, SCO and IBM are parties to Amendment No. X to Software Agreement SOFT-00015 as amended, Sublicensing Agreement SUB-00015 as amended, Software Agreement SOFT-00015 Supplement No. 170 as amended, and Substitution Agreement XFER-00015B ("Amendment No. X"). IBM agreed to certain changes to Amendment No. X to accommodate Novell and SCO. In exchange for such accommodation, Novell has agreed that IBM may reduce by \$350,000 its fourth quarter 1995 royalty payment under SUB-00015, as amended, for the distribution of UNIX System V, Release 3.2 in object code form in the second, third, and fourth quarter of 1995, periods ending 6/30/95, 9/30/95 and 12/31/95 respectively.

This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one agreement binding on the executing parties. Delivery of this Agreement may be by mail or facsimile transmission of an executed copy.

NOVELL, INC.

INTERNATIONAL BUSINESS
MACHINES CORPORATION

By: _____

By: *Greg Schuler*

Name: _____

Name: *Kenn Schneider*

Title: _____

Title: *Sr. Contract Administrator*

Date: _____

Date: *10-17-96*

INTERNATIONAL BUSINESS MACHINES CORPORATION
THE SANTA CRUZ OPERATION, INC.
NOVELL, INC.

Amendment No. X to Software Agreement SOFT-00015 as amended,
Sublicensing Agreement SUB-00015A as amended,
Software Agreement SOFT-00015 Supplement No. 170 as amended,
and Substitution Agreement XFER-00015B

This amendment ("Amendment No. X") is between International Business Machines Corporation, a New York corporation, with a place of business at Old Orchard Road, Armonk, New York 10504 ("IBM"), The Santa Cruz Operation, Inc. ("SCO") with a place of business at 400 Encinal Street, Santa Cruz, California 95061-1900, and Novell, Inc., a Delaware corporation, with a place of business at 2180 Fortune Drive, San Jose, California 95131 ("Novell"). This Amendment No. X becomes effective when executed by an authorized representative of Novell, SCO, and IBM (the "Effective Date").

RECITALS

AT&T Technologies, Inc. ("AT&T") and IBM entered into various software license agreements concerning the Software Product: UNIX System V, Release 3.2, which are Software Agreement SOFT-00015 as amended, Sublicensing Agreement SUB-00015A as amended, Software Agreement SOFT-00015 Supplement No. 170 as amended (or any other Supplements that pertain to prior versions or releases of the Software Product), and Substitution Agreement XFER-00015B (the "Related Agreements"). Novell acquired AT&T's rights under the Related Agreements. In an agreement between Novell and SCO dated September 19, 1995 (the "Asset Purchase Agreement"), SCO purchased, and Novell retained, certain rights with respect to the Related Agreements. In an effort to simplify the royalty requirements contained in the Related Agreements, the following modifications to the terms and conditions of the Related Agreements have been mutually agreed to by the parties. Capitalized terms in this Amendment will have the meanings assigned to them in this Amendment No. X. All capitalized terms not defined herein will have the meanings assigned to them in the Related Agreements and such defined terms in the Related Agreements appear in all capitalized letters.

AMENDMENT NO. X

Novell, SCO, and IBM agree as follows:

- 1 *No Additional Royalty.* Upon payment to SCO of the consideration in the section entitled "Consideration", IBM will have the irrevocable, fully paid-up, perpetual right to exercise all of its rights under the Related Agreements beginning January 1, 1996 at no additional royalty fee. However, if IBM requests delivery of additional copies of source code of the

Software Product, IBM will pay the fees listed under Section 1(b) of Soft-00015 Supplement No. 170. Notwithstanding the above, the irrevocable nature of the above rights will in no way be construed to limit Novell's or SCO's rights to enjoin or otherwise prohibit IBM from violating any and all of Novell's or SCO's rights under this Amendment No. X, the Related Agreements, or under general patent, copyright, or trademark law.

2 *Relief of 2.05(b) and 2.05(c) of SUB-00015A; Sublicensing of Software Products (Source).*

2.1 *Contractors.* Subject to the limitations set forth below in Section 3, Section 2.05(b) and the second sentence of Section 2.05(c) will not apply to contractors to whom IBM provides Software Products, provided that: (i) any use of such Software Products by such contractor is solely for Authorized Purposes in support of the contractor's distribution and support of Sublicensed Products; and (ii) if any such contractor is not a source code licensee for the relevant version of Software Product and previous releases, IBM will require such contractor to certify in writing to SCO, upon SCO's request, that any use by such contractor of such source code is as a contractor of IBM. For the purposes of this exemption, "Authorized Purpose" means making modifications to the Software Products, and furnishing such modifications to IBM and/or distribution of such modifications of Sublicensed Products in binary form by the contractor to customers directly or through other Distributors, provided that such modifications are not for purposes of adaptation of Sublicensed Products to other system manufacturers' hardware systems and are solely to: (i) adapt the Sublicensed Products to support unique hardware features or devices (e.g. specialized graphics, adapters, or displays) intended for use in vertical applications; or (ii) provide fixes to customers of the Sublicensed Product.

2.2 *Customers.* Subject to the limitations set forth below in Section 3, a customer to whom IBM provides a Software Product for use in support of the customer's use of the Sublicensed Product received from IBM directly or through IBM's Distributors shall be deemed to be a contractor of IBM if the customer's use of the Software Product otherwise complies with the requirements of paragraph 3 of the February 1, 1985 amendment to SOFT-00015. This Section 2.2 neither expands or restricts such customers' right, if any, to distribute Software Products or Sublicensed Products.

3 *Source Code Library.* The following Section 3 of this Amendment applies to activities contemplated by Section 2 of this Amendment only and does not apply to or obligate IBM with respect to activities described elsewhere in the Related Agreements. IBM may license a Software Product in source code form to an eligible contractor or customer for such contractor's or customer's use in accordance with Section 2 (hereinafter referred to

as "Source Copy") subject to the following terms and conditions:

- 3.1 IBM's right to license or otherwise provide to contractors and/or customers copies of Software Products pursuant to Section 2 of this Amendment shall be limited to 50 Source Copies at any one point in time. For purposes of calculating the number of copies outstanding: (i) in the event that IBM provides more than one Source Copy to a single customer or contractor, such additional Source Copy or copies will be applied against the 50 copy limitation; (ii) however, multiple Source Copies licensed for use on the same CPU or multiple Source Copies on different CPUs within a scalable parallel or multiprocessor complex contained in a series of co-located cabinets will be counted as one Source Copy; and (iii) when a contractor or customer has completed its use of a Source Copy, and either returns the Source Copy to IBM or provides IBM with certification as described below that the Source Copy has been destroyed, the number of Source Copies then outstanding will be reduced by one.
- 3.2 IBM will maintain pertinent records regarding IBM's issuance of Source Copies and the return or certified destruction of Source Copies by contractors and customers.
- 3.3 SCO has the right to Audit (see definition in 3.6 below) IBM's pertinent records, at SCO's expense. However, IBM will pay for the cost of such Audit if the Audit reveals IBM's licensing of the Source Copies materially violates the terms and conditions of this Amendment. In addition, IBM agrees that IBM's contracts with contractors and customers for Source Copies distributed pursuant to Section 2.1 and 2.2 of this Amendment will contain a provision which allows SCO to conduct an Customer/Contractor Audit (see definition in 3.6 below) of such customer and/or contractor.
- 3.4 If IBM management acquires actual knowledge that a contractor or customer is using the Source Copy in material violation of the applicable use restrictions contained in its license agreement with IBM, IBM will within a reasonable time, but in no event later than thirty days of acquiring such knowledge, notify SCO of such violation; further, IBM will, as IBM may elect, either: (i) take appropriate action to remedy the violation; or (ii) IBM will at SCO's expense cooperate with SCO in SCO's action to remedy the violation.
- 3.5 IBM will require all contractors and customers to whom IBM licenses a Source Copy to enter into an agreement with IBM in which such customer or contractor agrees: (a) to comply with the applicable use restrictions set forth in Section 2 above; (b) upon termination of the contractor's or customer's use of the Source Copy, the customer or contractor will return the Source Copy to IBM or cause its representative to certify in writing that the Source Copy has been destroyed.

3.6 For purposes of Amendment No. X, "Audit" will mean: an audit by an independent accounting firm chosen by SCO, the results of which, including the names of contractors and customers to whom IBM has licensed Source Copies, will remain confidential and only known to the selected independent auditor, unless such auditor concludes that there has been a material violation of the terms of this Amendment. In the event such auditor determines that there has been a material violation of the terms of this Amendment, the auditor may provide to SCO information the auditor reasonably determines necessary for SCO to enforce its rights under this Amendment. SCO's right to audit IBM shall be limited to one (1) Audit per year conducted during normal business hours and shall be contingent upon SCO reasonably and objectively believing that IBM has licensed Source Copies in material violation of the terms and conditions of this Amendment. For purposes of Amendment No. X, "Customer/Contractor Audit" will mean: an audit by an independent accounting firm chosen by SCO, the results of which will remain confidential and only known to the selected independent auditor, unless such auditor concludes that there has been a material violation of the terms of this Amendment. In the event such auditor determines that there has been a material violation of the terms of this Amendment, the auditor may provide to SCO information the auditor reasonably determines necessary for SCO to enforce its rights under this Amendment. SCO's right to audit an IBM customer or contractor shall be limited to one (1) Audit per year conducted during normal business hours and shall be contingent upon SCO reasonably and objectively believing that the IBM customer or contractor has used the Source Copies licensed from IBM pursuant to Sections 2.1 and/or 2.2 of this Amendment in material violation of the terms and conditions of this Amendment.

3.7 The following illustrations are intended to clarify and illustrate the relief provided in Subsection 2.1 of this Amendment.

Company A, sublicensee of the Sublicensed Product, is a general computer system manufacturing firm. IBM may distribute Source Copies to Company A for the Authorized Purpose.

However, IBM may not distribute Source Copies to Company A for purposes of making modifications to adapt the Sublicensed Products as a general operating system for Company A's general computer hardware system.

Notwithstanding the foregoing, IBM may distribute Source Copies to a development organization of Company A that produces unique hardware devices (e.g., specialized graphics, adapters, or displays) intended for use in vertical applications, for the purpose of adapting the Sublicensed Products to support such unique hardware devices.

4 *Consideration.* As consideration for the above modifications to the terms and conditions of the Related Agreements, IBM agrees to pay SCO a nonrefundable fee of \$10,125,000 per the following payment schedule: \$4,860,000 due on the Effective Date of this Amendment No. X (net 30 days); and \$5,265,000 due on January 1, 1997 (net 15 days).

5 *Authority.*

5.1 Novell represents and warrants to IBM that it has the unrestricted right and authority to enter into and execute this Amendment.

5.2 SCO represents and warrants to IBM that it has the unrestricted right and authority to enter into and execute this Amendment.

6 *Restriction on fully paid-up License.* For a period of five years from January 1, 1996, the royalty relief described in Section 1 of this Amendment No. X shall apply only to use or distribution of the Software Products and Sublicensed Products in the IBM operating system referred to currently as AIX, any prior version or releases of AIX and derivative or follow-on version to AIX on the Power or Power PC or Power2 architectures or derivative or follow-on architectures irrespective of the name of such versions. During such five year period, any IBM distribution of Software Products or Sublicensed Products not covered by the preceding sentence, shall be subject to a royalty pursuant to the Related Agreements, with such royalty to be calculated at the aggregate discount percentage (80% in the case of Sublicensed Products) in effect at the time of execution of this Amendment No. X. After such five year period, the royalty relief described in Section 1 of this Amendment No. X shall apply to any authorized use or distribution of the Software Products or Sublicensed Products. The second to last sentence of paragraph 9 of the February 1, 1985 amendment to SOFT-00015 is modified by deleting the words: "and employees of Licensee shall not refer to the physical documents and materials comprising Software Products subject to this Agreement when they are developing any such products or services or providing any such service."

7 Notwithstanding anything to the contrary in the Related Agreements, with respect only to Software Products and Sublicensed Products to which the paid up rights in Section 1 apply: (a) Designated CPUs are not required to be listed in a Supplement to SOFT-00015, and IBM may copy such Software Products as replacements or additions to Designated CPUs without notice to, or consent of, Novell or SCO; and (b) Section V of SUB-00015A shall not apply to such Sublicensed Products.

8 The Amendment dated April 26, 1996 between IBM, and Novell, on behalf of itself and SCO, is hereby replaced in its entirety. Except as modified herein, all other terms and conditions of the Related Agreements will remain in effect. This Amendment No. X does not give IBM any additional rights to distribute the Software Product in source code form other than as modified in Section 2 and 3 of this Amendment No. X.

9 **Confidentiality.** For a period of two (2) years, this Amendment No. X and the replaced amendment dated April 26, 1996 are confidential and each party will not issue press releases publicizing, and will use reasonable efforts not to otherwise disclose, the commercial and legal details of this Amendment No. X, the replaced amendment or their subject matters without the other parties' prior written approval. Notwithstanding the foregoing, each party shall be permitted to disclose to third parties non-financial information dealing with the commercial and legal details of this Amendment as part of a transaction authorized by this Amendment provided that such disclosure is subject to confidentiality terms consistent with the terms of this Agreement. Also, disclosure by any party of commercial and legal details of this Amendment shall not be restricted if such disclosure is:

- 9.1 in response to a valid order of a court or other governmental body or any political subdivision thereof; provided, however, that the party proposing to make such disclosure will first have made a reasonable effort to obtain a protective order requiring that the information so disclosed be used only for the purposes for which the order was issued; or
- 9.2 necessary to establish rights under this Amendment in a court or administrative proceeding.

10 **Indemnification; Limitations on Liability.**

10.1 Subject to the limitations on liability below, Novell agrees to indemnify and hold harmless IBM and IBM Subsidiaries from and against any and all losses, liabilities, judgments, and costs incurred as a result of any alleged or actual Novell breach of Novell's representation and warranty in Section 5.1 of this Amendment. Novell's indemnification of IBM shall be limited to the amount paid by IBM to SCO under this Amendment. In addition, provided that IBM has paid full consideration in accordance with this Amendment, Novell's indemnification to IBM shall also include the amount of any additional royalties paid to SCO by IBM if IBM would not have been obligated to pay such additional royalties absent such breach. Novell will defend at its sole expense any suits or proceedings related to the above indemnification provided that IBM gives Novell prompt notice and control of any claim of which it learns. Novell will have the right to choose legal counsel and IBM will have the right to participate in the defense of any such claim, provided that Novell will not be responsible for indemnifying IBM for the cost of IBM's attorney's fees. In no event will Novell be liable for any indirect, incidental, special, punitive or consequential damages, lost revenues, or profits, data, or use incurred by IBM however caused, no matter what theory of liability, even if Novell has been advised of the possibility of such damages.

10.2 Subject to the limitations on liability below, SCO agrees to indemnify and hold harmless IBM and IBM Subsidiaries from and against any and all losses, liabilities, judgments, and costs incurred as a result of any alleged or actual SCO breach of SCO's representation and warranty in Section 5.2 of this Amendment. SCO's indemnification of IBM shall be limited to the amount paid by IBM to SCO under this Amendment. In addition, provided that IBM has paid full consideration in accordance with this Amendment, SCO's indemnification to IBM shall also include the amount of any additional royalties paid to SCO by IBM if IBM would have not been obligated to pay such additional royalties absent such breach. SCO will defend at its sole expense any suits or proceedings related to the above indemnification provided that IBM gives SCO prompt notice and control of any claim of which it learns. SCO will have the right to choose legal counsel and IBM will have the right to participate in the defense of any such claim, provided that SCO will not be responsible for indemnifying IBM for the cost of IBM's attorney's fees. In no event will SCO be liable for any indirect, incidental, special, punitive, or consequential damages, lost revenues, or profits, data, or use incurred by IBM however caused no matter what theory of liability, even if SCO has been advised of the possibility of such damages.

11 Except as modified herein, all other terms and conditions of the Related Agreements will remain in effect.

INTERNATIONAL BUSINESS
MACHINES

By: *[Signature]*
Carole Schmetz
(Print or Type Name)
Sr. Contract Administrator
(Title)
10-17-96
(Date)

THE SANTA CRUZ OPERATION, INC.

By: _____

(Print or Type Name)

(Title)

(Date)

NOVELL, INC.

By: _____

(Print or Type Name)

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INTERNATIONAL BUSINESS
MACHINES

By: _____

(Print or Type Name)

(Title)

(Date)

THE SANTA CRUZ OPERATION, INC.

By: Steven M. Sabbath

Steven M. Sabbath

(Print or Type Name)

Vice President, Law & Corporate Affairs

(Title)

16 October 1996

(Date)

NOVELL, INC.

By: _____

(Print or Type Name)

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INTERNATIONAL BUSINESS
MACHINES

By: _____

(Print or Type Name)

(Title)

(Date)

THE SANTA CRUZ OPERATION, INC.

By: _____

(Print or Type Name)

(Title)

(Date)

NOVELL, INC.

By: James R. Tolonen

JAMES R. TOLONEN
(Print or Type Name)

10/16/96

(Title)

(Date)
