

## **CHERWELL SOFTWARE HOSTING SERVICES ADDENDUM**

This Hosting Services Addendum (this "Addendum") is between Cherwell Software, LLC, a Delaware limited liability company ("Cherwell") and Customer ("Customer"), and is entered into pursuant to the End-User License Agreement ("EULA") or End-User Subscription Agreement ("EUSA") (in either case the "Agreement") between Customer and Cherwell regarding certain Licensed Software, as defined in the Agreement.

Cherwell offers a flexible licensing model that allows Customer to deploy the Licensed Software on-premise, in a Cherwell-hosted environment or in a third-party data center. This flexibility applies to both perpetual licenses under a EULA and subscription licenses under a EUSA. This Addendum contains the terms and conditions that apply when Customer has chosen to deploy the Licensed Software in a Cherwell-hosted environment and is attached to and incorporated into the Agreement. The Addendum may be terminated as provided below and Customer may continue to use the Licensed Software subject to the applicable Agreement.

### **1. HOSTING SERVICES**

**1.1 Facility.** Cherwell shall maintain and support the hardware, servers, operating systems, database servers, networking and infrastructure (such as power, connectivity and environmental controls) necessary for Customer to access and use the Licensed Software, including maintaining maintenance and support agreements with necessary third party providers and applying the latest upgrades, updates and patches from those providers. Cherwell's hosting facility will comply with applicable laws, rules and regulations regarding safe working environments and fire protection measures and will maintain safety and security measures in accordance with customary industry standards. Upon request, Cherwell will provide Customer with documentation describing such standards and measures.

**1.2 Connectivity.** Cherwell shall provide a Domain Name System (DNS) Name which shall provide Customer connectivity and access to the Licensed Software.

**1.3 Security.** Customer Data means all text, images and information provided by Customer and stored in the hosted system. Cherwell will use industry standard security measures, such as firewalls and standard encryption protocols, to protect Customer Data. Cherwell will promptly notify Customer of any compromise to the security of the hosting facility that impacts Customer. Cherwell shall logically segregate Customer Data from data belonging to other Cherwell customers. Cherwell will immediately notify Customer of a confirmed security breach that impacts Customer Data and will provide Customer with regular status updates until the breach is resolved. Within 72 hours of final resolution of the breach, Cherwell will provide Customer with a final incident report. In the event Cherwell engages a third party service provider to assist Cherwell in fulfilling its duties under this Addendum, Cherwell agrees that it will enter into a confidentiality agreement with the third party that is at least as protective of Customer's Confidential Information as the Agreement.

**1.4 Customer Data Back-Up.** Cherwell shall back up Customer Data to two geographically distinct data storage sites. Cherwell will use commercially reasonable efforts to meet a disaster recovery time objective of 18 hours in a disaster recovery scenario. Customer acknowledges that Cherwell may charge customer for recovering data which was lost or no longer available as a result of Customer's own actions or inactions. Customer further acknowledges that Cherwell's services are not intended to be used as the sole repository for Customer Data and that Customer has access to and control over its Customer Data, including the ability to make its own backups using the Cherwell Administration tool. CUSTOMER IS STRONGLY ADVISED TO MAINTAIN A COPY OF ALL CUSTOMER DATA ON SERVERS OTHER THAN THOSE PROVIDED OR MAINTAINED BY CHERWELL PURSUANT TO THIS ADDENDUM.

**1.5 Maintenance and Support.** Pursuant to the Agreement, Cherwell or a Cherwell Partner will provide Maintenance and Support for the Licensed Software, including any portion installed locally on Customer's own computers. All requests for Support must be directed to the designated technical support team and not the Cherwell hosting team. However, Customer acknowledges that Cherwell or the Cherwell Partner, as the case may be, is not responsible for, nor will Cherwell or the Cherwell Partner provide support related to, Customer's environment or infrastructure in which such local installations of any portion of the Licensed Software are found.

**1.6 Upgrade Notification.** Cherwell shall provide Maintenance of the Licensed Software as defined and set forth in the Agreement. Cherwell shall provide Customer thirty (30) days advance notice prior to applying any updates, upgrades, patches, bug fixes and new releases or versions of the Licensed Software provided as part of Maintenance (each a "Maintenance Release") to the Cherwell-hosted Licensed Software. Customer may opt out of a particular Maintenance Release, provided, however, that (a) Customer agrees that it will not be able to decline or defer critical security patches and updates and Cherwell is free in its reasonable discretion to determine which Maintenance Releases are critical and (b) Customers under a subscription license model will not be able to decline or defer Maintenance Releases. Customer shall be responsible for applying Maintenance Releases to any locally installed portion of the Licensed Software.

## **2. SYSTEM AVAILABILITY; EXCUSED OUTAGES**

**2.1 Availability.** The Licensed Software shall be available 99.98% of the time per month, except for Excused Outages. Excused Outages are defined as unavailability of the Licensed Software caused by (a) Scheduled Maintenance, as defined below; (b) Customer's systems or Customer's actions or inactions; and (c) circumstances beyond Cherwell's control or the control of Cherwell's authorized agent or service provider, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, and equipment and telecommunications failures, delays, attacks or intrusions, provided Cherwell or its authorized agent or service provider takes reasonable and commercial care to prevent such failures, delays, attacks or intrusions.

**2.2 Scheduled Maintenance.** Scheduled Maintenance is defined as routine maintenance that occurs on a designated day and time each month and out of band or emergency maintenance that occurs only during designated non-peak hours. Cherwell will provide Customer with at least 48 hours advance notice of any Scheduled Maintenance and any change to the designated days and times of Scheduled Maintenance. Cherwell reserves the right to perform emergency maintenance as necessary and will promptly notify Customer of any downtime caused by the emergency.

**2.3 Notification and Cooperation.** In addition to the Scheduled Maintenance notice above, Cherwell will promptly notify Customer of any service outages via email or telephone. All notices will include a recovery time estimate. Cherwell will attempt to resolve outages within the time estimated but any timeframes are estimates only and are not guaranteed. Cherwell will also notify Customer when the outage is resolved and services have been restored. Customer acknowledges that in certain circumstances system unavailability may be caused by issues with Customer's computers or systems and agrees to cooperate with Cherwell to determine the source of the outages.

**2.4 Service Credits.** In the event the Licensed Software is not available as set forth above, Customer shall be entitled to a Service Credit equal to the value of the down time (on a pro-rata basis, using Customer's annual hosting fee), applied as a credit on Customer's next invoice. Customer must request a Service Credit in writing to Cherwell within 15 days of the end of the month for which a Service Credit is requested, and provide sufficient detail necessary to support the Service Credit. In the event Customer is entitled to Service Credits over any three consecutive months, or for any five months during a 12-month period, then notwithstanding

any other provision of the Agreement, Customer shall have the right to terminate this Addendum and receive a pro rata refund of any prepaid but unused hosting fee.

**3. CUSTOMER ACCESS.** In order to administer its installation of the Licensed Software, Customer must install the Cherwell Administration module on a local computer. However, in order to maintain the security of the hosting system while Cherwell is providing hosting services, Customer will not have direct access to the hosted environment except via the Cherwell Service Management applications and shall not install the Server portion of the Licensed Software on its own systems or premises for use in a production environment. At Customer's option, Customer may (a) access the Licensed Software in a "smart client" environment and install the Client portion of the Licensed Software on Customer's end-user computers or (b) Customer may access the Licensed Software in a "browser client" environment without installing the Client portion of the Licensed Software on Customer's end-user computers. In either environment, however, the number of concurrent users accessing the Licensed Software must not exceed the number of concurrent users provided for under the Agreement. Upon termination of this Addendum, Customer may install the Server portion of the Licensed Software on its own systems and premises in a production environment, subject to the Agreement. Customer may install copies of any portion of the Licensed Software in non-production environments, solely for purposes of testing, development or disaster recovery, provided, however, that in no event shall such copies be used for production purposes

### **3. CUSTOMER OBLIGATIONS**

**3.1 Restrictions.** Customer shall not, and shall ensure that its employees, affiliates and clients do not: (a) knowingly or intentionally interfere with or disrupt the Licensed Software or the Cherwell systems used to host the Licensed Software, including, without limitation, transmitting viruses, worms, Trojan horses or other malicious code; (b) attempt to gain unauthorized access to the hosted system or network or allow others to do so; (c) make any use of the service that violates any applicable law, rule or regulation; or (d) make any use of the service that violates any acceptable use policy provided by Cherwell from time to time. Cherwell may suspend services due to detection of an attack coming from Customer's systems or a determination that continued use of the service will violate applicable law or the legal rights of another person or entity. Except for the limited right to access and use the Cherwell hosted environment as provided in this Addendum and the software use license granted in the Agreement, Cherwell reserves all rights to the Licensed Software and the Cherwell hosted environment.

**3.2. Indemnification by Customer.** Customer represents that it has all necessary permissions and rights to the Customer Data and grants Cherwell a limited and non-exclusive license, for the sole purpose of providing services under this Addendum, to copy, display, distribute, download and transmit Customer Data. To the extent Customer Data is Confidential Information of Customer, it is subject to the terms of the Agreement, including the Confidentiality section, and to any other confidentiality agreement mutually agreed between Cherwell and Customer. To the extent permitted by applicable law, Customer agrees to indemnify, defend and hold harmless Cherwell and its officers, directors, employees, and representatives from and against all third party claims, demands, damages, expenses, fees, penalties, liabilities, judgments, or causes of action of any nature (including, reasonable attorney's fees) arising out of or related to the Customer Data or any communication transmitted by Customer.

### **4. TERM AND TERMINATION**

**4.1 Effective Date.** This Addendum is effective as of the Effective Date of the Agreement and the initial term of this Addendum shall be one year, unless otherwise agreed to in writing by the parties. Following the initial term, Customer may renew this Addendum for one or more additional one-year terms by providing notice to Cherwell. Payment by Customer of Cherwell's renewal invoice for the hosting service fees, which will be sent to Customer at least 30 days prior to the end of any term, shall constitute notice of Customer's election to renew.

**4.2 Termination.** Customer may terminate this Addendum at any time, without cause, by providing written notice to Cherwell, but this does not entitle Customer to any type of refund. Either party may terminate this Addendum upon written notice to the other party if the other party fails to cure a material breach of this Addendum within thirty (30) days of written notice of the breach from the terminating party. Upon termination by Customer for an uncured breach by Cherwell, Cherwell will pay Customer a pro-rata refund of any prepaid but unused hosting fee, plus any unpaid service credits payable to Customer.

**4.3 Effect of Termination.** Termination of this Addendum shall not terminate the Agreement nor Customer's right to use the Licensed Software as set forth in the Agreement. Termination of this Addendum will likewise not obligate Cherwell to reinstall the Licensed Software on Customer's own systems or premises or provide professional or "migration" services related thereto, except as mutually agreed upon by the parties. Upon termination of this Addendum, Customer will have 30 days to request a copy its data, and if requested, Cherwell shall provide such data in an industry-standard format such as a XML or .csv file. After the 30-day period, Cherwell has no obligation to maintain or provide Customer Data and will destroy all Customer Data in its possession or under its control in accordance with industry standard DOD data destruction methods, unless such destruction is legally prohibited.

Signature lines for the Agreement are located on the Cherwell Order Confirmation form to which the Agreement is attached and incorporated by reference.