

**ATTACHMENT VII
END USER LICENSE AGREEMENT**

	□ COMPANY LEGAL NAME □
Company:	
Address:	

MASTER LICENSE AND SERVICES AGREEMENT

This **Master License and Services Agreement** (the “**Agreement**”) is entered into in Brisbane, California by and between the company identified above (“**Company**”) and CollabNet, Inc., a Delaware Corporation, with its principal address at 8000 Marina Boulevard, Suite 600, Brisbane, CA 94005-1865 (“**CollabNet**”). Company may license software Products (as defined below) and obtain Services (as defined below) under this Agreement by submitting a signed Master Product Order (“**Master Product Order**”) in the form of **Addendum A** attached hereto and made a part hereof, and subsequent Product Orders collectively (“**Product Order(s)**”) that reference this Agreement and are accepted by CollabNet. This Agreement is effective on the date of the fully executed Master Product Order (the “**Effective Date**”) and sets forth the terms and conditions under which CollabNet will provide such Products and Services and under which Company accepts the same.

1.0 Definitions.

For purposes of this Agreement, the following capitalized terms shall have the following meanings:

“**Affiliate**” or “**Subsidiary**” or their respective plurals, shall mean a corporation or other business entity anywhere in the world, subject to Section 11.0 hereof (Export/Import), in which either party owns or controls, directly or indirectly: (1) an equitable interest representing the right to elect the majority of the directors or persons performing similar functions or, if the law of the applicable jurisdiction does not permit such majority interest, then the maximum allowable under such law; or (2) majority beneficial ownership of the voting power or equity of an entity.

“**Services**” shall mean collectively the Services described in any executed **Addendum** attached hereto and any professional services provided pursuant to a Product Order (“**Professional Services**”) or a separately executed Statement of Work (“**SOW**”) between the parties.

“**Third Party Components**” shall have the meaning set forth in Section 2.1.1

- 2.0 License.**
- 2.1 Licensed Product(s).**

The Product(s) licensed pursuant to this Agreement are (a) the CollabNet software programs and other products specified in the a Master Product Order or subsequent Product Order executed by Company and any permitted copies, excluding therefrom any Third Party Components that are distributed with the Products (“**Product(s)**”), and (b) related Company manuals (“**Documentation**”) provided by CollabNet on-line. Updated or revised Products and Documentation shall be provided pursuant to **Addendum C** attached hereto and made a part hereof. Products are licensed to Company pursuant to the terms of **Addendum B**, attached hereto and made a part hereof (“**License Agreement**”).

2.1.1 Third Party Components.

The Company agrees and acknowledges that the Product is distributed with certain third party software components (the “**Third Party Components**”) which are listed in the Product and licensed to the Company pursuant to the licenses provided to Company or set forth on a Company website noticed to Company (the “**Third Party Licenses**”). The Company agrees and acknowledges that it (i) has reviewed and understands the Third Party Licenses applicable as of the Effective Date and (ii) shall abide at all times by the terms of any and all of the applicable Third Party Licenses.

2.2 Product and Service Warranties.

2.2.1 General.

CollabNet warrants that it has the right to license the Products to Company and that, except as set forth in [Section 8.0](#) hereof (Liability), the Product(s), when properly used for the purposes and in the manner specifically authorized by this Agreement, to the knowledge of CollabNet, do not infringe upon any United States copyright, patent, trademark, or trade secret of any third party. Notwithstanding anything to the contrary in the foregoing or elsewhere in this Agreement, CollabNet makes no representation regarding any violation of any third party copyright, patent, trademark, trade secret or other intellectual property rights by the Third Party Software (as defined below) or the Third Party Components.

2.4 Audit Rights. Company hereby acknowledges that CollabNet may audit Company's production installation of the Products that are onsite at Company up to once every six (6) months in the course of performing Support Services hereunder in order to determine the number of accounts registered.

2.2.2 Limited Warranty.

The "**Warranty Period**" for all Products shall commence on the Effective Date and continue in effect for the Term of this Agreement, provided that all Fees are current and Company has a current contract with CollabNet to supply Support Services (as defined below). CollabNet warrants that during a Product's Warranty Period, the Product will conform to the technical specifications relating to the then current release of the Product. Errors may exist or occur in a Product; however CollabNet's sole obligation under this limited warranty is to replace defective Product(s) and attempt to correct any material error or defect in the current release of a Product that is reported to CollabNet by Company during the Warranty Period. Such error correction services and advisory assistance will be provided as expeditiously as reasonably possible through CollabNet's Support Services. This warranty shall not apply to non-conformities, errors or problems arising from Company's negligence or improper use of the Product, from unauthorized modifications made to the Product, from use of the Product in an unsupported operating environment, or from use with Company's or any third party's software.

CollabNet does not warrant, nor shall it be responsible for, the operation or performance of any third party software (including, without limitation, the Third Party Components) or other products related to the Services, even if selected or recommended by CollabNet (collectively, the "**Third Party Software**"). All Third Party Software used or distributed with the Product or used in connection with the Product are provided "as-is", and CollabNet's obligations with respect to any Third Party Software shall be further subject to the limitations provided in [Section 8](#) ("Liability") hereto.

2.2.3 Service Warranties.

CollabNet shall perform all Services in a professional and workmanlike manner.

3.0 Support Services; Professional Services

3.1 Support and Maintenance for the Software Application(s).

Upon Company's submission of a Master Product Order or any subsequent Product Orders specifying purchase of the application support and maintenance services (collectively "**Support Services**") described in **Addendum C**, CollabNet will provide such Support Services for the applicable Product(s) to Company through employees, contractors, vendors or Affiliates, as appropriate. Support Services apply to problems and issues with the use of the Software licensed under this Agreement and are separate from CollabNet's hosting of the Product(s) on CollabNet servers, the terms for which, if applicable, are contained in **Addendum D** attached hereto and made a part hereof.

3.2 Professional Services.

3.2.1 CollabNet Personnel.

CollabNet shall designate the personnel to perform the Professional Services. The Professional Services to be rendered hereunder shall be performed by CollabNet employees, Affiliates, agents or other individuals under contract with CollabNet.

3.2.2 Expenses

Except as otherwise provided in a Statement of Work, Company shall reimburse CollabNet for all reasonable expenses ("**Expenses**") incurred in connection with the provision of Professional Services hereunder on site, including, without limitation, expenses related to travel, lodging, meals, vehicle rental, vehicle insurance, vehicle mileage, postage, reproduction, printing, facsimile, telephone, other communications and other support services. CollabNet shall retain supporting documentation for the Expenses.

3.2.3. Intellectual Property Rights.

Except as may be otherwise set forth in a Statement of Work, the intellectual property rights of the parties hereunder shall be as set forth below in this [Section 3.2](#). In the event ownership of such rights is not specified to be in either party, ownership shall reside with CollabNet:

3.2.4. CollabNet Intellectual Property.

Except as may be otherwise set forth in a Statement of Work, all works of authorship, inventions (whether or not patentable), knowledge, ideas, concepts, techniques, know-how, methods, processes, systems and devices authored, created or conceived by CollabNet prior to or during the course of this Agreement and all intellectual property rights in connection therewith, including but not limited to copyright, trademark, patent and trade secret rights, shall be owned exclusively by CollabNet ("**CollabNet Intellectual Property**"). Company shall not own or, except as set forth in a Product Order, Statement of Work or in **Addendum B**, have any interest or license in or to the CollabNet Intellectual Property, whether by assignment, license, any "work-made-for-hire" or similar doctrine, or otherwise.

4.0 Service Level Agreement for the Hosting of the Software

4.1 Hosting Services.

CollabNet's services for provisioning and maintaining the CollabNet Product environment(s) for any Product described in the Product Order as being delivered as a hosted service are the Hosting Services described in **Addendum D** attached hereto and made a part hereof. For those Products being delivered onsite **Addendum D** shall not apply.

5.0 Fees and Payment.

5.1 Fees.

The License and Support and Maintenance and other related fees hereunder ("**Fees**") shall be set forth in the Master Product Order or any subsequent Product Order and shall be due and payable as set forth in such Product Order or as set forth in Section 5.2 below if not otherwise in the Product Order. All amounts are stated and shall be paid in U.S. Dollars received in the United States.

5.2 Invoicing.

CollabNet will invoice Company for the Fees at Company's Billing Address set forth in the Master Product Order. Company shall pay CollabNet the amounts set forth on each invoice submitted to Company by CollabNet, hereunder within thirty (30) calendar days of the date the invoice is received by Company.

5.3 Taxes.

In addition to the foregoing, Company shall be responsible for the payment of any and all taxes or levies, however designated, including but not limited to any withholding tax, value added tax (VAT), use tax, privilege or franchise tax or sales tax, customs duty or impost, export or import license fee, excise tax based on gross revenue or any similar tax or charge, or any amounts imposed in lieu of any of the foregoing, which might be levied as a result of the performance, production, license or shipment of any Products or of any Services covered by this Agreement, or the use of any Products by Company, whether imposed by any regulatory body of the United States or any foreign country, except for taxes and levies relating to CollabNet's income. Company's payments to CollabNet hereunder shall be made without withholding or deduction for or on account of any such taxes or levies, provided that if Company is required by law to withhold or deduct for or on account of any such taxes or levies, then Company shall promptly advise CollabNet of such requirement and any treaty or other program for minimizing such withholding or deduction. CollabNet shall provide such assistance as Company may reasonably request in qualifying for such treaty or program. Each amount otherwise payable by Company to CollabNet shall be increased so that the net amount paid to CollabNet, after all such withholdings and deduction, will not be reduced. Company shall make payment to the appropriate governmental authority as required by law, and as soon as practicable thereafter, Company shall deliver to CollabNet an official receipt (or a certified copy thereof) evidencing such payment.

5.4 Late Payments.

Company shall pay to CollabNet interest on all amounts not paid when due hereunder at the rate of one and one-half percent (1.5%) per month or the highest legal rate, whichever is less.

6.0 Nondisclosure.

6.1 Confidential Information.

For purposes of this Agreement "**Confidential Information**" shall mean only: (a) that information disclosed in tangible form by one party to the other party and conspicuously marked at the time of disclosure as "confidential," "proprietary", or by any other appropriate legend clearly indicating the proprietary nature of the information; (b) any information which the disclosing party orally or visually discloses and identifies at the time of disclosure as being disclosed in confidence, and (c) the CollabNet Products licensed hereunder. Confidential Information shall include such Information of the parties' Affiliates or Subsidiaries, and the nondisclosure obligations set forth herein shall apply to the parties' Affiliates or Subsidiaries. Company and CollabNet shall (i) limit access to each Product and all Confidential Information to its employees and/or consultants who agree to be bound by the terms of this Agreement; (ii) not provide or disclose any Product or any Confidential Information to any third party, and (iii) take all reasonable precautions to maintain the confidentiality of any Product or Confidential Information. The obligations in this Section shall survive termination of this Agreement or any License granted hereunder for a period of three years from the date of termination.

6.2 Non-Confidential Information.

Confidential Information shall not include information which:

- (a) is now or hereafter becomes, through no act or omission on the part of the receiving party, generally known or available within the software and e-commerce or internet industry, or is now or later enters the public domain through no act or omission on the part of the receiving party;
- (b) was acquired by the receiving party before receiving such information from the disclosing party and without restriction as to use or disclosure;
- (c) is hereafter rightfully furnished to the receiving party by a third party, without restriction as to use or disclosure;
- (d) is information which the receiving party can document was independently developed by the receiving party;
- (e) is required to be disclosed by a government agency to further the objectives of this Agreement or by a proper court of competent jurisdiction; provided the receiving party uses its commercially reasonable efforts to minimize the disclosure of such information and will consult with and assist disclosing party in obtaining a protective order prior to such disclosure; or
- (f) is disclosed with the prior written consent of the disclosing party.

6.3 Return of Confidential Information.

Upon the disclosing party's request, the receiving party will promptly return to the disclosing party all materials or tangible items containing the disclosing party's Confidential Information and all copies thereof.

6.4 No Grant of Rights.

Each party recognizes and agrees that nothing contained in this Agreement will be construed as granting any rights to the receiving party, by license or otherwise, to use any of the disclosing party's Confidential Information except as specified in this Agreement for the purposes specified herein or in a Product Order.

7.0 No Other Warranties

OTHER THAN THE WARRANTIES EXPRESSLY STATED IN SECTION 2.2 HEREOF AND ANY ADDENDUM HERETO, TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, COLLABNET HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO ANY OF THE PRODUCTS, SERVICES OR PROFESSIONAL SERVICES COVERED BY THIS AGREEMENT, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR USE, ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR ANY WARRANTIES OF NON-INFRINGEMENT, WHETHER EXPRESS OR IMPLIED. COMPANY'S USE OF THE PRODUCTS, SERVICES AND PROFESSIONAL SERVICES IS AT ITS OWN RISK. COLLABNET DOES NOT WARRANT THAT THE USE OF THE PRODUCTS, SERVICES OR PROFESSIONAL SERVICES WILL BE UNINTERRUPTED, ERROR FREE, OR COMPLETELY SECURE OR THAT THE SERVICES WILL MEET COMPANY'S REQUIREMENTS. COLLABNET SHALL HAVE NO OBLIGATIONS UNDER THE LIMITED WARRANTIES SET FORTH HEREIN IF COMPANY MISUSES THE PRODUCTS, SERVICES OR PROFESSIONAL SERVICES OR VIOLATES THE TERMS OF THIS AGREEMENT.

8.0 Liability.**8.1 Limitation of Remedies and Liabilities; Disclaimer.**

EXCEPT FOR ANY LIABILITY FOR BREACH OF SECTION 6.0 (CONFIDENTIALITY), OR COLLABNET'S OBLIGATIONS UNDER SECTION 9.0 (INDEMNIFICATION), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES OR SUBSIDIARIES OR THEIR RESPECTIVE SUPPLIERS OR RESELLERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCTS, SERVICES OR PROFESSIONAL SERVICES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK

STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

IN ANY CASE, EXCEPT FOR ANY LIABILITY FOR BREACH OF SECTION 6.0 (CONFIDENTIALITY), OR SECTION 9.0 (INDEMNIFICATION), AND EXCEPT AS SET FORTH IN ADDENDUM D (SERVICE LEVEL AGREEMENT) IF APPLICABLE, WITH RESPECT TO SECTION 2.2.2 THEREOF, THE ENTIRE COLLECTIVE AND AGGREGATE LIABILITY FOR ANY PARTY OR ITS AFFILIATES UNDER ANY PROVISION OF THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE THE SUM OF THE FEES COMPANY PAID FOR THE PRODUCTS OR SERVICES, REGARDLESS OF THE FORM OF ANY LEGAL ACTION OR PROCEEDING WHETHER IN CONTRACT, STATUTE, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE.

COLLABNET DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM COLLABNET'S OR ITS SUPPLIERS' NETWORKS AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT COMPANY'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH COLLABNET WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, COLLABNET CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, COLLABNET DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

COMPANY AND NOT COLLABNET IS RESPONSIBLE FOR ANY LIABILITY ARISING OUT OF ANY THIRD PARTY SOFTWARE, OR ANY OTHER CONTENT OR CODE PROVIDED BY COMPANY OR A THIRD PARTY OR THAT IS ACCESSED THROUGH THE PRODUCT AND/OR ANY MATERIAL LINKED THROUGH SUCH CONTENT OR CODE.

PORTIONS OF THE PRODUCT MAY HAVE BEEN CREATED USING SOURCE CODE GOVERNED BY OPEN SOURCE, FREE, OR OTHER PUBLIC LICENSES ("OPEN SOURCE CODE") AND OPEN SOURCE CODE MAY ALSO BE INCLUDED IN THE THIRD PARTY SOFTWARE (INCLUDING, WITHOUT LIMITATION, THE THIRD PARTY COMPONENTS). NOTWITHSTANDING THE PROVISIONS OF SECTION 2.2 HEREOF, COLLABNET MAKES NO REPRESENTATIONS OR WARRANTIES AS TO NON-INFRINGEMENT BY ANY THIRD PARTY SOFTWARE OR COMPONENTS, AND IS NOT RESPONSIBLE FOR ANY LIABILITY ARISING FROM ANY CLAIM BY ANY THIRD PARTY THAT ANY

SUCH OPEN SOURCE CODE INFRINGES ANY PATENT OR COPYRIGHT OR ANY OTHER PROPRIETARY RIGHT. COLLABNET MAY PROVIDE THIRD PARTY PRODUCTS, SOFTWARE AND/OR SERVICES HEREUNDER. THE LIABILITIES OF THE LICENSORS OF THE THIRD PARTY COMPONENTS SHALL BE FURTHER SUBJECT TO LIMITATIONS PROVIDED IN THE THIRD PARTY LICENSES. COMPANY'S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES WITH RESPECT TO SUCH THIRD PARTY PRODUCTS, SOFTWARE AND/OR SERVICES (INCLUDING RIGHTS AND REMEDIES IN CONNECTION WITH ANY INFRINGEMENT CLAIMS) SHALL BE AGAINST SUCH THIRD PARTY, AND NOT AGAINST COLLABNET.

9.0 Indemnification.

CollabNet shall indemnify, defend and hold Company harmless, at CollabNet's expense, against any claim, suit or proceeding (collectively "**Claim**") brought against Company resulting from, relating to or arising out of an allegation that any use by Company of the Product, Documentation, Services and/or Professional Services constitutes an infringement, contributory infringement, or inducement of infringement of a patent, copyright, trademark, or other proprietary right, or misappropriation of a trade secret of a third party; provided that Company promptly notifies CollabNet in writing of the Claim and reasonably cooperates with CollabNet to facilitate any defense of such Claim. CollabNet's obligation to indemnify shall include, without limitation, an obligation to pay any costs, including, but not limited to, reasonable attorneys' fees, expert witnesses' fees, expenses, damages awarded to third parties and costs incurred by Company (other than those associated with Company employee time or expense). CollabNet shall have sole control of the defense or settlement of any such Claim, at CollabNet's sole expense, provided that Company may employ counsel at its own expense and participate in the defense and/or settlement of any Claim. In addition, CollabNet may take any of the following actions: (a) obtain the right for Company to continue using the Product, Services, Professional Services or deliverables under a Statement of Work, b) modify the Product, Services, Professional Services or such deliverables to make it non-infringing, or c) if such remedies are not reasonably available, remove the Product, Services, Professional Services or such deliverables.

The foregoing notwithstanding, CollabNet shall have no liability for a claim of infringement to the extent it is based on: (i) the use by Company of any Product, Documentation, Services or Professional Services, including any Deliverable provided to Company as part of the performance of Professional Services, (collectively, "**Infringing Property**") more than thirty (30) days after CollabNet notifies Company that continued use of the Infringing Property will subject Company to such claim of infringement; (ii) the combination of any Infringing Property with other software or products not provided by CollabNet, which claim would have been avoided if the Infringing Property had not been so combined; (iii) the modification

of any of the Infringing Property by anyone other than CollabNet; or (iv) the hardware on which any Infringing Property is being run where such hardware is not under the control of CollabNet. For purposes of interpreting this Section 9.0, a Product shall be considered to be "modified" if there are any changes that materially affect the implementation, functionality, or performance of the Product.

Notwithstanding anything to the contrary in the foregoing, Collabnet will have no obligation to indemnify Company for claim of intellectual property infringement arising from Company's use or implementation of any Third Party Software.

10.0 Representations and Warranties of the Parties.

10.1 General.

Each party respectively represents and warrants that it has the legal right and authority during the Term of this Agreement to enter into this Agreement and perform its obligations, and that use or provision of the Products, Documentation or Services will not violate any applicable laws or regulations or cause a breach of any agreements with any third parties.

10.2 Compliance with Laws.

Company agrees that it will use the Products, Services or Professional Services only for lawful purposes and in accordance with this Agreement. Company will not resell the Products, Services or Professional Services to any third parties without the prior written consent of CollabNet (which may be withheld in its sole discretion). Each party agrees that it will comply at all times with all applicable laws and regulations.

10.3 Company Responsibilities.

10.3.1 Company owns and will retain ownership of all Company trademarks, trade names, service marks and logos (hereinafter the "**Company Marks**") and nothing herein will operate to transfer any interest in any logo, trademark, or service mark of Company. Company hereby grants CollabNet a limited, nonexclusive, non transferable, personal right to use the Company Marks, solely in connection with CollabNet's performance under this Agreement, including but not limited to the right to display Company Marks on any website delivered by CollabNet to Company under a Product Order or a Statement of Work ("**Website**"), and in presentations and other written materials. CollabNet is granted no other right, title, or license to the Company Marks.

Company agrees to permit CollabNet to apply its legal notices, on any such Website, which notices shall not be modified or deleted by Company, to use Company as a reference in sales contacts, and to cooperate with CollabNet to mutually agree on appropriate references in any publicity about this Agreement.

10.3.2 Company agrees that it is solely responsible for the evaluation of its software requirements, selection of any Products to satisfy those requirements, and verification of resulting data.

10.3.3 It is understood and agreed that if CollabNet shall be providing Professional Services, advice and recommendations to Company, then all decisions in connection with the implementation of such Professional Services, advice and recommendations shall be the responsibility of, and made by, Company.

In order to facilitate CollabNet's provision of any such Professional Services, Company shall: (a) provide CollabNet with timely access to Company's data and information; (b) provide an experienced, qualified and full-time employee of Company as the representative who has appropriate skills and who performs his/her assigned tasks and duties in a competent and timely fashion; (c) if required, dedicate adequate working space, equipment and facilities to allow CollabNet to perform the Professional Services; (d) promptly render all decisions and approvals so as not to delay or impede the performance of Professional Services by CollabNet; and (e) promptly notify CollabNet of any issues, concerns or disputes with the Professional Services.

11.0 Export/Import.

The parties agree to comply with all export and import laws and restrictions and regulations of the United States and foreign countries, and not to export, re-export or import the Product or any direct product thereof in violation of any such restrictions, laws or regulations, or without all necessary authorizations. Neither the Product nor the underlying information or technology may be downloaded or otherwise exported or re-exported (a) to Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, or any other country subject to United States trade sanctions applicable to the Product, to individuals or entities controlled by such countries, or to nationals or residents of such countries other than nationals who are lawfully admitted permanent residents of countries not subject to such sanctions; or (b) to any named party or individual on the U.S. Department of Treasury, Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, and/or the U.S. Department of Commerce, Bureau of Export Administration Denied Persons List or Entity List. By downloading or using the Product, Company agrees to the foregoing and represents and warrants that it complies with these conditions.

12.0 Term and Termination.

12.1 Unless terminated earlier under the provisions of this Agreement, the "**Term**" of this Agreement and the License for each Product licensed hereunder shall commence on the Effective Date and shall continue for the period specified in the Master Product Order or subsequent Product Orders.

12.2 Without prejudice to any right or remedy CollabNet may have against Company for breach or non-performance of this Agreement, CollabNet may terminate

this Agreement and any License granted herein upon written notice if: (a) Company fails to pay any Fees within thirty (30) days after such Fees are due and payable, (b) Company breaches any term or condition of this Agreement, or (c) Company becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing; provided, however, that any such termination shall not relieve Company of any payment obligations to CollabNet incurred prior to such date and such obligations shall become immediately due and payable. Any such termination shall take effect at such date as CollabNet shall specify in such notice.

12.3 Upon termination of this Agreement or any particular License, Company shall make no further use of the Product(s) or Services for which the Agreement has terminated and shall provide CollabNet with written certification that the Product(s) has been deleted from all computer systems. Termination under this Section shall not relieve either party of its obligation regarding confidentiality of the Product(s) and Confidential Information.

12.4 The terms and conditions which by their nature survive the expiration or termination of this Agreement, shall so survive, including but not limited to the provisions of Sections 1, 6, 7, 8, 9, 10, 11, 12 and 13.

13.0 Miscellaneous.

13.1 Data Transfer

Company expressly acknowledges and agrees that as part of fulfilling the terms of this Agreement, Personal Data, as defined below, regarding Company, its employees, partners or customers may be posted by Company on CollabNet hosted servers and that such hosted servers are located outside the European Union, specifically in the United States of America. For any such Personal Data posted on the hosted servers, CollabNet will be considered only a data processor and not a data controller and that all control of any such Personal Data remains with Company. CollabNet acknowledges that all Company Content, including all user data, is the confidential and proprietary information of Company and may be used by CollabNet, its vendors and subcontractors exclusively on behalf of Company only for the purposes contemplated under this Agreement or for creating anonymous statistical data for analyzing the Services or for billing purposes, and for no other purpose whatsoever. For purposes of this Agreement, "**Personal Data**" means any information posted on the hosted servers by Company that is sufficient to cause a person (the "data owner") to be identified, directly or indirectly.

13.2 Governing Law.

This Agreement and performance hereunder shall be exclusively governed by and construed under the laws of the State of California, without reference to principles of conflict of laws, provided, however, that this Agreement will not be subject to the UN Convention on the International

Sale of Goods. Any action brought by the parties to enforce or interpret any provision of this Agreement shall be brought exclusively in an appropriate state court in San Mateo County or federal court in the Northern District of California. The parties hereby consent to such jurisdiction and venue and waive any objection to same.

13.3 Severability.

Each provision of this Agreement is severable; if any provision is declared void, illegal, or unenforceable, such provision shall be modified by the appropriate judicial body to the minimum extent necessary to render it valid, legal, and enforceable while effectuating insofar as possible the basic purposes of such provision. The remaining provisions shall remain in full force and effect.

13.4 Amendment.

No amendment, modification, supplement or other purported alteration of this Agreement or a Statement of Work shall be binding upon the parties unless it is in writing, is appended hereto or to such Statement of Work as an Addendum, and is signed on behalf of the parties' authorized representatives. Any such Addendum shall be incorporated into this Agreement by this reference.

13.5 Notices.

Any notice required or permitted by this Agreement shall be in writing, in the English language, and shall be sent by prepaid registered or certified mail, return receipt requested, addressed to the other party at the address shown at the beginning of this Agreement or at such other address for which such party gives notice hereunder. Such notice shall be deemed to have been given three (3) days after deposit in the mail or, if via express overnight courier, the next day, except that notice of change of address shall be effective only upon receipt.

13.6 No Assignment.

Company shall have no right to assign this Agreement, nor any License that it grants, without the prior written consent of CollabNet. CollabNet shall have the right to assign this Agreement to an entity that succeeds to all or substantially all of the business or assets of CollabNet. Subject to the foregoing, this Agreement shall be binding upon, and inure to the benefit of, the successors and permitted assigns of a party to this Agreement, provided that any successor or permitted assign shall agree in writing, for the express benefit of the other party, to assume all of the obligations of its predecessor under this Agreement. Any assignment or attempted assignment of this License Agreement not permitted by this Section 13.6 shall be void.

13.7 Waiver.

No delay, omission, or failure to exercise any right or remedy provided for in this Agreement shall be deemed to be a waiver thereof or an acquiescence in the event giving rise to such remedy (but every such right or remedy may be

exercised as the party exercising such right or remedy deems expedient).

13.8 Interpretation.

Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement. This Agreement shall be construed within its fair meaning and no inference shall be drawn against the drafting party in interpreting this Agreement.

13.9 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Faxed signatures will be considered the equivalent of an original signature and shall be acceptable to bind the parties and shall not affect the validity of this Agreement. Notwithstanding the foregoing, each party agrees to execute an original of this Agreement and to promptly provide the other party with an original signature at the request of that party.

13.10 Force Majeure.

No party shall be responsible for any delays caused by acts of God or any other cause beyond its reasonable control, including but not limited to such things as strikes, riots, acts of war or terrorist acts, restricting legislation, embargo, blockage, work stoppage, or major outage of a public communications carrier, etc. Any delay caused by one party hereto which affects any other party's ability to perform according to the terms of this Agreement shall extend the non-delaying party's obligation to perform by the same number of days by which the delaying party delayed in performing its obligations.

13.11 Entire Agreement.

This Agreement, including any attachments or Exhibits or Addenda to this Agreement, constitutes the entire understanding and agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous proposals, agreements or understandings between the parties. In the event of a conflict between any term of this Agreement and a Product Order, the Product Order shall control. In the event of a conflict between any terms of this Agreement or terms of a Product Order and the terms and conditions attached to or otherwise forming part of any Purchase Order (collectively, "**Purchase Order Terms**") issued by Company, the terms of this Agreement and/or Product Order shall control or supersede the Purchase Order Terms and void any additional obligations placed on CollabNet not contemplated by this Agreement. This Agreement has been written in the English language and, in the event of any conflict or inconsistency between the English-language version and any translation hereof, the English language version shall prevail.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have executed this Master License and Services Agreement by a duly authorized representative and acknowledge that they understand and agree to be bound by the terms and conditions of this Agreement.

BY:		BY:	
	CollabNet, Inc.	Company Name:	
	_____		_____
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Effective Date:	_____	Date:	_____

Addendum A

MASTER PRODUCT ORDER

Company Name:		Quote Date:	
Notice Address:		Quote Expiration:	
Business Contact:		Billing Address:	
Phone:		Billing Contact:	
Email:		Phone:	
Fax:		Email:	
Salesperson:		Fax:	

Product Number	Qty	Unit	Description	List Price/Fee Per User	Discounted Price/Fee Per User	Extended Price	First Payment
P1000			CollabNet _____ Edition ("C_E") License Fee for _____ users for (Type Projects) for the period _____, 200_ to _____, 200_.				
P4000			____ months Subscription for CUBiT Management Software for up to __ Nodes	N/A	N/A		
			CUBiT managed Infrastructure (Nodes/Hosts) as follows:	N/A	N/A		
S5010			[detail of specific nodes purchased] Support and Maintenance Fee for C_E [and CUBiT] (Type) for the period _____, 200_ to _____, 200_. [Any professional services]				
H1060			Domain Name Purchase				
Total							

Special Notes/Comments

Default configuration and additional bandwidth/disk space cost. CollabNet will deploy the CollabNet Enterprise Edition Environment [and the CUBiT Environment] for Company with the following default configuration: Bandwidth one (1) Mbps, Managed Disk Space five (5) GB. Beyond this default configuration, CollabNet will charge and Company agrees to pay for increased usage levels of disk space and bandwidth by Company at the following rates:

Product Number	Description	Cost per month
H1010	Additional Bandwidth over one (1) Mbps	\$400.00 per one (1) Mbps
H1000	Additional managed disk space above five (5) GB	\$25 per one (1) GB

If applicable, “**Public Project**” shall have the meaning set forth in the CCE License in **Addendum B** to the Master Agreement set forth below.

If applicable, “**CUBiT**” shall mean the CollabNet Universal Build and Integrated Test System.

Support Services – Check One as Appropriate

Silver **Gold** **Platinum** **Support Services** are included on this Product Order at a price of ____ % of the License Fees for CEE[and CUBiT]. The Support Services are described in **Addendum C** in the Master License and Service Agreement referenced below .

Time Zones: If applicable, Company chooses Zone 1 (Pacific Time) or Zone 2 (Indian Standard Time) for Support Services.

Professional and/or Operations Services. [Describe]:

Domain Name – Check One as Appropriate

H1060 is included on this Product Order. Please select provided or generate options in order of preference for a domain name¹

1 st Choice:		2 nd Choice:		3 rd Choice:	
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H1060 is **NOT** included on this Product Order. Company understands and agrees to abide by Section 2.9 (“Domain Name”) of **Addendum D**, Service Level Agreement. Please identify an Onsite Contact on this Product Order who is responsible for making changes with the registrar of the domain and identify the domains or sub-domains over which CollabNet name servers will be made authoritative:

--	--	--

Onsite Contact:

Onsite Email:

Onsite Phone:

Onsite Fax:

Billing and Payment Terms

Unless otherwise noted, all fees are due in advance on the Effective Date and are payable net thirty (30) days after receipt of a CollabNet invoice.

Referenced Agreements

This Master Product Order is effective on the Effective Date set forth below (the “**Effective Date**”) and together with all Statements of Work, as applicable, all Exhibits, Addenda and subsequently executed Product Orders, is incorporated into and deemed to be a part of the CollabNet Master License and Services Agreement , duly executed between the parties dated _____, 200__ (the “**Agreement**”). By their respective signatures below, the parties agree to be bound by all terms and conditions of the Agreement.

¹ Availability of country code top level domain names varies depending on country.

ACCEPTED BY:		BY:	
CollabNet, Inc.	_____	Company Name:	_____
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Effective Date:	_____	Date:	_____

Addendum B-1**CollabNet Enterprise Edition and/or CUBiT
License Agreement (Hosted)****1.0 Definitions**

All capitalized terms used in this **Addendum B** shall have the same meaning as referenced in the Agreement.

2.0 License Grant.

Subject to the terms and conditions of this Agreement, CollabNet hereby grants to Company and Company hereby accepts from CollabNet, a non-exclusive, non-transferable worldwide license ("**License**") to use the software Products, solely for Company's internal information management and data processing business purposes. Company may not sublicense, distribute, resell or use any Products for any other purpose or for the benefit of any other party, except as necessary for access to developers or partners as specified in the Master Product Order or any subsequent Product Order or as permitted in a Statement of Work that may be executed between the parties.

3.0 Reservation of Rights.

All rights not expressly granted in this Addendum B and the Agreement are reserved by CollabNet including, but not limited to, the unrestricted right to sell, license, market, and distribute the Products in any form anywhere. Nothing in this

Agreement is intended by the parties to constitute a sale of the Products or any derivations thereof. Company shall not alter, modify or create any derivative works of, including but not limited to customization, translation or localization, reverse engineer, decompile, disassemble or otherwise attempt to divine the source code for the Products, or copy the Products, redistribute, encumber, sell, rent, lease, sublicense or otherwise transfer rights to the Products or remove or alter any copyright, trademark, legends, symbols or labels in the Products.

4.0 Title and Intellectual Property Rights.

The Products are the valuable proprietary and trade secret information and property of CollabNet or its licensors. Title, ownership rights and intellectual property rights, including but not limited to, copyright and patent rights in the Products, and all derivatives thereof, shall remain in CollabNet and/or its licensors. Company acknowledges the ownership and intellectual property rights of CollabNet and will not take any action to jeopardize, limit or interfere in any manner with CollabNet's or its licensors' ownership of or rights with respect to the Products. The Products are protected by copyright law and other intellectual property laws and by international treaties.

Addendum B-2**CollabNet Community Edition ("CCE")
License Agreement (Hosted)****1.0 Definitions**

For purposes of this **Addendum B**, the following capitalized terms shall have the following meanings. All other capitalized terms shall have the meanings referenced in the Agreement:

"Public Project" shall mean a software development project that any user can view and access free of charge and participate in without restriction other than: registration for a user I.D., and compliance with a) the Terms of Service/Use on the applicable Site, and b) the level of participation granted such user by the project owner.

"Private Project" shall mean a software development project that restricts any user's access or participation with gating items beyond those permissible for a Public Project.

2.0 License Grant.

Subject to the terms and conditions of this Agreement, CollabNet hereby grants to Company and Company hereby accepts from CollabNet, a non-exclusive, non-transferable worldwide license ("**License**") to use the CCE Product(s) solely for a) the websites (collectively, the "**Site**") provided by CollabNet to Company and number of users purchased therefor in a Product Order, and b) Company's Public Projects hosted by CollabNet. Company may not use the Products for any Private Projects without purchasing a separate license for such use. Company may not sublicense, distribute, resell or use any of the Products for any other purpose or for the benefit of any other party, except as necessary for access to subcontractors, developers or partners as specified in the Master Product

Order or any subsequent Product Order or as permitted in a Statement of Work that may be executed between the parties hereto.

3.0 Reservation of Rights.

All rights not expressly granted herein are reserved by CollabNet including, but not limited to, the unrestricted right to sell, license, market, and distribute the Products in any form anywhere. Nothing in this Agreement is intended by the parties to constitute a sale of the Products or any derivations thereof. Company shall not alter, modify or create any derivative works of, including but not limited to customization, translation or localization, reverse engineer, decompile, disassemble or otherwise attempt to divine the source code or any Product, or copy any Product, redistribute, encumber, sell, rent, lease, sublicense or otherwise transfer rights to any Product or remove or alter any copyright, trademark, legends, symbols or labels in the Product.

4.0 Title and Intellectual Property Rights.

The Products are the valuable proprietary and trade secret information and property of CollabNet or its licensors. Title, ownership rights and intellectual property rights, including but not limited to, copyright and patent rights in the Products, and all derivatives thereof, shall remain in CollabNet and/or its licensors. Company acknowledges the ownership and intellectual property rights of CollabNet and will not take any action to jeopardize, limit or interfere in any manner with CollabNet's or its licensors' ownership of or rights with respect to the Products. The Products are protected by copyright law and other intellectual property laws and by international treaties.

Addendum B-3**CollabNet Enterprise Edition and/or CUBiT
License Agreement (On-Site)****1.0 Definitions**

All capitalized terms used in this **Addendum B** shall have the same meaning as referenced in the Agreement.

2.0 License Grant.

Subject to the terms and conditions of this Agreement, CollabNet hereby grants to Company and Company hereby accepts from CollabNet, a non-exclusive, non-transferable worldwide license ("License") to use the Product(s) solely for Company's internal information management and data processing business purposes and solely on servers owned or leased by Company and located at facilities under Company's control. Company may not sublicense, distribute, resell or use any of the Products for any other purpose or for the benefit of any other party, except as necessary for access to developers or partners as specified in the Master Product Order or any subsequent Product Order or as permitted in a Statement of Work that may be executed between the parties hereto. Company may not make copies of the Software except as follows: one copy of the Software for each server on which the Products reside and are in use, and one copy for back-up and archive purposes. After initial installation of the Software on one server, Company may not copy and install the Software on an additional server until the initial server has reached maximum capacity. Thereafter, as each server reaches maximum capacity, the Software may be copied and installed on an additional server as needed for use of the Software.

3.0 Reservation of Rights.

All rights not expressly granted herein are reserved by CollabNet including, but not limited to, the unrestricted right to sell, license, market, and distribute the Products in any form anywhere. Nothing in this Agreement is intended by the parties to constitute a sale of the Products or any derivations thereof. Company shall not alter, modify or create any derivative works of, including but not limited to customization, translation or localization, reverse engineer, decompile, disassemble or otherwise attempt to divine the source code for any Product, or copy any Product, redistribute, encumber, sell, rent, lease, sublicense or otherwise transfer rights to any Product or remove or alter any copyright, trademark, legends, symbols or labels in the Product.

4.0 Title and Intellectual Property Rights.

The Products are the valuable proprietary and trade secret information and property of CollabNet or its licensors. Title, ownership rights and intellectual property rights, including but not limited to, copyright and patent rights in the Products, and all derivatives thereof, shall remain in CollabNet and/or its licensors. Company acknowledges the ownership and intellectual property rights of CollabNet and will not take any action to jeopardize, limit or interfere in any manner with CollabNet's or its licensors' ownership of or rights with respect to the Products. The Products are protected by copyright law and other intellectual property laws and by international treaties.

Addendum C-1

Silver Support and Maintenance for the Product (Not available for Onsite Licenses)

1.0 Definitions.

For purposes of this **Addendum C**, the following capitalized terms shall have the following meanings. All other capitalized terms shall have the meanings referenced in the Agreement:

“**New Product(s)**” shall mean a software product that provides new functionality and that CollabNet in its sole discretion offers separately or in addition to the applicable Product for a separate fee.

“**Product(s)**” shall mean the CollabNet Products defined in Section 2.1 of the Agreement.

“**Product Options**” shall mean software options which provide additional features or functionality for the applicable Product and are made generally available in a Release as a component, but for a separate fee.

“**Release**” shall mean a software release that provides performance, feature or functionality changes to the applicable Product. A given Release may incorporate New Products and Product Options as determined in the sole discretion of CollabNet.

2.0 Product Support and Maintenance.

CollabNet will provide the following services to support and maintain use of the Product:

2.1 Support Hours.

Company will be provided with live telephone support via a US toll-free number and international direct dial number. CollabNet will provide 8 x 5 support hours – 8 hours per day, 5 work days per week (Monday – Friday) including holidays and excluding weekends. Customers will be able to submit email and case requests via CollabNet’s self-service portal 24 x 7 x 365 (excluding maintenance windows). CollabNet Support staff will have access 24 x 7 x 365 to Operations’ engineers responsible for ensuring production site availability.

2.2 Response Time.

Every case submitted by Company will be acknowledged when received (Priority 1 issues in 3 hours or less). The initial auto-response will be at a minimum an acknowledgement that the case has been received by our Customer Relationship Management (CRM) system. Whenever possible a case status will be provided by live support staff. CollabNet will prioritize reported problems based upon its Support Service Level Policy (“**Support SLP**”), which will be provided to Company as part of the Support Services start-up information. CollabNet’s response time to any request for Support will be based upon the level of Support Services purchased by Company and the severity of the case reported. Company will be able to initiate support requests 24 x 7 x 365 by

using one of the following mechanisms: a) email, or b) password protected web based case submission.

2.3 Case Allotment.

Company will be able to report up to 6 monthly support cases to access CollabNet Support personnel for technical and functional issues without additional charge. The monthly 6 case allotment does not apply to Critical Defects as defined in the Support SLP. For Critical Defects, there is no limitation on the number of support cases that can be reported without additional charge.

2.4 Named Contacts.

In order to ensure consistent management of cases and the security interests of its customers, CollabNet requires Company to authorize a specified number of named contacts that are the Company representatives trained on the CollabNet product and authorized to interact with the CollabNet Support. Company is allowed to identify up to 2 named contacts.

2.5 Uptime Guarantee for Hosted Services.

So long as Company remains under the Silver Support Services, CollabNet will provide the Company with a ninety-nine percent (99%) uptime guarantee for the Hosting Services as those Services are described in **Addendum D** to the Agreement (“**Service Level Agreement**”). This guaranty is subject to the terms and conditions of Section 2.3 of **Addendum D** regarding Service Level exclusions and all other terms and conditions of that Addendum.

2.6 Collaborative Workspace.

Company will be provided with an online project workspace where CollabNet Support representatives and Company authorized representatives can collaborate on cases pertaining to initial implementation, upgrades, configuration, and on-going use of the application.

2.7 Patches and Upgrades.

All Support Services include software maintenance and access to the latest appropriate version of the Product provided that licensing of and access to Product Options or New Products may be subject to an additional charge. When a patch or maintenance release which addresses security vulnerabilities or data loss is available for deployment, CollabNet Support will schedule an upgrade to that patch as soon as possible.

2.8 Tool Conversions.

For project tool conversions, either from Issue Tracking to Project Tracker or CollabNet CVS to CollabNet Subversion, upon Company’s request CollabNet shall define a Statement of Work outlining the required work, work schedule, and any fees or other charges.

3.0 Company Responsibilities.

CollabNet's ability to provide support and maintenance services pursuant to the terms of this Addendum and the Agreement depends upon Company meeting the following requirements: a) Company personnel assigned to work with CollabNet on support issues must be trained and knowledgeable in the administration and use of the Product; and b) Company must promptly supply all information requested by CollabNet to resolve reported problems. Company understands and agrees that its failure to meet these requirements may prevent CollabNet from providing support and maintenance services as otherwise might be required under the terms of this Addendum and the Agreement.

4.0 Products Supported.

If Company has a customized Product, whether it is delivered in an instance set, bridge to other systems, or other mechanism, to obtain support for such a product, Company must purchase the CollabNet Platinum Support Services. Support for customized Products cannot be provided under any other CollabNet support services.

5.0 CUBiT Hardware Replacement.

If Company has executed a Product Order for CUBiT, then so long as Company remains under the Silver Support Services, CollabNet will replace any Malfunctioning Nodes within twenty-four (24) hours of confirmation by CollabNet of malfunction. For this purpose, a "Malfunctioning Node" is defined as a hardware malfunction where the machine is not capable of executing standard programs.

6.0 Additional Support Offerings for CUBiT.

As a Silver Support Services customer, Company will be offered the following optional services at an additional charge: (a) advanced disaster recovery services (duplication of nodes in approved disaster recovery facility);

(b) creation of additional profile libraries through customized Professional Services; and (c) a Technical Support Account Manager (TSAM) to serve as a dedicated resource for review and management of the account (including help with upgrades, patches & more).

7.0 Application Feature and Enhancement Requests.

CollabNet will consider and respond to feature and enhancement requests from Company.

8.0 Exclusions to Support.

The Support Services do not cover: (a) custom engineering support, (b) migration of Company data to the applicable CollabNet Product databases, (c) integration of the applicable CollabNet Product with other applications, (d) content maintenance, or (e) other related custom work. Such additional support services may be purchased for an additional fee set forth in a Product Order and/or covered in a Statement of Work executed by the parties hereto.

9.0 Changes to Level of Support.

Should Company decide to increase the level of Support Services it purchases, e.g., from Silver Support to Gold Support, such change can be made at any time provided that Company is current in the payment of all Fees under its existing Support Services. All agreements and changes must be made in writing to this contract and signed by both parties to constitute a valid agreement.

10.0 Support Services Descriptions

CollabNet offers other support services. The descriptions of such services can be found at the following link:

<http://www.collab.net/support/>

Addendum C-2

Gold Support and Maintenance for the Product

1.0 Definitions.

For purposes of this **Addendum C**, the following capitalized terms shall have the following meanings. All other capitalized terms shall have the meanings referenced in the Agreement:

“**New Product(s)**” shall mean a software product that provides new functionality and that CollabNet in its sole discretion offers separately or in addition to the applicable Product for a separate fee.

“**Product(s)**” shall mean the CollabNet Products defined in Section 2.1 of the Agreement.

“**Product Options**” shall mean software options which provide additional features or functionality for the applicable Product and are made generally available in a Release as a component, but for a separate fee.

“**Release**” shall mean a software release that provides performance, feature or functionality changes to the applicable Product. A given Release may incorporate New Products and Product Options as determined in the sole discretion of CollabNet.

2.0 Product Support and Maintenance.

CollabNet will provide the following services to support and maintain use of the Product:

2.1 Support Hours.

Company will be provided with live telephone support via a US toll-free number and international direct dial number. CollabNet will provide 12 x 5 support hours – 12 hours per day, 5 work days per week (Monday – Friday) including holidays and excluding weekends. Customers will be able to submit email and case requests via CollabNet’s self-service portal 24 x 7 x 365 (excluding maintenance windows). CollabNet Support staff will have access 24 x 7 x 365 to Operations’ engineers responsible for ensuring production site availability.

2.2 Response Time.

Every case submitted by Company will be acknowledged when received (Priority 1 issues in 2 hours or less). The initial auto-response will be at a minimum an acknowledgement that the case has been received by our Customer Relationship Management (CRM) system. Whenever possible a case status will be provided by live support staff. CollabNet will prioritize reported problems based upon its Support Service Level Policy (“**Support SLP**”) which will be provided to Company as part of the Support Services start-up information. CollabNet’s response time to any request for Support will be based upon the level of Support Services purchased by Company and the severity of the case reported. Company will be able to initiate Support requests 24 x 7 x 365 by

using one of the following mechanisms: a) email or b) password protected web based case submission.

2.3 Case Allotment.

Company will be able to report up to 10 monthly support cases to access support personnel for technical and functional issues without additional charge. The monthly 10 case allotment does not apply to Critical Defects as defined in the Support SLP. For Critical Defects, there is no limitation on the number of support cases that can be reported without additional charge.

2.4 Named Contacts.

In order to ensure consistent management of cases and the security interests of its customers, CollabNet requires Company to authorize a specified number of named contacts that are the Company representatives trained on the CollabNet product and authorized to interact with the CollabNet Support. Company is allowed to identify up to 5 named contacts.

2.5 Uptime Guarantee for Hosted Services

So long as Company remains under the Gold Support Services, CollabNet will provide the Company with a ninety-nine point five percent (99.5%) uptime guarantee for the Hosting Services as those Services are described in **Addendum D** to the Agreement (“**Service Level Agreement**”). This guaranty is subject to the terms and conditions of Section 2.3 of **Addendum D** regarding Service Level exclusions and all other terms and conditions of that Addendum.

2.7 Collaborative Workspace.

Company will be provided with an online project workspace where CollabNet Support representatives and Company authorized representatives can collaborate on cases pertaining to initial implementation, upgrades, configuration, and on going use of the application.

2.8 Patches and Upgrades.

All Support Services include software maintenance and access to the latest appropriate version of the Product provided that licensing of and access to Product Options or New Products may be subject to an additional charge. When a patch or maintenance release which addresses security vulnerabilities or data loss is available for deployment, CollabNet Support will schedule an upgrade to that patch as soon as possible. For onsite deployments it is the responsibility of the Company to install such patches and upgrades or CollabNet’s responsibility for support will lapse.

2.9 Tool Conversions.

Company may request a maximum of 2 conversions a year free of charge. These conversions, either from Issue Tracker to Project Tracker or CollabNet CVS to CollabNet Subversion, will be scheduled or planned according to Company’s project priorities and CollabNet resource

availability. For conversion above the allotted 2 per year, Company must request CollabNet to define a Statement of Work outlining required work, schedule, and any fees or other charges.

3.0 Company Responsibilities

CollabNet's ability to provide support and maintenance services pursuant to the terms of this Addendum and the Agreement depends upon Company meeting the following requirements: a) Company personnel assigned to work with CollabNet on support issues must be trained and knowledgeable in the administration and use of the Product; and b) Company must promptly supply all information requested by CollabNet to resolve reported problems. Company understands and agrees that its failure to meet these requirements may prevent CollabNet from providing support and maintenance services as otherwise might be required under the terms of this Addendum and the Agreement.

4.0 Products Supported.

If Company has a customized Product, whether it is delivered in an instance set, bridge to other systems, or other mechanism, to obtain support for such a product, Company must purchase the Platinum Support Services. Support for customized Products cannot be provided under any other CollabNet Support Services.

5.0 CUBiT Hardware Replacement.

If Company has executed a Product Order for CUBiT, then so long as Company remains under the Gold Support Services, CollabNet will replace any Malfunctioning Nodes within twelve (12) hours of confirmation by CollabNet of malfunction. For this purpose, a "Malfunctioning Node" is defined as a hardware malfunction where the machine is not capable of executing standard programs.

6.0 Additional Support Offerings for CUBiT.

As a Gold Support Services customer, Company will be offered the following optional services at an additional charge: (a) advanced disaster recovery services (duplication of nodes in approved disaster recovery facility); (b) creation of additional profile libraries through customized Professional Services; and (c) a Technical Support Account Manager (TSAM) to serve as a dedicated resource for review and management of the account (including help with upgrades, patches & more).

7.0 Changes to Level of Support.

Should Company decide to decrease the level of Support Services it purchases, e.g., from Gold Support to Silver Support, such change can only be made on the annual renewal anniversary for the Company's then current Support Services. Any such change will be made by submitting on or before the annual renewal anniversary CollabNet's standard Product Order signed by an authorized Company representative.

8.0 Application Feature and Enhancement Requests.

CollabNet will consider and respond to feature and enhancement requests from Company.

9.0 Exclusions to Support.

The Support Services do not cover: (a) custom engineering support, (b) migration of Company data to the applicable CollabNet Product databases, (c) integration of the applicable CollabNet Product with other applications, (d) content maintenance, or (e) other related custom work. Such additional support services may be purchased for an additional fee set forth in a Product Order and/or covered in a Statement of Work executed by the parties hereto.

Addendum C-3

Platinum Support and Maintenance for the Product

1.0 Definitions.

For purposes of this Addendum C, the following capitalized terms shall have the following meanings. All other capitalized terms shall have the meanings referenced in the Agreement:

"**New Product(s)**" shall mean a software product that provides new functionality and that CollabNet in its sole discretion offers separately or in addition to the applicable Product for a separate fee.

"**Product(s)**" shall mean the CollabNet Products defined in

Section 2.1 of the Agreement.

“**Product Options**” shall mean software options which provide additional features or functionality for the applicable Product and are made generally available in a Release as a component, but for a separate fee.

“**Release**” shall mean a software release that provides performance, feature or functionality changes to the applicable Product. A given Release may incorporate New Products and Product Options as determined in the sole discretion of CollabNet.

2.0 Product Support and Maintenance.

CollabNet will provide the following services to support and maintain use of the Product:

2.1 Support Hours.

Company will be provided with live telephone support via a US toll-free number and international direct dial number, 24 hours a day and 7 days a week including holidays. CollabNet Support Operations will be staffed as follows:

- a) 24 x 5 business day coverage will be provided by online Customer Service Representatives (“CSR”); and
- b) 24 x 2 weekend coverage will be provided by a Technical Support Engineer (TSE) on-call and able to be online within an hour for critical cases.

Customers will be able to submit email and case requests via CollabNet’s self-service portal 24 x 7 x 365 (excluding maintenance windows). CollabNet Support staff will have access 24 x 7 x 365 to Operations’ engineers responsible for ensuring production site availability.

2.2 Response Time.

Every case submitted by Company will be acknowledged when received (Priority 1 issues in 1 hour or less). The initial auto-response will be at a minimum an acknowledgement that the case has been received by our Customer Relationship Management (CRM) system. Whenever possible a case status will be provided by live support staff. CollabNet will prioritize reported problems based upon its Support Service Level Policy (“**Support SLP**”) which will be provided to Company as part of the Support Services start-up information. CollabNet’s response time to any request for support will be based upon the level of Support Services purchased by Company and the severity of the case reported. Company will be able to initiate support requests 24 x 7 x 365 by using one of the following mechanisms: a) email, or b) password protected web based case submission.

2.3 Case Allotment.

There will be no limit on the number of support cases Company will be able to report to CollabNet.

2.4 Named Contacts.

In order to ensure consistent management of cases and the security interests of its customers, CollabNet requires Company to authorize a specified number of named contacts that are the Company representatives trained on the CollabNet product and authorized to interact with the

CollabNet Support. Company is allowed to identify up to 5 named contacts.

2.5 Uptime Guarantee for Hosted Services

So long as Company remains under the Platinum Support Services, CollabNet will provide the Company with a ninety-nine point nine percent (99.9%) uptime guarantee for the Hosting Services as those Services are described in **Addendum D** to the Agreement (“**Service Level Agreement**”). This guaranty is subject to the terms and conditions of Section 2.3 of **Addendum D** regarding Service Level exclusions and all other terms and conditions of that Addendum

2.6 Collaborative Workspace.

Company will be provided with an online project workspace where CollabNet Support representatives and Company authorized representatives can collaborate on cases pertaining to initial implementation, upgrades, cases, configuration, and on going use of the application.

2.7 Patches and Upgrades.

All Support Services include software maintenance and access to the latest appropriate version of the Product provided that licensing of and access to Product Options or New Products may be subject to an additional charge. When a patch or maintenance release, which addresses security vulnerabilities or data loss, is available for deployment, CollabNet Support will schedule an upgrade to that patch as soon as possible. For onsite deployments it is the responsibility of the Company to install such patches and upgrades or CollabNet’s responsibility for support will lapse.

2.8 Logo/Branding Support.

Whenever the look and feel of the Product is modified, some changes will be carried onto subsequent releases which may necessitate additional support from CollabNet. In this situation, Company will have the ability to request through Support that their look folders be modified and maintained between upgrades and maintenance releases. Such a request will be considered a Severity 3 issue under the Support SLP.

2.9 Designated Support Account Manager

Company will be provided with a Technical Support Account Manager (“**TSAM**”). The TSAM will provide services such as application administration services and custom processes implementation as described below. The selection of the TSAM will be in the sole discretion of CollabNet. CollabNet reserves the right to decide that any particular requested service falls outside the parameters of TSAM capabilities. In such an instance, Company can request that CollabNet define a Statement of Work outlining required work, work schedule and any fees or charges.

2.10 Application Administration Service. Upon Company’s request, the TSAM will provide general application administration services for the Product for specific Company cases including managing accounts, roles, permissions, and third party project collaboration

setup. During the term of the Support Services, Company will be able to request that the TSAM assist in up to 48 of the combined total of cases involving assessment of and assistant with functional set-up and usage of CollabNet Enterprise Edition.

2.11 Custom Processes Implementation. Upon Company's request, the designated TSAM will perform the following services: project implementation management, custom downtime windows, and custom methodologies needed for larger installations.

a) Project Implementation Management. The TSAM will coordinate the initial implementation and subsequent upgrades as needed. A staging environment will be made available for review of the new version prior to production upgrades if Company so requests.

b) Custom Downtime Windows. The TSAM will define custom downtime windows for Company specific planned maintenance activities such as upgrades, patch deployment, or other activities.

c) Custom Methodology: The TSAM will extend Company's implementation, upgrade and related methodologies to Company's specification. If the methodologies were to call for work products deemed outside of this Platinum Support Services, the TSAM will work with Company to define the work needed and CollabNet will provide Company with the appropriate commercial terms to complete the requested work.

2.12 Tool Conversions.

Company may request a maximum of 4 project tool conversions per year free of charge. These conversions, for example, either from Issue Tracker to Project Tracker or CollabNet CVS to CollabNet Subversion, will be scheduled or planned according to Company's project priorities and CollabNet resource availability. For conversion above the allotted 4 per year, upon Company's request, CollabNet will define a Statement of Work outlining required work, work schedule, and any fees or charges.

3.0 Company Responsibilities

CollabNet's ability to provide support and maintenance services pursuant to the terms of this Addendum and the Agreement depends upon Company meeting the following requirements: a) Company personnel assigned to work with CollabNet on support issues must be trained and knowledgeable in the administration and use of the Product; and b) Company must promptly supply all information requested by CollabNet to resolve reported problems. Company understands and agrees that its failure to meet these requirements may prevent CollabNet from providing support and maintenance services as otherwise might be required under the terms of this Addendum and the Agreement.

4.0 CUBIT Hardware Replacement.

If Company has executed a Product Order for CUBIT, then so long as Company remains under the Platinum Support Services, CollabNet will replace any Malfunctioning Nodes within eight (8) hours of confirmation by CollabNet of malfunction. For this purpose, a "Malfunctioning Node" is defined as a hardware malfunction where the machine is not capable of executing standard programs.

5.0 Additional Support Offerings for CUBIT.

As a Platinum Support Services customer, Company will be offered the following optional services at an additional charge: Advanced disaster recovery services (duplication of nodes in approved disaster recovery facility); and creation of additional profile libraries through customized Professional Services.

6.0 Changes to Level of Support.

Should Company decide to decrease the level of Support Services it purchases, e.g., from Platinum Support to Gold Support, such changes can only be made on the annual renewal anniversary for the Company's then current Support Services. Any such changes will be made by submitting on or before the annual renewal anniversary, CollabNet's standard Master Product Order signed by an authorized Company representative

7.0 Application Feature and Enhancement Requests.

CollabNet will consider and respond to feature and enhancement requests from Company.

8.0 Exclusions to Support.

The Support Services do not cover: (a) custom engineering support, (b) migration of Company data to the applicable CollabNet Product databases, (c) integration of the applicable CollabNet Product with other applications, (d) content maintenance, or (e) other related custom work. Such additional support services may be purchased for an additional fee set forth in a Product Order and/or covered in a Statement of Work executed by the parties hereto.

Addendum D

Service Level Agreement (Hosted)

1.0 Definitions.

In the event the Product described in the Product Order is to be delivered as a hosted service, the provisions of this **Addendum D** shall apply. For purposes of this **Addendum D**, the following capitalized terms shall have the following meanings. All other capitalized terms shall have the meanings referenced in the Agreement.

“**Downtime**” for any specific Product shall mean any period of time when that Product becomes unavailable to Company and authorized third party end-users. Downtime for one Product shall not be counted as downtime for other Products. Availability of any CUBiT nodes or any functionality problems associated with the CUBiT nodes is specifically excluded from Downtime and is not covered by this SLA.

“**Error**” shall mean any error, problem or defect resulting from an incorrect functioning of the applicable Product if such error, problem or defect causes inaccurate or incomplete results or functions to occur.

“**Exploit(s)**” shall mean any unauthorized and/or improper use of the Product or use that causes a breach of security or otherwise compromises the Product.

“**Qualifying Downtime**” shall mean when one or more application services in a Product offered by CollabNet have unexpectedly stopped listening for network traffic, or there is failure of the CollabNet-maintained network fabric. The “**CollabNet-maintained network fabric**” is comprised of any and all network hardware directly controlled by CollabNet. The availability of the Internet itself is excluded from this definition.

2.0 Service Level Agreement for the Hosting of the Product(s).

2.1 Hosting Services.

CollabNet, as an application service provider, shall be responsible itself or through its Affiliates or vendors, for provisioning and maintaining the CollabNet Product environment, including all hardware, all underlying software and required services, such as network infrastructure, bandwidth, data storage and back-up, but specifically excluding any CUBiT Nodes (the “**Hosting Services**”). All such Hosting Services will be provided at CollabNet designated facilities on hardware and other equipment owned by CollabNet (“**host server(s)**”). CollabNet will provide routine reporting of service status and scheduling of all non-routine events pertaining to

the Services. CollabNet shall be responsible for monitoring and reporting to a Company Contact all Downtime that it detects, or of which it is notified by Company, along with its root cause and resolution.

2.2 Service Level Warranty.

2.2.1 Uptime Guarantee.

CollabNet will provide the Company with an uptime guarantee for the Hosting Services based upon the level of Support Services purchased by Company. Under any of the uptime guarantees, at any time should the Hosting Services for a particular Product go down and be unavailable for access by Company such that the particular period of Downtime constitutes Qualifying Downtime, Company may be entitled to a credit as specified in Section 2.2.2 below. Downtime per incident will not be counted as Qualifying Downtime until it has lasted more than ten (10) minutes, measured from the point of first detection until resolution. Such ten (10) minute period (the “**Monitoring Response Period**”) is provided for tolerance in confirming the reports of automatic monitoring alarms and the time required to notify personnel. The foregoing provisions of this Section 2.2.1 shall constitute the “**Service Level Warranty**”. Subject to the terms and conditions hereof, the Service Level Warranty shall apply to the host server(s), underlying operating systems, attached data storage devices and CollabNet’s switch infrastructure to the Internet.

2.2.2 Credit.

Notwithstanding the foregoing, despite CollabNet’s reasonable efforts, Qualifying Downtime may still occur, and in such event the License Fee (“**License Fee**”) applicable to a particular Product specified in the Master Product Order shall be adjusted as follows: CollabNet will credit Company with one (1) hour of service for every accumulated hour of Qualifying Downtime not to exceed six (6) whole days in a calendar month (the “**Credit**”).

2.3 Service Level Warranty Exclusions.

The Downtime incurred by the following incidents will be excluded from the Service Level Warranty and will not constitute Qualifying Downtime.

2.3.1 Allowable Downtime. The following shall not constitute Qualifying Downtime: i) 7.3 hours per month constituting one (1) percent allowable Downtime measured 24 hours 7 days a week; and; ii) the aggregate Monitoring Response Periods per incident.

2.3.2. Scheduled Maintenance.

CollabNet reserves six (6) hours of scheduled

maintenance in the aggregate per week for the CollabNet-maintained network fabric, and shall give Company reasonable prior notice thereof. CollabNet standard maintenance windows are available for reference at: http://www.collab.net/support/maintenance_windows.html

Scheduled maintenance of equipment by CollabNet's upstream providers is separate from the CollabNet maintenance window and does not constitute Qualifying Downtime. To the extent CollabNet receives notice of scheduled maintenance from such providers from which notice CollabNet can identify that service to Company will be affected, CollabNet shall promptly advise Company.

2.3.3 Non-Scheduled Maintenance and Emergency.

Emergency Downtime for non-scheduled maintenance can occur at any time after Company has been notified via phone and/or email.

2.3.4 Emergency Downtime due to Security Breaches.

Emergency Downtime due to security breaches may be required in the event an Exploit is discovered. CollabNet will alert Company of any Exploit and will use commercially reasonable efforts to remedy the situation. The Hosting Services will remain down until such time that either the Exploit has been fixed or an acceptable workaround has been implemented.

2.3.5 Emergency Downtime or Scheduled Maintenance Caused by CollabNet's Service Providers.

Emergency Downtime or scheduled maintenance caused by CollabNet's service providers will not count against the Service Level Warranty; provided however that CollabNet will (a) use ongoing efforts to investigate and identify the root cause of any degradation of service from such providers, and (b) will make efforts to mitigate all Downtime by the redundancies provided.

2.3.6 General Exclusions.

All actions beyond the reasonable control of CollabNet are excluded from Qualifying Downtime and the Service Level Warranty, including but not limited to availability of the Internet itself.

2.4 Alerting and Reporting of a Downtime Incident.

2.4.1 Monitoring.

CollabNet will monitor 24 x 7 x 365 Company's production site hosted by CollabNet. CollabNet maintains automatic monitoring of both the network connection and the Product application according to standard industry practices. Network connectivity to the services will be monitored locally. Once an automatic monitor alerts

CollabNet's Network Operations Center of a Downtime incident, Network Operations personnel will then verify the incident and take immediate corrective action to recover continuity of Hosting Services.

2.4.2 Call Response Center.

In addition to the monitoring provisions of [Section 2.4.1](#), in the event of operational problems with the Services or the Products, a Company Contact may contact CollabNet technical support via the US toll-free number and international direct dial number provided by CollabNet. Trouble calls received by CollabNet will receive immediate attention to verify the reported problem and initiate corrective action to insure continuity of service. Qualifying Downtime confirmed by CollabNet personnel will be covered under the Service Level Warranty.

2.4.3 Notification.

All incidents of Downtime will be accumulated and tracked by CollabNet. CollabNet shall notify the Company Contact by email that detected Downtime or other event that impact the availability of the Services has occurred.

2.5 Root Cause Analysis and Determination.

Once the Downtime has been cured, system logs and observations will be collected to determine the root cause of the Downtime experienced and the length of the Downtime to the nearest minute.

CollabNet's authorized operations and engineering personnel will undertake an assessment of the data to make a final determination of whether the Downtime experienced constitutes Qualifying Downtime within the scope of the Service Level Warranty. This assessment shall be conducted promptly, will cover all service providers including CollabNet itself, and reasonable efforts will be made to issue a root cause report within ninety-six (96) hours of the precipitating event. All reports, logs and other data used to make the foregoing determination will be made available to Company upon request.

2.6 Security.

2.6.1 Physical Access to Data Center.

CollabNet has selected co-location partners that have secure hardware cages in buildings that maintain twenty-four (24) hour security and identification processes before admitting entrance to anyone.

2.6.2 User Authentication.

Company is solely responsible for authenticating its user access to the system. CollabNet will be responsible for authenticating access to the system for CollabNet personnel for administration and support functions.

2.7 Redundancy.

CollabNet's primary data center will be co-located within a facility with redundant connectivity links, multiple peering relationships with other Internet providers, and redundant power systems, to seek minimal utility interruptions and maximum instance reachability and uptime.

2.8 Back Up and Contingency.

2.8.1 Back Up of Data.

Data will be backed up incrementally each day, with a full back up performed once per week. Copies of backup data will be stored in a remote location. CollabNet will provide thirteen (13) weeks offsite storage of the media for each weekly backup. The integrity of backup data shall be tested weekly. The ability to restore backup data shall be tested monthly by performing a restoration of backup data to a test server. Data backups will include CUBiT user data to the extent such data is stored on a CollabNet-controlled network, but data loaded directly onto the CUBiT hardware by Company is specifically excluded from this backup process.

2.8.2 Contingency.

In the event that CollabNet is unable to continue to provide the Hosting Services, CollabNet will assist Company in transferring data, loading the Service platform, configuring it, and advising on its operation.

2.9 Domain Name

In order to provide the Hosting Services, CollabNet name servers must be authoritative for the new or existing domain(s) or sub-domain(s) ("**Domain(s)**") chosen by Company in a Product Order. Subject to availability restrictions for some country code top level domain names, the registered owner of the Domain(s) ("**Registrant**") can be either CollabNet or Company as Company decides in its sole discretion.

If CollabNet is the Registrant, then CollabNet shall be identified as the Administrative, Billing and/or Technical Contact for the Domain(s), and CollabNet shall be responsible for administering and maintaining the Domain(s) during the Term. Upon termination of this Agreement or expiration of the Term, CollabNet agrees to promptly transfer the Domain(s) to Company. Company shall reimburse CollabNet for any fees charged by the domain name registrar ("**Registrar**") for transferring the Domain(s) to Company.

If Company is the Registrant, Company agrees to identify itself as the Administrative and/or Billing Contact for the Domain(s). Company agrees that it shall be solely responsible for administering and maintaining the Domain(s) with the Registrar, including, without limitation, renewing the Domain(s), during the Term. Company agrees to identify CollabNet as the Technical Contact for the Domain by using the CollabNet NIC Handle,

JB1348-ORG, or any other NIC Handle that may be identified by CollabNet from time to time. Company also agrees to give authority over the Domain(s) to CollabNet name servers, ns1.collab.net, ns2.collab.net, ns3.collab.net or any other name servers that may be identified by CollabNet from time to time. Company further agrees to provide an Onsite Contact on the Product Order who shall be responsible for making any changes to the Domain(s) with the Registrar.

Notwithstanding which party to the Agreement is the Registrant, Company represents and warrants that the Domain(s) chosen by Company do not infringe or violate the domain name(s), trademark(s), or other intellectual property rights of any third party. Company will defend, indemnify and hold harmless CollabNet, its officers, directors, employees, attorneys, agents and their successors and assigns from and against any and all claims, losses, harm, costs, liabilities, damages, and expenses (including, but not limited to, court costs, attorneys' fees and related expenses) related to any claim, action, suit or proceeding, which claim, action, suit or proceeding is based upon or results from any actual or alleged breach of this representation and warranty.

3.0 Limitation of Liability.

NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY IN THE AGREEMENT, FOR PURPOSES OF ANY SERVICE LEVEL WARRANTY IN THIS ADDENDUM D, THE ENTIRE AGGREGATE LIABILITY OF COLLABNET PURSUANT TO, IN CONNECTION WITH, AND ARISING OUT OF THIS ADDENDUM, REGARDLESS OF THE FORM OF ANY LEGAL ACTION OR

PROCEEDING, WHETHER IN CONTRACT, STATUTE, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF CREDIT ACTUALLY GRANTED TO COMPANY BY COLLABNET PURSUANT TO SECTION 2.2.2 OF THIS ADDENDUM WITH RESPECT TO THE HOSTING SERVICES.