PRODUCT LICENSE AND SERVICES AGREEMENT

IMPORTANT INFORMATION – READ CAREFULLY

UNLESS YOU HAVE OBTAINED PERMISSION TO USE THE SOFTWARE UNDER A SEPARATE, DULY SIGNED LICENSE AGREEMENT WITH PERFORCE SOFTWARE, INC., A DELAWARE CORPORATION ("PERFORCE"), DELPHIX CORP., A DELAWARE CORPORATION AND A WHOLLY-OWNED SUBSIDIARY OF PERFORCE ("DELPHIX"), OR AN AUTHORIZED RESELLER OR DISTRIBUTOR OF PERFORCE OR DELPHIX, THE ACCOMPANYING SOFTWARE IS PROVIDED UNDER THE FOLLOWING TERMS AND CONDITIONS AND ANY SUPPLEMENTAL TERMS REFERENCED BELOW. YOUR RIGHT TO USE THE SOFTWARE IS CONDITIONED UPON YOUR ACCEPTANCE OF THIS PRODUCT LICENSE AND SERVICES AGREEMENT ("AGREEMENT"). IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS SET FORTH HEREIN, AND YOU DO NOT HAVE A SEPARATE LICENSE AGREEMENT AS REFERENCED ABOVE, YOU MAY NOT DOWNLOAD, USE, OR COPY THE SOFTWARE, AND YOU MUST CEASE USING THE SOFTWARE AND DELETE ANY COPIES OF IT FROM YOUR SYSTEMS.

1. **SCOPE AND KEY TERMS.**

1.1 ***Overview.*** This Agreement will govern Licensee's use of the Software and provision of Services by Perforce to Licensee under the applicable Order Form (defined in Section 1.2 below) or statement of work ("**SOW**"). References below to "you" or "your" refer to the Licensee of the Software. Perforce is the "Licensor" whether you received the Software from Perforce or Delphix directly, or from an authorized reseller or distributor. The Software is licensed, not sold. The Software is the proprietary information of Perforce and Delphix, and any of 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 Perforce reserves all rights not expressly granted in this Agreement.

This Agreement and the Order Form(s) accepted by both you and Perforce, Delphix, or its authorized reseller or distributor, will govern your use of the Software and provision of any Services by Perforce. All Order Forms are subject to Perforce's acceptance. If no other Perforce ordering document referencing the license transaction and executed by Perforce is delivered to you, a Perforce 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 Perforce's acceptance of the transaction.

1.2. ***Definitions.***

"***Affiliates***" shall mean any natural person, partnership, corporation, association, limited liability company, joint stock company, trust, joint venture, unincorporated organization, estate, labor union, or a government entity that, directly or indirectly, controls, is controlled by, or is under common control with another party. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a party whether through the ownership of voting securities, by contract, or otherwise.

"Documentation" means the user documentation, in written, electronic, or other format that describes the Software and its operation and which Perforce makes generally available to its customers and/or licensees for use with the Software.

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

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

"Order Form" means a Perforce ordering document that: (a) references this Agreement; (b) identifies the specific Services, Software, and rights being granted to you under those terms, including the License Type, quantity and License Term; and (c) sets forth the fees and payment terms for the Software licenses and/or Services.

"Professional Services" means the installation, configuration, deployment, and/or training services offered by Perforce in connection with your use of the Software. Such Professional Services will be set forth in the applicable Order Form and/or SOW.

"Services" means collectively the Support Services, Professional Services, and any other services Perforce provides in connection with the Software.

"Services Warranty Period" has the meaning set forth in Section 5.3.

"Software" means the specific software products provided by Perforce that are listed on an Order Form, all related Documentation, and all updates, modifications, and releases of the Software provided to you.

"Software Warranty Period" has the meaning set forth in Section 5.1.

"Support Services" means the technical maintenance and support services offerings or plans described in the [Perforce Support Policies (KBA1504)](https://support.Perforce.com/) located on Perforce's Knowledge Base located at: https://support.Perforce.com/.

2. **LICENSE.**

2.1. *License Grant*. Subject to your compliance with the terms and conditions of this Agreement, Perforce grants you a non-exclusive, non-transferable license, solely during the License Term set out in the applicable Order Form, to: (a) use, operate and/or access 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.

During the License Term, Perforce may collect, process and store data relating to your use of the Software. Any information we gather regarding you in connection with your use of the Software is subject to Perforce's Privacy Policy set forth at https://www.perforce.com/privacy-policy, as it may be amended from time to time.

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

(a) You will not copy the Software or Documentation, in whole or in part, except as expressly authorized in this Agreement.

(b) 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.

(c)   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.

(d)   You will not allow the Software to be accessed or used by anyone other than your employees and contractors (as permitted in Section 2.3 below).

(e)   You will not disclose to any third party any comparison of the results of operation of the 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 Perforce. 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 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.

2.3. **Contractors.** You may allow 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 contractors with respect to Software licensed under this Agreement; (b) you ensure the Software is completely and irretrievably uninstalled from any such 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 contractors' services requiring use of the Software; and (c) you have written agreement(s) in place with such contractors requiring such contractors protect the Software, Confidential Information and intellectual property of Perforce at least to the same extent as set forth in this Agreement. You acknowledge that Perforce has no warranty or other obligations to your 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; *provided, however*, that 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 Perforce, its subcontractors, or authorized resellers or distributors regarding possible improvements in the operation, functionality, or use of Perforce's software products. You hereby grant to Perforce and its subcontractors and authorized resellers and 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 Perforce's existing and future product offerings and commercializing such offerings.

2.6. **Deliverables.** Perforce will own all rights, title, and interest in and to the Deliverables. For purposes of an Order Form and/or SOW, the term "**Deliverables**" shall mean any deliverables created by Perforce during the performance of the Professional Services that are specifically identified in such Order Form and/or SOW, whether published or unpublished. Perforce hereby grants to Licensee and its Affiliates 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 Software and/or Deliverables.

2.7 **Trial Use.** If Perforce has provided you with Software for evaluation only, you have thirty (30) days from installation date and/or access date to evaluate the Software ("**Evaluation Period**"). If you decide to license use of 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 Perforce does not provide technical and maintenance services or offer any warranties until a paid license is obtained.

3. **NON-PERFORCE SOFTWARE.**

The Software may interoperate with third party products (by way of example, plugins) ("**Non-Perforce Software**") and you may choose to make such interoperability on your own or through a third-party vendor. The use of any such Non-Perforce Software with the Software licensed hereunder is subject to the paid License Term specified under the applicable Order Form. Perforce makes no representations whatsoever about the Non-Perforce Software and Perforce has no control over such Non-Perforce Software. You acknowledge and agree that Perforce: (a) is not responsible for such Non-Perforce Software, including without limitation, technical and maintenance services; and (b) cannot guarantee the continued availability of such Non-Perforce Software. Further, you acknowledge and agree that the use of any Non-Perforce Software is governed by such Non-Perforce Software third party vendor's terms and conditions or such other agreement.

4. **CONFIDENTIALITY.**

4.1. **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.

4.2. **Exclusions.** The obligations in Section 4.3 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.

4.3. *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 4.3. 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.

5. **WARRANTY.**

5.1. *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*"), Perforce 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.

5.2. *Software Warranty Remedy.* If, during the Software Warranty Period, Perforce receives written notice from you of any non-conformity of the Software with the warranty set forth in Section 5.1, Perforce will, as your sole and exclusive remedy and Perforce'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 Perforce 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 Perforce, 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.

5.3. *Services Warranty.* Perforce 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 SOW (the "*Services Warranty Period*"). If during the Services Warranty Period, Perforce receives written notice from you of non-conformity with the performance of the Professional Services set forth in this Section 5.3, Perforce will, as your sole and exclusive remedy and Perforce'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.

5.4. *Exclusions*. The warranty set forth in Section 5.1 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 Perforce; (b) accident, negligence, abuse or misuse of the Software by Licensee or by persons other than authorized personnel of Perforce; or (c) your use of the Software other than in accordance with this Agreement. The warranty set forth in Section 5.3 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 9.2.

5.5. ***Disclaimer.*** EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, PERFORCE 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. PERFORCE DOES NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT USE THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE.

6. **INDEMNIFICATION.**

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

6.2. ***Remedy.*** If use of any of the Software or Deliverables is, or in Perforce's reasonable opinion is likely to be, the subject of a Claim specified in Section 6.1 above, then Perforce 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 Perforce's reasonable efforts, then Perforce may terminate your rights and Perforce'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 SOW 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 Perforce.

6.3. ***Exclusions.*** Perforce's obligations under Section 6.1 above shall not apply to the extent any Claim results from: (a) modifications to the Software or Deliverables made by a party other than Perforce, 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 Perforce or intended by the license of the Software by Perforce 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 Perforce to avoid infringement or misappropriation; (d) Perforce'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 6 SET FORTH PERFORCE'S AND ITS LICENSORS' SOLE AND EXCLUSIVE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

7. **LIMITATION OF LIABILITY.**

IN NO EVENT WILL PERFORCE 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 PERFORCE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. IN NO EVENT WILL PERFORCE 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 Perforce to enter into this Agreement and that the purchase price and fees charged to you would be substantially higher without such limitations.

8. **EXPIRATION AND TERMINATION.**

8.1. *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 8.1 will terminate 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 and the rights shall immediately and automatically fall back to Perforce. Upon termination of this Agreement or expiration of the License Term in any Order Form, you will: (i) promptly return to Perforce 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.

8.3. *Survival.* Sections 1, 2.2, 2.4, 2.5, 2.6, 4, 5.5, 6, 7, 8.2, 8.3, 11, and 12 will survive the termination or expiration of this Agreement or of any Order Form.

9. **PROFESSIONAL SERVICES.**

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

contractors or subcontractors shall perform the Professional Services in accordance therewith and this Agreement. Perforce shall be responsible for the compliance of its employees, contractors, and subcontractors with this Agreement.

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

10. **SUPPORT SERVICES**.

Perforce shall provide Support Services for the Software in accordance with the current version of the [Perforce Support Policies (KBA1504)](). The applicable Support Services offering or plan will be identified on the applicable Order Form at the time of order placement.

11. **DELIVERY; INVOICING; PAYMENT; AND TAXES.**

11.1. *Electronic Delivery.* Perforce only distributes its Software electronically, either by your downloading from the Internet or via media that is returned to Perforce after installation. If you are in possession of any Perforce Software media, please return it to Perforce at 400 First Avenue North, Suite 400, Minneapolis, Minnesota 55401, USA.

11.2. *Electronic invoicing; Expenses; and Payment.* Perforce only invoices customers via electronic methods, either by email or through an online payment system. If you require use of an online payment system, you will need to provide Perforce with setup and login instructions. Failure to provide a billing email address will delay ordering.

Unless agreed otherwise under the applicable Order Form and/or SOW, you will reimburse Perforce for all reasonable and customary travel, lodging, and other related expenses incurred by Perforce or its authorized personnel in connection with the performance of Professional Services specified under the Order Form and/or SOW.

Unless agreed otherwise under the applicable Order Form, you will prepay the total fees stated under such Order Form. You agree to pay all invoices within thirty (30) days from the date of your receipt of Perforce's invoice.

11.3. *Taxes.* Your purchase price does not include any tariffs, customs or duties that may be applicable to the sale of the Perforce Software and Services. When Perforce has the legal obligation to collect such tariffs, customs or duties, the appropriate amount shall be added to your invoice and paid by you. Prices do not include any national, regional, and local excise, sales, use, withholding or similar taxes.

12. **GENERAL.**

12.1. *Compliance with Laws; Export Control.* You will be solely responsible for your compliance with, and you agree to comply with, all applicable laws in connection with your use of the Software. Licensee, on behalf of itself and its Affiliates, agrees to comply fully with all applicable laws, statutes, regulations, rules, ordinances, codes, and standards relating to any export controls and economic sanctions laws of the United

States or abroad. You acknowledge that the Software is of United States origin and is subject to the Export Administration Regulations (the "**EAR**") administered by the U.S. Department of Commerce's Bureau of Industry and Security ("**BIS**"), and the laws and regulations governing economic sanctions and embargoes administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"). Accordingly, any use, transshipment, or diversion of the Software contrary to applicable export control laws or sanctions laws is prohibited. You warrant and covenant that: (1) you and your Affiliates will not export, re-export, re-sell, provide access to, or otherwise transfer the Software or related technology with knowledge that a violation of the U.S. law, the EAR, or the terms of any order, license, license exception, or other authorization issued under the EAR has occurred, is about to occur, or is intended to occur in connection with the item; and (2) you and your Affiliates will not export, re-export, re-sell, provide access to, or otherwise transfer the Software into any country or region subject to comprehensive economic sanctions (*i.e.*, currently Cuba, Iran, North Korea, Russia, Syria, and the Crimea Region of Ukraine). You further represent that: (a) you and your Affiliates are not, and are not acting on behalf of, (i) any natural person or entity who is a citizen, national, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export, reexport, or transfer of the Software or related technology, or (ii) any natural person or entity listed on OFAC's list of Specifically Designated Nationals and Blocked Persons or the Consolidated Sanctions List, or BIS's Denied Persons List, Entity List, or Unverified List; and (b) you and your Affiliates will not permit the Software to be used for any purposes prohibited by law, including but not limited to any prohibited development, design, manufacture, or production of missiles or nuclear, chemical, or biological weapons. You shall exercise diligent efforts to ensure your and your Affiliates' compliance with this Section 12.1.

12.2. **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.

12.3. **Assignment**. You may not assign this Agreement, in whole or in part, by operation of law or otherwise, without Perforce'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 Perforce, 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.

12.4. **Governing Law and Jurisdiction**. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, 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 Delaware, and you and Perforce irrevocably consent to the personal jurisdiction and venue therein.

12.5. **Verification**. Upon Perforce's written request, you will furnish Perforce 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, Perforce 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 Perforce during the period audited, then Perforce will invoice you, and you will promptly pay Perforce for such underpaid fees based on Perforce'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 Perforce's costs of conducting the audit.

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

12.7. **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.

12.8. **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, epidemic, pandemic, natural disasters or governmental action.

12.9. **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 Perforce may notify the other party in writing.

12.10. **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 Perforce.

12.11. **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.

12.12. **Relationship of the Parties.** Perforce is performing the Professional Services as an independent contractor, not as an employee, agent, joint venturer, or partner of Licensee. Perforce 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 Perforce employees, contractors, or subcontractors, provided that a job posting available to the general public shall not be deemed such a solicitation.

12.13. **Entire Agreement.** This Agreement, including all accepted Order Forms and SOW's referencing this Agreement and any documents incorporated thereto, constitutes the entire agreement between you and

Perforce 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 Perforce and shall be deemed null and void.