MRE TECHNOLOGY SERVICES, LLC ("MRETS")

STANDARD TERMS AND CONDITIONS OF SALE

FOR TECHNOLOGY PRODUCTS AND SERVICES

1.   Offer and Acceptance: MRETS offers to sell and deliver products and services (referred to herein as "products") in accordance with the terms and conditions set forth herein. Acceptance of this offer is expressly limited to such terms. MRETS hereby objects to and rejects any additional or different terms proposed by Buyer, including those contained in Buyer's purchase order, unless MRETS expressly agrees to such terms in writing.

2.   Prices and Releases: MRETS's price in effect on the actual ship date for the quantity actually shipped shall apply.

3.   Title and Delivery: If products are shipped from MRETS facilities, shipments inside the U.S. shall be delivered F.O.B. MRETS's offices in Houston, Texas. Shipments outside the U.S. shall be delivered FCA (Incoterms 2000) Buyer's designated carrier. Title and liability for loss or damage shall pass to Buyer upon MRETS's delivery to Buyer's designated carrier. Any subsequent loss or damage shall not relieve Buyer from its obligations. Buyer shall reimburse MRETS for insurance and transportation costs on international shipments and shall be responsible for all import duties, taxes and any other expenses incurred or licenses or clearances required. MRETS may deliver products in installments. Delivery dates are estimates. MRETS shall not be liable for any damage, losses or expenses incurred by Buyer if MRETS fails to meet the estimated delivery dates. If shipment of products is made directly from a distributor or manufacturer to Buyer, the shipping rules and conditions stated in their policies shall apply.

4.   Payment Terms: If MRETS extends credit to Buyer, payment terms shall be net thirty (30) days after MRETS's invoice. MRETS may change or withdraw credit amounts or payment terms at any time for any reason. If the products are delivered in installments, Buyer shall pay for each installment in accordance with the above payment terms. If Buyer fails to make any payment when due, MRETS may suspend or cancel performance under any agreements in which MRETS has extended credit to Buyer. MRETS's suspension of performance may result in rescheduling delays. If, in MRETS's judgment, Buyer's financial condition does not justify the payment terms specified herein, then MRETS may terminate this contract unless Buyer immediately pays for all products that have been delivered and pays in advance for all products to be delivered. Termination in accordance with this clause shall not affect MRETS's right to pursue any other available remedies.

5.   Taxes: Prices do not include applicable taxes or duties. Buyer is solely responsible for paying all applicable taxes and duties. MRETS will add sales taxes to the sales price where required by applicable law, and Buyer will pay such taxes unless Buyer provides MRETS with a duly executed sales tax exemption certificate. If Buyer is required to pay use taxes in its home jurisdiction, to state or local taxing authorities or both, Buyer will accrue and pay such taxes on a timely basis and indemnify MRETS for any costs, expense and liabilities associated with such taxes. If Buyer is required by law to withhold any amount of tax from its payment to MRETS, Buyer shall

promptly pay such amount to the appropriate tax authority and take all reasonable steps to minimize such withholding tax.

6.   Contingencies: MRETS shall not be in breach of this contract and shall not be liable for any non-performance or delay in performance if such non-performance or delay is due to a force majeure event or other circumstances beyond MRETS's reasonable control, including but not limited to shortages of labor, energy, fuel, machinery or materials, technical or yield failures, war, civil unrest, any government act, law or regulation, including any judicial order or decree, any communication or power failure, labor dispute, natural disaster, fire, flood, earthquake, explosion, terrorist act or Act of God.

7.   Warranties and Related Remedies:

7.1   Products not manufactured by MRETS shall carry only the warranty offered by the original manufacturer, unless specified otherwise in the offering or agreed upon by MRETS. Services shall be good and workmanlike. MRETS's warranty shall not apply to products that have been improperly installed, installed in an improper application, damaged by accident or abuse, or if Buyer alters them or fails to maintain them in accordance with the manufacturer's specifications or good practice. All labor costs and transportation costs are the responsibility and the expense of Buyer or as stated in the warranty of the original manufacturer. Buyer agrees to follow all applicable return policies of the manufacturer or the manufacturer's representative with respect to refund or repair procedures. MRETS shall not be liable for any defects that result from Buyer's design, specifications or instructions for such components.

7.2   EXCEPT AS SET FORTH ABOVE, PRODUCTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." MRETS DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING PRODUCTS AND SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.3   Buyer agrees that prior to using or distributing any systems that include MRETS products, Buyer will thoroughly test such systems and the functionality of such MRETS products as used in such systems. MRETS may provide technical, applications or design advice, quality characterization, reliability data or other services. Buyer agrees that providing these services shall not expand or otherwise alter MRETS's warranties, as set forth above, and no additional obligations or liabilities shall arise from MRETS providing such services.

7.4   No MRETS products are authorized for use in FDA Class III (or similar life-critical medical equipment) unless authorized officers of the parties have executed a special agreement specifically governing such use. Only those MRETS components which MRETS has specifically designated as military grade are designed and intended for use in military/aerospace applications or environments. Buyer acknowledges and agrees that any military or aerospace use of MRETS products which have not been so designated is solely at the Buyer's risk, and that Buyer is solely responsible for compliance with all legal and regulatory requirements in connection with such use.

7.5   Notwithstanding anything to the contrary, SOFTWARE PRODUCTS AND EXPERIMENTAL AND DEVELOPMENT PRODUCTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." MRETS DISCLAIMS ALL WARRANTIES, EXPRESS OR

IMPLIED, REGARDING SUCH SOFTWARE PRODUCTS AND EXPERIMENTAL AND DEVELOPMENT PRODUCTS, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8.   Intellectual Property Indemnification:

8.1   **MRETS will not pay any damages, liabilities or costs and will not defend, indemnify or hold harmless Buyer against any claim, suit or proceeding brought against Buyer, insofar as such claim, suit or proceeding is based on an allegation that products supplied by MRETS to Buyer directly infringe any patent, copyright, or trade secret.**

THE FOREGOING STATES THE SOLE LIABILITY OF THE PARTIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING INTELLECTUAL PROPERTY INDEMNIFICATION TERMS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT, AND THAT IN THE ABSENCE OF SUCH TERMS, THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

9.   Limitations and Damages Disclaimer:

9.1   General Limitations. IN NO EVENT SHALL MRETS BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS CONTRACT OR THE USE OF THE PRODUCTS PROVIDED HEREUNDER, REGARDLESS OF WHETHER MRETS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, ANCILLARY COSTS TO THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, RE-TESTING, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, LOSS OF DATA, OR BUSINESS INTERRUPTION. NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT AGAINST MRETS MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED.

9.2   Specific Limitations. IN NO EVENT SHALL MRETS'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR ANY USE OF ANY MRETS PRODUCT PROVIDED HEREUNDER, EXCEED THE TOTAL AMOUNT PAID TO MRETS FOR THE PARTICULAR UNITS SOLD OR SERVICES RENEDERED UNDER THIS CONTRACT WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM AROSE, WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. THE EXISTENCE OF MORE THAN ONE CLAIM AGAINST THE PARTICULAR UNITS OR SERVICES SOLD TO BUYER UNDER THIS CONTRACT SHALL NOT ENLARGE OR EXTEND THIS LIMIT.

9.3   BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

9.4   ATTORNEYS' FEE WAIVER.   If there is any dispute concerning these terms and conditions or the performance of either party pursuant to these terms and conditions, and either party retains counsel for the purpose of enforcing any of these terms and conditions or asserting these terms and conditions in defense of suit filed against it, each party will be solely responsible for its own costs and attorneys' fees incurred in connection with the dispute irrespective of whether or not a lawsuit is actually commenced or prosecuted to conclusion, and regardless of whether applicable law provides for attorneys' fees as a recoverable cost or element of damage in such a claim or suit.

10.   Cancellations and Rescheduling. No cancellation or rescheduling of orders by Buyer within fifteen (15) days of MRETS's estimated shipping date for the component will be accepted.

11.   Non-waiver of Default: In the event of any default by Buyer, MRETS may decline to make further shipments. If MRETS elects to continue to make shipments, MRETS's action shall not constitute a waiver of any such default or affect MRETS's legal remedies for any such default.

12.   Governing Law: This contract shall be governed by and interpreted in accordance with the laws of the State of Texas, without reference to conflict-of-laws principles. If for any reason a court of competent jurisdiction finds any provision of this contract to be unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties, and the remainder of this contract will continue in full force and effect. This contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, or by the Uniform Computer Information Transactions Act (UCITA). Buyer agrees that non-exclusive jurisdiction for any dispute arising out of or relating to this contract lies within courts located in the State of Texas and consents to venue in Harris County, Texas. Notwithstanding the foregoing, any judgment may be enforced in any United States or foreign court, and MRETS may seek injunctive relief in any United States or foreign court.

13.   Export Control:

13.1 Buyer agrees that unless prior authorization is obtained from the U.S. Department of Commerce, neither Buyer nor its subsidiaries shall export, re-export, or release, directly or indirectly, any technology, software, or software source code (as defined in Part 772 of the Export Administration Regulations of the U.S. Department of Commerce ("EAR")), received from MRETS, or export, re-export, or release, directly or indirectly, any direct product of such technology, software, or software source code (as defined in Part 734 of the EAR), to any destination or country to which the export, re-export or release of the technology, software, software source code, or direct product is prohibited by the EAR. Buyer furnishes the assurances provided herein to MRETS in compliance with Part 740 (Technology and Software Under Restriction) of the EAR.

13.2 Buyer further agrees to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any product, technical data, software or software source code acquired from MRETS under this contract or any direct product of such technical data, software or software source code. Accordingly, Buyer shall not sell, export, re-export, transfer, divert or otherwise dispose of any such product, technical data, software or software source code directly or indirectly to any person, firm, entity, country or countries prohibited by US or applicable non-US laws. Further, Buyer shall give notice of the need to comply with such laws and regulations to any person, firm or entity which it has reason to believe is obtaining any such

product, technical data, software or software source code from Buyer with the intention of exportation. Each party shall secure, at its own expense, such licenses and export and import documents as are necessary for each respective party to fulfill its obligations under this contract. If government approvals cannot be obtained, MRETS may terminate, cancel or otherwise be excused from performing any obligations it may have under this contract.

13.3 Any product export classification made by MRETS shall be for MRETS's internal use only and shall not be construed as a representation or warranty regarding the proper export classification for such product or whether an export license or other documentation is required for the exportation of such product. This Section 13 shall survive termination of this contract.

14.   Assignment: This contract shall not be assignable by Buyer without MRETS's prior written consent. Any unauthorized assignment shall be null and void.

15.   Entire Agreement: This contract and the manufacturer's and distributor's instructions, warranties, warranty disclaimers and policies incorporated herein by reference or otherwise constitute the entire agreement between the parties relating to the sale of the products and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No prior representations or statements relating to the sale of the products made by any MRETS representative, which are not stated herein, shall be binding on MRETS. No addition to or modification of any provision of this contract shall be binding upon MRETS unless made in writing and signed by a duly authorized MRETS representative. No course of dealing or trade usage or course of performance shall be relevant to explain or supplement any term in this contract. These terms and conditions shall prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any purchase order or other writing not expressly incorporated herein, including but not limited to data sheets, application notes and purchase order acknowledgements. The section headings contained in this contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this contract. The distributor's terms and conditions for use, warranties and disclaimers, limitations of liablity and remedies and other terms which are incorporated into this contract are attached hereto as Exhibit A.

PRODUCT LICENSE AND SERVICES AGREEMENT v2

This Product License and Services Agreement ("Agreement") is made and entered into as of _____, 20____ ("Effective Date") by and between Delphix Corp., a Delaware corporation headquartered in 1400A Seaport Blvd., Suite 200, Redwood City, CA 94063 ("Delphix") and _____, a _____ corporation located at _____ ("Licensee").

1. **SCOPE AND KEY TERMS.** This Agreement will govern Licensee's use of the Software and provision of Professional Services by Delphix to Licensee under the applicable Order Form or statement of work. References below to "you" or "your" refer to the Licensee of the Software. Delphix is the "Licensor" whether you received the Software from Delphix directly or an authorized partner. The Software is licensed, not sold. The Software is the proprietary information of Delphix or its licensors 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.*** This Agreement and the Order Form(s) accepted by both you and Delphix or its authorized partner will govern your use of the Software. An ***"Order Form"*** is a Delphix ordering document which (a) references this Agreement; (b) identifies the specific Software and rights being licensed to you under those terms, including the License Type, quantity, License Term, and territory; and (c) sets forth the fees and payment terms for the Software licenses. All Order Forms are subject to Delphix's acceptance. If no other Delphix ordering 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.

1.2. ***"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 customers and/or licensees for use with the Software.

1.3. ***"License Term"*** means the license duration set forth in the applicable Order Form.

1.4. ***"License Type"*** means the usage rights granted under the applicable Order Form.

1.5. ***"Professional Services"*** mean the installation, configuration, deployment and/or training services offered by Delphix in connection with your use of the Software. Such Professional Services will be set forth in the applicable Order Form or statement of work.

1.6. ***"Services Warranty Period"*** has the meaning set forth in Section 4.3.

1.7. ***"Software"*** means the specific software products provided by Delphix and listed on an Order Form and (a) all related Documentation; and (b) all updates, modifications and results of technical and maintenance services provided to you.

1.8. ***"Software Warranty Period"*** has the meaning set forth in Section 4.1.

1.9. ***"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) for your internal business purposes; and (b) copy the Software as reasonably necessary to exercise the license rights granted with regard to the Software, including making a reasonable number of copies for backup and archival purposes.

2.2. *Conditions.* The rights granted to you herein are subject to your compliance with the following obligations:

<table>
<tr><td>(a)</td><td>You will not copy the Software or Documentation, in whole or in part, except as expressly authorized in this Agreement.</td></tr>
<tr><td>(b)</td><td>You will not sell, resell, distribute, transfer, assign, lease, lend, sublicense or rent the Software or Documentation, or make the functionality of the Software available to any other party through any means, including, without, limitation, by uploading the Software to a network, or file-sharing service or through any hosting, application services provider, service bureau, time-sharing or other type of services, except as expressly authorized in this Agreement.</td></tr>
<tr><td>(c)</td><td>You will not disassemble, decompile, reverse engineer, modify or create derivative works of the Software or Documentation nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable mandatory local law.</td></tr>
<tr><td>(d)</td><td>You will not allow the Software to be accessed or used by anyone other than your employees and offsite contractors (as permitted in Section 2.3 below).</td></tr>
<tr><td>(e)</td><td>You will not disclose to any third party any comparison of the results of operation of the Software with other products.</td></tr>
<tr><td>(f)</td><td>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.</td></tr>
<tr><td>(g)</td><td>Your use of the Software is time-limited to the License Term set out in the applicable Order Form, and access may be regulated through a license management tool. You will not install or use the Software in any manner that circumvents or interferes with the operation of such a tool or any other technological measure that controls access to the Software.</td></tr>
</table>

2.3. **Offsite Contractors.** You may allow offsite contractors who require access to and use of the Software solely for your benefit, provided that: (a) you are responsible for the acts and omissions of such offsite contractors with respect to Software licensed under this Agreement; (b) you ensure the Software is completely and irretrievably uninstalled from any such offsite contractors' equipment and premises (except for those modules necessary to view results and other data generated from using the Software) immediately upon completion of such offsite contractors' services requiring use of the Software; and (c) you have written agreement(s) in place with such offsite contractors requiring such offsite contractors protect the Software, Confidential Information and intellectual property of Delphix 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**"). 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, 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, distribute, 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 Delphix's existing and future product offerings and commercializing such offerings.

2.6 **Deliverables.** Delphix will own all right, title and interest in and to the Deliverables. For purposes of an Order Form and/or statement of work, the term "Deliverables" shall mean any deliverables created by Delphix during the performance of the Professional Services that are specifically identified in such statement of work, whether published or unpublished. Delphix hereby grants to Licensee and its Affiliates (defined below) a revocable, worldwide, royalty-free, non-exclusive, non-transferable, limited, right and license to use, execute or copy the Deliverables solely for its internal business purposes and solely in connection with Licensee's use of the Professional Services or Deliverables. For purposes of this Agreement, the terms "Affiliates" shall mean any entity that Controls, or is Controlled by, or is under common Control with Licensee, where "Control" means ownership, directly or indirectly, of fifty percent (50%) or more of the voting interest of Licensee.

3. CONFIDENTIALITY.

3.1. **Confidential Information.** "**Confidential Information**" means: regardless of whether information is marked or otherwise identified in writing as confidential, (a) Deliverables, Licensee Materials and 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, discounts and pricing set forth in any quotation, Order Form and/or this Agreement.

3.2. *Exclusions.* The obligations in Section 3.3 will not apply to the extent any information: (a) is or becomes generally known to the public through no breach of this Agreement by the receiving party ("Receiving Party"); (b) was rightfully in the Receiving Party's possession at the time of disclosure, without an obligation of confidentiality; (c) is independently developed by the Receiving Party without use of the disclosing party's ("Disclosing Party") 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: (i) 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 (ii) not disclose such Confidential Information to any third party, other than to its employees, contractors and as permitted under this Section 3.3. The foregoing obligations will not restrict either party from disclosing the other party's Confidential Information or the terms and conditions of this Agreement: (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 enable it to contest such order or requirement; (b) on a confidential basis to its legal or financial advisors that need to know in order to provide business advice to such party; (c) as required under applicable securities regulations; or (d) on a confidential basis to present or future providers of venture capital and/or potential private investors in or acquirers of such party.

4. WARRANTY.

4.1. *Limited Software Warranty.* For a period of forty-five (45) days from the License Term start date set forth on the applicable Order Form ("Software Warranty Period"), Delphix warrants that, under normal authorized use: (a) the Software will substantially conform to the functional specifications set forth in the Documentation; and (b) it has used commercially reasonable efforts in accordance with industry standards to screen the Software, and to its knowledge, the Software, as delivered, does not contain any virus, Trojan horse, or trap door.

4.2. *Software Warranty Remedy.* If, during the Software Warranty Period, Delphix receives written notice from you of any 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 and its licensors' sole and exclusive 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 *Services Warranty.* Delphix warrants that the Professional Services will be performed in a professional manner in accordance with applicable industry standards. This warranty will be in effect for a period of thirty (30) days from the completion of the Professional Services set forth in the applicable Order Form or statement of work (the "Services Warranty Period"). If during the Services Warranty Period, Delphix receives written notice from you of non-conformity with the performance of the Professional Services set forth in this Section 4.3, Delphix will, as your sole and exclusive remedy and Delphix's entire liability for any breach of the foregoing warranty, at its sole option and expense, promptly re-perform any Professional Services that fail to meet this limited warranty or refund to you the services fees paid for the non-conforming Professional Services. THE FOREGOING STATES YOUR SOLE AND EXCLUSIVE REMEDY FOR WARRANTY CLAIMS RELATED TO THE SERVICES.

4.4. *Exclusions.* The warranty set forth in Section 4.1 above shall not apply if the failure of the Software results from or is otherwise attributable to: (a) repair, maintenance or modification of the Software by persons other than authorized personnel of Delphix; (b) accident, negligence, abuse or misuse of the Software by Licensee or by persons other than authorized personnel of Delphix; or (c) your use of the Software other than in accordance with this Agreement. The warranty set forth in Section 4.3 above shall not apply if the failure to perform the Professional

Services results from or is otherwise attributable to any failure by Licensee to comply with its responsibilities under Section 9.1.

4.5. ***Disclaimer.*** EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, DELPHIX AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY OR COMPLETENESS OF RESULTS, CONFORMANCE WITH DESCRIPTION, NON-INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE, EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED. DELPHIX DOES NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT USE THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE.

5. INDEMNIFICATION.

5.1. ***Infringement Indemnity.*** Delphix will defend or settle, at its expense, any third party action or suit brought against you alleging that the Software or Deliverables provided by Delphix to you hereunder directly infringes any United States patent or any copyright or misappropriates any trade secret during the paid License Term ("**Claim**"), and Delphix will pay any damages awarded in final judgment against you or agreed to in settlement by Delphix that are attributable to any such Claim, provided that you: (a) promptly notify Delphix in writing of the Claim; (b) grant Delphix sole control of the defense and any related settlement of the Claim; and (c) provide Delphix, at Delphix's expense, with all assistance and information reasonably required for the defense and resolution of the Claim. Delphix will not be responsible for any compromise made or expense incurred without its consent.

5.2. ***Remedy.*** If use of any of the Software or Deliverables is, or in Delphix's reasonable opinion is likely to be, the subject of a Claim specified in Section 5.1 above, then Delphix may, at its sole option and expense: (a) procure for you the right to continue using the Software or Deliverables; (b) replace or modify the affected Software or Deliverables so that it is non-infringing while maintaining substantially equivalent in function to the original Software or Deliverables; or (c) if options (a) and (b) above cannot be accomplished despite Delphix's reasonable efforts, then Delphix may terminate your rights and Delphix's obligations hereunder (i) with respect to such Software and refund the unamortized portion of the license fees paid for such Software, based upon a straight-line depreciation calculation over the term of the license for such Software commencing as of the date you received such Software; or (ii) within thirty (30) days after such termination shall grant Licensee credit for the fees paid under the applicable Order Form and/or statement of work for the infringing Deliverables giving rise to the Claim. Upon such termination, Licensee will have no further right to the Deliverables and shall promptly return any such Deliverables to Delphix.

5.3. ***Exclusions.*** Delphix's obligations under Section 5.1 above shall not apply to the extent any Claim results from: (a) modifications to the Software or Deliverables made by a party other than Delphix, if the infringement or misappropriation would not have occurred but for such modifications; (b) the combination, operation or use of the Software with equipment, devices, software, systems or data not supplied by Delphix or intended by the license of the Software by Delphix to you, if the infringement or misappropriation would not have occurred but for such combination, operation or use; (c) your failure to use updated or modified Software provided by Delphix to avoid infringement or misappropriation; (d) Delphix's compliance with any designs or specifications provided by you; (e) your use of the Software or Deliverables other than in accordance with this Agreement; or (f) Software licensed for no fee, including Software licensed during the Evaluation Period.

THE PROVISIONS OF THIS SECTION 5 SET FORTH DELPHIX'S AND ITS LICENSORS' SOLE AND EXCLUSIVE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

6. LIMITATION OF LIABILITY.

IN NO EVENT WILL DELPHIX OR ITS LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, DATA, BUSINESS OR PROFITS, REVENUE, GOODWILL, OR OTHER ECONOMIC LOSS OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY AND WHETHER OR NOT DELPHIX WAS

ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. IN NO EVENT WILL DELPHIX OR ITS LICENSORS' AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE AMOUNT PAID BY YOU FOR THE AFFECTED SOFTWARE OR SERVICES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY CLAIM. THE FOREGOING LIMITATIONS SHALL SURVIVE AND APPLY REGARDLESS OF THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. You agree that the foregoing limitations of liability constitute a material inducement for Delphix to enter into this Agreement and that the purchase price and fees charged to you would be substantially higher without such limitations.

7. EXPIRATION AND TERMINATION.

7.1. *Termination for Cause.* Either party will have the right to terminate this Agreement or any Order Form if the other party breaches any material term of this Agreement or applicable Order Form, as the case may be, and fails to cure such breach within thirty (30) days after receiving written notice thereof from the non-breaching party. 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 will terminate all Order Forms and Software licenses granted hereunder.

7.2. *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 and the rights shall immediately and automatically fall back to Delphix. 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.

7.3. *Survival.* Sections 1, 2.2, 2.4, 2.5, 3, 4.5, 5, 6, 7.2, 7.3 and 8 will survive the termination or expiration of this Agreement or of any Order Form.

8. GENERAL.

8.1. *Export Control.* You will comply fully with U.S. Export Administration Regulations, and any export laws, restrictions and regulations, including those of the United States and the member states of the European Union, to ensure that the Software (software, any technical data related thereto and any direct product thereof) is not exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by such laws and regulations. You will, at Delphix's request, demonstrate compliance with all such applicable export laws, restrictions and regulations.

8.2. *Compliance with Laws.* You will be solely responsible for your compliance with, and agree to comply with, all applicable laws in connection with your use of the Software.

8.3. *U.S. Government Rights.* The Software and its documentation are "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and DFARS 227.7202. If the Software and its documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the Software and its documentation shall be as specified in this Agreement.

8.4. *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.

8.5. *Governing Law and Jurisdiction.* This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to application of conflicts of law rules or principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply. The Uniform Computer Information Transactions Act as enacted shall 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.

8.6. *Verification.* Upon 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.

8.7. *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 any other remedies under this Agreement or otherwise.

8.8. *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.

8.9. *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.

8.10. *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.

8.11 *Modification and Waiver*. 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.

8.12. *Severability.* 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.

8.13 *Relationship of the Parties.* Delphix is performing the Professional Services as an independent contractor, not as an employee, agent, joint venturer or partner of Licensee. Delphix acknowledges and agrees that its personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Licensee makes available to its employees. Accordingly, for a period of twelve (12) months following the completion of Professional Services, Licensee agrees not to directly or indirectly solicit for employment any Delphix employees, contractors or subcontractors, provided that a job posting available to the general public shall not be deemed such a solicitation.

8.14. *Entire Agreement.* This Agreement, including all accepted Order Forms and statements of work referencing this Agreement, constitutes the entire agreement between you and Delphix with respect to the subject matter hereof, and supersedes all prior, contemporaneous written or oral agreements, understandings and communications on the subject. Any terms or conditions contained in your purchase order or other ordering document that are inconsistent with or are addition to the terms and conditions of this Agreement are hereby rejected by Delphix and shall be deemed null.

9.   **PROFESSIONAL SERVICES.**

9.1   *Performance of Services.* Delphix will perform the Professional Services in accordance with the terms and conditions of this Agreement and of each Order Form and/or statement of work. Licensee shall have no obligation whatsoever to engage Delphix to provide any Professional Services, except as specifically agreed in writing in an Order Form and/or statement of work. Conversely, Delphix shall have no obligation to provide any requested Professional Services until it accepts an Order Form and/or agrees to the terms of a statement of work. Upon the signing (i) of an Order Form by Licensee and/or (ii) by both parties of a statement of work, Delphix's employees and/or Delphix's contractors or subcontractors shall perform the Professional Services in accordance therewith and this Agreement. Delphix shall be responsible for the compliance of its employees, contractors and subcontractors with this Agreement.

9.2   *Licensee Responsibilities.* Licensee will provide Delphix with access to Licensee's sites and facilities during Licensee's normal business hours as reasonably required by Delphix to perform the Professional Services. Licensee will also make available to Delphix any data, information and any other materials reasonably required by Delphix to perform the Professional Services, including, but not limited to, any data, information or materials specifically identified in the statement of work (collectively, "Licensee Materials").

10.   **TRIAL USE**.

If Delphix has provided you with Software for evaluation only, you have thirty (30) days from installation date to evaluate the Software ("Evaluation Period"). If you decide to use any of the Software after the Evaluation 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 Evaluation Period, you must cease using the Software and delete any copies of it from your systems. Software licensed during the Evaluation Period is provided "as-is" and Delphix does not provide technical and maintenance services or offer any warranties until a paid license is obtained.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

Delphix Corp.			
Signature:		Signature:	
Name:		Name:	
Title:		Title:	
Date:		Date:	