NOVELL SOFTWARE RESELLER CONTRACT

THIS CONTRACT ("Contract") is made this 16th day of June, 2005 by and between **ASAP SOFTWARE EXPRESS, INCORPORATED ("Contractor")** and the **STATE OF MARYLAND ("State")**, acting by and through the **DEPARTMENT OF BUDGET AND MANAGEMENT ("Department")**.

IN CONSIDERATION of the promises and the covenants herein contained, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

1.1 "Contractor" means ASAP SOFTWARE EXPRESS, INCORPORATED whose principal business address is 850 Asbury Drive, Buffalo Grove, Illinois 60089 and whose principal office in Maryland is **7272 Wisconsin Ave, Suite 300, Bethesda, MD 20814**.
1.2 "Department" means the Department of Budget and Management.
1.3 "Effective Date" means the date on which the State signs and executes this Contract.
1.4 "Procurement Officer" means William M. Bowser.
1.5 "IFB" means the Invitation for Bids for Novell Software Reseller, Project No. 050R5800203, dated April 26, 2005 and Addendum #1, dated May 11, 2005 and Addendum #2, Dated May 12, 2005.
1.6 "State" means the State of Maryland.
1.7 "Contract Manager" means Michael Balderson.
1.8 "MLA" means the Novell Master License Agreement – State of Maryland (April 2005), attached to and made a part of the IFB as Attachment I and incorporated into this Contract by this reference as if fully set forth herein.
1.9 "SSA" means a Novell-certified Software Services Agent, as defined in Section 2.17 of the MLA.

2. Scope of Work

2.1 The Contractor shall provide Novell software products, Novell maintenance and Optional Premium Services and Premium Service Upgrades as described in the IFB at fixed-percent discounts off of the applicable Novell List Price. These services shall be provided in accordance with this Contract and the following exhibits, which are attached and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A –Novell Master License Agreement - State of Maryland (April 2005)
Exhibit B - Invitation for Bids -Project No. 050R5800203, dated April 26,2005
Exhibit C - Contractor's Bid-Project No. 050R5800203, dated May 20, 2005

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

3. Time for Performance. The term of this Contract commences on the Effective Date of the Contract and expires on June 30, 2007. The State, at its sole option, shall have the unilateral right to extend the Contract for two (2) additional successive two-year terms.

4. Consideration and Payment

4.1 The consideration for Novell products and services provided by the Contractor shall be in accordance with Sections 2.6 and 2.8 of this IFB. Payments will be made as specified in Sections 1.30 and 2.13 of this IFB. Each invoice must include the Contractor's Federal Tax Identification Number which is [redacted]. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, are prohibited. Invoices should be submitted to the individual or office designated on the respective purchase order.

4.2 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

5. Rights to Records

The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, solely for purposes of this Contract with the State of Maryland shall be the sole property of the Department and shall be available to the Department at any time. The Department shall have the right to use the same without restriction and without

compensation to the Contractor other than that specifically provided by this Contract. Notwithstanding the foregoing, the parties acknowledge and agree that Contractor shall pass through or otherwise transfer and/or assign licenses to any and all Novell software products provided by Contractor to the State hereunder, subject to the terms of the MLA.

6. Patents, Copyrights, Intellectual Property

6.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

6.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such software or services furnished by the Contractor infringes any patent, trademark, copyright, or trade secret. If a third party claims that a Product infringes that party's patent, copyright, trademark, or trader secret, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a Court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations.

6.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item. Contractor shall immediately notify the State's Procurement Officer and the State's Contract Manager, in writing, of the possibility of any claim of infringement arising hereunder.

6.4 The provisions of this Section 6 shall be applicable to Contractor only in the event:

a) Novell has not agreed to undertake each and every obligation specified in Subsections 6.1 through 6.3; or

b) a claim, suit, or action under this Section 6, or the need to undertake action on behalf of the State and the Department under this Section 6 is attributable, in whole or in part, to Contractor.

7. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance

of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

8. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. To the extent the Contractor is or becomes actively involved with the installation of any Novell software, the Contractor shall ensure that all data is backed up and is recoverable by the Contractor.

9. Non-Hiring of Employees

No official or employee of the State of Maryland, as defined under State Government Article, 15-102, Annotated Code of Maryland, whose duties as such official or employee includes matters relating to or affecting the subject matter of this Contract, shall, during the pendancy and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

10. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute or regulation, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

11. Maryland Law

11.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

11.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or the software licenses acquired hereunder.

12. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

13. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

14. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State of Maryland from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

15. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State of Maryland shall pay the Contractor fair and equitable compensation for satisfactory

performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

16. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

17. Delays and Extensions of Time

The Contractor acknowledges and agrees that time is of the essence with respect to its duties and obligations under this Contract. The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

18. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

19. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in

effect on the date of execution of this Contract are applicable to this Contract.

20. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate, $100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches $100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

21. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, Sections 14-101 - 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate $100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of $500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

22. Retention of Records

Notwithstanding anything to the contrary, the Contractor shall retain and maintain all records and documents in any way relating to this Contract for three (3) years after Contract closeout and final payment by the State of Maryland under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. The Contractor agrees to cooperate fully in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.

23. Warranties

The Contractor hereby represents and warrants that:

A. It is a certified SSA, and as such, has full authority to pass through or otherwise transfer and/or assign the Novell licenses to the Novell software products obtained through Contractor hereunder, subject to the terms of the MLA, and that it has made such contractual agreements with Novell that are required for Contractor to fully discharge each and every obligation of Contractor under the IFB and this Contract. Nothing for which the Contractor is responsible under this Contract will cause the State's use of the software to infringe on the intellectual property rights of any person or entity.

B. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

C. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

D. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,

E. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

F. It will at no time during the term of this Contract or any renewal thereof do anything that will place the State in actual or prospective breach of its obligations to Novell under the MLA.

24. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its bid.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its bid or offer, was inaccurate, incomplete, or not current. Notwithstanding anything to the contrary contained in the IFB or elsewhere, Contractor acknowledges and agrees that: (i) Novell has agreed, as specified in Section 6.2 of the MLA, to limit price increases to its price list during any "Term", as "Term" is defined in the MLA; and (ii) that in applying its percentage discount to the Novell List Price, Contractor shall be bound by such limitations and it shall apply its percentage discount only to the Novell List Prices that are in effect at the commencement of the applicable "Term" during which orders are placed.

25. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, which approval the State may withhold or condition in its sole and absolute subjective discretion. Contractor may not assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, which approval the State may withhold or condition in its sole and absolute subjective discretion. Any such subcontract or assignment shall include the terms of Sections 9 through 24 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

26. Administrative

26.1 Procurement Officer. The work to be accomplished under this Contract shall be performed under the direction of the Contract Manager. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

26.2 Notices. All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State: Department of Budget and Management
Office of Information Technology
Strategic Planning Division
45 Calvert Street, 4th Floor
Annapolis, Maryland 21401
Attention: Michael Balderson

If to the Contractor: **ASAP Software Express, Inc.**
850 Asbury Drive
Buffalo Grove, Illinois 60089
Attn: Randy Lee, VP Government

27. Indemnification

27.1 The Contractor shall indemnify the State from and against liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

27.2 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

27.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

27.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.

28. Limitation of Liability

28.1 For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

A. For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 6 ("Patents, Copyrights, Intellectual Property") of this Contract;

B. Without limitation for damages for bodily injury (including death), damage to real property and tangible personal property, and for damages and/or charges claimed by Novell against the State which are attributable, in whole or in part, to Contractor's failure to undertake and complete its duties, obligations and responsibilities hereunder;

C. For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability per claim shall be limited to the greater of three (3) times the aggregate dollar amount invoiced under this Contract up to the date of settlement or final award of any such claim, or US $200,000. Third party claims arising under Section 27 ("Indemnification"), of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third party claims arising under Section 27 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 27.

29. Orderly Termination

Contractor agrees that, except as expressly provided otherwise in the IFB, at the commencement of this Contract it shall have ready and available such systems, processes, and sufficient levels of qualified personnel to be able to promptly, diligently, efficiently and completely prosecute the requirements of this Contract.

Upon the expiration or earlier termination of this Contract, Contractor shall:

(i) promptly, diligently, efficiently and in good faith work with any successor contractor and the State to transition services over to the successor contractor;

(ii) during the transition period, continue to be subject to all of the terms and conditions of the Contract, including, by way of example only, those that govern the rates, fees and other charges that Contractor may be permitted to charge the

State under the Contract, and under no circumstances shall the Contractor be entitled to raise any such rates, fees and/or other charges during the transition period; and,

(iii) at the end of the transition period, provide the State with a summary report of the transition that, among other things, contains a certification signed by an officer of the Contractor who is authorized to legally bind Contractor, that states that all actions necessary to successfully transition the services to the successor contractor have been completed, or if they have not been completed, why they have not been completed. The State shall be entitled to withhold any final payment(s) otherwise due Contractor until it receives the summary report and certification specified in this subsection.

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

[redacted]

By: Randall A. Lee Date:

Title: VP Government, North America

[redacted]

Witness:

STATE OF MARYLAND
By: DEPARTMENT OF BUDGET AND MANAGEMENT

[redacted]

By: Cecilia Januszkiewicz Date:
Deputy Secretary

[redacted]

Witness:

Approved for form and legal sufficiency this 8th day of June, 2005.

[redacted]

Alan W. Kempske
Assistant Attorney General

Approved by the
Board of Public Works:

6-15-05
Date

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