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## 9. TERM AND TERMINATION.

- 9.1. Term. This Agreement shall continue in perpetuity unless terminated earlier in accordance with this Agreement. Except as provided for below, the term for Licenses granted in this Agreement will be effective in perpetuity beginning on the shipment date of the applicable Licensed Software, unless otherwise terminated earlier by either party in accordance with the terms of Section 9.2 herein. Notwithstanding the above, the term of (a) Evaluation Licenses will only be effective for the term set forth above or in the applicable Loan Agreement and (b) any License which is identified in an Accepted Purchase Order as being a subscription-based License will only be effective during the applicable Subscription Period. Licensee understands and agrees that each subscription-based License shall expire automatically and immediately upon expiration of the Subscription Period, unless Licensee renews such License by paying the applicable renewal fee.
- 9.2. Termination. Licensee may terminate this Agreement (including without limitation all perpetual Licenses) at any time for any reason by giving written notice to Mercury. In addition to any other termination rights provided for in this Agreement, Mercury may terminate this Agreement (including without limitation all perpetual Licenses) immediately upon written notice to Licensee in the event of material breach of this Agreement by Licensee if such breach is incapable of cure or Licensee otherwise fails to cure such breach within thirty (30) days following notice of such breach. Without limiting the generality of the foregoing, Licensee expressly acknowledges and agrees that the failure to make any payment due under this Agreement and/or a breach of the terms, conditions and restrictions applicable to any License granted hereunder shall constitute a material breach of this Agreement by Licensee.
- 9.3. Effect of Termination. Termination of this Agreement shall not release Licensee from the obligation to make payment of any unpaid amounts that otherwise have accrued under this Agreement prior to such termination. Within fifteen days after any such expiration or termination, Licensee shall return to Mercury or, at Mercury's request, destroy all Licensed Software, without retaining any copies thereof. A duly authorized officer of Licensee shall certify in writing to Mercury Licensee's compliance with this Section 9.3.
- 9.4. Survival of Sublicenses. Any permitted sublicenses granted by Licensee to End Users pursuant to a valid End User Agreement shall survive termination of this Agreement in accordance with the terms and conditions of such End User Agreement.
- 9.5. Survival. The terms of Sections 1, 2.4, 6, 8, 9, and 10 shall survive termination or expiration of this Agreement.

## 10. MISCELLANEOUS.

- 10.1. Markings. Licensee agrees to reproduce copyright notices, patent registrations and notices, and all other legends on and in any and all copies of the Licensed Software and related Documentation, including partial copies, in any form or medium, including the statement that the copies are licensed material. Nothing in this section shall be construed to expand Licensee's rights or to independently confer on Licensee the right to make any such copies, derivatives or modifications.
- 10.2. Force Majeure. No party hereto shall have any liability under this Agreement for such party's failure or delay in performing any of the obligations imposed by this Agreement to the extent such failure or delay is the result of any of the following

events (each, a "Force Majeure Event"): (i) any fire, explosion, unusually severe weather, natural disaster or Act of God; (ii) epidemic; any nuclear, biological, chemical, or similar attack; any other public health or safety emergency; any act of terrorism; and any action reasonably taken in response to any of the foregoing; (iii) any act of declared or undeclared war or of a public enemy, or any riot or insurrection; (iv) damage to machinery or equipment; any disruption in transportation, communications, electric power or other utilities, or other vital infrastructure; or any means of disrupting or damaging internet or other computer networks or facilities; (v) any strike, lockout or other labor dispute or action; (vi) any action taken in response to any of the foregoing events by any civil or military authority; or (vii) any other event beyond such party's control; provided that financial inability in and of itself shall not be a Force Majeure Event.

- 10.3. Severability. In the event that any provision of this Agreement is found to be unenforceable, such provision will be reformed only to the extent necessary to make it enforceable, and the remainder will continue in effect, to the extent consistent with the intent of the parties as of the shipment date.
- 10.4. Relationship of the Parties. Nothing in this Agreement shall be construed to place the parties hereto in an agency, employment, franchise, joint venture, or partnership relationship. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained shall give rise or is intended to give rise to any rights of any kind to any third parties. Neither party will make any representations to the contrary, either expressly, implicitly or otherwise.
- 10.5. Governing Law; Consent to Jurisdiction. ALL DISPUTES, CLAIMS OR CONTROVERSIES ARISING OUT OF THIS AGREEMENT, OR THE NEGOTIATION, VALIDITY OR PERFORMANCE OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS WITHOUT REGARD TO ITS RULES OF CONFLICT OF LAWS. Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States of America located in the Commonwealth of Massachusetts (the "Massachusetts Courts") for any litigation between the parties hereto arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, waives any objection to the laying of venue of any such litigation in the Massachusetts Courts and agrees not to plead or claim in any Massachusetts Court that such litigation brought therein has been brought in any inconvenient forum or that there are indispensable parties to such litigation that are not subject to the jurisdiction of the Massachusetts Courts. Any action against Mercury under this Agreement must be commenced within one (1) year after such cause of action accrues.
- 10.6. Assignment; Binding Effect. Licensee may not assign this Agreement in whole or in part by operation of law or otherwise, without the prior written consent of Mercury. Any attempted assignment, delegation or transfer by Licensee in violation hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on the parties and their successors and permitted assigns.
- 10.7. Notices. All notices under this Agreement will be in writing and will be deemed given: (i) when delivered personally; (ii) when sent by confirmed facsimile; (iii) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. In the case of Mercury, all communications will be sent to the address set forth on the first page of this Agreement or such other addresses designated in writing by Mercury.
- 10.8. No Waiver. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.
- 10.9. Complete Agreement. This Agreement constitutes the entire agreement between the parties. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations. This Agreement may not be modified or waived, in whole or part, except in writing and signed by an officer or duly authorized representative of the party to be bound.
- 10.10. Compliance with Laws. Licensee understands and acknowledges that any sale, export or re-export of Licensed Software and/or Documentation, or any portion thereof, are subject to the laws and regulations of the United States. Mercury products or services controlled by the EAR may not be used for the design, development, manufacture, use or repair of nuclear, biological or chemical weapons, or for missile technology. Diversion contrary to US law is strictly prohibited. Mercury products and services controlled by the ITAR may not be exported or transferred to foreign persons in the United

States or abroad without first obtaining proper export authority from the U.S. Department of State. Mercury products may not be sold, exported or re-exported to any person or entity designated as prohibited or restricted by an agency of the US government. See "Lists to Check" at [www.bis.doc.gov](http://www.bis.doc.gov) for a complete listing. Sales or retransfers of Mercury Systems products or services may not be made to countries prohibited by the U.S. Government. An End Use Statement signed by the Customer may be required prior to shipment. For further information contact Mercury Systems, and see [www.pmddtc.state.gov](http://www.pmddtc.state.gov) or [www.bis.doc.gov](http://www.bis.doc.gov). Licensee agrees to indemnify, defend, and hold Mercury and its Third Party Licensors, harmless from any claims, damages or suits resulting from its failure to comply with this Section 10.10.

- 10.11. Restricted Rights. The Licensed Software and Documentation are each a "commercial item" as defined at 48 C.F.R. § 2.101, consisting of commercial computer software and commercial computer software documentation. Licensee shall ensure that for direct or indirect government purchases or acquisitions of Licensee Application by the U.S. Department of Defense from Licensee, the rights of use, reproduction, and disclosure are only as stated in this Agreement, per 48 C.F.R. § 227.7202-1(a) and 48 C.F.R. § 227.7202-3(a). For direct or indirect government purchases or acquisitions of Licensee Application by any other federal agency or instrumentality, the rights of use, reproduction, and disclosure are only as stated in this Agreement, per 48 C.F.R. § 12.212. Licensee acknowledges that for indirect government purchase or acquisitions through a third party, the Licensed Software and/or Documentation was sold to intermediaries only as a "commercial item" subject to the minimum provisions required by 48 C.F.R. § 52.244-6 for commercial item subcontracts, so that the rights of use, reproduction, and disclosure are only as stated in this Agreement. Any further development of the Licensee Application and/or Documentation at government expense is limited to modifications permitted to commercial items in 48 C.F.R. § 2.101.
- 10.12. United Nations Convention. Mercury and Licensee exclude application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act from this Agreement.
- 10.13. Authorization. Licensee represents and warrants that the person executing, accepting or confirming this Agreement is duly authorized by Licensee to bind Licensee to the terms and conditions of this Agreement.