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## Collaborative Member Addendum to Academic License Agreement

This Collaborative Member Addendum supplements the 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 Amendment.

**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 and that qualifies to participate under MHEC’s interstate compact authority, including MHEC itself, and has signed an ALA. Participants who qualify under MHEC’s interstate compact authority include higher education accounts, both public and private, in Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, North Dakota, and Wisconsin or any other state that later is made part of the MHEC organization. The Customer signing this ALA will be responsible for all ALA obligations of other schools or entities that participate under Customer’s ALA. Customer shall not be responsible for entities that execute their own ALA and Collaborative Member Addendum with Novell.

2. Section 1.12, **Collaborative**, is added as a new definition:

Collaborative means the Novell/MHEC Higher Education Collaborative, which is an intercollegiate association of Novell software users. It has been established through Novell and MHEC entering into an ALA, for the purpose of making Novell products, services and training more accessible and beneficial to MHEC member institutions. The Collaborative will be made available to all Customers.

3. Section 1.13, **Collaborative Member**, is added as a new definition:

Collaborative Member means a Customer that completes and signs a Novell ALA, and a Collaborative Member Addendum.

4. Section 1.14, **Collaborative Membership Dues**, is added as a new definition:

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 of such Dues from its 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.

5. 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.

Media and Documentation. Novell warrants that if either the Software's media or the Documentation is in a damaged or physically defective condition at the time of delivery to Customer and if it is returned to Novell (postage prepaid) within 90 days of delivery, Novell will provide Customer replacements at no charge.

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, Customer 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 service 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.

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

- a. Collaborative Member's discount shall be the highest discount available as shown on the then-current Academic License Agreement Annual Fee Worksheet. Collaborative Member will also be eligible for 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 Member 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 agreement in place with Novell, Customer may add the MHEC ALA Collaborative Addendum to its contract at its next Annual Period and thus qualify for the higher discount, and all other Collaborative discounts approved by Novell.

7. 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 of 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, or (f) non-licensed Software use.

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 You regarding any claim of infringement or misappropriation of any intellectual property rights of any third party.

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

Nothing in the ALA or this Addendum 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.

9. 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.

10. Section 13, **Premium Technical Support**, is added as a new section:

A. Support Incidents. Telephone incidents will be available as part of the Collaborative, per the following terms:

MHEC will establish a pool of telephone incidents ("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/Customer with Personal Identification Numbers (PIN) at the time the Collaborative Member enrolls in the Collaborative. Novell will administer the Pool of incidents and will distribute the telephone incidents to the Collaborative Members. Collaborative Members will access the telephone incidents directly from Novell using the MHEC Premium Service Agreement. On a monthly basis, Novell will notify MHEC of the name of each Collaborative Member using an

incident from the Pool, and the number of incidents used by that Collaborative Member. MHEC will bill the Collaborative Member accordingly.

**B. Service Account Manager, Service Support and MHEC Requested Information.** Novell will also assign to MHEC a Service Account Manager for use by Collaborative Members. All service 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 support incidents, including the number of support incidents remaining in the Pool, the date each support incident was used, the name of the Collaborative Member using each support incident, and the contact person at that Collaborative Member.

**C. Reimbursement to MHEC.** As a condition of Collaborative membership, Collaborative Member must reimburse MHEC for all support incidents used through the Collaborative, with the exception of the first telephone support incident, which Collaborative Member receives at no charge. On a monthly basis, MHEC will bill Collaborative Member for the support incidents used by that Collaborative Member. If Collaborative Member fails to reimburse MHEC for support incidents used, 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.

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

**D.** MHEC and Novell may revise the prices and services offered under Section 13, Premium Technical Support, from time to time. Collaborative Member will be notified by MHEC of any such revision prior to such revision taking place.

**Continuance.** Except as expressly modified by this Amendment, the ALA terms remain unchanged. If an inconsistency exists between the ALA and this Amendment, the Amendment provisions shall control.

**Novell, Inc.**

**Collaborative Member**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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