

## Exhibit D

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: *Greg Schneider*

Greg Schneider  
(Print or Type Name)

Sr. Contract Administrator  
(Title)

10-17-96  
(Date)

THE SANTA CRUZ OPERATION, INC.

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

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

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

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

NOVELL, INC.

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

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

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: Steven H. Sablath

Steven H. Sablath

(Print or Type Name)

Vice President, Law & 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 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

THE SANTA CRUZ OPERATION, INC.

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

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

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

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

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

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

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

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

NOVELL, INC.

By: James R. Tolover

James R. Tolover

(Print or Type Name)

10/16/96

Agreement Number SOFT-2538

**THE SANTA CRUZ OPERATION, INC.  
REFERENCE SOURCE CODE AGREEMENT**

This Agreement is between THE SANTA CRUZ OPERATION, INC. ("SCO"), a California corporation, having an office at 400 Encinal Street, Santa Cruz, California 95061-1900, and YOU as indicated in the signature block of this Agreement, for YOURSELF and on behalf of YOUR SUBSIDIARIES. Subject to the terms and conditions of this Agreement, SCO will provide YOU the right to acquire REFERENCE SOFTWARE PRODUCTS. Each such REFERENCE SOFTWARE PRODUCT shall become subject to this Agreement on acceptance by SCO of an ORDER submitted by YOU and accepted by SCO that identifies the SOURCE CODE PRODUCT upon which a REFERENCE SOFTWARE PRODUCT is based. Each ORDER made part hereof shall identify the number of this Agreement and shall include a Product Schedule for the SOURCE CODE PRODUCT. Any additional terms and conditions set forth in such Product Schedule incorporated into such ORDER shall also apply with respect to such REFERENCE SOFTWARE PRODUCTS provided that each such Product Schedule containing such additional terms and conditions is signed by YOUR duly authorized representative. Additional terms and conditions on YOUR initiated ORDERS in conflict with or modifying the terms and conditions of this Agreement shall not apply to such ORDER.

This Agreement and its applicable ORDERS set forth the entire agreement and understanding between the parties as to the subject matter hereof and merges all prior discussions, communications, agreements or understandings between them with respect to such subject matter. This Agreement shall not be modified except by a writing signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives:

YOU

International Business Machines Corp  
(Company Name)

New York  
(State Incorporation)

3039 Cornwallis Rd  
(Address)

Research Triangle Park, NC 27709  
(Address)

Debra P. Walton  
(By)

DEBRA P. WALTON  
(Print or Type Name)

Contracts Representative  
(Title)

2-5-98  
(Date)

THE SANTA CRUZ OPERATION, INC.

By: [Signature]  
(Name)

VICE LAW & CORP AFFAIRS  
(Title)

2-10-98  
(Date)

## 1. TERM AND TERMINATION

- 1.01 This Agreement shall become effective on the date of acceptance by SCO. With respect to a particular REFERENCE SOFTWARE PRODUCT, the duration of LICENSEE's rights shall be as specified in the Product Schedule associated with the applicable Supplement.
- 1.02 If YOU fail to fulfill one or more of YOUR material obligations under this Agreement, SCO 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' prior written notice to YOU specifying any such breach, unless within the period of notice all breaches specified therein shall have been remedied; upon such termination, YOU shall immediately discontinue use of and return or destroy all copies of REFERENCE SOFTWARE PRODUCTS covered hereunder.
- 1.03 Upon thirty (30) days written notice to SCO, YOU may elect to terminate YOUR rights hereunder. You may elect to acquire more extensive rights under a separate SCO Software Agreement covering the applicable SCO SOURCE CODE PRODUCTS.
- 1.04 The termination of this Agreement or YOUR rights hereunder shall not relieve YOU of YOUR obligations to pay any fee hereunder.

## 2. GRANT OF RIGHTS

- 2.01 Subject to the provisions and during the term of this Agreement, SCO grants to YOU a personal, nontransferable, nonassignable and nonexclusive limited right to use in the United States REFERENCE SOFTWARE PRODUCTS identified in one or more ORDERS hereto, solely for YOUR own business purposes and solely on or in conjunction with DESIGNATED CPUs. Such right to use does not include any right to:
- (a) modify such REFERENCE SOFTWARE PRODUCTS or prepare derivative works based on such REFERENCE SOFTWARE PRODUCTS; or
  - (b) to distribute, to any other party, REFERENCE SOFTWARE PRODUCTS; or
  - (c) in the case of object code portions, if any, of REFERENCE SOFTWARE PRODUCTS, to reverse engineer, reverse compile, disassemble or otherwise attempt to derive the source code of such portions.
- 2.02 No right is granted by this Agreement for the use of REFERENCE SOFTWARE PRODUCTS directly for others, or for any use of REFERENCE SOFTWARE PRODUCTS by others unless such uses are permitted for the associated SCO SOURCE CODE PRODUCTS in the applicable Product Schedules for such SCO SOURCE CODE PRODUCTS.
- 2.03 No right is granted to YOU to allow anyone other than YOUR employees to use REFERENCE SOFTWARE PRODUCTS unless such uses are permitted by a specific provision in the Product Schedules for the associated SCO SOURCE CODE PRODUCTS. The term "employees" as used in this Agreement means both direct and contractors.

## 3. CONFIDENTIALITY

- 3.01 SCO shall include the appropriate markings of confidentiality on the REFERENCE SOFTWARE PRODUCT. As such, YOU shall treat all REFERENCE SOFTWARE PRODUCT or SOFTWARE DERIVATIVE provided to you under this Agreement in accordance with the terms and conditions of this Section.
- 3.02 YOU agree to use the same degree of care as YOU would with similar products of YOUR own, (but no less than a reasonable degree of care) and to hold all parts of REFERENCE SOFTWARE PRODUCTS or SOFTWARE DERIVATIVES subject to this Agreement in confidence for SCO and not make any disclosure of any or all of such REFERENCE SOFTWARE PRODUCTS (including methods and concepts utilized therein) to anyone, except to YOUR employees to whom such disclosure is necessary to the use for which rights are granted hereunder and who are under a binding obligation to keep such disclosure in confidence.

3.03 YOU 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.

3.04 YOUR obligations under this Section shall not apply to a particular portion of the REFERENCE SOFTWARE PRODUCT which: (i) has become generally available to the public through acts or omissions not attributable to YOU; (ii) was already lawfully in YOUR possession unburdened by an obligation of confidentiality owed to SCO, prior to its receipt from SCO; (iii) is received by YOU independently from a third party who was free to lawfully disclose such information to YOU without breach of an obligation of confidentiality to SCO; (iv) is required to be disclosed by YOU by judicial or governmental administrative authority, provided that YOU first notify SCO in a timely fashion to permit SCO to take appropriate protective measures; or (v) is independently developed by you with use of the REFERENCE SOFTWARE PRODUCT or SOFTWARE DERIVATIVE.

3.05 YOUR obligations of confidentiality shall survive termination of this Agreement.

3.06 Notwithstanding anything to the contrary, YOU shall have the right to use residual information mentally retained by YOUR employees who in the ordinary course of their work pursuant to this Agreement, retain such information in non-tangible form after having access to REFERENCE SOFTWARE PRODUCT, provided that such employees make no deliberate attempt to preserve such information by reducing it to writing or to otherwise memorialize such information contemporaneously. However, nothing in this paragraph shall affect SCO's rights under patent or copyright laws.

#### 4. SOURCE CODE ACQUISITION

Upon payment of the applicable fees set forth in the Product Schedule for a particular REFERENCE SOFTWARE PRODUCT, YOU may obtain a copy of such REFERENCE SOFTWARE PRODUCT for limited use hereunder in one of the following ways:

- (a) in the case of a SCO SOFTWARE PRODUCT, directly from SCO; or
- (b) in the case of a SOFTWARE DERIVATIVE, from another licensee of SCO for the associated SCO SOURCE CODE PRODUCT who has previously acquired the right, via a SCO Software Agreement, to provide such SOFTWARE DERIVATIVE to certain SCO licensees via SOURCE CODE EXCHANGE.

#### 5. COPIES OF REFERENCE SOFTWARE PRODUCTS

YOU may make copies of REFERENCE SOFTWARE PRODUCTS solely for the uses granted hereunder. Each copy shall contain any copyright notices, proprietary notices or notice giving credit to another developer, which appear on or in the REFERENCE SOFTWARE PRODUCT being copied or in the applicable Product Schedule for the associated SCO SOURCE CODE PRODUCT. All YOUR obligations hereunder with respect to such REFERENCE SOFTWARE PRODUCT shall apply to each copy.

#### 6. EXPORT

YOU will not, without the prior written consent of the REFERENCE SOFTWARE PRODUCT provider, export, either directly or indirectly, REFERENCE SOFTWARE PRODUCTS covered by this Agreement to any country outside of the United States. YOU will obtain any and all necessary governmental export licenses for export or for any disclosure of a REFERENCE SOFTWARE PRODUCT to a foreign national.

#### 7. TRADEMARKS

No right is granted herein to use any trademarks, trade devices, service marks or symbols, or other trade indicia, and abbreviations, contractions or simulations thereof (collectively "trademarks") owned by, or used to identify any product or service of, SCO (or a corporate affiliate thereof) or any third party including any third party who has contributed to any portion of a REFERENCE SOFTWARE PRODUCT.

## 8. FEES AND TAXES

- 8.01 The applicable fees specified in Product Schedule(s) included in ORDERS made part hereof shall be paid to SCO within thirty (30) days of receipt of an invoice from SCO.
- 8.02 YOU shall pay all taxes, including sales and use taxes (and any related interest or penalty), however designated, imposed as a result of this Agreement, except any income tax imposed upon SCO by any governmental entity within the United States (the fifty (50) states and the District of Columbia). Fees specified here do not include taxes. If SCO is required to collect a tax to be paid by YOU, YOU shall pay the amount of such tax to SCO on demand.

## 9. PAYMENTS

- 9.01 Payments to SCO under this Agreement shall be made payable and sent to:

The Santa Cruz Operation, Inc.  
P.O. Box 7745  
San Francisco, CA 94120-7745

## 10. NOTICES

- 10.01 Notices and other correspondence with SCO relating to this Agreement shall be sent to:

The Santa Cruz Operation, Inc.  
P. O. Box 4  
430 Mountain Avenue  
Murray Hill, New Jersey 07974-0004  
Attention: Law and Corporate Affairs

- 10.02 Any statement, notice, request or other communication shall be deemed received when personally delivered, sent by facsimile, or three days after being sent via first-class mail postage pre-paid to either party at the addresses specified in this Agreement.

## 11. AUDITS

- YOU agree to keep records of each copy of REFERENCE SOFTWARE PRODUCTS. Such records shall list the location, person responsible, and manufacturer, model and serial number of DESIGNATED CPUs such REFERENCE SOFTWARE PRODUCT is installed on. YOU agree to furnish reports detailing the procedures used to keep such records and the list of DESIGNATED CPUs to SCO upon request. Such request from SCO shall not be more frequent than annually. Prompt adjustment shall be made to compensate for any errors or omissions.

## 12. WARRANTY

- 12.01 SCO warrants that it is empowered to grant the rights granted herein.
- 12.2 Except as set forth in Section 12.01, SCO (and other developers) make no representations or warranties with regard to REFERENCE SOFTWARE PRODUCTS, expressly or impliedly. By way of example but not of limitation, SCO and other developers make no representations or warranties of merchantability or fitness for any particular purpose, or that the use of any REFERENCE SOFTWARE PRODUCT will not infringe any patent, copyright or trademark. SCO and other developers shall not be held to any claim by YOU or a third party on account of, or arising from, the use of any REFERENCE SOFTWARE PRODUCT.

SCO performs a standard virus check on all media the REFERENCE SOFTWARE PRODUCT is contained on and as such the REFERENCE SOFTWARE PRODUCT is provided to YOU free of any known virus.

SCO's Law and Corporate Affairs Department (meaning the organization responsible for the protection of SCO's patents and other intellectual property, and for the response to suits and claims

in connection therewith, has no knowledge of any patents or copyrights which are infringed or may be infringed, or any trade secrets or other proprietary rights of other parties which are or may be misappropriated or violated by using, making, copying, licensing or distributing SCO Products supplied by SCO to OEM hereunder.

### 13. MISCELLANEOUS PROVISIONS

- 13.01 Neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by YOU and any purported assignment or transfer shall be null and void.
- 13.02 The construction and performance of this Agreement shall be governed by the substantive laws of the State of California.

### 14. DEFINITIONS

- 14.01 CPU means central processing unit.
- 14.02 COMPUTER PROGRAM means any instruction or instructions, in source-code or object-code format, for controlling the operation of a CPU.
- 14.03 DESIGNATED CPU means any CPU listed as such for a specific SOURCE CODE PRODUCT in an ORDER under this Agreement. Such listing includes the maker, model number and serial number.
- 14.04 SCO SOURCE CODE PRODUCT means a SOURCE CODE PRODUCT made commercially available for license in source-code form by SCO through a SCO Software Agreement.
- 14.05 ORDER means YOUR initiated written request for rights to acquire SOFTWARE DERIVATIVES or REFERENCE SOFTWARE PRODUCT under the terms and conditions of this Agreement. Such request may be via a purchase order, order form or some other mutually acceptable ordering vehicle under which all required ordering information including the applicable fees as specified in a Product Schedule attached to such ordering vehicle.
- 14.06 REFERENCE SOFTWARE PRODUCT means a SCO SOURCE CODE PRODUCT or a SOFTWARE DERIVATIVE of such SCO SOURCE CODE PRODUCT.
- 14.07 SOFTWARE DERIVATIVE means a third-party furnished derivative work of a SCO SOURCE CODE PRODUCT, or portion thereof.
- 14.08 SOURCE CODE PRODUCT means materials such as COMPUTER PROGRAMS, information used or interpreted by COMPUTER PROGRAMS and documentation relating to the use of COMPUTER PROGRAMS. Certain SOURCE CODE PRODUCTS identified in an ORDER hereto may contain materials prepared by other developers.
- 14.09 SOURCE CODE EXCHANGE means the distribution of a SOFTWARE DERIVATIVE from a third-party licensee of SCO to YOU upon verification by SCO, at the request of such third party licensee, of the equivalent SCO SOURCE CODE PRODUCT rights-to-use identified in an ORDER hereto. Such verification will be requested by such third-party licensee.
- 14.10 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, as the case may be).