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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. 2:03cv-0294

Honorable Dale A. Kimball

## DECLARATION OF WILLIAM SANDVE, JR.

I, William Sandve, Jr., declare as follows:

1. I am currently Program Director for UNIX Product Management at International Business Machines Corporation, a New York corporation ("IBM"), in its Austin, Texas office, responsible for product management of AIX and Linux products for IBM's pSeries systems, including software product strategy, requirements, and roadmap plans. From July 1995 to January 1998 I worked as a Program Manager and as a Project Manager for IBM in its Austin, Texas office.

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 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 in 1996.

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.

**I. Negotiation of the April 1996 Amendment**

5. On December 6, 1995, Novell sold certain UNIX system related assets, which Novell had acquired through its acquisition of UNIX Systems Laboratories, Inc., to Tarantella. Novell informed IBM that Novell had retained certain rights in connection with the sale of these UNIX related assets to Tarantella, including the right to amend certain UNIX license agreements under certain circumstances.

6. 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 1 through 5.

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".

7. 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);
- 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).

8. IBM was seeking to amend the Related Agreements in order to:

- effect a royalty buy-out, eliminating the need to maintain a team just to audit the required royalty payments every year;
- make IBM's rights under the Related Agreements irrevocable, fully paid-up and perpetual;
- make it easier to redistribute licensed source code to contractors and customers for limited purposes; and
- loosen the confidentiality restrictions in these agreements.

IBM's position was that the Related Agreements needed to be amended to eliminate any rights that Novell or Tarantella had to terminate IBM's rights under the agreements, IBM needed the ability 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 the confidentiality provision in the agreements, which was hampering IBM's business activities, had to be loosened. IBM was prepared to pay Novell a lump sum payment in the amount of \$10,125,000 for these amendments.

9. Kenneth Stokes, Paul D. Vineis, Esq., and I represented IBM in the negotiations concerning the modification of the Related Agreements. Novell was represented by Larry Bouffard and A. Allison Lisbonne, Esq.

10. Early in the negotiations, Ms. Lisbonne and Mr. Bouffard, on behalf of Novell, agreed with some, but not all of IBM's proposed amendments. On April 18, 1996, Novell sent IBM a draft of a proposed amendment (the "April 18 Draft"), a true and correct copy of which is attached hereto as Exhibit 6. The April 18 Draft included a royalty buy-out provision which would have eliminated per copy fees for distribution of binary copies of SVR3.2 and previous releases. This would have addressed IBM's concern about auditing the required royalty payments every year. However, the April 18 Draft did not include a provision making 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.

11. On April 22, 1996, Mr. Vineis sent a letter to Ms. Lisbonne of Novell (the "April 22 Letter"), a true and correct copy of which is attached hereto as Exhibit 7. The April 22 Letter provided comments on a draft of the proposed

amendment, including comments relating to irrevocability, redistribution of source code to contractors and customers and reduction of the confidentiality restrictions in the agreements. 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.”

12. The proposed modification regarding irrevocability was intended to ensure that the underlying agreements could never be terminated under any circumstances. The proposed change regarding redistribution was intended to facilitate the redistribution of licensed source code to contractors and customers. IBM's proposal to loosen the confidentiality provision was intended 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.

13. Messrs. Stokes and Vineis and I participated in a number of conversations with Novell representatives Ms. Lisbonne and Mr. Bouffard regarding the

changes proposed in the April 22 Letter. IBM's proposal concerning irrevocability was discussed at length. We explained to Novell that IBM's customers rely heavily on AIX products and use them in mission-critical applications, such as operating power plants, and that it was therefore important to IBM that it secure irrevocable rights under the Related Agreements to, among other things, copy and furnish, including market, license and distribute, AIX. We stated that IBM could not justify a \$10,125,000 non-refundable payment for what was at this time very old software unless IBM's rights under the agreements could never be terminated under any circumstances. We made clear that, under our proposal, IBM's rights under the Related Agreements could not be terminated or interfered with under any circumstances, and no additional royalty payments beyond the agreed upon amount of \$10,125,000 would be required in connection with IBM's distribution of its AIX operating system product on specified architectures (and, after five years, other sublicensed products). IBM was willing to accept only one limitation on these rights--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 (if it met the requirements for such relief).

14. The proposed change regarding irrevocability meant that IBM would acquire an irrevocable, fully paid-up, perpetual right to use the licensed code that would preclude anyone from terminating or otherwise interfering with its right to copy and furnish, including market, license and distribute, IBM's AIX operating system product and other sublicensed products, 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). Since the only proposed confidentiality restriction on IBM with respect to the licensed code or products was that it could not, in certain circumstances, copy the licensed code into certain products or publicly disclose the licensed code, and since Novell's only right to limit IBM's use of licensed code under the confidentiality provision was to prevent IBM, in certain circumstances, from copying the licensed code into certain products or publicly disclosing the licensed code, the only conduct that Novell could enjoin under IBM's proposal was, in appropriate circumstances, IBM's copying of the licensed code into certain products or publicly disclosing the licensed code.

15. I understood IBM's proposal to mean that, if IBM were to publish the licensed code in breach of the Related Agreements, then Novell could enjoin the publication (if it met the requirements for such relief), but Novell could not terminate IBM's rights under the Related Agreements. I believe all who participated in the discussions had the same understanding.

16. With respect to the redistribution provision, we explained IBM's need to redistribute the licensed source code to contractors and customers for limited purposes, such as adapting the software to support unique hardware or providing temporary fixes. With respect to the confidentiality provision, we explained that IBM wanted its employees to be free to look at the licensed source code and documentation when the employees were engaged in product development.

17. Ultimately, Novell accepted IBM's proposal 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 under certain limited circumstances. Novell also agreed to accept 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. In addition, Novell accepted IBM's proposal that IBM employees be permitted to refer to the licensed code while they are developing or providing products or services.

18. I believe that Novell agreed to IBM's proposed changes because:

- the licensed code and related information and documentation were old and of diminishing and uncertain value, since they had been widely distributed and were well known in the industry;
- IBM was making a \$10,125,000 non-refundable payment for irrevocable rights;
- Novell understood that, while IBM's rights would not be terminable, Novell could, under certain circumstances, seek to enjoin publication of licensed code;
- Novell understood IBM's need for limited rights to redistribute the licensed source code to contractors and customers; and
- Novell understood the practical sense of not preventing IBM employees from looking at licensed source code and documentation.

19. After the parties reached the understanding described above, 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, IBM and Novell, acting on its own behalf and on the behalf of Tarantella, entered into an amendment to the Related Agreements (the "April 1996 Amendment"), a true and correct copy of which is attached hereto as

Exhibit 8. In the April 1996 Amendment, Novell represents that it "has the right to amend the Related Agreements on behalf of SCO under certain circumstances applicable in this instance".

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, which is nearly identical to the language that Mr. Vineis proposed in the April 22 Letter, clearly states that IBM's rights under the Related Agreements become irrevocable, fully paid-up and perpetual upon payment of \$10,125,000, and 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 (if it met the requirements for such relief). So Novell gave up the right, based upon an alleged breach of the Related Agreements, 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, but retained the right to enjoin IBM, under certain circumstances, from copying licensed code into certain products or publicly disclosing the licensed code.

23. As Mr. Vineis requested in his 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 by IBM and Novell, acting on its own behalf and on the behalf of Tarantella, Tarantella objected to the amendment. Scott D. Lester, Esq., of Brobeck Phleger & Harrison LLP, counsel for

Tarantella, in a letter dated May 1, 1996 to Novell, forwarded to IBM under cover of a letter dated May 3, 1996, a true and correct copy of which is attached hereto as Exhibit 9, asserted that execution of the April 1996 Amendment by Novell constituted a breach of the asset purchase agreement between Novell and Tarantella and represented an invalid exercise of Novell's authority.

26. IBM took the position that Novell should resolve Tarantella's concerns, since Novell had represented to IBM that Novell had the authority to amend the Related Agreements on behalf of Tarantella. Pursuant to a "standstill agreement" with Tarantella, a true and correct copy of which is attached hereto as Exhibit 10, 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 11 through 13.

27. On or about May 21, 1996, Mr. Bouffard of Novell sent me a letter, a true and correct copy of which is attached hereto as Exhibit 14, attaching revisions to the April 1996 Amendment proposed by Tarantella. Tarantella proposed, among other things, to: (i) 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"; (ii) impose right to use fees on IBM contractors and customers who were provided licensed source code; and (iii) 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.

28. Novell 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. I do not recall ever discussing the terms of the April 1996 amendment directly with any Tarantella representative. Discussions did occur among IBM, Novell, and Tarantella, but those discussions related to negotiating the "standstill agreement".

29. Although 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), IBM was willing to limit its right to provide contractors and customers with copies of licensed source code to a specified number of copies. The limit that the parties eventually agreed upon was 50 copies at any time. Record-keeping, audit and other similar provisions related to the 50-copy limitation were also agreed upon. IBM rejected Tarantella's proposed changes regarding the irrevocability of IBM's rights, out of concern that the proposed changes would weaken or limit the irrevocability of IBM's rights. 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.

30. 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. I believe that Tarantella accepted this compromise because it was mostly concerned with redistribution of licensed source code to contractors and customers (and the 50-copy limitation and related provisions were sufficient to address these concerns) and it was less concerned with the irrevocability provision or the confidentiality provision. IBM was willing to accept 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 15.

31. After the parties reached the understanding described above, 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**

32. 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 16.

33. 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 general patent, copyright, or trademark law.

I 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 they retained the right to seek to enjoin or otherwise prohibit conduct that breached the provisions of the Related Agreements (short of termination) (if they met the requirements for such relief). I believe all the parties involved in the negotiation of Amendment No. X had the same understanding. So, for example, Novell and Tarantella had given up the right, based upon an alleged breach of the Related Agreements, 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. However, they retained the right to enjoin IBM, under certain circumstances, from publishing licensed source code. As the parties discussed in negotiating Amendment No. X, this language means that IBM has the irrevocable, fully paid-up, perpetual right to use the licensed code or products, and no one can terminate or otherwise interfere with IBM's right to copy and furnish, including market, license and distribute, sublicensed products, such as IBM's AIX operating system product or 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). No one, including Novell and Tarantella, can enjoin or otherwise prohibit any IBM conduct regarding the licensed code, except that Novell or Tarantella may enjoin or otherwise prohibit IBM, under certain circumstances, from copying the licensed code into certain products or from publicly disclosing the licensed code or from violating Novell's or Tarantella's rights under general patent, copyright or trademark laws. 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 with respect to an alleged breach of the Related Agreements is to seek an injunction preventing IBM, in certain circumstances, from copying the licensed code into certain products or from publicly disclosing the licensed code.

34. 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 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. I believe all the parties involved in the negotiation of Amendment No. X had the same understanding. After the execution of Amendment No. X, the only thing the confidentiality provision of the Software Agreement precludes IBM from doing is, under certain circumstances, copying licensed code into certain products or publicly disclosing the licensed code.

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


35. I have been advised that Caldera purports to have acquired some but not all rights to UNIX System V. I also understand 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

Caldera or any other party can terminate IBM's rights under the Related Agreements. I believe that any argument that IBM's rights are terminable is inconsistent with the language of Amendment No. X and the understanding of the people who negotiated the April 1996 Amendment and Amendment No. X. Termination is no longer a remedy under the Related Agreements.

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

Executed: June 5, 2003.

Austin, Texas

  
\_\_\_\_\_  
William Sandve, Jr.

**EXHIBIT 1**

**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.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION

Accepted by:

AT&T TECHNOLOGIES, INC.

By <u>R.A. McDonough</u> 2/1/85	By <u>O. L. Wilson</u> 2-1-85
(Signature) (Date)	(Signature) (Date)
<u>R.A. McDonough JR</u>	<u>O. L. WILSON</u>
(Type or print name)	(Type or print name)

COUNSEL - SYSTEMS PRODUCT DIV.  
(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 CPUs 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 such SOFTWARE PRODUCT is attached to this Supplement.



A Schedule for such SOFTWARE PRODUCT was attached to Supplement No. \_\_\_\_\_.

Location	DESIGNATED CPUs 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 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.



**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 SUBLICENSED PRODUCTS.

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

1.04 SUBLICENSED 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 SUBLICENSED PRODUCTS and to furnish, either directly or through DISTRIBUTORS, such copies of SUBLICENSED 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 SUBLICENSED PRODUCTS obtains agreement as specified in Section 2.02 from such a customer, before or at the time of furnishing each copy of a SUBLICENSED PRODUCT, that:
  - (i) only a personal, nontransferable and nonexclusive right to use such copy of the SUBLICENSED PRODUCT on one CPU at a time is granted to such customer;
  - (ii) no title to the intellectual property in the SUBLICENSED PRODUCT is transferred to such customer;
  - (iii) such customer will not copy the SUBLICENSED PRODUCT except as necessary to use such SUBLICENSED PRODUCT on such one CPU;

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

2.02 In the United States and in other jurisdictions where an enforceable copyright covering the **COMPUTER PROGRAMS** of the **SUBLICENSED 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 **SUBLICENSED 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 **SUBLICENSED PRODUCTS** (**LICENSEE** or another **DISTRIBUTOR**) before any **SUBLICENSED 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 **SUBLICENSED PRODUCTS**, but may furnish to customers copies of **SUBLICENSED PRODUCTS** furnished to such **DISTRIBUTOR** by **LICENSEE** or other **DISTRIBUTORS**. In such cases the product name appearing on such copies shall not be deleted or altered by such a **DISTRIBUTOR**.

2.05 (a) A DISTRIBUTOR who is also an AUTHORIZED COPIER may modify and make copies of SUBLICENSED PRODUCTS, select a name for SUBLICENSED PRODUCTS to appear on such copies (consistent with the provisions of Section 2.10), 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 **SUBLICENSED PRODUCT** shall include an appropriate copyright notice. Such copyright notice may be the copyright notice or notices appearing in or on the corresponding portions of the **SOFTWARE PRODUCT** on which such **SUBLICENSED PRODUCT** is based or, if copyrightable changes are made in developing such **SUBLICENSED PRODUCT**, a copyright notice identifying the owner of such changes.

2.09 In certain cases AT&T may make copies of software materials available on appropriate media for purchase by **LICENSEE** for distribution by **LICENSEE** as **SUBLICENSED PRODUCTS**. However, purchase of such copies shall not relieve **LICENSEE** of its obligation to pay fees under this Sublicensing Agreement for such **SUBLICENSED 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 **SUBLICENSED PRODUCTS** offered or furnished to customers by **LICENSEE** or **DISTRIBUTORS**. However, **LICENSEE** and **DISTRIBUTORS** may state in advertising, publicity, packaging, labeling or otherwise that a **SUBLICENSED PRODUCT** is derived from 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 **SUBLICENSED 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 **SUBLICENSED PRODUCTS** in its possession.



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

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

#### IV. FEES AND DISCOUNTS

4.01 (a) For rights granted under this Sublicensing Agreement, LICENSEE shall pay to 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 SUBLICENSED PRODUCT is based and a per-copy fee for each copy of a SUBLICENSED PRODUCT either (i) furnished by LICENSEE to a customer or to a DISTRIBUTOR, (ii) made by an AUTHORIZED COPIER and furnished by such AUTHORIZED COPIER to a customer or to another DISTRIBUTOR or (iii) put into use by LICENSEE on a CPU of LICENSEE. The amounts of such 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 SUBLICENSED 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 SUBLICENSED 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 SUBLICENSED 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 SUBLICENSED 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 SUBLICENSED PRODUCT from one CPU of LICENSEE to another or the transfer of a SUBLICENSED 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 SUBLICENSED 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 SUBLICENSED 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 SUBLICENSED 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 R. A. McDonald 2/1/85  
(Signature) (Date)

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

R. A. McDonald  
(Type or print name)

O. L. WILSON  
(Type or print name)

CONSUMER SERVICES DIV.  
(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.

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\*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 SUBLICENSED 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 SUBLICENSED 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 SUBLICENSED 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 SUBLICENSED 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 SUBLICENSED 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 SUBLICENSED 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 SUBLICENSED 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 *Frank W. Fresene*  
*for O.L. Wilson*

ACCEPTED AND AGREED TO:

INTERNATIONAL BUSINESS MACHINES CORPORATION

By *R. A. McDonald*  
Title *Control Systems Product Division*  
Date *February 1, 1985*



Licensee INTERNATIONAL BUSINESS  
MACHINES CORPORATION

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 Type	Serial No.	Source or Object	Fee
SEE ATTACHMENT A				\$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]  
(Signature) (Date)

By [Signature]  
(Signature) (Date)

[Signature]  
(Type or print name)

O. L. WILSON  
(Type or print name)

[Signature]  
(Title)

Manager, UNIX® Software Licensing  
(Title)

Schedule for  
UNIX\* System V, Release 3.0  
and  
UNIX System V, Release 3.0 International Edition\*\*  
May 22, 1987

## 1. Fees

## (a) Right-to-use fees

- (i) Initial DESIGNATED CPU \$65,000
- (ii) Each additional DESIGNATED CPU \$20,000
- (iii) Each of third and subsequent DESIGNATED CPUs after initial sublicensing fee has been paid \$ 2,000
- (iv) Fees listed in item (iii) above do not cover distribution of a copy of this SOFTWARE PRODUCT

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

## (c) Upgrade Fees

LICENSEES for any prior release or version of UNIX System V may upgrade those systems for the following fee: \$22,000

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

## (d) Right-to-use fees, upgrade fees and the distribution fee are subject to change upon ninety (90) days notice.

## (e) Sublicensing fees (applicable only to SUBLICENSED PRODUCT under a Sublicensing Agreement)

- (i) Initial \$25,000\*\*\*

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

\*\*Furnished to LICENSEES outside the United States

\*\*\*Not payable by LICENSEES who have paid Initial Sublicensing Fee for another release or version of UNIX System V

*Andrew Heller* 2-15-88  
*afw*

Schedule for  
 UNIX\* System V, Release 3.0  
 and  
 UNIX System V, Release 3.0, International Edition\*\*  
 May 22, 1987

(ii) Per Copy Fees (See Notes 1 and 2)

- Base System	\$ 30
Kernel Extension	10
Basic Utilities Extension	20
- Advanced Utilities Extension	60
Administered System Extension	80
Software Development Extension	80
Terminal Interface Extension	30
-----	
Unlimited User System combining the above seven components	\$150
1-2 User System combining the above seven components	50
-----	
- Network Services Extension	\$ 30

(iii) UNIX System V ASSIST Software may be provided with a  
 SUBLICENSED PRODUCT at no fee.

(iv) The extensions are defined in the System V Interface  
 Definition, Issue 2, Volumes 1, 2 and 3. Use of any  
 portion of an extension in deriving a SUBLICENSED  
 PRODUCT will require payment of the full fee for that  
 extension except as listed below:

Routines from files in usr/src/lib whose pathnames  
 end in .o or .a may be included in object-code format  
 in customer developed applications software without  
 payment of a sublicensing fee to AT&T.

Routines in directories usr/src/head may be used to  
 interface to routines in usr/src/lib whose pathnames  
 end in .o or .a or files in usr/lib whose pathnames  
 end in .a without payment of a sublicensing fee to  
 AT&T.

Schedule for  
UNIX\* System V, Release 3.0  
and  
UNIX System V, Release 3.0, International Edition\*\*  
May 22, 1987

- (v) Sublicensing fees are subject to change on ninety (90) days' notice. However, if the per-copy fees are increased, a licensee may continue to pay the per-copy fees in effect at the beginning of such licensee's then-current period (initial period or additional one-year period) until the end of such period.

Notes:

1. A 1-2 user system is defined as having input/output ports for (a) not more than two (2) login terminals (including the system console, if any) or (b) a login terminal and a network connection.
  2. "User" means a login 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 SUBLICENSED PRODUCT based on UNIX System V, Release 3.0 or UNIX System V, Release 3.0, International Edition. An end-user must not be given the ability to increase the number of users supported by a SUBLICENSED PRODUCT for a 1-2 user system.
2. Documentation Furnished
- (a) Printed Documentation
- AT&T 3B2 Computer UNIX System V Release 3.0 -
    - Documentation Roadmap
    - Product Overview
    - Release Notes
    - Systems Administrator's Guide
    - Systems Administrator's Reference Manual

Schedule for  
 UNIX\* System V, Release 3.0  
 and  
 UNIX System V, Release 3.0, International Edition\*  
 May 22, 1987

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 will be supplied on nine track, 1600 BPI magnetic tape or data cartridge.

- (a) The usr/src directory and subdirectory file system in cpio format. Includes the following subdirectories and their associated lower level subdirectories and files:

cmd	lib
head	scripts
	uts

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

include  
src

Note: The "crypt" command, scripts, library function and associated documentation are not included in UNIX System V, Release 3.0, International Edition.

### 4. Sublicensing (under a Sublicensing Agreement)

- (a) A SUBLICENSED PRODUCT based on UNIX System V, Release 3.0 or UNIX System V, Release 3.0, International Edition, may include:

- (i) COMPUTER PROGRAMS in object-code format. All COMPUTER PROGRAMS may be treated as object-code except for files and subdirectories under directory usr/src.



Schedule for  
 UNIX\* System V, Release 3.0  
 and  
 UNIX System V, Release 3.0, International Edition\*\*  
 May 22, 1987

The following text and data files and directories may be treated as object code:

usr/src/cmd/spell/american	usr/src/cmd/spell/1st
usr/src/cmd/spell/british	usr/src/cmd/spell/local
usr/src/cmd/spell/extra	usr/src/cmd/spell/step

- (ii) The following documents are proprietary to AT&T and may NOT be distributed with a SUBLICENSED PRODUCT:

AT&T UNIX System V, Release 3.0 - Source Code Provision  
 Release Notes  
 System V Porting Rules

- (iii) Except as noted in Section 2(b), not more than two copies of the permitted printed documentation may be reproduced and distributed with each copy of a SUBLICENSED PRODUCT containing the BASE system without execution of a Supplement for UNIX System V, Release 3.0 and UNIX System V, Release 3.0 International Edition - Documentation Reproduction and payment of the appropriate fees.

- (iv) Documents which may not be reproduced may be purchased from AT&T and distributed with a SUBLICENSED PRODUCT based on UNIX System V, Release 3.0.

- (b) A SUBLICENSED PRODUCT must conform to the following requirements:

- (i) If a SUBLICENSED PRODUCT contains any portion of the BASE System, such portion must conform to the System V Interface Definition, Issue 2, Volumes 1, 2 and 3 ("SVID2").
- (ii) After June 30, 1988, if LICENSEE offers a SUBLICENSED PRODUCT containing a portion of the BASE System such SUBLICENSED PRODUCT must conform to the entire BASE system as defined in SVID2.
- (iii) If a SUBLICENSED PRODUCT contains any portion of the NETWORK SERVICES EXTENSION, such portion must conform to the SVID2 and must be designed to run with BASE Systems that conform to the SVID2.

Schedule for  
 UNIX\* System V, Release 3.0  
 and  
 UNIX System V, Release 3.0, International Edition\*\*  
 May 22, 1987

- (iv) After June 30, 1988, if LICENSEE offers a SUBLICENSED PRODUCT containing a portion of the NETWORK SERVICES EXTENSION such LICENSEE must also offer either a single SUBLICENSED PRODUCT containing the entire functionality of the NETWORK SERVICES EXTENSION or multiple SUBLICENSED PRODUCTS which when combined contain the entire functionality of the NETWORK SERVICES EXTENSION. Such SUBLICENSED PRODUCTS(S) must conform to the SVID2 and must be designed to run with BASE systems that conform to the SVID2.
- (v) A SUBLICENSED PRODUCT containing any portion of any extension outlined in Section 1(e)(1), except the SOFTWARE DEVELOPMENT EXTENSION, must be designed to run with BASE Systems that conform to the SVID2.
- (vi) A SUBLICENSED PRODUCT containing any portion of UNIX System V ASSIST Software must be designed to run with BASE Systems that conform to the SVID2.
- (c) A SUBLICENSED PRODUCT does not need to conform to the SVID2 if it is being used on a CPU for porting and development activities related to such SUBLICENSED PRODUCT.

#### 5. Other Software

The products listed below may be used in the United States on DESIGNATED CPUs for UNIX System V, Release 3.0 as if they were that product. The products may also be used outside the United States on DESIGNATED CPUs for UNIX System V, Release 3.0, International Edition as if they were that product. Only those products marked with an "E" may be shipped outside the United States by AT&T.

All prior releases and versions of UNIX System V  
 All prior releases and versions of UNIX System V,  
 International Versions  
 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 3.0 or UNIX System V, Release 3.0, 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 3.0 or UNIX System V, Release 3.0, International Edition, may also be used to furnish a time-sharing service to third parties.



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

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

JAN 25 1993

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]

[Signature]

(Type or Print Name)

Title [Signature]

Date 1/23/93

23817

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 SUBLICENSED 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 License 1

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 78758  
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  
to IBM/AT&T*

Include "Substitution Agreement, XFER-000158", 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  
IBM/AT&T*

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

such Contractor is for Authorized Purposes in support of the Contractor's distribution and support of SUBLICENSED PRODUCTS. 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 solely to: (i) adapt the SUBLICENSED PRODUCTS to support unique hardware features or devices (e.g., specialized graphics adapters or displays), or (ii) provide temporary fixes to customers of the SUBLICENSED 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."

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 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 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 SUBLICENSED 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 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 (eighty percent (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 1 of this Amendment shall apply to any use or distribution of the SOFTWARE PRODUCTS or SUBLICENSED 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."

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 SUBLICENSED PRODUCTS in 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."

Novell  
April 22, 1996  
Page 3

Section 6. Add a new section 6 to read: *OK*

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."

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  
→ and on behalf  
of SCO.*

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*

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 fixed 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 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.

- 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 features 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 1 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 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. 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

of liability, even if Novell has been advised of the possibility of such damages.

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

INTERNATIONAL BUSINESS  
MACHINES

By: 

R. L. Lee

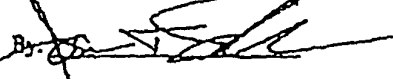
(Print or Type Name)

Manager, IPS

(Title) Contract Services

4/26/96  
(Date)

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

By: 

James T. Sullivan

(Print or Type Name)

VP Worldwide OEM Sales

(Title)

26 April 1996

(Date)

NOVELL, INC.

By: 

James T. Sullivan

(Print or Type Name)

VP Worldwide OEM Sales

(Title)

26 April 1996

(Date)



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

BROBECK  
PHLEGER &  
HARRISON  
LLP  
ATTORNEYS AT LAW

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

BPHSF6\SD\0230715.VP

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

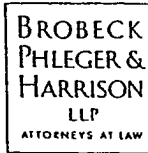
cc: Alok Mohan (via facsimile)  
President, Chief Executive Officer  
The Santa Cruz Operation, Inc.

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



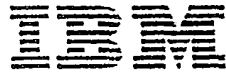
May 3, 1996  
Page 2

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.



**Software Contracts & Licensing  
AUSTIN, TEXAS**



IBM CONFIDENTIAL

UNCLASSIFIED

X

FROM: Craig Schneider  
Software Contracts  
11400 Burnet Road  
Internal Zip 1725  
Austin, TX 78758  
(512) 823-8694 T/L 793-8694  
FAX # (512) 823-8712

Fax To: PAUL VINEIS  
Company: POM AUSTIN  
Phone #: 37930  
Fax #: 37035  
Date: 5-7-96

Subject: SCO LETTER

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# EXHIBIT 10



*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 SUB-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 SUB-00015A", Section 3 entitled "Comments" and the last sentence of Section 6 entitled "Restrictions 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.

SCAGRELEDOC

1 OF 2

MAY 20 '96 17:07

408 427 5474

PAGE.002

MAY 21 '96 10:45

1234567

PAGE.002

1234567  
 SENT BY: SAN JOSE, FORTUNE : 5-20-96 : 13:12 : NOVELL LEGAL DEPT - 308 427 5474:6 3/ 3  
 1996 05 20 13:12 1234567 1234567 1234567 1234567 1234567 1234567 1234567 1234567 1234567 1234567

Novell agrees that IBM shall have no obligation to make any payments to Novell with respect to UNIX Documenter's Workbench 2.0, and all previous releases, that may otherwise be due under the Related Agreements and Software Agreement SOFT-00015 Supplement 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 construed or deemed an admission 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 Related Agreements, including Software Agreement SOFT-00015 Supplement 157, as amended.

THE SANTA CRUZ OPERATION, INC.

By: Steven M. Sabbath

STEVEN M. SABBATH

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

(Title)

20 May 1996

(Date)

NOVELL, INC.

By: Marc Epstein

(Print or type name)

VP

(Title)

5/20/96

(Date)

INTERNATIONAL BUSINESS  
 MACHINES CORPORATION

By: Craig Schneider

CRAG SCHNEIDER

(Print or type name)

SR. Customer Administrator

(Title)

5-20-96

(Date)

SCAGRELL.DOC

2 OF 2

not TOTAL PAGE.003 \*\*

MAY 23 '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

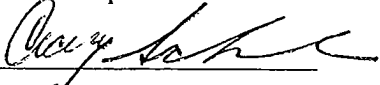
Attention: Allison Lisbonne (Novell) and Steven M. Sabbath (SCO)

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

By: 

Name: CRAG SCHNEIDER

Title: Sr. Contract Administrator

Date: 6-17-96

Novell, Incorporated

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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 95131The 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 BradfordName: David BradfordTitle: General CounselDate: 6/17/96

\*\* TOTAL PAGE.02 \*\*

International Business Machines Corporation

11400 Butler Road  
Austin, Texas 78758  
612/823-0000

June 14, 1996

Novell, Incorporated  
Worldwide Sales  
2180 Fortune Drive, Building Six  
San Jose, California 95131The 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: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

The Santa Cruz Operation, Incorporated

By: Steven M. SabbathName: STEVEN M. SABBATHTitle: VICE PRESIDENT, LAW & CORP. AFFAIRSDate: 17 JUNE 1996

\*\* TOTAL PAGE.02 \*\*

# EXHIBIT 12

512 823 1670

JUL 25 '96 10:04 FR S-W CONTRACTS

512 823 1670 TO 914084275474

P.02/02

IBM

International Business Machines Corporation

July 25, 1996

11400 Burnet Road  
Austin, Texas 78758  
512/823-0000Novell, Incorporated  
Worldwide Sales  
2180 Fortune Drive, Building Six  
San Jose, CA 95131The 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

BY:

David Bullis  
Signature

NAME:

David Bullis

TITLE:

Contract Relationship Analyst

DATE:

July 25, 1996

Novell, Incorporated

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

NOV300 3AM

\*\* TOTAL PAGE.02 \*\*





IBM

International Business Machines Corporation

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

August 27, 1996

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

BY:

Craig Schneider  
Signature

NAME:

CRAIG SCHNEIDER

TITLE:

SR. Contract Administrator

DATE:

August 27, 1996

Novell, Incorporated

BY:

Michael V. Hoffman  
Signature

NAME:

MICHAEL V. HOFFMAN

TITLE:

ASSOCIATE GENERAL COUNSEL

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

NOVSCO.SAM

# EXHIBIT 14

MAY 21 '96 10:30 FR IBM SITE GENERAL MGR 512 823 7876 TO 38712  
MAY 21 '96 10:47 FR 5:28333862 5:28333862 TO 37855

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 Vineis, Allison Lisbonna, Chris Hogan

MHR 19 2003 16:01 FR IBM LEGAL - AUSTIN 512 823 7035 TO 72244339  
MAY 21 '96 10:30 FR IBM SITE GENERAL MGR 512 823 7876 TO 38712  
MAY 21 '96 10:47 FR 5128383882 5128383882 TO 37035

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 \$3000 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 \$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.

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 features or devices (e. g., specialized graphics, adapters, or displays) intended for use in vertical

MAY 21 '96 10:30 FR IBM SITE GENERAL MGR 512 823 7876 TO 38712  
MAY 21 '96 10:48 FR 5128383882 5128383882 TO 37835

P.20/22  
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) in 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 therein, 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, 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" 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 Licensee

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 7076 TO 38712  
MAY 21 '96 10:48 FR 512838382 512838382 TO 37035

P.21/22  
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 (i) Sublicensed Products to which the paid up rights in Section I apply and (ii) Software Products, (a) Designated CPU's 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 CPU's 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

4080738697

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.

By: James R. Tolonen  
Name: James R. Tolonen  
Title: SVP & CFO  
Date: 10/16/96

INTERNATIONAL BUSINESS  
MACHINES CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
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.


By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

INTERNATIONAL BUSINESS  
MACHINES CORPORATION

By: 

Name: Ken SCHNEIDER

Title: SR. Contract Administrator

Date: 10-17-96

# EXHIBIT 16

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: 

Gerald Schneider

(Print or Type Name)

SR. Consultant Americas & Europe

(Title)

10-17-96

(Date)

THE SANTA CRUZ OPERATION, INC.

By: \_\_\_\_\_

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

NOVELL, INC.

By: \_\_\_\_\_

\_\_\_\_\_  
(Print or Type Name)

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.

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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)

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: \_\_\_\_\_

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

THE SANTA CRUZ OPERATION, INC.

By: \_\_\_\_\_

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

NOVELL, INC.

By: \_\_\_\_\_

James R. Tolonen  
(Print or Type Name)

10/16/96

(Title)

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(Date)