

Collaborative Member Addendum to Academic License Agreement

This Collaborative Member Addendum supplements Academic License Agreement ("ALA"), between the party signing this addendum ("Collaborative Member") and Novell, Inc. ("Novell").

Definitions. Terms with the initial letter capitalized will have the same meaning as defined in the ALA, unless otherwise defined in this Addendum.

New Definitions.

1. "MHEC" means Midwestern Higher Education Commission.
2. "Collaborative" means the Novell/MHEC Higher Education Collaborative, which is an intercollegiate association of Novell software users. It is established upon Novell and MHEC entering into the ALA as amended. The Collaborative will be made available to all Customers.
3. "Collaborative Member" means a Customer that completes and signs a Novell ALA, and Collaborative Member Addendum.
4. "Collaborative Membership Dues" means the amount Collaborative Members must pay MHEC as part of the Collaborative Membership requirements. MHEC, in its sole discretion, shall determine the amount of the Collaborative Membership Dues and shall be solely responsible for collecting Collaborative Membership Dues from Collaborative Members.

If Collaborative Member fails to pay the Collaborative Membership Dues to MHEC within the time frame defined by MHEC, MHEC shall notify Collaborative Member that they are in breach of the Collaborative Member Addendum. If payment is not received within 30 days of such notification, MHEC shall notify Novell, and Novell shall terminate Collaborative Member's Collaborative Member Addendum.

Amendments. The ALA is amended and supplemented as follows:

1. Section 1.4, **Customer**, is deleted and replaced with the following:

Customer means an educational organization that has been approved by Novell, signs the ALA and qualifies to participate under MHEC's interstate compact. Included in the interstate compact are higher education accounts, both public and private, currently in Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, North Dakota, Iowa, South Dakota and Wisconsin. The Customer signing the ALA is responsible for ALA obligations of all entities that participate under Customer's ALA. MHEC shall provide a list of higher education institutions that are eligible to participate in MHEC programs.

2. The following is added at the end of Section 2.2, **Limited Warranty and Additional Terms**:

Software. Novell warrants that the Software will conform substantially to the specifications in the Documentation, provided that: (a) the Software is not modified by anyone other than Novell, unless authorized by Novell in writing; (b) Customer notifies Novell in writing of the nonconformity within 90 days after licensing the Software; and (c) the Software is installed in a compatible environment. In this Section, "conform substantially" means that the Software conforms to the vast majority of all specifications in the Documentation. Novell's only obligation under this warranty is to cause the Software to conform substantially with its specifications or to refund to Customer the consideration paid for such Software upon Customer's return of all the Software. In the event of a refund, Customer's right to use the Software shall automatically expire.

Services. Novell warrants that the technical services provided under the ALA will be supplied in a professional manner. As files may be altered or damaged in the course of Novell providing technical services, Customers agree to take appropriate measures to isolate and back up its systems.

Beta. Any beta software is provided to Customer "AS IS" without any warranty. Customer acknowledges that such software has not been fully tested and may contain errors and bugs. Customer must determine the suitability of the use of such software for any purpose. Novell does not guarantee that a commercial version of the software or that associated products will be released. Novell shall have no obligation to provide support for beta software.

Non-Novell Products. Novell does not warrant non-Novell products. Any such products are provided on an "AS IS" basis. Any technical or warranty services for non-Novell products is provided by the product manufacturer in accordance with any applicable manufacturer's warranty.

Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THESE LIMITED WARRANTY SECTIONS, NOVELL MAKES NO WARRANTY OR REPRESENTATIONS REGARDING ANY SOFTWARE PRODUCTS OR SERVICES. NOVELL DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES OR CONDITIONS, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, AND NON-INFRINGEMENT. NOVELL DOES NOT WARRANT THAT THE SOFTWARE IS WITHOUT DEFECT OR ERROR OR THAT ITS OPERATION WILL BE UNINTERRUPTED. This limited warranty gives specific legal rights, which may vary in different states or jurisdictions.

3. Section 6.7, **Discount**, is added as a new section:

- a. Collaborative Member's discount shall be the highest discount available, for the number of FTE purchased by Collaborative Member, as shown on the then-current Academic License Agreement Annual Fee Worksheet, plus any other Collaborative discounts approved by Novell.
- b. Should the ALA between MHEC and Novell terminate for any reason, the Collaborative shall also be terminated, and the discount afforded to Collaborative Members shall be discontinued at the end of Collaborative Member's then current Annual Period. Subsequent to termination, the discount will be the discount Collaborative Member independently qualifies for under the ALA program at Collaborative Member's subsequent Annual Period. All other Collaborative discounts shall also be discontinued.
- c. Should Customer already have an ALA in place with Novell, Customer may add the Collaborative Member Addendum to its contract at its next Annual Period and thus possibly qualify for higher discount and all other discounts approved by Novell.

4. Section 10.8, **Intellectual Property Indemnification**, is added as a new section:

Novell will defend or settle any claim, suit or proceeding brought against Customer (referred to below as "You") so far as it is based on an allegation that a Software product infringes on any patent, trademark, or copyright of the country in which You take delivery of such product. Novell will pay any damages, costs and expenses finally awarded (or agreed to by settlement) in any such claim, suit or proceeding. Novell will be relieved of the foregoing obligation unless (a) You promptly notify Novell of any such claim, (b) Novell has sole control of the defense and related settlement negotiations, and (c) You provide Novell with the reasonable assistance, information and authority necessary to perform the above. If You desire separate legal representation in any such action, You will be responsible for the costs and fees or Your separate counsel.

If a Software product is held to infringe and its use is enjoined, or if in Novell's opinion a Software product is likely to become the subject of infringement, You will permit Novell, at Novell's option and expense, to: (a) procure for You the right to continue to use the Software, or (b) replace or modify the Software so that it becomes non-infringing and has the same or additional functionality and comparable or improved performance characteristics, or (c) upon Your return of the infringing Software, refund to You the consideration paid for such Software in equal quarterly payments paid by Novell over a 3-year period from the date of return.

Novell shall have no responsibility for infringement to the extent the infringement results from (a) Novell's compliance with Your designs, specifications, or instructions; (b) use of other than the current Software release, if the infringement would have been avoided by use of the current release and if the infringement occurs more than 90 days after Novell has made a public announcement or notified You a previous release may infringe; (c) a software modification not requested or authorized in writing by Novell, (d) use or combination of the Software with non-Novell software, equipment, or data, other than

as specified in its documentation or otherwise approved in writing by Novell for use with the Software; (e) the furnishing to You of any information, service, or technical support by a third party; (f) non-licensed Software use; or (g) use of any Linux-based Software or Software for which Licensor does not charge a license fee ("Linux Product") if you are not current of payment of ALA fees for the Linux Product on the date the infringement claim is tendered.

Novell's liability under this Intellectual Property Indemnification section is limited to the greater of three times the amount of ALA fees paid by the applicable Customer or \$1 million. This Intellectual Property Indemnification section states the entire and exclusive obligation of Novell to Customer regarding any claim of infringement or misappropriation of any intellectual property rights of any third party.

5. Section 10.9, **Partnership Not Intended**, is added as a new section:

Nothing in the ALA or this Amendment is intended, or shall be deemed, or construed to constitute a partnership or a joint venture between the parties. The relationship of the parties shall be that of independent contractors.

6. Section 10.11, **MHEC Not Liable for Collaborative Member**, is added as a new section:

MHEC is not liable to Novell for the failure of any Collaborative Member that has signed a Collaborative Member Addendum, to make any payment or to otherwise fully perform pursuant to the terms and conditions of any ALA and/or ALA Addendum, unless said liability is expressly provided for in an ALA and ALA Addendum executed by MHEC, and only to the extent so provided in the ALA and ALA Addendum.

7. Section 13, **Technical Services Premium Support**, is added as a new section.

- a. Support Incidents. Academic Service Requests will be available as part of the Collaborative. To define, an Academic Service Request has a target response time of two hours and is available 24x7. MHEC will establish a pool of Service Requests ("Pool") for use by Collaborative Members by purchasing quantities of incidents from Novell from time to time as required to maintain the Pool. Novell will provide MHEC/Customers with a Customer Identification Number (CID) at the time the Collaborative Member requests authorization to utilize Academic Service Requests through MHEC Collaborative. MHEC will provide a list of Collaborative Members who are authorized to access the Service Requests directly from Novell using the MHEC Premium Service Agreement. Novell shall offer Academic Service Request only to those Collaborative Members authorized by MHEC. On a monthly basis, Novell will notify MHEC of the name of each authorized Collaborative Member using a Service Request from the Pool, and the number of Service Requests used by that authorized Collaborative Member. MHEC will bill the Collaborative Member accordingly.
- b. Service Account Manager. Novell will assign to MHEC a Service Account Manager for use by Collaborative Members. All technical support described under this Section will come directly through Novell but may, at Novell's discretion, be delivered by a Novell outsourcing partner. Novell will make available to MHEC upon request the usage information of Service Requests, including the number of Service Requests remaining in the Pool, the date each Service Request was used, the name of the Collaborative Member using each Service Request, and the contact person at the Collaborative Member.
- c. Reimbursement to MHEC. As a condition of Collaborative membership, Collaborative Members, authorized by MHEC for Academic Service Requests, must reimburse MHEC for all Service Requests used through the Collaborative. If a Collaborative Member fails to timely reimburse MHEC upon a receipt of an invoice from MHEC, MHEC shall notify Collaborative Member that they are in breach of Collaborative Addendum. If payment is not received within 30 days of such notification, MHEC shall notify Novell and Novell shall terminate Collaborative Members Collaborative Addendum.

In no event will Novell be liable to MHEC or any Collaborative Members for revoking or terminating the ALA Collaborative Addendum as a result of MHEC's request or due to such Members failure to pay MHEC membership dues, support fees, or other monies owing.

- d. Service Request Definition: All MHEC authorized Collaborative Member Academic Service Requests opened will be considered "time spent with an engineer" and charges for time spent with an engineer will not be reversed. MHEC is responsible for informing the Collaborative members that the Collaborative members will be charged for each Service Request raised even if multiple Service Requests are opened from one initial Service Request. The MHEC authorized Collaborative Member will be responsible for knowing that multiple Service Requests raised from one Service Request will result in additional charges.

Continuance: Except as expressly modified by the Addendum, the ALA terms remain in effect unchanged. If any inconsistency exists between the ALA and this Addendum, the Addendum provisions shall control.

IN WITNESS WHEREOF, each of the parties hereto has caused this Addendum to be executed by duly its duly authorized representative.

Novell, Inc.:

Signature: _____

Name: _____

Title: _____

Date: _____

Collaborative Member:

Signature: _____

Name: _____

Title: _____

Date: _____