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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 Delphix ('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 http://www.delphix.com/resources/legal/legal-govt/ 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)

(a) Error! Unknown document property name.

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 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 referencing 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: Subject to the following:

> 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.

PRODUCT LICENSE AGREEMENT v5.12 (GOVERNMENT)

IMPORTANT INFORMATION—READ CAREFULLY

UNLESS YOU HAVE OBTAINED PERMISSION TO USE THE SOFTWARE UNDER A SEPARATE, DULY SIGNED LICENSE AGREEMENT WITH DELPHIX OR AN AUTHORIZED DISTRIBUTOR, THE ACCOMPANYING SOFTWARE IS PROVIDED UNDER THE FOLLOWING TERMS AND CONDITIONS AND ANY SUPPLEMENTAL TERMS REFERENCED BELOW AND YOUR RIGHT TO USE THE SOFTWARE IS CONDITIONED UPON YOUR ACCEPTANCE OF THIS AGREEMENT.

IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, AND YOU DO NOT HAVE A SEPARATE LICENSE AGREEMENT AS REFERENCED ABOVE, YOU MAY NOT USE OR COPY THE SOFTWARE, AND YOU MUST DELETE ANY COPIES OF IT FROM YOUR SYSTEMS. IF YOU HAVE PAID A LICENSE FEE FOR USE OF THE SOFTWARE AND DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY, WITHIN TEN (10) DAYS OF YOUR INITIAL PURCHASE, REQUEST A REFUND FOR THE SOFTWARE, PROVIDED THAT YOU CERTIFY THAT YOU HAVE NOT AND WILL NOT USE THE SOFTWARE AND THAT YOU HAVE DESTROYED ALL COPIES OF THE SOFTWARE FROM YOUR SYSTEMS.

- 1. **SCOPE AND KEY TERMS.** This is a legal agreement concerning your use of the Software described below. The rights granted to the Software are expressly conditioned upon acceptance of these Terms and Conditions by the legal entity or person acquiring the license and, if applicable, responsible for payment. If you are using the Software as an employee, the legal entity that employs you is the "licensee." Your employer may have already accepted a version of these Terms and Conditions by signing an Order Form referencing them. In all other circumstances, you are binding your employer, and yourself personally as an employee, to these Terms and Conditions by using the Software. References below to "you" or "your" refer to the licensee of the Software. Delphix is the "licensor," regardless of whether you received the Software from Delphix directly or an authorized distributor.
- The Software is the proprietary information of Delphix or its suppliers who retain exclusive title to their intellectual property rights in the Software. Your rights to the Software are limited to those expressly granted below and Delphix reserves all rights not expressly granted in this Agreement.

- 1.1. ***Order Forms.*** The Terms and Conditions set forth in this Delphix Product License Agreement and the Order Form(s) accepted by both you and Delphix or its authorized distributor contain all terms and conditions applicable to your use of the Software (collectively, the "***Agreement***"). An ***"Order Form"*** is a Delphix document which references the applicable Delphix Product License Agreement and identifies the specific Software and rights being licensed to you under those terms, including the License Type, quantity, license term, and territory. The Order Form also sets forth the fees and payment terms for the Software licenses. You must refer to a copy of the applicable Order Form to determine these conditions of the Agreement. All Order Forms are subject to Delphix's acceptance. If no other Delphix document referencing the license transaction and executed by Delphix is delivered to you, a Delphix invoice referencing this Agreement and issued in response to your correct purchase order shall be considered the applicable Order Form, and issuance of such invoice to you shall be Delphix's acceptance of the license transaction. Additional or different terms on your purchase order shall not apply.
- 1.2. ***"Authorized Users"*** means a party's employees or authorized contractors: (a) whose duties require access to or use of the Software or Confidential Information for the benefit of that party; and (b) who will comply with restrictions on use and disclosure that protects the Software and Confidential Information to at least the same extent as set out in this Agreement.
- 1.3. ***"Documentation"*** means the user documentation, in written, electronic or other format, which describes the Software and its operation and which Delphix makes generally available to its licensed customers for use with the Software.
- 1.4. ***"License Type"*** means the usage rights purchased under the applicable Order Form.
- 1.5. ***"Software"*** means the specific products provided by Delphix and listed in an Order Form and (a) all related Documentation, and (b) all updates, modifications and maintenance services provided to you.
- 1.6. "vCPU" means any single, physical core of a multi-core CPU assigned or used by the Software.
- 2. **LICENSE.**
- 2.1. ***License Grant.*** Subject to your compliance with the terms and conditions of this Agreement, Delphix grants you a nonexclusive, non-transferable license, solely during the license term set out in the applicable Order Form, to (a) use and operate the Software subject to payment of the applicable Software license fees, and (b) copy the Software as

reasonably necessary to exercise the license rights granted in subsection (a), including making a reasonable number of copies for backup and archival purposes.

- 2.2. **Conditions.** The rights granted to you above are conditional upon your compliance with the following obligations:

a. You will not copy Delphix's Software or Documentation, in whole or in part, except as expressly authorized in this Agreement.

b. You will not transfer, assign, lease, lend or rent Delphix's Software or Documentation, use them to provide service bureau, time-sharing or other services, or otherwise provide or make the functionality thereof available to third parties except as expressly authorized in this Agreement.

c. You will not disassemble, decompile, reverse engineer, modify or create derivative works of Delphix's Software or Documentation nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable mandatory local law.

d. You will not let the Software be accessed or used by anyone other than the Authorized Users.

e. You will not disclose to any third party any comparison of the results of operation of Delphix's Software with other products.

f. You will not delete or in any manner alter the copyright, trademark or other proprietary rights notices appearing on the Software as delivered by Delphix. You will reproduce such notices on all copies you are authorized to make of the Software.

g. Your use of the Software is time-limited to the licensed term set out in the applicable Order Form ("**License Term**"), and access may be regulated through a license management tool. You will not install or use the Software in a manner that circumvents or interferes with the operation of such a tool or any other technological measure that controls access to the Software.

- 2.3. **Offsite Contractors.** You may allow Authorized Users that are offsite contractors to access and use the Software solely for your benefit in accordance with this Agreement provided that: (a) you are responsible for the acts and omissions of its offsite contractors with respect to Software licensed under this Agreement; (b) you ensure that the Software is completely and irretrievably uninstalled from any offsite contractor's equipment and premises (except for those modules necessary to view results and other data generated from using the

Software) immediately upon completion of the offsite contractor's services requiring use of the Software; and (c) you have an agreement in place with the offsite contractor substantively requiring that the offsite contractor protect Delphix's Software, Confidential Information and intellectual property at least to the same extent as set forth in this Agreement. You acknowledge that Delphix has no warranty or other obligations to your offsite contractors.

- 2.4. *Special Terms for Third Party Software.* The Software may contain open source or community source software ("**Open Source Software**") provided under separate license terms (the "**Open Source License Terms**"). The applicable Open Source License Terms can be found under the Software's About screen under "Licenses." Your use of the Open Source Software in conjunction with the Software in a manner consistent with the terms of this Agreement is permitted; however, you may have broader rights under the applicable Open Source License Terms and nothing in this Agreement is intended to impose further restrictions on your use of the Open Source Software.

- 2.5. *Feedback.* You may choose to, but are not required to, provide suggestions, data, feedback and other information to Delphix, its subcontractors or authorized distributors regarding possible improvements in the operation, functionality or use of Delphix's software products. You hereby grant to Delphix and its subcontractors and authorized distributors, without charge, the right to use, copy, modify and create derivative works of any such suggestions, data, feedback and information solely for the purpose of improving the operation, functionality or use of its existing and future product offerings and commercializing such offerings.

- 3. **CONFIDENTIALITY.**

- 3.1. *Confidential Information.* "*Confidential Information*" means: regardless of whether such information is marked or otherwise identified in writing as confidential, (a) each party's software products, in byte code or source code form; (b) any authorization keys and passwords delivered in order to operate such products; (c) Documentation, product road maps and development plans, and product pricing information; (d) any business, technical or training information; and (e) the specific business terms and pricing set forth in any quotation, Order Form or this Agreement.

- 3.2. *Exclusions.* Confidential Information does not include information that: (a) is or becomes generally known or available to the public through no act or omission of the party receiving Confidential Information ("Receiving Party"); (b) is rightfully known by the Receiving Party prior to receiving such information from the other party ("Disclosing Party") and without

restriction as to use or disclosure; (c) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information and without breach of this Agreement; or (d) is rightfully received by the Receiving Party from a third party without restriction on use or disclosure. The existence of this Agreement and the nature of the business relationship between the parties are not considered Confidential Information.

- 3.3. *Use and Disclosure Restrictions.* Receiving Party will not use the Disclosing Party's Confidential Information except as necessary to exercise the rights granted under this Agreement or to evaluate opportunities to license additional Software pursuant to this Agreement, and will not disclose such Confidential Information to any person or entity except to its Authorized Users. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to its legal or financial advisors that need to know in order to provide business advice to such party. In addition, each party may disclose the terms and conditions of this Agreement: (i) as required under applicable securities regulations; and (ii) on a confidential basis to investors or potential investors and acquirers of such party.

- 3.4. *Right of Equitable Relief.* The parties acknowledge that violations of the covenants and obligations of this Agreement may cause the non-breaching party irreparable injury for which an adequate remedy at law may not be available. Therefore, the non-breaching party shall be entitled to seek all remedies that may be available under equity, including immediate injunctive relief, in addition to whatever remedies may be available at law.

- 4. **WARRANTY.**

- 4.1. *Limited Software Warranty.* Subject to the remainder of this Section 4, for a period of forty five (45) days from the license term start date pursuant to an Order Form, Delphix represents and warrants that, (a) the Software will substantially conform to the functional specifications set forth in the applicable Documentation, and (b) to Delphix's knowledge, Delphix has not provided with the Software any virus, Trojan horse, or trap door.

- 4.2. *Sole Remedy.* If, during the warranty period set forth in Section 4.1, Delphix receives written notice from you of non-conformity of the Software with the warranty set forth in Section 4.1, Delphix will, as your sole and exclusive remedy and Delphix's entire liability for such non-conformity: (a) deliver a correction or workaround for the non-conformity; or (b) if Delphix is unable to deliver such a correction or workaround, provide written notice to you

and, upon your return or confirmed destruction of all copies of the non-conforming Software to Delphix, refund the license fees paid by you for such non-conforming Software. THE FOREGOING STATES YOUR SOLE AND EXCLUSIVE REMEDY FOR WARRANTY CLAIMS RELATED TO THE SOFTWARE.

- 4.3. *Disclaimer.* Delphix does not warrant that the Software will meet your requirements, that the Software will operate in combinations with equipment, devices, software or systems provided by persons other than Delphix and that the operation of the Software will be error-free or uninterrupted. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, DELPHIX AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THOSE RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY OR COMPLETENESS OF RESULTS, CONFORMANCE WITH DESCRIPTION, AND NON-INFRINGEMENT. DELPHIX AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.

- 5. **TRIAL USE.**

- 5.1. If Delphix has provided you with Software for evaluation only, you have 30 days from the installation date to evaluate the Software. If you decide to use any of the Software after the 30-day trial period, you must obtain a paid license under terms set out in the applicable Order Form. If you decide not to obtain a paid license for any Software after the 30-day trial period, you must cease using the Software and must delete any copies of it from your systems. Software licensed during the 30-day evaluation period is provided "as is," and Delphix does not provide technical support or offer any warranties until a paid license is obtained.

- 7. **LIMITATION OF LIABILITY.**

- 7.1. *Exclusion of Damages.* Notwithstanding anything to the contrary, this Agreement does not limit liability due to death or personal injury caused by gross negligence, or liability due to fraudulent misrepresentations or willful misconduct, or liability arising from breaches of confidentiality or licensing obligations hereunder. SUBJECT TO THE FOREGOING SENTENCE, IN NO EVENT WILL EITHER PARTY, OR ITS SUPPLIERS, BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS, REVENUE, GOODWILL, ANTICIPATED SAVINGS) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF THIS

AGREEMENT, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), FAILURE OF A REMEDY TO ACCOMPLISH ITS PURPOSE, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. You may have other rights under applicable mandatory local laws. This Agreement does not change your rights under applicable mandatory local laws if such laws do not permit it to do so.

- 7.2. *Cap on Liability.* IN NO EVENT WILL DELPHIX OR ITS SUPPLIERS' AGGREGATE LIABILITY UNDER THIS AGREEMENT, OR RELATING TO ITS SUBJECT MATTER, EXCEED THE AMOUNT PAID BY YOU FOR THE SOFTWARE GIVING RISE TO THE CLAIM.

- 8. **EXPIRATION AND TERMINATION.**

- 8.1. *Termination for Breach.* Either party will have the right to terminate this Agreement or any Order Form if the other party breaches any material term of the Agreement or Order Form, as the case may be, and if such breach is capable of cure, the breaching party fails to cure such breach within thirty (30) days after receiving written notice thereof. Either party will have the right to terminate this Agreement if the other becomes insolvent or makes an assignment for the benefit of creditors, or a trustee or receiver is appointed for such other party or for a substantial part of its assets, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against such other party. Termination of this Agreement under this section terminates all Order Forms and Software licenses granted hereunder.

- 8.2. *Effect of Termination or Expiration.* Upon termination or expiration of this Agreement or an Order Form, all Software licenses and rights to use Confidential Information that are granted thereunder shall terminate. Upon termination of this Agreement or expiration of the license term in any Order Form, you will: (i) promptly return to Delphix or destroy the applicable Software and Confidential Information and all copies and portions thereof, in all forms and types of media; and (ii) promptly pay all fees owing up to the date of termination.Sections 2.4, 2.5, 4.3, 8.2 and 9, and your obligations under Sections 2.2, 2.3, 3 and 7, will survive the termination or expiration of this Agreement or of any Order Form.

- 8.3. *Survival.* Sections 1, 2.2, 2.4, 2.5, 3, 4.3, 7, 8.2, 8.3 and 9, will survive the termination or expiration of this Agreement or of any Order Form.

- 9. **GENERAL.**

- 9.1. *Promotion.* Unless otherwise provided in the Order Form, you agree that Delphix may use your name and logo (in a form you approve) to identify you as a customer on Delphix's website or in marketing or publicity materials.

- 9.2. ***Export Control.*** You agree to comply fully with all relevant export laws and regulations, including those of the United States and the Member States of the European Union. These laws include restrictions on destinations, end-users and end use. You will ensure that neither the Software, nor any direct product thereof are: (a) exported or re-exported directly or indirectly in violation of applicable export laws; or (b) used for any purposes prohibited by applicable export laws, including but not limited to nuclear, chemical, or biological weapons proliferation. You will, at Delphix's request, demonstrate compliance with all such applicable export laws, restrictions, and regulations.

- 9.3. ***Assignment.*** You may not assign this Agreement, in whole or in part, by operation of law or otherwise, without Delphix's express prior written consent. Notwithstanding the above, if you merge with another company or are acquired, the surviving entity may continue to use the licenses to the Software licensed to you under accepted Order Forms, upon prior written notice to Delphix, in compliance with the terms and conditions of this Agreement. Any attempt to assign this Agreement without such consent will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

- 9.4. ***Governing Law and Jurisdiction.*** This Agreement will be governed by and construed in accordance with the laws of the State of California excluding that body of laws known as conflicts of law. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and you and Delphix irrevocably consent to the personal jurisdiction and venue therein.

- 9.5. ***Verification and Audit.*** You will monitor and track access to and use of the Software. At Delphix's written request, you will furnish Delphix with (i) a certification signed by an officer of your company providing user or access information that identifies whether the Software is being used in accordance with the terms of this Agreement and the applicable Order Forms, and (ii) log files from any support or license tools that regulate access to the Software. Upon at least thirty (30) days prior written notice, Delphix may engage, at its expense, an independent auditor to audit your use of the Software to ensure that you are in compliance with the terms of this Agreement and the applicable Order Forms. Any such audit will be conducted during regular business hours at your facilities and will not unreasonably interfere with your business activities. You will provide the auditor with access to the relevant records and facilities. If an audit reveals that you have underpaid fees to Delphix during the period

audited, then Delphix will invoice you, and you will promptly pay Delphix for such underpaid fees based on Delphix's price list in effect at the time the audit is completed. If the underpaid fees exceed five percent (5%) of the license fees paid by you for the Software, then you will also pay Delphix's costs of conducting the audit.

- 9.6. *Nonexclusive Remedy.* Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

- 9.7. *Force Majeure.* Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, terrorism, riot, natural disasters or governmental action.

- 9.8. *Notices.* All notices required or permitted under this Agreement will be in writing. Notices will be effective upon delivery if delivered in person and upon mailing if delivered by courier service, overnight delivery services or by a form of certified or express mail. Notices affecting this Agreement as a whole will be sent to the address set forth above, if any, or to such other address of a party as such a party may identify in writing; notices related to a particular transaction will be sent to the primary corporate addresses set forth in the Order Form or to such other address as you or Delphix may notify the other party in writing.

- *Entire Agreement; Modification; Interpretation.* This Agreement, including all accepted Order Forms referencing this Agreement, constitutes the complete and exclusive understanding and agreement between you and Delphix regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. You agree that additional or different terms on your purchase order shall not apply. Failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of this Agreement will be effective only if in writing and signed by you and an authorized representative of Delphix. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. The word "including" when used in this Agreement will mean including without limitation of the generality of any description, definition, term or phrase preceding that word.

- **END OF TERMS**