

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(p) 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-I, 1985 amendment to SOFT-00015. This Section 2.2 neither expands or restricts such customer's 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: \$4,360,000 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 (30% 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 any replaced amendment dated April 26, 1996 are confidential and each party will not issue press releases publicizing, and will use reasonable efforts not to otherwise disclose, the commercial and legal details of this Amendment No. X, the replaced amendment or their subject matters without the other parties' prior written approval. Notwithstanding the foregoing, each party shall be permitted to disclose to third parties non-financial information dealing with the commercial and legal details of this Amendment as part of a transaction authorized by this Amendment provided that such disclosure is subject to confidentiality terms consistent with the terms of this Agreement. Also, disclosure by any party of commercial and legal details of this Amendment shall not be restricted if such disclosure is:

- 9.1 in response to a valid order of a court or other governmental body or any political subdivision thereof; provided, however, that the party proposing to make such disclosure will first have made a reasonable effort to obtain a protective order requiring that the information so disclosed be used only for the purposes for which the order was issued; or
- 9.2 necessary to establish rights under this Amendment in a court or administrative proceeding.

10

Indemnification; Limitations on Liability.

- 10.1 Subject to the limitations on liability below, Novell agrees to indemnify and hold harmless IBM and IBM Subsidiaries from and against any and all losses, liabilities, judgments, and costs incurred as a result of any alleged or actual Novell breach of Novell's representation and warranty in Section 5.1 of this Amendment. Novell's indemnification of IBM shall be limited to the amount paid by IBM to SCO under this Amendment. In addition, provided that IBM has paid full consideration in accordance with this Amendment, Novell's indemnification to IBM shall also include the amount of any additional royalties paid to SCO by IBM if IBM would not have been obligated to pay such additional royalties absent such breach. Novell will defend at its sole expense any suits or proceedings related to the above indemnification provided that IBM gives Novell prompt notice and control of any claim of which it learns. Novell will have the right to choose legal counsel and IBM will have the right to participate in the defense of any such claim, provided that Novell will not be responsible for indemnifying IBM for the cost of IBM's attorney's fees. In no event will Novell be liable for any indirect, incidental, special, punitive or consequential damages, lost revenues, or profits, data, or use incurred by IBM however caused, no matter what theory of liability, even if Novell has been advised of the possibility of such damages.

10.2 Subject to the limitations on liability below, SCO agrees to indemnify and hold harmless IBM and IBM Subsidiaries from and against any and all losses, liabilities, judgments, and costs incurred as a result of any alleged or actual SCO breach of SCO's representation and warranty in Section 5.2 of this Amendment. SCO's indemnification of IBM shall be limited to the amount paid by IBM to SCO under this Amendment. In addition, provided that IBM has paid full consideration in accordance with this Amendment, SCO's indemnification to IBM shall also include the amount of any additional royalties paid to SCO by IBM if IBM would have not been obligated to pay such additional royalties absent such breach. SCO will defend at its sole expense any suits or proceedings related to the above indemnification provided that IBM gives SCO prompt notice and control of any claim of which it learns. SCO will have the right to choose legal counsel and IBM will have the right to participate in the defense of any such claim, provided that SCO will not be responsible for indemnifying IBM for the cost of IBM's attorney's fees. In no event will SCO be liable for any indirect, incidental, special, punitive, or consequential damages, lost revenues, or profits, data, or use incurred by IBM however caused no matter what theory of liability, even if SCO has been advised of the possibility of such damages.

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

INTERNATIONAL BUSINESS
MACHINES

By: *[Signature]*
CHRIS SCHEIDER
(Print or Type Name)
SE. District Administrator
(Title)
10-17-96
(Date)

THE SANTA CRUZ OPERATION, INC.

By: _____

(Print or Type Name)

(Title)

(Date)

NOVELL, INC.

By: _____

(Print or Type Name)

10.2 Subject to the limited liability below, SCO agrees to indemnify 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: Steven M. Sabbath

Steven M. Sabbath

(Print or Type Name)

Vice President, Joint Corporate Affairs

(Title)

16 October 1991

(Date)

NOVELL, INC.

By: _____

(Print or Type Name)

10.2 Subject to the limitations on liability below, SCO agrees to indemnify 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. Tolman

(Print or Type Name)

10/16/96