CollabNet, Inc.
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Carahsoft Rider to Manufacturer End User License Agreements
(for U.S. Government End Users)

1. **Scope.** This Carahsoft Rider and the CollabNet, Inc. ('Manufacturer') End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").

2. **Applicability.** The terms and conditions in the attached Manufacturer EULA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41. U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft' s contract #GS-35F-0119Y, including, but not limited to the following:

(a) **Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

(b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.

(c) **Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

(d) **Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to

(a) **Error! Unknown document property name.**

verify Ordering Activity's compliance with this Agreement.

(e) Termination. Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

> Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..

(f) Consent to Government Law / Consent to Jurisdiction. Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

(g) Force Majeure. Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

(h) Assignment. All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.

(i) Waiver of Jury Trial. All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.

(j) Customer Indemnities. All Manufacturer EULA clauses referencin**g** Customer Indemnities are hereby deemed to be deleted.

(k) Contractor Indemnities. All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

(l) Renewals. All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

(m) Future Fees or Penalties. All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To

Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

(n) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.

(o) Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.

(p) Installation and Use of the Software. Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.

(q) Dispute Resolution and Venue. Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

(r) Limitation of Liability: Notwithstanding anything herein to the contrary, the following shall be deemed to supplement Section 11 of the Manufacturer EULA and not to delete it:

> Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) Public Access to Information. Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be available to the public.

(u) Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

License and Services Agreement

Customer and CollabNet, Inc., a Delaware Corporation, with its principal address at 8000 Marina Boulevard, Suite 600, Brisbane, California 94005-1865 ("CollabNet") agree that the terms and conditions of this License and Services Agreement (the "**Agreement**") will apply to the license of CollabNet Software Products and maintenance and support and other services therefor as described in an applicable Order ("**Order**"). This Agreement is effective on the date the applicable Order is effective (the "**Effective Date**").

1. Definitions.
"**Documentation**" shall mean the online or written documentation for the Software provided by CollabNet.
"**Open Source Code**" shall mean software governed by open source, free or other public licenses, whether provided by CollabNet or accessed from third parties
"**Software**" shall mean the CollabNet proprietary software provided to Customer, excluding any Open Source Code included with or used by the software.

2. Grant of License. Subject to the terms and conditions contained in this Agreement, CollabNet hereby grants to Customer and Customer hereby accepts from CollabNet, for the limited term ("**Term**") set forth in the applicable Order or Orders (the "**Order**") , a non-exclusive, non-transferable, non-sub-licensable license (the "**License**") to: (a) install the Software solely on servers owned or leased by and located at facilities under Customer's control; (b) register "Users" to use the Software solely for Customer's internal development use; a User may be deleted and re-assigned at Customer's discretion; and (c) make a reasonable number of copies of the Software for back-up, archival or security purposes only, provided that all of the copyright or proprietary notices of the original are included in the copies. Customer may not use the Software for any other purpose or for the benefit of any other party, except as may be permitted in writing by CollabNet. Customer may copy and distribute the Documentation solely for Customer's use to install and support the Software, provided that all of the copyright or proprietary notices of the original are included in all copies or partial copies.

3. Title. The Software and Documentation 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 Software and Documentation, and all derivatives thereof, shall remain in CollabNet and/or its licensors. Customer 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 Software and Documentation. The Software is protected by copyright law and other intellectual property laws and by international treaties.

4. 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 Software and Documentation in any form anywhere. Nothing in this Agreement is intended by the parties to constitute a sale of the Software or any derivations thereof. Customer 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 Software, or, except as set forth in 2 hereof, copy any Software or Documentation, redistribute, encumber, sell, rent, lease, sublicense or otherwise transfer rights to any Software or Documentation or remove or alter any copyright, trademark, or other legends, symbols or labels in the Software or Documentation.

5. Additional Users/Services. Customer has the option to separately order additional licenses for users for the Software. The information for such purchase is available at www.open.collab.net or www.collab.net . Customer hereby acknowledges that CollabNet may include a license management feature in the Software that will allow CollabNet to monitor Customer's compliance with this Agreement. Customer may also order services from CollabNet as specified in an Order. A description of CollabNet's Consulting Services can be found at http://www.collab.net/services/subversion-/consulting.html. A description of CollabNet's Training Classes can be found at http://www.collab.net/services-/subversion/training.html. All onsite consulting or training courses are subject to additional and reasonable travel and lodging expenses incurred by CollabNet consultants or instructors, which expenses shall be invoiced upon completion. All consulting or training services must be scheduled and used within six (6) months of acceptance of the applicable Order by CollabNet (the "**Services Term**"), or as otherwise agreed in the Order, and no refund will be granted for any services not used within the Services Term. All reports,

training materials or other deliverables are the intellectual property of CollabNet and are provided for Customer's internal use only.

6. Support. No support services are included with the Order of the Software. CollabNet will provide support and maintenance services ("**Support**") for the Software in accordance with the specific support plan chosen and ordered by Customer in the Order. A description of Support services can be found at http://www.open.collab.net/support/support-programs/. CollabNet Support Programs for CollabNet products include coverage for CollabNet Certified Integrations.

7. Fees and Payment. The License and Support and other fees hereunder ("**Fees**") shall be as set forth in the applicable Order and shall be due on the Effective Date. All amounts are stated and shall be paid in U.S. Dollars received in the United States. CollabNet will invoice Customer for the Fees at the billing address Customer provides, and all such Fees are payable within thirty (30) days of date of CollabNet invoice.

8. Taxes. In addition to the Fees, Customer shall pay any and all taxes or levies, however designated or levied, whether imposed by any US or foreign regulatory body, except for taxes and levies relating to CollabNet's income. Customer payments to CollabNet hereunder shall be made without withholding or deduction for or on account of any such taxes or levies.

9. Confidential Information. For purposes of this Agreement, "**Confidential Information**" shall mean any information (i) designated as confidential orally or in writing by either party hereto, (ii) related to the Software or Documentation, (iii) related to either party's business, or (iv) other information received by a party ("**Receiving Party**") by virtue of its relationship under this Agreement with the party disclosing the information ("**Disclosing Party**") including, but not limited to, product or services plans and strategies, product designs, costs or prices for services or products, financial information, marketing plans, business opportunities, customer data, software, research or know-how. Confidential Information does not include information which (a) is rightfully received by the Receiving Party from a third party without restriction or violation of confidentiality, (b) is known to or developed by the Receiving Party independently without use of the Confidential Information, (c) is or becomes generally known to the public by other than a breach of duty hereunder by the Receiving Party, or (d) has been approved in advance for release by written authorization of the Disclosing Party.

The parties shall protect all disclosed Confidential Information by using the highest degree of care to prevent its unauthorized use, dissemination, disclosure or publication, but in no event less than the degree of care the Receiving Party uses to protect its Confidential Information of a similar nature. The parties agree to limit access to any Confidential Information only to persons with a bona fide need to know and who have prior to disclosure acknowledged their agreement to be bound by the terms pertaining to confidentiality set forth in this Section 9. The parties shall use the Confidential Information only for the purposes of performance of this Agreement.

All Confidential Information (and copies thereof) shall remain the property of the Disclosing Party. Immediately upon the receipt of written demand or at the expiration or termination of this Agreement, each party shall discontinue all use of the Confidential Information provided to it, and return or destroy all Confidential Information in its possession.

10. Warranties; Disclaimer. CollabNet warrants that the Software as delivered will conform in all material respects to the technical specifications for the then-current release of the Software for a period of ninety (90) days from the Effective Date. CollabNet reserves the right to correct such specifications due to typographical or clerical errors. In the event of any breach of this warranty, provided notice of such breach is given in writing to CollabNet during such ninety (90) day period, CollabNet will make commercially reasonable efforts to repair the Software. The preceding sentence states CollabNet's sole and exclusive liability, and Customer's sole and exclusive remedy, under this warranty.

CollabNet also warrants that the media containing the Software and Documentation will be free of material defects. Customer's sole and exclusive remedy for breach of this media warranty is replacement of the defective media as long as any such defect is found within ninety (90) days after the Effective Date.

OTHER THAN THE WARRANTIES EXPRESSLY STATED HEREIN, COLLABNET HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SOFTWARE OR DOCUMENTATION 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 OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. COLLABNET DOES NOT WARRANT THAT THE USE OF THE SOFTWARE SHALL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED.

11. Limitation of Remedies and Liabilities; Disclaimer.
TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COLLABNET OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, 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, 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 CUSTOMER PAID FOR THE SOFTWARE OR SERVICES IN THE PRECEDING TWELVE (12) MONTHS, REGARDLESS OF THE FORM OF ANY LEGAL ACTION OR PROCEEDING WHETHER IN CONTRACT, STATUTE, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE.

PORTIONS OF THE SOFTWARE MAY INCLUDE OR HAVE BEEN CREATED USING OPEN SOURCE CODE. NOTWITHSTANDING ANY COLLABNET WARRANTY PROVISIONS HEREIN, COLLABNET IS NOT RESPONSIBLE FOR ANY LIABILITY ARISING FROM A CLAIM BY ANY THIRD PARTY WITH RESPECT TO SUCH OPEN SOURCE CODE.

12. Indemnity. CollabNet will defend, or at its option settle, any claim brought against Customer and its employees to the extent that such claim alleges that the Software or any part thereof infringes any intellectual property right of any third party; but only if Customer gives CollabNet prompt notice of the claim, permits CollabNet to control the defense or settlement of the claim, and cooperates fully with such defense or settlement of the claim. In fulfillment of its obligations hereunder, CollabNet may, at its expense and option: (a) procure for Customer the right to continue using the Software; (b) replace or modify the Software so it becomes non-infringing; or (c) if neither of these are practical, accept return of the affected Software and pay Customer a sum equal to the license and support charges paid, less a pro rata depreciation based on the number of months the Software was used by Customer during the applicable term of charges. The foregoing states CollabNet's entire liability with respect to intellectual property infringement claims.

The foregoing notwithstanding, CollabNet shall have no liability for a claim of infringement to the extent it is based on: (i) Open Source Software included in or provided with the Software; (ii) the use by Customer of the Software more than thirty (30) days after CollabNet notifies Customer that continued use of the Software may subject Customer to such claim of infringement; (iii) the use of the Software in combination with other software, hardware or products not provided by CollabNet, which claim would have been avoided if the Software had not been so combined; or (iv) the modification of the Software by anyone other than CollabNet. For purposes of interpreting this Section, Software shall be considered to be "modified" if there are any changes that are not recommended in the Documentation.

13. Termination. The Agreement will be automatically renewed for a similar Term on the first day of each subsequent term period subject to the payment of CollabNet's then-current fees therefor, unless this Agreement is terminated by either party by providing written notice to the other party not later than sixty (60) days before the expiration of the then-current term. CollabNet may terminate this Agreement upon written notice if Customer fails to pay any Fees within thirty (30) days after such Fees are due. Either Party may terminate this Agreement if the other party breaches any material term or condition of this Agreement, or 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 Customer of any payment obligations to CollabNet incurred prior to such date and such obligations shall become immediately due and payable. Upon termination of this Agreement, Customer will promptly return to CollabNet all copies of Software and Documentation or certify in

writing to CollabNet that all copies have been destroyed. Additionally, if Customer disposes of any media containing Software, Customer will ensure that it has completely erased or otherwise destroyed any Software stored on such media.

Customer may terminate for any reason all or any part of this Agreement upon sixty (60) days written notice to CollabNet. In the event of such termination, CollabNet shall immediately cease all work terminated hereunder and cause any and all of its suppliers to cease work. Except as set forth in Section 7 hereof, Customer shall have no liability for such termination except for liability for services rendered or expenses incurred prior to the effective date of such termination for which payment has not been made.

14. Representations. Customer represents and warrants that it has the legal right and authority to enter into this Agreement and perform its obligations. Customer agrees to comply with all applicable laws and regulations of the United States and foreign authorities, including, without limitation, laws regarding the transmission of technical data, such as encryption, exported from the United States or from the country in which Customer resides. Customer agrees not to export, re-export or import the Software or its Documentation in violation of any such restrictions, laws or regulations, or without all necessary authorizations.

15. Assignment. Neither party may assign this Agreement nor any License granted hereunder without the prior written consent of the other party, except that CollabNet may assign this Agreement pursuant to a merger or sale involving all or substantially all of the assets or business of CollabNet.

16. Equal Employment Opportunity. CollabNet agrees to comply with any applicable provisions of the Rehabilitation Act of 1973, the Veteran's Readjustment Act of 1974, and Executive Order 11246, and implementing regulations of the U.S. Department of Labor, which embody governmental policy on equal employment opportunity.

17. Security Obligations. CollabNet agrees that it shall not assign any worker to perform services under this Agreement unless that person qualifies as a "U.S. person," defined as: i) U.S. citizen; or ii) U.S. nationals, including an alien lawfully admitted for permanent resident (those possessing a valid Form I-550 or "green card"); Should Customer determine that the work performed under this Agreement shall enable persons working for CollabNet to have access to classified information that relates to a U.S. Government classified program, or other regulated information CollabNet agrees to provide appropriate background checks or limit access to data as mutually agreed between the parties. In addition to the foregoing requirements. CollabNet shall comply with the Immigration Reform and Control Act of 1986 ("IRCA") and in particular, have all of its workers fill out an I-9 form, verifying their authorization to work in the United States.

18. Audit Rights. Customer hereby acknowledges that CollabNet may audit its production installation of the Software onsite up to once every six (6) months.

19. 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.

20. Government Use. Customer understands and agrees that the Software and Documentation have been developed at private expense and are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, as those terms are used in DFAR Section 227.7202 and FAR 12.212(b) or its successor provisions, as applicable, and the U.S. Government shall have "RESTRICTED RIGHTS", and no rights in or license to the Software or Documentation other than those set forth in Section 2 above.

21. Miscellaneous. The parties agree that the terms and conditions of this Agreement shall not be varied or amended by any additional or conflicting terms found on, referenced or incorporated in or attached to any Purchase Order issued by or on Customer's behalf ("**Additional Terms**"). Any such Additional Terms shall be void. CollabNet may use Customer's name on CollabNet's customer list, including customer lists that may appear in marketing materials. Each provision of this Agreement is severable; if any provision is declared void, illegal, or unenforceable, such provision shall be modified 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. No amendment or other purported alteration of this Agreement shall be binding upon the parties unless it is in writing and is signed by the parties' authorized representatives. Any notice required or permitted by this Agreement shall be in writing, in the English language, and shall be sent by prepaid certified mail, return receipt requested, email, or fax, addressed to the other party at the address provided by such party, or at such other address for which such party gives notice hereunder. Such notice shall be deemed to have been given on delivery, or if via express overnight courier, the next day, except that notice of change of address shall be effective only upon receipt. No delay, omission, or failure to exercise any right or remedy provided for in this Agreement shall be deemed to be a waiver thereof. Any provision in this Agreement that may reasonably be interpreted as being intended by the parties to survive the termination or expiration of this Agreement shall survive any such termination or expiration.

22. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements or understandings between the parties. 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 control.

23. VMware Player. If Customer uses the Software in conjunction with CollabNet's designated collaborator the VMware Player ("**Player**") software product, Customer agree as follows: i) that Customer will comply with all of the terms and conditions of the VMware End user License Agreement; ii) VMware is an intended third party beneficiary of this Agreement with the right to enforce the terms and conditions of the VMware End User License Agreement; iii) Customer shall not misuse or remove any VMware trademarks from the Player; iv) CollabNet will not be responsible for provision of any support or services related to the Player; and v) if Customer wants to contact VMware for any reason, it should direct all correspondence to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, USA or visit the VMware website at http://www.vmware.com/.