

# Scottish Technical Advisory Group

# Novell<sup>®</sup>

## Unilateral Non-Disclosure Agreement (Novell Discloses)

This Non-Disclosure Agreement (the "Agreement") is entered into on \_\_\_\_\_ (the "Effective Date") by and between Novell UK Limited ("Novell") located at Novell House, 1 Arlington Square, Downshire Way, Bracknell, Berkshire RG12 1WA and \_\_\_\_\_ ("Recipient") whose address is \_\_\_\_\_.

Recipient and Novell agree that the following terms and conditions will govern the disclosure or transfer by Novell to Recipient of the Confidential Information described below. This Agreement shall become effective upon the date of execution by Recipient (the "Effective Date").

### 1. Confidential Information and Purpose.

1.1 Recipient agrees that all technical information disclosed by Novell and/or all information disclosed by Novell to Recipient with respect to Novell products, product development, know-how, business activities, business opportunities and/or personnel will be considered and referred to collectively herein as "Confidential Information" of Novell. Recipient acknowledges that Confidential Information may be disclosed in oral/visual or tangible form.

1.2 The Confidential Information is intended for Recipient's internal consideration only, and accordingly may be used by Recipient only for discussion purposes within Recipient's organisation and for purposes of Recipient's internal IT strategy development.

2. Obligation of Confidentiality. Recipient agrees to use the same care and discretion to avoid disclosure, publication, or dissemination of Confidential Information as it uses with its own similar information that it does not wish to disclose, publish, or disseminate, but in no event less than reasonable care. Recipient may not disclose Confidential Information to any third parties, but Recipient may disclose such information to employees within Recipient's organisation who have a need to know provided that such employees (i) have been notified of the confidential nature of such information, (ii) are bound by obligations of confidentiality no less stringent than those set out in this Agreement and (iii) have agreed to use the Confidential Information strictly in accordance with the terms of this Agreement. Recipient shall promptly notify Novell in writing of any circumstances that become known to Recipient surrounding any unauthorised possession, use, or knowledge of Novell's Confidential Information.

3. Exceptions. No obligation of confidentiality applies to any Confidential Information that Recipient can show: (i) is, or becomes, publicly available without breach of this Agreement, but only from such date as it becomes so available; (ii) was rightfully disclosed to Recipient by a third party without obligation of confidentiality; or (iii) is independently developed by Recipient without use of the Confidential Information.

4. Ownership. All Confidential Information remains the property of Novell and/or its licensors. No license under any invention, patent, copyright, trade secret or other

proprietary right is granted, either directly or indirectly, by this Agreement or by any disclosure of Confidential Information hereunder. Recipient certifies that the Confidential Information will not be rented, leased, sold, sublicensed, assigned, or otherwise transferred. If software is provided to Recipient under this Agreement, Recipient agrees (i) not to reverse compile or disassemble the software to discover the human perceivable portions of the code and (ii) to discontinue using the software upon Novell's general release of the software to the public or earlier upon Novell's request.

5. Termination. This Agreement shall begin on the Effective Date above, and shall remain in effect until all Confidential Information disclosed hereunder has become publicly available without breach of this Agreement. Recipient agrees that it will, within ten (10) days of written notification by Novell, return all documents and tangible items in its possession which contain any part of the Confidential Information and certify to Novell in writing that it has kept no originals or copies thereof.

6. Disclaimer. All Confidential Information is provided "AS IS", WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Novell does not represent or warrant that it will release any product related to the Confidential Information or that target dates will be met. Novell will not be liable for any expenses or losses incurred or any actions undertaken by Recipient as a result of receipt or use of the Confidential Information. The entire risk arising out of the use of the Confidential Information remains with Recipient. Novell may change or cancel its plans at any time. Disclosure of Confidential Information to Recipient shall not constitute representation, warranty, or assurance with respect to non-infringement of patents or other third party proprietary rights.

7. Warranty. The Warranty described in Section 6 is in lieu of all other warranties, express or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

8. Limitation of Remedies. Novell's entire liability and Recipient's exclusive remedy for any claims concerning this agreement and any Novell materials provided under the agreement are set forth in this section.

a. Direct Damage. Save for the death or personal injury caused by the negligence or wilful default of Novell as to which there shall be no limitation of liability, Novell's

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liability for direct damages incurred by Recipient arising out of this agreement shall be limited US\$50,000.

- b. **Special Damages.** Neither party shall be liable for any indirect, special incidental, or consequential damages (including but not limited to, damages for interruption of business, loss of business, and loss of use of data) under this agreement, even if the other party has been advised of the possibility of such damages.

9. General.

- a. This Agreement shall be governed and construed in accordance with the substantive law, excluding the private international law rules, of the country of principal residence of the Recipient, where that country is 1) a member state of the European Union or 2) a member state of the European Free Trade Area or 3) the Republic of South Africa. In any other case within Europe, the applicable law shall be the law of the Federal Republic of Germany. Within the Middle East and Africa (excluding the Republic of South Africa) the applicable law shall be the law of England and Wales. Outside Europe, Middle East and Africa ("EMEA"), the applicable law shall be the law of the State of Utah, USA. In the case of a Subsidiary or Permitted Affiliate, the same rules as above shall apply in relation to the choice of applicable law. In any legal proceeding arising out of this Agreement, the prevailing party shall be entitled to an award of its costs and reasonable attorneys' fees.

- b. **Export Constraints.** Recipient shall not export or re-export any technical data or products received from Novell or the direct product of such technical data to any proscribed country listed in the U.S. Export Administration regulations unless properly authorized by the U.S. government.

- c. Recipient may not assign its rights or delegate its duties or obligations under this Agreement without prior written consent of Novell. Any attempt to do so is void. The parties agree that the complete and exclusive statement of the agreement between them relating to the subject hereof shall consist of this Agreement. Any reproduction of this Agreement by reliable means will be considered an original of this document. This Agreement is executed in English.

### RECIPIENT

Signature: \_\_\_\_\_

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

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

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

NOVELL

Signature:  \_\_\_\_\_

Name: STEPHEN RATH

Title: FINANCE DIRECTOR

Date: 02/12/05