



CONTRACT

1. **CONTRACTING PARTIES:** This agreement is between the state of Utah, Office of the Chief Information Officer ("OCIO") and the Department of Community and Economic Development ("DCED"), referred to as STATE, and

Digital Signature Trust Co.
1095 East 2100 South, Suite 201
Salt Lake City, UT 84106

Legal Status of Contractor

- Sole Proprietor
 Non-Profit Corporation
 For-Profit Corporation
 Partnership
 Governmental Agency

Referred to as **CONTRACTOR**
Federal Tax ID No. 84-1392613

CONTRACTOR Number: 37256E

Commodity Code:

Agency Code: 710

Novell, Inc.
1800 South Novell Place
Provo, UT 84606

And

National Information Consortium
12 Corporate Woods
10975 Benson Street, Suite 390
Overland Park, KS 66210

Each referred to as **SUBCONTRACTOR**

2. **GENERAL PURPOSE OF CONTRACT:** To build and maintain an online community and business development portal, supported by a directory service that will promote community development and assist Utah companies of all sizes to utilize e-business technologies to grow and prosper.
3. **PROCUREMENT:** This contract is entered into as the result of the procurement process on requisition #: RFP #GH0055.
4. **CONTRACT PERIOD:** This contract is effective as of September 1, 2000 and will terminate on 31 December 2004, unless otherwise extended or terminated in accordance with the terms and conditions of this contract. At the option of STATE, the Contractor and Subcontractors, this contract may be renewed twice for a period of 2 years each after the original termination date hereof upon written notice at least 90 days in advance of the termination date.
5. **CONTRACT COSTS:** CONTRACTOR will be paid a maximum of \$75,000.00 for costs authorized by this contract.
6. **INCORPORATION BY REFERENCE:** The provisions of the RFP and the eUBN Proposal are hereby incorporated into this Contract and made a part hereof. If there is any conflict among the provisions of the RFP, the eUBN Proposal, this Contract, and the laws of the STATE, then those conflicts will be resolved in the following order precedence:
- Utah law
 - Contract Attachment B
 - Standard Terms and Conditions Contract Attachment A
 - The Request for Best and Final Offer Response
 - The RFP and the eUBN Proposal, equally.

7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED HERETO:**
a. All other governmental laws, regulations, or actions applicable to services provided herein.
8. **AUDIT REQUIREMENTS:**
a. This Contract shall be subject to financial audit by the DCED Financial Manager, or someone designated by that officer.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

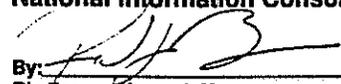
Digital Signature Trust Co.

By: 
Trell Rohovit, Vice President of Product Management

Novell, Inc.

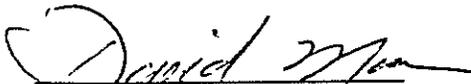
By: _____
Richard Nortz, Executive Vice President of World Wide Sales

National Information Consortium

By: 
Ric Brown, Network Manager

STATE


David Winder, Exec. Director, DCED


David Moon, Chief Info. Officer, Governor's Office

Director, Division of Purchasing

Director, Division of Finance

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah STATE Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
1. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the STATE of Utah. The parties will submit to the jurisdiction of the courts of the STATE of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake Co.
2. **RECORDS ADMINISTRATION:** The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records shall be retained by the CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later.
3. **AUDIT OF RECORDS:** The CONTRACTOR agrees to allow STATE and Federal auditors, and STATE Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
4. **CONFLICT OF INTEREST:** CONTRACTOR represents that none of its officers or employees are officers or employees of the STATE of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
5. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as herein expressly set forth. Compensations stated herein shall be the total amount payable to the CONTRACTOR by the STATE. The CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the CONTRACTOR.
6. **INDEMNITY CLAUSE:** The CONTRACTOR agrees to indemnify, save harmless, and release the STATE OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from the STATE'S sole negligence.
7. **EQUAL OPPORTUNITY CLAUSE:** The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated June 30, 1989, which prohibits sexual harassment in the work place.
8. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
9. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.
10. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.
11. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
12. **SALES TAX EXEMPTION:** The state of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
13. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the STATE of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the STATE of Utah applies to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the STATE has relied on the contractor's skill or judgment to consider when it advised the STATE about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the STATE has not been warned. Remedies available to the STATE include the following: The contractor will repair or replace (at no charge to the STATE) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the state of Utah may otherwise have under this contract.

(Revision date: January 5, 2000)

**ATTACHMENT B
SPECIAL PROVISIONS**

1. **SCOPE OF WORK:** CONTRACTOR's purpose under this Contract is to build and maintain an online community and business development portal that will promote community development and assist Utah companies of all sizes to utilize e-business technologies to grow and prosper. The eUtah Business Network will consist of:
 - a) An online business development portal ("PORTAL SITE") that contains services to help businesses find each other and do commerce electronically.
 - b) A database of all Utah businesses. The Utah Business Directory ("DIRECTORY") will allow businesses to update their own profile so that other businesses and consumers can easily locate them.
 - c) The foundation for additional community and business development services, including, but not limited to, identity management of Utah citizens, community resources, associated relationships and services.The work to be performed hereunder shall hereafter be referred to as the "PROJECT."
2. **ROLE OF THE STATE:** STATE's Role under this Contract will be as follows:
 - a) Provide CONTRACTOR funding in the amount of \$75,000.
 - b) Provide, maintain and supply updates for the initial population of the DIRECTORY.
 - c) Provide, maintain and supply updates to the original business database, to be used by Contractor in performing identification and authentication of businesses listed in the DIRECTORY. Provide a means whereby the State approves the validity of a business applicant before the applicant is given an object in the DIRECTORY.
 - d) Foster the growth of the Directory and electronic marketplaces hosted on the Portal Site.
 - e) Use good faith efforts to market and promote the eUBN through current marketing resources, including, but not limited to, press releases, publications, and tradeshow.
 - f) Assist with the formation of, and serve on, an eUtah Business Network Council ("eUBNC").
 - g) Assist in the formation of strategic alliances between third parties and the eUBNC.
 - h) Perform in accordance with the Service Level Agreement that will be mutually agreed upon, fully executed and in writing, by all parties (including without limitation, State, Contractor and Subcontractor) at a future date.
3. **ROLE OF CONTRACTOR:** CONTRACTOR and its Subcontractors shall have responsibility and authority:
 - a) Work with the STATE in the design and development of the Portal Site.
 - b) Design look and feel of Portal Site.
 - c) Define the functional feature set of the eUBN offering including, but without limitation, functionality, design, and revenue generating features.
 - d) Build database schema for the Directory and populate with data provided by the STATE.
 - e) Host the eUBN at no cost to the STATE.
 - f) Maintain the Portal Site, including:
 - i. Provide necessary hardware, software and networking
 - ii. Provide reasonable measures to ensure the reliability of the site
 - iii. Provide reasonable recovery of the site by means of backing up data and protection with Uninterrupted Power Supply ("UPS").
 - iv. Provide reasonable security necessary to ensure the protection of companies' data stored at the CONTRACTOR site. This will include use of digital certificates, a firewall and keeping of certificate issuance, certificate revocation and firewall log files.
 - g) Provide ONE digital certificate with a twelve month term to all Utah businesses in the directory that request one within the initial twelve month offering period beginning October 1, 2000.
 - h) Serve on the eUBNC.
 - i) Perform in accordance with the Service Level Agreement that will be mutually agreed upon, fully executed and in writing, by all parties (including without limitation, State, Contractor and Subcontractors) at a future date.
4. **eUTAH BUSINESS NETWORK COUNCIL (eUBNC) AND ITS ROLE**
 - A. There is created an oversight group to be known as the eUtah Business Network Council (eUBNC). The

eUBNC will consist of one representative from each of the following:

1. CONTRACTOR, Digital Signature Trust Co.,
2. Subcontractor Novell,
3. Subcontractor National Information Consortium,
4. STATE Office of the CIO,
5. STATE Division of Business and Economic Development, and
6. STATE DCED IT Manager

B. The role of the eUBNC is defined as follows:

1. Establish the strategic direction for the eUBN
2. Establish and approve polices for the eUBN
3. Coordinate and approve partnership agreements related to the eUBN
4. Review and approve marketing, and financial plans

C. The voting structure of the eUBNC is as follows:

1. Each representative has one vote
2. Voting requires a quorum
3. A quorum equals 5 (five) representatives
4. A majority equals 4 (four) votes
5. A majority vote carries except in the cases listed below where unanimous consent is required:
 - a. Appointing a new member to the eUBNC
 - b. Review and approval of revenue and expenditures
6. In the case of a tie vote, a mutually agreed upon, neutral arbitrator will be appointed to cast the tie breaking vote. The arbitrator will be given the directive to consider the originally agreed upon economic development objective to help decide his/her vote.

5. INTELLECTUAL PROPERTY RIGHTS

- A. Ownership. Each Party retains ownership of all data and other intellectual property that it brings to the Project. Any invention, improvement, derivative work, or intellectual property made or developed exclusively by the employee(s) of one Party in connection with the Project shall belong exclusively to said Party.
- B. License. Subject to State's payment of all amounts due under this Contract and subject further to other restrictions in this Contract, Contractor and Subcontractors grant to State, and State acquires, a nonexclusive, nontransferable, nonassignable, worldwide, perpetual (subject to other provisions of this Contract), royalty-free (other than payments identified) license under copyright to link to, market and display the Project pursuant to this Contract.
- C. Portal Identifiers. The Uniform Resource Locators (URLs) registered, portal web site graphics and trademarks used in promoting the Portal Site ("Portal Identifiers") shall be owned by the Contractor and Subcontractors jointly. The Contractor and Subcontractor must all agree in writing on the Portal Identifiers to be used. Portal Identifiers must not infringe in any way on any Party's trademarks or trade names. The State shall have the right to use all such Portal Identifiers throughout the term of this Agreement. In the event that (i) the State terminates this Agreement, and (ii) the Contractor and Subcontractors do not desire to continue using the Portal Identifiers for their intended purposes, and (iii) the State desires to continue use of such Portal Identifiers, State has the option to license such rights at no cost from the Contractor and Subcontractors within thirty (30) days of notice of such an event. If State does not exercise its option to license the rights, the option is void.
- D. Protection of Project. State, Contractor and Subcontractor agree to take all reasonable steps to protect the Project under this Contract, and any related documentation, from unauthorized copying or use. As Project consists of software, the source code of such Project shall be deemed to include trade secrets of Contractor and/or Subcontractors. The source code and embodied trade secrets are not licensed to State. State agrees not to modify, disassemble or decompile Project in order to discover the trade secrets contained in the source code or for any other reason.
- E. Modifications and Adaptations. Except as otherwise provided in this Contract and subject to approval by the eUBNC, State may not make or authorize the making of modifications or adaptations of Project. All proprietary rights notices must be faithfully reproduced and included on all copies, modifications and adaptations.
- F. Restrictions. Except as expressly authorized in this Contract, State agrees not to rent, lease, sublicense,

distribute, transfer, copy, reproduce, or modify Project or any related documentation marked, or understood to be, confidential without Contractor's and Subcontractors' prior written consent.

6. **REVENUES AND EXPENSES:** The establishment of all charges to Project users shall be included in a financial plan as mutually agreed by the eUBNC. The eUBNC will review and approve all Project use or data access charges for fairness, reasonableness, and appropriateness. Parties may at any time recommend changes in charges to the eUBNC. Flow of funds will be determined by the eUBNC. The Contractor will have the responsibility of distributing all funds attributable to Project transactions and subscriptions in the following order unless otherwise mutually agreed to between the eUBNC representatives in writing: (1) revenue will be distributed to Parties according to the following formula: 95% Contractor and Subcontractors, 5% to the eUBNC for payment of reasonable and necessary expenses, as described in the financial plan, and as mutually agreed by the eUBNC.
7. **DISCLAIMER AND LIMITATION OF CONTRACTOR'S LIABILITY:**
THE STATE ACKNOWLEDGES THAT CONTRACTOR AND ITS SUBCONTRACTORS MAY NOT BE ABLE TO CORRECT ALL PROGRAM ERRORS OR VERIFY ALL BUSINESSES DATA AND THE CONTRACTOR AND ITS SUBCONTRACTORS DO NOT WARRANT OR REPRESENT THAT ALL DATA IS ACCURATE OR ERROR FREE. CONTRACTOR AND ITS SUBCONTRACTORS EXPRESSLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE DESIGN AND FUNCTIONALITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEAL, USAGE OR TRADE PRACTICES. IN NO EVENT WILL CONTRACTOR AND ITS SUBCONTRACTORS BE LIABLE FOR LOST REVENUE OR PROFIT, OR FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF THE CONTRACTOR AND ITS SUBCONTRACTORS HAVE BEEN ADVISED TO THE POSSIBILITY OF SUCH DAMAGES. CONTRACTOR AND ITS SUBCONTRACTORS DO NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES. MOREOVER, THE CONTRACTOR AND ITS SUBCONTRACTORS DO NOT WARRANT THAT THE PORTAL SITE, INCLUDING WITHOUT LIMITATION ANY RELATED DATABASE AND PRODUCTS, WILL BE COMPATIBLE WITH EACH OR EVERY KIND OR TYPE OF TECHNOLOGY THAT MIGHT BE USED BY INDIVIDUALS TO ACCESS THE PORTAL SITE.
8. **NOTICE:** CONTRACTOR agrees to immediately notify the STATE if during the course of this Contract a change or reorganization occurs which affects the purposes of, or its ability to perform under, the terms and conditions of this Contract. Changes or reorganizations that require notification to the STATE include, but are not limited to the following:
 - A. Material Change in the amount or type of facilities, assistance, or staff provided by CONTRACTOR to facilitate this Contract.
 - B. Any other change or reorganization that the CONTRACTOR reasonably expects would be of interest or value to the STATE in the administration of this Contract.Notices by the parties to one another shall be given in writing to the persons identified in paragraph 13 below at the addresses shown below, or to such other persons as may be subsequently identified in a written notice. Such notices shall be effective on the date of receipt if hand delivered and signed for by one of the above names Contact Persons, or if sent by U.S. first-class or restricted delivery mail, postpaid, or by any reputable overnight delivery service, prepaid.
9. **MARKETING:** The STATE, CONTRACTOR and Subcontractors agree to use their resources to jointly and separately market the eUBN web site and its services. It is recognized that CONTRACTOR, its Subcontractors and their affiliated companies intend to use their experience with the STATE and the eUBN as a marketing tool with third parties. It is agreed that CONTRACTOR and/or its Subcontractors may make references to and use the STATE of Utah as a reference.
10. **CONFIDENTIAL INFORMATION**
The Parties understand and agree that access to records prepared, owned, received, or retained by the State is governed by the Utah Governmental Records Access and Management Act (GRAMA), Utah Code Ann. § 63-2-101, et seq. The Contractor and/or Subcontractor may protect the confidentiality of their documents to the extent allowed by GRAMA if: (1) Contractor and/or Subcontractor makes a written claim of business

confidentiality under Section 63-2-308, and (2) one or more of the exceptions noted in Section 63-2-304 apply, or another statute allows the records to be kept confidential.

11. TERMINATION:

- A. It is contemplated by the Parties that the State will use its good faith efforts to promote the adoption and use of the eUBN among state agencies, businesses and people who engage in business over the Internet with or within the state of Utah. In the event that due to inadequate marketing attention or limited adoption and use by businesses and consumers that results in revenue at a level that does not sustain a reasonable profit, after recovery of costs, Contractor and/or its Subcontractors may terminate this Agreement only after nine months from the contract date and upon 90 days prior written notice being given to the State and other Parties to this Contract.
- B. If the Contract is terminated before the expiration of the initial term by the Contractor or if the State terminates the Contract 'for cause', the Contractor will provide to the State at no cost, and without additional terms or conditions, a complete copy of all current business profile information, excluding the relevant relationship links that exist between eUBN members and maintained by Novell's access control architecture (hereinafter referred to as "Data"). The Data shall be delivered to the State no later than the end of the term of the contract unless otherwise agreed to mutually by the parties to this contract.

For purposes of this Contract, the phrase "for cause" shall mean:

- 1) Any material breach or evasion by the Contractor of the terms or conditions of this Contract and its amendments, if any; or,
- 2) Substantial cessation of eUBN services by the Contractor; or,
- 3) Fraud, misappropriation, embezzlement, malfeasance, significant misfeasance, or illegal conduct by the Contractor, its officers, or directors; or,
- 4) Dissolution of Contractor or forfeiture of its company existence; or,
- 5) An adverse judicial decision by a court of competent jurisdiction, which has the effect of rendering Network operations no longer feasible; or,
- 6) Insolvency of Contractor; or,
- 7) Negligent disclosure of any confidential information.

The Contractor may terminate the contract with 90 days notice without penalty or requirement to release Data to the State for the following reasons:

- 1) An adverse judicial decision by a court of competent jurisdiction, which has the effect of rendering eUBN operations no longer feasible; or,
 - 2) Legislation materially alters the ability of the Contractor to operate the eUBN.
- C. This Agreement does not contemplate a "work for hire," and in the event that this Agreement is terminated, regardless of the reason for such termination, or not renewed at the end of the Initial Term or any Renewal Term, Contractor and Subcontractors may proceed with the independent development, licensure, marketing and sale of their inventions, works, services, products and other intellectual property, which may have the same or similar technology and functions as the Project.
- D. In the event of a termination of this Agreement, all obligations of confidentiality, including without limitation, all terms of Section 10, and other provisions and licenses which by their nature survive termination, shall continue in effect in accordance with their terms.

12. **ASSIGNMENT:** Neither this Contract nor any interest herein may be assigned or otherwise transferred by either the State, Contractor or Subcontractors in whole or in part without the signed prior consent of the other Parties. Any Party hereto shall have the right to assign this Agreement, without prior approval, to any successor to such Party by way of merger or consolidation or the acquisition of substantially all of the entire business and assets of such Party relating to the subject matter of this Contract, provided that such assignee shall remain liable and responsible to the other Parties hereto for the performance and observation of all such obligations herein.

13. **CONTACT PERSON:** The STATE and the CONTRACTOR designate the following individuals to be key contacts for "the Project," and initial representatives on the eUBNC.

STATE:

Michael Allred

Department of Community and Economic Development

Project Manager

324 South STATE Street, Suite 500

Salt Lake City, UT 84111

Ron Richins
Department of Community and Economic Development
Director, Business Development
324 South STATE Street, Suite 500
Salt Lake City, UT 84111

Vaughn Taylor
Office of the Chief Information Officer
Project Manager
116 STATE Capitol
Salt Lake City, UT 84114

CONTRACTOR:
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Salt Lake City, UT 84106

SUBCONTRACTORS:
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Overland Park, KS 66210

Todd Hogan
Novell, Inc.
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