

## Novell Hosted Services Amendment

This Novell Hosted Services Amendment (“Amendment”), after submission by the customer entity identified and signing below (“Customer” or “You”) and acceptance by the relevant Novell entity (“Novell”), shall become a binding agreement and, where applicable, shall amend Your Master License Agreement, Corporate License Agreement, or Volume License Agreement (“Agreement”), as well as the end user license agreement (“EULA”) accompanying the relevant Novell Software product. Unless modified by this Amendment, the terms of Your MLA, CLA, VLA and/or EULA shall remain unchanged and unaffected.

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

Customer Address: \_\_\_\_\_

Contact: \_\_\_\_\_

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

Phone/Fax: \_\_\_\_\_

Email: \_\_\_\_\_

1. **Purpose:** Customer intends to use certain Novell Software products designated by Novell to provide hosting, subscription, service bureau, outsourcing or other similar software usage services (“Hosted Services”), including the leasing of third-party applications, to its Hosted Customers. Hosted Customer means a third party for whom You operate, maintain, and/or use the Novell Software to enable the third party to operate its business. The Novell Software may allow such hosting customers to have use of the third-party applications by connecting to Customer’s servers. Except for product components that are necessary to enable Customer to perform the Hosting Services, at no time will You download, or allow any Novell Software to be downloaded, onto the Hosted Customer’s workstations or servers.
2. **Changes to Your MLA/CLA/VLA/EULA Terms:**
  - a. **License.** Notwithstanding any conflicting provisions that may be contained in the Agreement, for licenses of the Novell Software product(s) licensed under the terms of this Amendment for which all applicable Subscription fees have been paid, You may install copies of such product(s) for which you have paid the applicable Subscription fees and use such installed copies solely for the purpose of implementing Hosting Services to each applicable Hosted Customer. Such product(s) shall be used only to allow Your Hosted Customer access to the functionality of the software and not to any master media. Subscription fees must correspond to the number of Hosted Customer users (or other unit of measurement required by the applicable EULA) and must remain in effect at all times during the term of this Amendment. Some products offered on Novell’s Commercial Price List are not available under this Hosted Services program. A list of excluded products can be found at [www.novell.com/licensing/product\\_exclusions.html](http://www.novell.com/licensing/product_exclusions.html). Novell reserves the right to update this list as needed.
  - b. **Subscription.** For Novell Software products where only Subscription fees have been paid, You agree that regardless of any terms in the Agreement or product EULA to the contrary, such use shall not be perpetual and will be allowed only for so long as the applicable Subscription coverage remains in effect. Any gaps in Subscription coverage must be reported to Novell and cured via an annual “true-up.”
  - c. **Perpetual Licenses.** In the event that You require ownership of perpetual license rights, You must purchase the applicable perpetual license in sufficient quantity to cover Your provision of Hosting Services to Your Hosted Customers. Should your business relationship with a particular Hosted Customer end, You may thereafter allocate and use the same licenses to the Novell Software product(s) in providing Hosted Services to a different Hosted Customer.
  - d. **Improper Payment.** Neither Customer nor its directors, employees, agents or subcontractors or their directors, employees or agents shall make any payment or give anything of value, directly or indirectly, to any government official, political party, or candidate for government office (including any director, employee or agent of any government department, agency or instrumentality) to influence his or its decision, or to gain any other advantage for the Customer or Novell in connection with this Agreement. Customer shall immediately notify Novell of any

violation of this subsection and shall immediately pay Novell the greater of Customer's profits or monies earned in the transaction, or an amount equal to the amount of the payment or the value of the gift to a foreign official which gives rise to such violation. Customer shall also indemnify and hold Novell harmless for all losses and expenses arising out of such violation, or for any other activity causing Novell to violate the FCPA or any other United States law or regulation. In the event of any violation of this subsection, Novell may, at its sole option and in addition to Novell's other rights and remedies, terminate this Agreement at any time and notwithstanding any other provision of this Agreement, withhold any or all payments otherwise due to Customer in connection with this Agreement.

- e. You further agree that the availability and discounted pricing of the above Software products is solely to enable You to provide Hosting Services to Your Hosted Customers; such Novell Software products are not for resale and may not be used by You to provide Hosted Services for a greater number of Hosted Customers (or the individual end users of such Hosted Customers) than the number for which You have paid the applicable Subscription fees.

You also agree to the following:

- (a) be responsible for the payment of all Subscription fees related to use of the Novell Software. A minimum initial purchase of U.S.\$5,000, before discount, is required upon execution of this Addendum. Thereafter, Your minimum annual order for Novell Software under this Addendum must be in an amount no less than U.S.\$5,000, before discount; and
- (b) ensure that each Hosted Customer using the Novell Software through Your Hosted Services understands, and agrees to be bound by, the applicable Novell End User License Agreement for the relevant product(s); and.
- (c) implement commercially reasonable measures and enforceable policies within the Hosted Services and Your network that use the Novell Software to prevent: Internet abuse (including unauthorized access, monitoring, interference, and privacy breaches), security breaches (failing to protect the security of servers under Your control), bulk or commercial e-mail misconduct (failing to comply with the CAN SPAM ACT of 2003 and related laws and regulations applicable in Your country or origin), offensive content, and violations of intellectual property laws. Such measures may include, where appropriate, acceptable use policies and enforcement, use of updated firewalls, commercially available virus screening software, log-on identification and passwords, encryption, intrusion detection systems, logging of incidents, periodic reporting, and prompt application of current security patches and virus definitions; and.
- (d) be fully responsible for and indemnify Novell against any unauthorized use of Novell Software or breach of the above obligations by You or any of Your Hosted Customers.

- 3. **Term and Termination.** The term of this Hosted Services Amendment shall begin on the latter of the two dates this Amendment is executed by both parties ("Effective Date") and will continue until either party terminates upon sixty (60) days prior written notice. Unless otherwise stated in the Agreement, neither Customer's nor Novell's exercise of such termination right will relieve it of its then-current annual Subscription obligations, or entitle Customer to any refund for unused Subscription fees. This Amendment will be governed by the terms and conditions of the Agreement between You and Novell in effect as of the Effective Date.

**Customer Organization**

**Novell Organization**

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

Novell Entity: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

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

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

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

*Upon execution of this Addendum, please send it by fax and then mail the original(s) to Novell at:*

*For North America, Canada, Latin America, Asia Pacific: Novell, Inc., Attn: Contracts & Negotiations, 1800 South Novell Place, Mailstop PRV-H-544, Provo, UT 84606. Fax #: 801-861-2855*

*For Europe, Middle East, Africa: Novell Ireland, Attn: Contract Administration, Corrig Court, Corrig Road, Sandyford Business Estate, Sandyford, Dublin 18 Ireland. Fax# 00 353 1 6058089*