

This Hosting Services Addendum (this “Addendum”) is between the GSA Multiple Award Schedule Contractor acting on behalf of Cherwell Software, LLC (“Cherwell”) and the eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“Customer”), and is entered into pursuant to the End-User License Agreement (“Agreement”) between Customer and Cherwell regarding certain Licensed Software. This Addendum applies when Customer has chosen to deploy the Licensed Software in a Cherwell-hosted environment and is attached to and incorporated into the Agreement.

1. HOSTING SERVICES

1.1 Facility. Cherwell shall, either directly or indirectly through a third party hosting facility, maintain and support the hardware, servers, operating systems, database servers, networking and infrastructure necessary for Customer to access and use the Licensed Software. Cherwell’s hosting facility will comply with applicable laws, rules and regulations. Upon request, Cherwell will provide Customer with documentation describing such standards and measures. Cherwell shall provide a Domain Name System (DNS) Name which shall provide Customer connectivity and access to the Licensed Software.

1.2 Security. Hosted 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 Hosted Data. Cherwell shall logically segregate Hosted Data from data belonging to other Cherwell customers. Cherwell will immediately notify Customer of a confirmed security breach that impacts Hosted 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. Except as may be strictly required by applicable law, Cherwell agrees that it will not inform any third party of any such security breach involving Hosted Data without Customer’s prior written consent. 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.

1.3 Hosted Data Back-Up. For the Licensed Software installed in the hosted production environment, Cherwell will (i) perform hourly differential backups and store such backups for five (5) days; and (ii) perform daily backups and store such backups for thirty-one (31) days. For hosted non-production environments, Cherwell will perform daily backups and store such backups for thirty-one (31) days. All backups are encrypted both at rest and in transit. Backups are made directly to disk and replicated to a secondary geographically disperse location. Cherwell will use commercially reasonable efforts to meet a disaster recovery time objective of two (2) 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.

Cherwell shall provide Customer with full access and control over Hosted Data and the capability to download and make backups of Hosted Data at any time during the term of this Addendum. Subject to the above, Customer acknowledges that Cherwell’s services are not intended to be used as the sole repository for Hosted Data and that Customer has access to and control over its Hosted Data, including the ability to make its own backups using the Cherwell Administration tool.

1.4 Business Continuity. Cherwell will maintain a defined disaster recovery plan and process designed to minimize the risks associated with a disaster affecting Cherwell’s ability to provide the hosting services under this Addendum. Cherwell will test its disaster recovery plan annually. Upon request, Cherwell will provide a summary of its disaster recovery plan and test results, excluding any proprietary information.

1.5 Support. All requests for Support must be directed to the designated technical support team and not the Cherwell hosting team..

1.6 Upgrade Notification. 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 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. 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 (i) Scheduled Maintenance, as defined below; (ii) Customer’s systems or Customer’s actions or inactions; and (iii) 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 not involving employees of Cherwell or Cherwell’s authorized agent or service provider, and equipment and telecommunications failures, delays outside of Cherwell’s network, attacks or intrusions that are external to the Cherwell hosting environment and/or otherwise not reasonably under Cherwell’s control, 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. Unless otherwise provided under an Order Confirmation, Cherwell will perform Scheduled Maintenance only during the weekends, beginning no earlier than Friday at 8:00 p.m. MST and ending no later than 2:00 a.m. MST Saturday, unless otherwise agreed upon

by both parties, and shall provide Customer at least seven (7) calendar days advance notice thereof, except for emergency maintenance, in which case Cherwell shall provide as much notice as reasonably practicable.

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 Credit. "Service Credit" means a credit, calculated as set forth below, provided by Cherwell to Customer on its next invoice. In the event the Licensed Software is not available as set forth in Section 2.1, 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 subscription fee or annual hosting fee, as the case may be). 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 subscription or 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 hosted 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 (i) 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 (ii) 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. 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.

4. CUSTOMER OBLIGATIONS

4.1 Restrictions. Customer shall not, and shall ensure that its employees, affiliates and clients do not: (i) 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; (ii) attempt to gain unauthorized access to the hosted system or network or allow others to do so; or (iii) make any use of the service that violates any applicable law, rule or regulation. Cherwell may temporarily suspend services due to detection of an attack coming from Customer's systems or a reasonable determination that continued use of the service will violate applicable law or the legal rights of another person or entity.

4.2. Representation by Customer. Customer represents that it has all necessary permissions and rights to the Hosted 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 Hosted Data. To the extent Hosted 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.

5. TERM AND TERMINATION

5.1 Effective Date and Term. Unless terminated in accordance with Section 5.2 below:

(a) For perpetual licenses, 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 and both parties executing a new purchase order or option in writing.

(b) For subscription licenses, this Addendum is effective as of the Effective Date and is coterminous with the Agreement.

5.2 Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Cherwell shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination, Cherwell will pay Customer a pro-rata refund of any prepaid but unused hosting fee, plus any unpaid service credits payable to Customer.

5.3 Effect of Termination. With respect to perpetual licenses, termination of this Addendum shall not terminate the Agreement nor Customer's right to use the Licensed Software as set forth in the Agreement; provided, however, that 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 of its data, and if requested, Cherwell shall provide such data in an industry-standard format such as a XML or .csv file at no

additional charge. After the 30-day period, Cherwell has no obligation to maintain or provide Hosted Data and will destroy all Hosted Data in its possession or under its control in accordance with secure data destruction methods so as to protect against unauthorized access to destroyed Hosted Data, unless such destruction is legally prohibited. Upon request, Cherwell shall provide Customer with a certificate of destruction or other documentation indicating that it has complied with the above sentence.