

Collabware

Subscription Agreement

This Collabware Subscription Agreement is entered into between Collabware Systems Inc., having a place of business at 1188 West Georgia Street, Suite 1050, Vancouver, BC V6E 4A2 (“**Collabware**”), and the entity identified as the “Customer” (“**Customer**”) on the Collabware sales order form signed by Collabware and the Customer (“**Order Form**”), as of the date that Order Form is signed by Collabware and the Customer (“**Effective Date**”). This agreement permits the Customer to purchase subscriptions to access and use the Collabware hosted software offerings set out on the Order Form and related support and maintenance services on a subscription basis, as and to the extent listed on the Order Form.

By signing the Order Form, Collabware and the Customer agree as follows:

1. Interpretation

1.1 **Definitions.** In this agreement:

- (a) “**Customer Data**” means any data, information or material (including Personal Data) that Customer or any User processes, stores, or transmits using the Hosted Services or Software.
- (b) “**Documentation**” means the user guides and documentation for the Software accessible at <http://support.collabware.com>, as updated from time to time.
- (c) “**EULA**” means Collabware’s end-user licence agreement set forth at <https://www.collabware.com/legal/eula>.
- (d) “**Force Majeure Event**” is defined in section 14.
- (e) “**Hosted Services**” means the hosted software services through which Collabware makes the Software and Documentation for use by the Customer and its Users via internet access.
- (f) “**Personal Data**” means any information or data relating to an identified or identifiable natural person.
- (g) “**Software**” means the hosted Collabware proprietary software to which the Customer is subscribing, as set out on the Order Form.
- (h) “**Subscription Term**” means the duration of the Subscription, as set out on the Order Form, and including any renewals under section 10.1.
- (i) “**Subscription**” means the Customer’s right to, and to allow its Users to, access and use the Software and Support and Maintenance on a subscription basis during the Term.
- (j) “**Support and Maintenance**” means the applicable support and maintenance services as set out in section 5.
- (k) “**Supported Environment**” means the hardware and operating system platform and internet connections that meet or exceed Collabware’s recommended specifications from time to time for the Hosted Services and Software, as set out in the Documentation.
- (l) “**Term**” means the period starting on the Effective Date and ending on the day that the last Subscription Term terminates.

- (m) **"Users"** means the Customer's employees and contractors that are authorized by the Customer to access and use the Hosted Services and Software under the Subscription purchased under the Order Form.
- (n) **"Warranty Period"** means a period of 30 days after the Effective Date.

1.2 **Conflicting Terms.** Any conflict between the terms of this agreement and the Order Form, EULA or other pre-printed terms shall be resolved in favour of the terms of this Agreement unless both parties agree otherwise in writing. By way of clarity, all standard terms contained in any Customer purchase order or other form shall be overridden by the terms and conditions of this agreement.

1.3 **External Documents.** All external Collabware documents referred to by hyperlinks in this agreement are hereby incorporated into and form part of this agreement.

2. Licence

2.1 **Licence.** Subject to the Customer's compliance with this agreement and the EULA, Collabware will make the Hosted Services, Software, Documentation and Support and Maintenance available to Users under this agreement, the EULA and the Order Form during the Subscription Term. Collabware hereby grants to the Customer a limited, non-exclusive, worldwide, non-assignable licence during the relevant Subscription Term to access and use the Hosted Services, Software, Documentation and Support and Maintenance solely for the Customer's internal business purposes and based upon the number of Users and subscriptions set out in the Order Form, on the terms and conditions set out in this agreement and the EULA.

2.2 **Restrictions.** The Customer will use the Hosted Services and Software solely for its internal business purposes, in compliance with applicable law, and shall not: (i) resell, sublicense, lease, time-share or otherwise make the Hosted Services available to any third party; (ii) send or store materials it knows to be infringing or unlawful; (iii) knowingly send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (iv) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Hosted Services; (v) modify, copy or create derivative works based on the Hosted Services or Software; (vi) reverse engineer the Hosted Service or Software; (vii) access the Hosted Services or Software for the purpose of building a competitive product or service or copying its features or user interface; (viii) use the Hosted Service, or permit it to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without Collabware's prior written consent; or (ix) permit access to the Hosted Services or Software by a direct competitor of Collabware.

2.3 **Users.** The Customer will authorize access to and assign unique passwords and user names to the number of Users specified on the Order Form. User logins are for designated Users and cannot be shared or used by more than one User, provided that any User login may be permanently reassigned to another User as needed. The Customer will be responsible for the confidentiality and use of its User's passwords and user names, and will use commercially reasonable efforts to prevent unauthorized access to or use of the Hosted Services or the Software, and will promptly notify Collabware of any actual or suspected unauthorized access to or use of the Hosted Services or Software or any loss or theft or unauthorized use of any User's password or user name.

3. Ownership

3.1 **Software and Documentation.** As between the parties, Collabware and its licensors own all right, title and interest (including all intellectual property rights) in and to the Hosted Services, the Software and Documentation, and all copies, derivations, modifications and enhancements thereof. In addition, Collabware owns any suggestions, enhancement requests, recommendations or other feedback provided by the Customer or its Users, including suggestions relating to the operation or functionality of the Software. Subject to the limited rights expressly granted to the Customer under this agreement and

the EULA, Collabware reserves all rights, title and interest in and to the Hosted Services, the Software and the Documentation, and all related intellectual property rights.

3.2 **Customer Data.** As between the parties, the Customer owns and has control over the Customer Data.

4. Availability

Collabware will use commercially reasonable efforts to make the Hosted Services available 24 hours a day, 7 days a week, except for:

- (a) scheduled downtime (for which Collabware will give reasonable prior notice); or
- (b) any Force Majeure Event.

5. Support and Maintenance

During the times that the Customer has paid the applicable subscription fees, Collabware will provide Support and Maintenance during the Subscription Term in accordance with Collabware's then-current standard support and maintenance policies at <https://www.collabware.com/legal/support>.

6. Customer Data

6.1 **Ownership and Rights.** Collabware does not own Customer Data, may not sell Customer Data, and will only have the right to use Customer Data in aggregated and anonymous form for Hosted Services and Software enhancement purposes. The Customer hereby grants to Collabware a royalty-free, nonexclusive, worldwide, right and licence (with the right to sublicense through multiple tiers) to use, copy, store, process, transmit and display Customer Data as necessary to provide the Software.

6.2 **Personal Data.** The Customer will be considered the data controller for any Personal Data. The Customer will have sole responsibility for determining if the collection, storage, and use of its Personal Data complies with applicable law, for making all required disclosures and obtaining all required consents relating to the activities described in this agreement, and otherwise complying with all applicable laws relating to Personal Data.

6.3 The Customer acknowledges and consents to the following:

- (a) the Hosted Services may require Customer Data to be transferred to a country outside of Customer's country or the country where the Customer Data originated, and that applicable laws in those other countries might permit foreign governments, courts, law enforcement or regulatory agencies to access Customer Data in those countries; and
- (b) Collabware may share Customer Data with its affiliates and business partners (like backbone network providers) for the sole purpose of providing to the Hosted Services to Customer, provided that Collabware will comply with its confidentiality and data protection obligations set out in this agreement.

6.4 **Retention and Return.** Unless otherwise expressly agreed in a writing that is signed by an authorized representative of Collabware, Collabware will have no obligation to retain Customer Data following 30 days after complete termination of the Hosted Services. The Customer will have 30 days from the date of termination of the Hosted Service in which to request a copy of the Customer Data, which Collabware will make available to Customer in the same format maintained by Collabware.

6.5 **Assurances.** The Customer represents and warrants that it owns all right, title and interest, or possesses sufficient license rights, in and to the Customer Data as may be necessary to permit the uses

contemplated under this agreement. The Customer bears all responsibility and liability for the accuracy and completeness of the Customer Data and Collabware's access, possession and use of Customer Data as permitted in this agreement.

7. Limited Warranty

Collabware warrants, for the Customer's benefit only, that during the Warranty Period the Hosted Services and Software will perform substantially in accordance with the Documentation when used with a Supported Environment. Collabware's sole and exclusive responsibility and the Customer's sole and exclusive remedy for a breach of this warranty will be for Collabware to correct the defects in the Hosted Services and Software so that they perform substantially in accordance with the Documentation when used with a Supported Environment.

This limited warranty is conditioned upon the use of the Hosted Services and Software strictly in accordance with this agreement, the EULA, the Documentation and Collabware's written instructions and on a Supported Environment, and on the absence of any misuse, damage, alteration or modification to the Hosted Services and Software. Collabware does not warrant that the Hosted Services and Software will meet the Customer's requirements, that the Hosted Services and Software will operate in the combinations that the Customer may select for use, that the operation of the Hosted Services and Software will be uninterrupted or error-free, or that all Hosted Services and Software errors will be corrected.

The Customer acknowledges and agrees that the Hosted Services and Software are subscription-based and that Collabware may modify the Hosted Services and Software from time to time and that, if Collabware does so, Collabware will update the Documentation accordingly.

8. Disclaimer

EXCEPT AS PROVIDED FOR IN SECTION 7, THE HOSTED SERVICES, SOFTWARE, DOCUMENTATION AND SUPPORT AND MAINTENANCE ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS AND COLLABWARE DISCLAIMS ALL WARRANTIES, CONDITIONS REPRESENTATIONS AND GUARANTEES, HOWEVER ARISING, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, AS TO THE HOSTED SERVICES, SOFTWARE, DOCUMENTATION, OR SUPPORT AND MAINTENANCE, INCLUDING BUT NOT LIMITED TO THE USE, SUFFICIENCY OR ACCURACY OF THE HOSTED SERVICES, SOFTWARE, DOCUMENTATION, OR SUPPORT AND MAINTENANCE AND EXPRESSLY EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY THAT OPERATION OF THE HOSTED SERVICES OR SOFTWARE WILL BE SECURE, UNINTERRUPTED OR ERROR FREE OR THAT THE HOSTED SERVICES OR SOFTWARE WILL MEET THE CUSTOMER'S REQUIREMENTS OR THAT IT WILL OPERATE IN CONJUNCTION WITH EQUIPMENT, THIRD-PARTY SOFTWARE OR SERVICES THAT THE CUSTOMER MAY OBTAIN OUTSIDE THIS AGREEMENT. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE ACCESS TO AND USE OF THE HOSTED SERVICES, SOFTWARE, DOCUMENTATION AND SUPPORT AND MAINTENANCE MAY AFFECT THE USABILITY OF THIRD-PARTY SOFTWARE, APPLICATIONS OR SERVICES.

9. Customer's Responsibilities

9.1 The Customer: (i) is responsible for the Customer's and its Users' compliance with this agreement and the EULA, and (ii) shall access and use the Hosted Services and Software only in accordance with the Documentation and applicable laws and government regulations. The Customer will, at its sole expense, be solely responsible for supplying, configuring and maintaining the hardware, software and licences, telecommunication and internet equipment, connections and services necessary for providing a Supported Environment.

9.2 The Customer is responsible for all activities conducted under its User logins and for its Users' compliance with this agreement, the Order Form and the EULA.

9.3 Collabware will not be responsible for, nor obligated to provide Support and Maintenance for, interruptions, errors, deficiencies or other problems with the Hosted Services or Software arising from the Customer's failure to provide a Supported Environment. Collabware has no responsibility for the working of the Customer's or any User's computer and telecommunications equipment and networks, any other computer equipment or software, or internet access. The Customer acknowledges and agrees that the operation and availability of equipment and systems used for accessing and interacting with the Hosted Services and Software, including public telecommunication networks, computer networks and the internet (whether supplied by Collabware, Customer or a third party) can be unpredictable and may from time to time interfere with or prevent access to or use of the Hosted Services and Software. Collabware is not in any way responsible for any such interference with or prevention of the Customer's or any User's access to or use of the Hosted Services and Software.

10. Term and Termination

10.1 **Subscription Term.** The initial Subscription Term will start on the Effective Date and will continue for the period specified on the Order Form or until it is terminated in accordance with this agreement or the EULA. Provided that the Customer is in compliance with this Agreement and the EULA and has paid the applicable fees, the Subscription Term will automatically renew for successive one-year terms unless either party gives written notice of non-renewal at least 30 days before the end of the initial Subscription Term or then-current renewal term.

10.2 **Termination.** Without prejudice to any other rights, Collabware may terminate this agreement on 30 days prior written notice if the Customer fails to comply with any of the material terms and conditions of this agreement or the EULA and fails to cure the failure within that 30-day period. Without limiting the previous sentence, Collabware may, in its sole discretion, suspend or terminate the Subscription if: (a) the Customer is using the Hosted Services and Software in a manner not permitted by this agreement or the EULA; (b) payment has not been made when due as provided under section 11; or (c) the Customer is using the Hosted Services and Software in violation of applicable law.

10.3 **Effect of Termination.** If this agreement expires or terminates for any reason:

- (a) the Subscription will immediately terminate and Collabware may immediately cease providing access to and use of the Hosted Services and Software;
- (b) the Customer will immediately cease accessing and using the Hosted Services and Software;
- (c) the Customer will immediately pay all sums owing to Collabware; and
- (d) within 10 days after expiry or termination, the Customer will destroy all copies of the Documentation then in the Customer's possession or control.

10.4 **Survival.** The parties' respective rights and obligations that by their nature would continue beyond this agreement's termination or expiration will survive termination. This includes, by way of example but not limited to, the rights and obligations under sections 7, 8, 10.3, and 11 through 17.

11. Fees and Payment

11.1 **Fees and Payment.** The Customer will pay the fees set out in the Order Form at the times and in the manner specified in the Order Form. If the Order Form does not specify payment terms for particular fees, Collabware will invoice those fees and all invoices are due 30 days after the date of the invoice. Except as set forth in section 15, fees are non-refundable upon payment.

11.2 **Overdue Charges.** All invoices due under this agreement will accrue interest at the rate of 1.5% of the outstanding balance of the invoice per month (18% per year) from the date such invoice payment is due until the date the outstanding amount, including all accrued interest, is paid.

11.3 **Suspension and Acceleration.** If full payment is not received within the applicable period, Collabware may suspend the Customer's access to and use of the Hosted Services and Software until such amounts are paid in full. Collabware will not exercise this suspension right if the Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

11.4 **Taxes.** Unless otherwise stated, fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). The Customer is responsible for paying all Taxes associated with this agreement. If Collabware has the legal obligation to pay or collect Taxes for which the Customer is responsible, the appropriate amount will be invoiced to and paid by the Customer unless the Customer provides Collabware with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Collabware is solely responsible for taxes assessable against it based on its income, property and employees. If the Customer is required under the law(s) of any applicable jurisdiction to deduct any withholding taxes from payments to Collabware, then (i) the Customer shall notify Collabware prior to withholding such taxes; (ii) the fee(s) or other charges payable by the Customer for the Software or services shall be increased so that the actual amount received by Collabware, net of all taxes, will be equal to the fees or other charges set forth in the Order Form or otherwise invoiced to the Customer; and (iii) the Customer shall promptly furnish Collabware with the official receipt of payment of such taxes from the appropriate taxing authority.

11.5 **Fee Changes.** Collabware may change the applicable fees by written notice delivered to Customer at least 60 days before the end of the Initial Subscription Term or then-current renewal term, and the amended fees will take effect at the commencement of the next renewal term.

12. Limitation of Liability

12.1 **LIMITATION OF DAMAGES.** COLLABWARE'S TOTAL CUMULATIVE LIABILITY WITH RESPECT TO OR ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT ACTUALLY PAID BY THE CUSTOMER FOR THE SOFTWARE GIVING RISE TO THE CLAIM IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

12.2 **EXCLUSION OF DAMAGES.** IN NO EVENT SHALL COLLABWARE HAVE ANY LIABILITY TO THE CUSTOMER FOR ANY LOST PROFITS OR REVENUES, LOST DATA, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT COLLABWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.3 **LIMITATION OF CAUSE OF ACTION.** No claim can be made against Collabware regarding the Hosted Services, Software or this agreement unless it is made within one year after the event giving rise to such claim.

13. Confidential Information

13.1 **Definition of Confidential Information.** As used in this agreement, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably

should be understood to be confidential given the nature of the information and the circumstances of disclosure. Collabware's Confidential Information includes the Hosted Services, Software, Documentation and other technical information related thereto. Confidential Information of each party includes this agreement's terms and conditions, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.

13.2 Protection of Confidential Information. The Receiving Party shall (i) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (iii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees, agents, contractors and representatives who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those contained in this Agreement. The Receiving Party will be responsible and liable for any breach of these obligations by any of its employees, agents, contractors and representatives. Except as required by law, neither party shall disclose the financial terms of this Agreement to any third party other than its affiliates and their legal counsel and accountants without the other party's prior written consent.

13.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing such Confidential Information.

14. Force Majeure

Neither party shall be considered in breach of its obligations under this agreement due to any failure to perform such obligations arising out of causes beyond that party's reasonable control. Such causes shall include, without limitation: acts of God; acts or omissions of any governmental authority, laws or regulations; fires, unusually severe weather, floods or other natural disasters; transportation stoppages or slowdowns or the inability to procure parts or materials; acts of terrorism, strikes or labour unrest; civil or military unrest; riots; degradation of telecommunications services; or where compliance with a condition herein would result in government-imposed penalty or violation of applicable law ("**Force Majeure Event**"). These causes will not excuse the Customer from paying accrued amounts due to Collabware through any available lawful means acceptable to Collabware. If a party is unable to perform for 30 consecutive days as a result of a continuing Force Majeure Event, the other party may immediately terminate this agreement upon written notice to the non-performing party.

15. Indemnity

15.1 Indemnification by Collabware. Collabware shall defend Licensee against any claim, demand, suit, or proceeding made or brought against Licensee by a third party alleging that the use of the Hosted Services and Software in accordance with this agreement, the EULA and the Documentation infringes or misappropriates the intellectual property rights of a third party (a "**IP Claim**"), and shall indemnify the Customer for any damages, reasonable legal fees and costs finally awarded against the Customer or as

finally settled by Collabware, provided that the Customer (a) promptly gives Collabware written notice of the IP Claim; (b) gives Collabware sole control of the defense and/or settlement of the IP Claim; and (c) provides to Collabware all reasonable assistance, at Collabware's expense. In the event of an IP Claim, or if Collabware reasonably believes the Hosted Services or Software may infringe or misappropriate a third party's intellectual property rights, Collabware may in its sole discretion and in lieu of this indemnity (i) modify the Hosted Services and Software so that it no longer infringes or misappropriates, provided such modification provides substantially similar functionality, (ii) obtain a license for the Customer's continued access and use of the Hosted Services and Software in accordance with this agreement, or (iii) terminate the Customer's right to access and use the Hosted Services and Software upon 30 days' written notice and refund to the Customer any prepaid fees, on a pro-rata basis for the time the Hosted Services and Software were used in accordance with this agreement.

15.2 Collabware has no obligation or liability under this section 15 if the IP Claim results from: (i) any use of the Hosted Services and Software not in accordance with this agreement, the EULA or the Documentation; (ii) a modification of the Hosted Services or Software not performed by Collabware, or any modifications for non-standard features or functionality at the Customer's request, (iii) the failure to promptly install a new maintenance release or version of the Hosted Services and Software that would have eliminated the actual or alleged infringement or misappropriation, (iv) the use or combination of the Hosted Services and Software with any non-Collabware product, information, design, specification, instruction, software, data, or material where such infringement would not have arisen but for such use or combination, (v) Collabware's or its authorized representative's compliance with instructions, designs, plans or specifications furnished by or on behalf of the Customer, (vi) any activities of the Customer after Collabware has notified the Customer that such activities may result in an IP Claim, (vii) the Customer's negligence or intentional misconduct, or (viii) any patent infringement claim alleging infringement by Customer-specific processes or methods created by or on behalf of the Customer using the Hosted Services and Software and, but for such Customer-specific method or process, the patent infringement claim would not have arisen.

15.3 THIS SECTION 15 SETS FORTH COLLABWARE'S SOLE LIABILITY AND THE CUSTOMER'S SOLE REMEDY WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION CLAIM.

16. Dispute Resolution

16.1 If there is any dispute arising out of or relating to this agreement, the Order Form or the EULA, then the parties will use reasonable and good faith efforts to resolve such dispute, first by a maximum period of 30 days of direct negotiation.

16.2 Any dispute arising out of or relating to this agreement. the Order Form or the EULA that is not settled by agreement between the parties within a reasonable time will be settled exclusively by binding arbitration by a single arbitrator. The location of the arbitration will be Vancouver, Canada. The arbitration will be governed by the *Commercial Arbitration Act* (British Columbia). The arbitrator will be selected and the arbitration conducted in accordance with the British Columbia International Arbitration Rules ("**Rules**") and conducted by the British Columbia International Commercial Arbitration Centre, except that this agreement's provisions will prevail over the Rules. The parties will share equally in the fees and expenses of the arbitrator and the cost of the facilities used for the arbitration hearing, but will otherwise each bear their respective costs incurred in connection with the arbitration. Depositions will not be allowed, but information may be exchanged by other means. The parties will use their best efforts to ensure that an arbitrator is selected promptly and that the arbitration hearing is conducted no later than 3 months after the arbitrator is selected. The arbitrator must decide the dispute in accordance with the substantive law of British Columbia. This requirement does not, however, mean that the award is reviewable by a court for errors of law or fact. Following the arbitration hearing, the arbitrator will issue an award and a separate written decision which summarizes the reasoning behind the award and the legal basis for the award.

16.3 The arbitrator cannot:

- (a) Award damages excluded by the terms of this Agreement
- (b) Award damages in excess of the amount, if any, limited by the terms of this Agreement;
or
- (c) Require one party to pay another party's costs, fees, lawyer's fees or expenses.

16.4 The award of the arbitrator will be final and binding on each party. Judgement upon the award may be entered in any court of competent jurisdiction.

16.5 The dispute resolution procedures described in this section are the sole and exclusive procedures for the resolution of any disputes which arise out of or are related to this agreement, the Order Form or the EULA, except that a party may seek preliminary or temporary injunctive relief from a court of competent jurisdiction if, in that party's sole judgment, such action is necessary to avoid irreparable harm or to preserve the status quo. If a party seeks judicial injunctive relief as described in this section, then the parties will continue to participate in good faith in the dispute resolution procedures described in this section. The parties agree that no court which a party petitions to grant the type of preliminary or temporary injunctive relief described in this section may award damages or resolve the dispute.

17. General

17.1 **Notices.** All notices given under this agreement will be in writing and given either by actual delivery or sent by email (delivery and read receipt required) to the addresses set out on the Order Form, or to such alternate address that a party has specified by notice given in accordance with this section. Notices shall be deemed to be received on the day they are actually delivered or as reflected by the delivery and read receipt if by email.

17.2 **Entire Agreement.** The Customer acknowledges that it has read the Order Form, this agreement (including the external Collabware documents referenced in this agreement) and the EULA, and understands each and agrees to be bound by the terms and conditions of each. The Customer agrees that this agreement, the Order Form and the EULA are the complete agreement between the parties and supersede all prior agreements, oral or written and all other communications between the parties relating to the subject of this agreement. This agreement may supersede any previous rights to use the Software, including software licenses or subscriptions to use online versions of the Hosted Services or Software.

17.3 **Subcontractors.** Collabware may engage subcontractors to provide or assist in providing Hosted Services, in which case Collabware remains responsible for the fulfillment of its obligations under this agreement and for the provision of the Hosted Services.

17.4 **Relationship.** The parties are independent contractors. This agreement does not and shall not be construed as creating a partnership, joint venture, agency of principal and agent, or other relationship.

17.5 **Governing Law.** This agreement, the Order Form, the EULA and all related matters are governed solely by the laws of British Columbia, Canada and the applicable federal laws of Canada. Subject to section 16, the parties hereby irrevocably submit and attorn to the original and exclusive jurisdiction of the Supreme Court British Columbia sitting in Vancouver, Canada, in respect of all disputes that the parties are permitted to take to court under this section.

17.6 **Usage Verification.** Collabware reserves the right to monitor and to conduct an audit of the Customer's records and operations related to the Hosted Services and Software solely for purposes of ensuring the Customer's compliance with this agreement and the EULA. Any audit shall be conducted at a mutually agreed upon date and time during the Customer's standard business hours. If Collabware discovers through the results of an audit performed hereunder or through any other means that the Customer owes Collabware fees, then the Customer shall pay Collabware the additional fees at

Collabware's then-current rates. In the event an audit determines that Customer owes Collabware for fees in an amount exceeding 5% of the fees paid during the current Subscription Term, then the Customer shall reimburse Collabware for the reasonable fees associated with the performance of such audit.

17.7 **Waiver.** No waiver of any of the provisions of this agreement or the EULA shall be deemed to constitute a waiver of any other provision nor shall such a waiver constitute a continuing waiver unless otherwise expressly provided in writing duly executed by the party to be bound.

17.8 **Export Laws.** The Customer agrees to comply with all import/export control or similar laws and regulations with respect to access and use of the Hosted Services, Software and Documentation, or technical data.

17.9 **Translations.** The English version of this agreement shall govern if this agreement has been translated into other languages.

17.10 **Severability.** If any term of this agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this agreement will remain in full force and effect.

17.11 **Headings.** The headings appearing at the beginning of the sections contained in this agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this agreement.

17.12 **No Assignment.** Neither this agreement nor any rights under it may be assigned, transferred, shared or delegated by the Customer without Collabware's prior written consent.

17.13 **Modification.** This agreement may not be modified or altered except by written instrument duly executed by both parties.

17.14 **Parties Bound.** This agreement is binding upon and enures to the benefit of the parties and their successors and permitted assigns.

[END OF COLLABWARE SUBSCRIPTION AGREEMENT]