

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into this 13TH day of August, 1998, by, between, and among Novell, Inc., Jeffrey V. Merkey, Darren Major, Larry Angus, and Timpanogas Research Group, Inc.

RECITALS

- A. Novell, Inc. ("Novell") filed a civil action styled as Novell, Inc. v. Wolf Mountain Group, Inc., Jeff V. Merkey, Darren Major, and Larry Angus, Civil No. 970400339, in the Fourth Judicial District Court of Utah County, State of Utah (hereinafter the "Trade Secret Litigation"), claiming among other things that the named defendants had misappropriated Novell trade secrets, breached contracts with Novell, and breached fiduciary duties to Novell.
- B. Timpanogas Research Group, Inc. (formerly known as Wolf Mountain Group, Inc.), Jeffrey V. Merkey, Darren Major and Larry Angus are the defendants in the Trade Secret Litigation (hereinafter the "Trade Secret Defendants").
- C. On April 29, 1997, Novell obtained a Temporary Restraining Order against the Trade Secret Defendants, enjoining them from engaging in various activities deemed by the Court to interfere with Novell's trade secrets and rights. By stipulation of the parties and order of the Court, that Temporary Restraining Order remained effective until the Court ruled on Novell's Motion for Preliminary Injunction.
- D. The Trade Secret Defendants filed a counterclaim against Novell in the Trade Secret Litigation, alleging among other claims, claims of defamation, conversion, and unfair competition (hereinafter the "Counterclaim").

- E. On April 1, 1998, the Court entered a Preliminary Injunction against the Trade Secret Defendants enjoining them from engaging in various activities deemed by the Court to interfere with Novell's trade secrets and rights. That Preliminary Injunction expires by its terms on October 31, 1998.
- F. Jeffrey V. Merkey filed a civil action styled as Jeff V. Merkey v. Novell, Inc., Civil No. 2:98CV311B, in the United States District Court, District of Utah (the "Sexual Harassment Litigation"), claiming that Novell sexually harassed Mr. Merkey, and later retaliated against him for his complaints of sexual harassment.
- G. Novell is the sole defendant in the Sexual Harassment Litigation.
- H. The parties in the Trade Secret Litigation and the Sexual Harassment Litigation desire to compromise and settle the Trade Secret Litigation, the Counterclaim, and the Sexual Harassment Litigation without further litigation.

I. AGREEMENT

In consideration of the mutual promises set forth below and with the intent of being legally bound, the parties hereto agree as follows:

1. Permanent Injunction. The parties shall sign and submit to the Fourth Judicial District Court of Utah County (the "Court") the Stipulation for Permanent Injunction in the form attached hereto as Exhibit A, together with the Permanent Injunction in the form attached hereto as Exhibit A-1. The Permanent Injunction may and should be entered by the Court, permanently enjoining the Trade Secret Defendants, including the officers, directors, employees, parent corporations, subsidiaries, and affiliates of Timpanogas Research Group, Inc. (1) from using, disclosing, transferring, possessing, copying, modifying or in any way

utilizing Novell's Wolf Mountain Source Code, as hereinafter defined, comprising any feature or component of the Wolf Mountain technologies; and (2) from using, disclosing, transferring, possessing, copying, modifying or in any way utilizing Novell's NetWare Source Code, as hereinafter defined. Said Permanent Injunction shall become effective immediately upon the expiration of the Preliminary Injunction on October 31, 1998.

"Wolf Mountain Source Code" is defined as source code related to Novell's Wolf Mountain technologies that was developed by defendants while employed by Novell on the Wolf Mountain Project, or that defendants did not develop but had access to as a result of their employment by Novell.

"NetWare Source Code" is defined as source code related to the NetWare Operating System that was developed by Novell, or others on Novell's behalf, or by defendants while employed by Novell.

2. Protective Order. The Protective Order issued by Judge Schofield in the Trade Secret Litigation on July 18, 1997, and attached hereto as Exhibit B, will remain in full force and effect and will continue to govern the actions of the parties hereto.
3. Press Release. Upon the execution of this Settlement Agreement, the parties to this Settlement Agreement shall issue the mutual press release attached hereto as Exhibit C. All further communications by any party hereto with the press or public concerning the Trade Secret Litigation, the Counterclaim, and/or the Sexual Harassment Litigation, the facts underlying the Trade Secret Litigation, the Counterclaim, and/or the Sexual Harassment Litigation, or the terms of the settlement of the same, shall be limited to the response, "Beyond what we have stated in our press release, the terms and details of our settlement of these matters are confidential. We have no further comment on the litigation, the facts

underlying it, or on the settlement." Until such time, if ever, as all of the parties hereto shall jointly agree to a further mutual press release, all communications by the parties to the press or public concerning future dealings between the Trade Secret Defendants and Novell shall be met with the response, "We are not inclined to speculate at this time about what, if any, business opportunities may evolve between the parties in the future." It shall not be a violation of this Settlement Agreement to refer members of the press or public, without further comment, to the public records on file at the state and federal courthouses in these matters. The parties further recognize and agree that a breach of this provision shall cause irreparable harm to the non-breaching party, entitling the non-breaching party to immediate injunctive relief in addition to other remedies provided by this Settlement Agreement.

4. Payment. The Trade Secret Defendants shall pay to Novell \$200,000.00, plus simple interest of 8% per annum on this principle amount, for a grand total of \$206,904.11, to be paid in three payments, each by cashier's check made payable to Novell, Inc., with such payments to be made at the following times and in the following amounts: (1) upon the execution of this Settlement Agreement, the sum of \$50,000.00; (2) one hundred and eighty (180) days after execution of the Settlement Agreement, the sum of \$105,917.81; and (3) two hundred and seventy (270) days after execution of the Settlement Agreement, the sum of \$50,986.30. In the event that the Trade Secret Defendants fail to make any of the three payments to Novell, in full and on or before the prescribed due dates, the parties agree that, in addition to any other remedies Novell may have in equity or at law, judgment in the amount of such shortfall may immediately be entered by the Court against the Trade Secret Defendants, and the parties further agree that satisfactory proof of the Trade Secret Defendants' failure to pay Novell according to the terms hereof may be made by

submission of an affidavit by a representative of Novell to the Court to that effect.

5. Audit Rights. At its sole discretion, and at any time during the two (2) years following the execution of this Settlement Agreement, Novell shall have the right to conduct three (3) audits of the records and source code of defendant Timpanogas Research Group, Inc. and any other entity which the Trade Secret Defendants or any of them own, operate or control to determine whether the Trade Secret Defendants have violated the terms of the Preliminary Injunction (until its expiration) and/or the terms of the Permanent Injunction. Such audits shall be supervised by Novell's outside counsel and performed by an independent expert retained by Novell and shall be conducted upon no less than five (5) days' written notice to the Trade Secret Defendants. Notwithstanding the foregoing, Novell shall conduct the first (1st) of the three (3) audits within three (3) months of the date of execution of this Settlement Agreement. Novell agrees not to use for itself or others any proprietary information belonging to any of the Trade Secret Defendants obtained as a result of said audits.

6. Confidentiality. With the exception of the statements permitted under paragraph 3 above, the parties to this Settlement Agreement shall keep the terms of this Settlement Agreement and all settlement discussions connected hereto confidential. This confidentiality agreement includes, but is not limited to, an agreement that none of the Trade Secret Defendants, including the officers, directors, employees, parent corporations, subsidiaries, and affiliates of Timpanogas Research Group, Inc., will publicly discuss or comment upon (a) the amount paid by the Trade Secret Defendants to Novell, either in specific or approximate terms, (b) the parties' motivations and goals in settlement, (c) the scope of the Permanent Injunction as a measure of the extent or legitimacy of Novell's trade

secrets in Wolf Mountain, or (d) the scope of the Permanent Injunction as a measure of the validity of either side's position in the Trade Secret Litigation. The parties further recognize and agree that a breach of this provision shall cause irreparable harm to the non-breaching party, entitling the non-breaching party to immediate injunctive relief in addition to other remedies provided by this Settlement Agreement.

7. Liquidated Damages for Breach of the Press Release Or Confidentiality Agreements. Each breach of paragraph 3 or paragraph 6 of this Settlement Agreement by the Trade Secret Defendants, including the officers, directors, employees, parent corporations, subsidiaries, and affiliates of Timpanogas Research Group, Inc., will result in liquidated damages of \$100,000.00. With respect to the foregoing amount, the parties acknowledge and agree that said amount is not intended by the parties to be, and does not constitute, a penalty or forfeiture. The parties further acknowledge and agree that the harm resulting from each breach by the Trade Secret Defendants, including the officers, directors, employees, parent corporations, subsidiaries, and affiliates of Timpanogas Research Group, Inc., of paragraph 3 or paragraph 6 of this Settlement Agreement is harm that is very difficult of accurate estimation and the foregoing amount constitutes a reasonable estimate or forecast of just compensation for the harm resulting from such breach. Nothing in this liquidated damages provision shall foreclose Novell, at its election, from attempting to prove actual damages in lieu of liquidated damages should the circumstances make proof of actual damages reasonable, and this liquidated damages provision shall in no way serve as a limitation on defendants' liability under this contract or otherwise.

8. Dismissal of Trade Secret Litigation. The Trade Secret Litigation and the Counterclaim shall be dismissed with prejudice, pursuant to the Stipulation for Dismissal and the Order of

Dismissal of Complaint and Counterclaim With Prejudice attached hereto as Exhibit D.

9. Dismissal of the Sexual Harassment Litigation. The Sexual Harassment Litigation shall be dismissed with prejudice, pursuant to the Stipulation for Dismissal and the Order of Dismissal attached hereto as Exhibit E.

10. Mutual General Release.

- a. For and in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Jeffrey V. Merkey, Darren Major, Larry Angus, and Timpanogas Research Group, Inc. (the "Releasing Defendants") their successors, assigns and affiliates, fully and forever release, acquit and discharge Novell and its successors, assigns and affiliates from any and all claims, demands, obligations, liabilities, causes of action, or any suits at law or equity whether known or unknown to them which they may have or which may accrue to them in the future against Novell by reason of any act or omission by Novell, or any officer, director, agent or employee of Novell, from any time prior hereto and until the date hereof, arising from any transaction, matter or thing involved, alleged or referred to or appearing directly or indirectly in the pleadings, discovery papers or any findings in the matters of Novell, Inc. v. Wolf Mountain Group, Inc., Jeff V. Merkey, Darren Major, and Larry Angus, Civil No. 970400339, in the Fourth Judicial District Court of Utah County, State of Utah, and Jeff V. Merkey v. Novell, Inc., Civil No. 2:98CV311B, in the United States District Court, District of Utah. Notwithstanding the foregoing, the Releasing Defendants do not release Novell from any liability that may arise from a breach of this Settlement Agreement.
- b. For and in consideration of the covenants contained herein and other good and valuable

consideration, the receipt and sufficiency of which is hereby acknowledged, Novell and its successors, assigns and affiliates, fully and forever releases, acquits and discharges Jeffrey V. Merkey, Darren Major, Larry Angus, and Timpanogas Research Group, Inc. (the Released Defendants) and their successors, assigns and affiliates from any and all claims, demands, obligations, liabilities, causes of action, or any suits at law or equity whether known or unknown to Novell which Novell may have or which may accrue to it in the future against Novell by reason of any act or omission by the Released Defendants from any time prior hereto and until the date hereof, arising from any transaction, matter or thing involved, alleged or referred to or appearing directly or indirectly in the pleadings, discovery papers or any findings in the matters of Novell, Inc. v. Wolf Mountain Group, Inc., Jeff V. Merkey, Darren Major, and Larry Angus, Civil No. 970400339, in the Fourth Judicial District Court of Utah County, State of Utah, and Jeff V. Merkey v. Novell, Inc., Civil No. 2:98CV311B, in the United States District Court, District of Utah. Notwithstanding the foregoing, Novell does not release the Released Defendants from any liability that has arisen or may arise from a violation of the Preliminary Injunction, or any liability that may arise from a violation of the Permanent Injunction to be entered by the Court, or any liability that may arise from a breach of this Settlement Agreement.

11. No Representations of Fact or Opinion. The parties hereto admit that this Settlement Agreement has been entered into freely and that no representations of fact or opinion have been made by any party or by anyone acting in any party's behalf to induce this Settlement Agreement with respect to the nature of their claims and/or damages.
12. Unenforceable Provisions. In the event that any part of this Settlement Agreement is held

to be invalid or unenforceable by a court of competent jurisdiction, the remaining parts hereof shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included herein.

13. Remedies. In addition to the remedies set forth above, in the event of a breach of or default under this Settlement Agreement, the non-breaching party shall be entitled to monetary damages, injunctive relief and declaratory relief, and any other relief available as a matter of law or equity, as well as the further relief set forth in paragraph 14.
14. Attorneys' Fees. The parties hereto will assume and pay their own respective attorneys' fees and costs incurred in connection with the prosecution and defense of the Trade Secret Litigation, the Counterclaim, and the Sexual Harassment Litigation. In the event of a breach or default under this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.
15. Duplicate Originals. This Settlement Agreement has been executed in two original counterparts and each such counterpart shall be deemed to constitute an original thereof.
16. Integration Clause. The parties hereto stipulate that this Settlement Agreement, together with the documents attached as Exhibits A, A-1, B, C, D and E, is the final, complete and exclusive expression of their agreement. This Settlement Agreement supersedes all prior oral or written agreements, if any, between the parties with respect to the subject matter contained herein. There are no representations, arrangements or understandings, oral or written, between the parties that are not fully expressed herein. No alterations or other modifications of this Settlement Agreement shall be effective unless in writing and signed by all parties hereto.
17. Continuing Jurisdiction. The parties hereto stipulate that the Court shall retain jurisdiction

over this matter for the sole purposes of conducting proceedings, should such proceedings become necessary in the future, to: (1) enforce the Preliminary Injunction; (2) enforce the Permanent Injunction; (3) enforce the Protective Order dated July 18, 1997; and (4) enter judgment for plaintiff in the event of the default in payment of the settlement amount by the defendants.

NOVELL, INC.

David R. Bradford

By: David R. Bradford
Its: Sr. v-p
Dated: 8-18-98

TIMPANOGAS RESEARCH GROUP, INC.

Jeff Merkey / Darren Major

By: Jeff Merkey / Darren Major
Its: CEO / President
Dated: 8/18/98

Jeffrey V. Merkey

Jeffrey V. Merkey
Dated: 8/18/98

Darren Major

Darren Major
Dated: 8/18/98

Larry Angus

Larry Angus
Dated: 8/18/98