CLOUD SERVICES AGREEMENT

This Cloud Services Agreement (this "Agreement") is entered into between Siemens Product Lifecycle Management Software Inc., also known as Siemens Industry Software (hereinafter referred to herein as "SISW"), and the customer that has signified its acceptance of the terms and conditions of this Agreement ("Customer"). SISW retains the right to utilize its affiliated companies in pursuing any of its rights and fulfilling any of its obligations under this Agreement. Therefore, the term "SISW" as used herein may also refer to affiliated companies that are directly or indirectly owned or controlled by the ultimate parent company of Siemens Product Lifecycle Management Software Inc. and who have been authorized by Siemens Product Lifecycle Management Software Inc. to distribute the Cloud Services.

Prior to making use of the Cloud Services to be provided under this Agreement, Customer will be prompted to signify its acceptance of these terms by clicking an "accept" button. By clicking the "accept" button, Customer has indicated that Customer has read and understood this Agreement and has accepted these terms and conditions. The terms and conditions of this Agreement represent the complete agreement of the parties with respect to Customer's use of the cloud services and to the extent that these terms are in conflict with the terms of any other agreement between Customer and SISW, these terms will take precedence and supersede the terms of such other agreement with respect to use of the Cloud Services.

1. **Definitions**.

    1.1   "Authorized Agent" means Customer's consultants, agents, contractors and suppliers who require access to the Cloud Services and/or Documentation as part of their support of Customer's internal business, provided that the Customer ensures that all access to the Cloud Services by its Authorized Agents is limited to their support of Customer's internal business.

    1.2   "Authorized User" means (i) Customer's employees and (ii) Authorized Agents, provided the Authorized Agents respect the proprietary nature of the Cloud Services and Documentation in accordance with the confidentiality provisions of this Agreement.

    1.3   "Cloud Services" means the collection of services offered for use by customers based on SISW software products.

    1.4   "Customer Data" means all data uploaded into the System by Customer or anyone making use of the Cloud Services under Customer's Entitlement, as well as any data generated through use of the Cloud Services.

    1.5   "Data Processing Agreement" means the document located at the following URL, which is incorporated by reference into this Agreement as if fully set forth herein:
    http://www.plm.automation.siemens.com/en_us/products/eula/sisw-data-processing-agreement.shtml

    1.6   "Documentation" means the explanatory printed or electronic materials provided by SISW with respect to the Cloud Services, including, but not limited to, license specifications, instructions for the use of the Cloud Services and technical specifications.

    1.7   "Entitlement" means the scope of rights granted to Customer to use the Cloud Services.

    1.8   "Service Level Agreement" means the document located at the following URL, which is incorporated by reference into this Agreement as if fully set forth herein:
    http://www.plm.automation.siemens.com/en_us/products/eula/sisw-service-level-agreement.shtml

    1.9   "Service Offering" means the description of an individual Cloud Service as set forth in the Service Level Agreement.

    1.10   "Support Annex" means the document located at the following URL, which is incorporated by reference into this Agreement as if fully set forth herein:
    http://www.plm.automation.siemens.com/en_us/products/eula/sisw-support-annex.shtml

    1.11   "System" means the combination of the Cloud Services and the computing infrastructure needed to enable SISW to offer the Cloud Services to Customer.

1.12 "Provider" means a third party that provides technology or services to SISW to facilitate SISW's offering of the Cloud Services to Customer.

2. Orders.

2.1 Ordering Cloud Services. This Agreement is a master agreement under which one or more orders for Cloud Services or associated professional services (each, an "Order") may be placed by Customer and accepted by SISW in accordance with the terms hereof. Each Order for Cloud Services shall be set forth in a Licensed Software Designation Agreement, or a similar ordering document in a format that is designated by SISW (each an "LSDA"). Each LSDA must incorporate the terms of this Agreement by reference. Professional Services may be provided pursuant to this Agreement provided that the Product Specific Terms for Professional Services have been agreed by the parties. Each Order for professional services shall be set forth in an SOW (as defined in the Product Specific Terms for Professional Services). An individual LSDA or SOW may contain terms that are additional to those contained in this Agreement and are specific to the particular Cloud Services or Professional Services offered therein.

2.2 Fees. Customer will pay such prices and fees as are mutually agreed upon by the parties for the Cloud Services and any Professional Services provided pursuant to this Agreement, and any other charges mutually agreed by the parties. Fees for the Cloud Services are payable in advance and will be invoiced as specified by the parties in an LSDA. Should Customer fail to pay any fees due to SISW as agreed, then in addition to any other rights and remedies SISW may have, SISW may suspend Customer's access to the Cloud Services until such time as all outstanding fees have been paid in accordance with the terms of this Agreement.

2.3 Excess Use. Should use of a Service Offering by Customer or its Authorized User exceed Customer's Entitlement, as described in the associated LSDA and the Service Level Agreement, SISW shall have the right to impose additional fees upon Customer with respect to such excess use at SISW's then-current rates for the Service Offering.

2.4 Taxes. Customer agrees to pay (and to reimburse SISW or its authorized channel partner, if applicable, on request if SISW or its authorized channel partner is required to pay) any applicable taxes, assessments and duties including, but not limited to, all national, foreign, state, local, regional, provincial or municipal sales and/or use taxes, value added taxes, goods and services taxes, consumption taxes, personal property taxes, ad valorem taxes, custom duties, import fees, stamp duty, intangibles tax, registration fees or other fee or charge of any kind or nature that is levied or imposed by any governmental authority on Customer's use of the Cloud Services, or its receipt of any other services, but not including taxes based on the net income of SISW. If Customer is exempt from value-added or sales tax, uses the product or services provided herein in an exempt manner, or otherwise deems itself not subject to value-added or sales tax, then Customer must provide a valid and executed exemption certificate, direct pay permit, or other such government approved documentation in good faith to SISW. If Customer is required by law to make any income tax deduction or to withhold income tax from any sum payable directly to SISW hereunder, Customer shall promptly effect payment thereof to the applicable tax authorities, and shall also promptly provide SISW with official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish that the income taxes have been paid and to enable SISW to support a claim for tax credit relief for such income tax payments made on its behalf by Customer.

2.5 Invoicing and Payment Terms. For direct sales from SISW or an SISW affiliate to Customer, SISW will invoice Customer for a Cloud Services Order on the first day of the month immediately following the month in which initial credentials for Customer's access to the ordered Cloud Services have been made available to Customer. SISW will invoice Customer monthly in arrears for all other charges as incurred unless otherwise agreed by the parties. Professional Services will be invoiced monthly in arrears as charges are incurred or as otherwise stated in accordance with the terms and conditions set out in the applicable SOW. Regardless whether related to Cloud Services, Professional Services, or any other product or service provided or delivered under this Agreement, Customer will pay each invoice within 30 days after the date of the SISW invoice unless otherwise agreed by the parties.

3. Right to Access Cloud Services.

3.1 Rights Granted. SISW grants to Customer a non-exclusive, non-transferable, worldwide right to access and use the Cloud Services and Documentation, including the System, solely for the internal business purposes of Customer, subject to the terms of this Agreement and the Service Level Agreement, Support Annex, and Data Processing Agreement (if applicable).

3.2   Authorized Users. Subject to the limitations of the Entitlement, Customer may permit Authorized Users to access and use a Service Offering. Customer shall be responsible for (i) ensuring that Authorized Users use the Service Offering only in support of Customer's internal business, (ii) any unauthorized use of the Service Offering undertaken using credentials associated with Customer's account, and (iii) any breach of this Agreement by an Authorized User.

3.3   Suspension of Cloud Services. If, in the reasonable opinion of SISW, it is necessary to suspend access to the Cloud Services to maintain the security or integrity of the Cloud Services, or a particular Service Offering, SISW may do so without liability to Customer, provided that SISW undertakes all reasonable efforts to limit the duration and scope of such suspension.

4. **Availability of the Cloud Services**. During the term of this Agreement, SISW will make the Cloud Services available to Customer, subject to the provisions of this Agreement, the Service Level Agreement, the Support Annex, and the relevant Documentation. SISW will use commercially reasonable efforts to maintain the Cloud Services in a functional state 24 hours per day, 7 days per week, except for planned downtime and any unavailability caused by circumstances beyond SISW's reasonable control, including without limitation acts of God, events resulting in loss of power or network connectivity at an SISW or Provider site, denial of service attacks, governmental or judicial orders, civil unrest, acts of terrorism, floods, fires, and labor stoppages. Should SISW fail to meet the service level commitments for a Service Offering as set forth in the Service Level Agreement, Customer shall be entitled to claim the remedy described in the Service Level Agreement, which shall be Customer's sole and exclusive remedy with respect to such failure by SISW to meet its service level commitments.

5. **Term and Termination**. The term of this Agreement begins on the date on which Customer first indicates its acceptance of the terms of this Agreement and continues until terminated in accordance with the terms of this Agreement. With respect to a particular Order, the term of such Order shall be as specified in the associated LSDA or SOW. For Orders of Cloud Services, the term of an Order will automatically renew for additional terms, each one (1) year in length, unless Customer gives written notice of termination for such Order at least thirty (30) days prior to the end of a term.

Within thirty (30) days of termination or expiration of this Agreement or any Order under this Agreement for any reason, Customer may submit to SISW a written request that Customer Data associated with a terminated Service Offering be made available for download by Customer. After the 30-day period has passed, SISW shall have no obligation to maintain Customer Data associated with a terminated Service Offering or provide any access to Customer, and SISW will thereafter delete or destroy all Customer Data stored in the System that is associated with a terminated Service Offering, unless prohibited by applicable law or governmental order. Any additional services requested by Customer from SISW to facilitate Customer's post-termination transition will be at SISW's then-current professional services rates and will require a written statement of work agreed between the parties.

6. **Intellectual Property Infringement Indemnity**.

6.1   Infringement Claim Indemnity. SISW will indemnify and defend, at its expense, any action brought against Customer to the extent that it is based upon a claim that Customer's use of the Cloud Services infringe a patent, copyright, trade secret or other intellectual property right and will pay all costs and damages finally awarded against Customer by a court of competent jurisdiction, provided that SISW is given prompt written notice of such claim and is given information, reasonable assistance, and sole authority to defend or settle the claim. SISW shall not enter into any settlement admitting liability or incurring obligations on behalf of Customer, without Customer's prior written consent.

6.2   Injunction. If a permanent injunction is obtained against Customer's use of a Cloud Service, then SISW will obtain for Customer the right to continue using the Cloud Service, or will replace or modify the Cloud Services so it becomes non-infringing; or, if such remedies are not reasonably available, SISW will grant Customer a pro rata refund of amounts prepaid by Customer for use of the Cloud Service, and Customer shall cease its use of the Cloud Service. SISW, in its sole discretion, may provide the remedies specified in this Section prior to the issuance of a permanent injunction.

6.3   Exclusions. SISW shall not have any liability or indemnification obligations to Customer under this Section 6 or under any other term of this Agreement to the extent that any infringement claim is based in whole or in part, or arises out of: (i) Customer's use of any non-current version of the Cloud Services, to the extent that Customer's liability for the infringement would have been avoided by the use of a more recent version of the Cloud Services, (ii) the combination, operation or use of the Cloud Services with any third party software, equipment, materials or products to the extent that Customer's liability for such infringement would have been avoided in the absence of such combination, use or

operation, (iii) an adjustment or configuration of the Cloud Services not made by SISW, (iv) Customer's use of the Cloud Services not in compliance with the Documentation, (v) Customer's failure to use a defect correction or patch supplied by SISW to Customer, (vi) compliance with designs, plans or specifications provided by Customer to SISW, or (vii) any refusal by Customer to use a non-infringing version of the Cloud Services offered by SISW to Customer at no cost to Customer as long as such non-infringing version performs substantially the same functions.

6.4   Sole and Exclusive Remedy. This Section 6 represents the sole and exclusive liability of SISW to Customer for infringement of the intellectual property rights of a third party under this Agreement.

7.   **Limitation of Liability**. SISW's entire liability for all claims or damages arising out of or related to this Agreement, regardless of the form of action, whether in contract, tort or otherwise, will be limited to and will not exceed, in the aggregate the amount paid to SISW under this Agreement for the specific Service Offering or professional service that caused the damage or that is the subject matter of the claim. This limitation is not applicable to claims for intellectual property infringement that are covered by Section 6.1 of this Agreement. In no event will the measure of damages payable by SISW include, nor will SISW be liable for, any amounts for loss of data, income, profit or savings or indirect, incidental, consequential, exemplary, punitive or special damages of any party, including third parties, even if SISW has been advised of the possibility of such damages in advance, and all such damages are expressly disclaimed. Neither party may make a claim under this Agreement arising out of an event or events that occurred more than two (2) years after the event is, or should have been, discovered by the party making the claim.

8.   **Maintenance of the Cloud Services.**

8.1   Environment and Updates. Customer acknowledges that the Cloud Services may be provided in a multiuser environment, and that SISW is not obligated to separately manage provision of the Cloud Services for any purchaser, including Customer. Updates to the software underlying the Cloud Services will be made at SISW's discretion, with or without notice, and there is no additional charge to Customer to access updated versions of the Cloud Services.

8.2   Support. Support provided by SISW for a Service Offering will be as described in the Support Annex.

8.3   Maintenance of Prior Versions. SISW is not under any obligation to maintain prior versions of the Cloud Services, and even if Customer requests, and SISW agrees, that a prior version of the Service be maintained for Customer's use, no course of dealing will be established between the parties that would require SISW to consent to additional requests by Customer to maintain prior versions of the Cloud Services.

8.4   Modification of the Cloud Services. SISW shall have the right to modify the manner in which it provides the Cloud Services if SISW determines that such a modification is necessary or advisable, in SISW's sole discretion. Should SISW reasonably determine that such a modification will materially impact Customer's use of the Cloud Services, SISW will use commercially reasonable efforts to notify Customer prior to the implementation of the modification.

8.5   Error Corrections. An Error means the failure of a Service Offering to conform substantially to the Documentation ("Error"). Customer may report any suspected Error to SISW and, upon SISW's request, Customer will provide SISW with a detailed, written description and documentation of the suspected Error. SISW will investigate the facts and circumstances related thereto and Customer will cooperate with SISW's investigation. If SISW finds that the Service Offering contains an Error, SISW will use all commercially reasonable efforts to correct the Error. An Error correction may consist of a separate patch, a workaround or it may be included in the next available release of the Service Offering, at the discretion of SISW.

8.6   Limitation of Remedies. SISW's sole and exclusive responsibility, and Customer's sole and exclusive remedy, for a failure to correct an Error will be that Customer may terminate its use of the Service Offering that is directly affected by the Error. SISW will thereafter promptly refund the unused portion of any prepaid fees for the then-current term of Customer's order of such Service Offering.

9.   **Limited License to Customer Data**.

9.1   Customer grants SISW a worldwide, non-exclusive, transferable, royalty-free license to use, host, transmit, display, sublicense and reproduce all Customer Data. Customer will indemnify and defend, at its expense, any action brought against SISW to the extent that it is based upon a claim that the Customer Data infringes a patent, copyright, trade secret or other intellectual property right and will pay all costs and damages finally awarded against SISW by a

court of competent jurisdiction, provided that Customer is given prompt written notice of such claim and is given information, reasonable assistance, and sole authority to defend or settle the claim. Customer shall not enter into any settlement admitting liability or incurring obligations on behalf of SISW, without SISW's prior written consent.

9.2   Customer covenants that it will only upload data into the System if Customer has the rights to upload such data and to grant to SISW the rights set forth in this Section. Excluding the limited license rights granted herein, SISW will not acquire any right, title, or interest in or to Customer Data, and SISW expressly disclaims any such rights. Unless otherwise agreed in writing between SISW and Customer, Customer covenants that only copies of Customer Data will be uploaded into the System and that Customer will at all times maintain an independent backup copy of all Customer Data at its own expense.

10. **Customer Credentials**.   As a precondition to use of the Service, each Authorized User under the Entitlement must establish a password for his or her account. SISW or its Providers may establish reasonable password requirements, and Customer agrees to require any Authorized Users under the Entitlement to abide by such requirements. All Authorized User passwords must be treated as confidential information, and no Authorized User may share his or her password with any other user. Customer bears sole responsibility for any unauthorized use resulting from misconduct by any of its users or any failure to properly secure passwords or other credentials. Customer will indemnify and hold harmless SISW from any costs, losses, or liabilities resulting from any failure by Customer or any of its users to abide by the terms of this Section or any rules established by SISW or its Providers pursuant to this Section. The provisions of this Section will survive the expiration or termination of this Agreement for any reason.

11. **Restrictions on Use of the Cloud Services**.   Customer shall not, and shall cause its users not to, (i) interfere with or disrupt the integrity or performance of the Cloud Services, (ii) circumvent the security of the System, (iii) use the Cloud Services in a manner that violates the law or any of SISW's rights, (iv) access the Cloud Services to monitor availability, performance, or functionality for any competitive purpose, (v) sell, resell, license, sublicense, rent, or lease the Cloud Services, (vi) use the Cloud Services to process or analyze data for any third party, (vii) upload into the System any data that violates the law or infringes the rights of any third party, or (viii) gain access to the Cloud Services by any means other than the means provided by SISW. Customer shall not perform any penetration test of the System without obtaining express written consent in advance from SISW, which SISW may grant or refuse in its sole discretion, and Customer will indemnify, defend, and hold harmless SISW from any costs, losses, or liabilities that result from Customer's performing a penetration test of the System.

12. **Export Compliance**.   SISW's obligation to fulfill its commitments under this Agreement is subject to the proviso that it is not prevented by any impediments arising from national or international foreign trade or customs requirements, including embargoes or other sanctions. Customer agrees to comply fully with all applicable national and international export and re-export control regulations including, but not limited to, those of the Federal Republic of Germany, of the European Union, of the United States of America and regulations of any other country or jurisdiction which may apply (the "Export Laws"). In particular, but not in limitation of the foregoing, Customer must assure that any access to or use of the Cloud Services that occurs under its Entitlement is not: (i) accessed, used, exported, re-exported (including any "deemed export"), or transferred, directly or indirectly, contrary to any applicable economic sanction or Export Law, or (ii) accessed or used for any purpose prohibited by the Export Laws or (iii) accessed or used by persons/entities otherwise ineligible to access or use the Cloud Services. SISW reserves the right to conduct the necessary Export Law checks and, upon request, the Customer shall promptly provide SISW with the necessary information to fulfill its legal obligations. Customer shall indemnify and hold harmless SISW from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by Customer, and Customer shall compensate SISW for all losses and expenses resulting therefrom. This Section will survive the expiration or termination of this Agreement for any reason.

13. **Confidentiality**.

13.1   SISW Confidential Information.   During the term of this Agreement and thereafter, Customer shall: (i) treat as confidential all SISW Confidential Information; (ii) not use such SISW Confidential Information except as expressly set forth herein; (iii) implement reasonable procedures to prohibit the unauthorized use, disclosure, duplication, misuse or removal of SISW Confidential Information; and, (iv) not disclose the SISW Confidential Information to any third party other than Authorized Users. Furthermore, Customer shall not copy SISW Confidential Information without SISW's prior written consent. If Customer breaches any of its obligations with respect to confidentiality or unauthorized use or disclosure of SISW Confidential Information hereunder, SISW shall be entitled to obtain equitable and injunctive relief in addition to all other remedies that may be available to protect SISW's interests. For purposes of this Agreement,

"SISW Confidential Information" means any and all information and materials disclosed by SISW to Customer, including, but not limited to, information regarding SISW's business strategies and practices, methodologies, trade secrets, know-how, pricing, technology, software, the Cloud Services and Documentation, product plans, services, client lists and information regarding SISW's employees, clients, vendors, consultants and affiliates. If Customer conducts benchmarks or other tests concerning the Cloud Services, including any content or functionality of our third party licensors, or hardware, then the results shall constitute SISW Confidential Information and shall not be published or otherwise revealed to any third party.

13.2   Customer Confidential Information.   For purposes of this Agreement, "Customer Confidential Information" means any information shared by Customer with SISW under this Agreement concerning Customer's business that has not been made public, provided that such information has been marked or otherwise identified as confidential at the time of disclosure or consists of information that, by its context, is sufficient to put SISW on notice of its confidential nature. SISW will prevent the disclosure and protect the confidentiality of Customer Confidential Information by using the same means it uses to protect its own confidential information, but in any event not less than reasonable means. Customer's Confidential Information will not be disclosed by SISW to any third party, other than to its employees, its affiliated companies, its consultants, agents, and contractors, without the prior written consent of Customer. The parties agree that Customer Data, which is addressed elsewhere in this Agreement, shall not be considered Customer Confidential Information.

13.3   Exclusions. SISW Confidential Information and Customer's Confidential Information are collectively referred to herein as the "Confidential Information". The confidentiality obligations of this Section 13 will not apply to any Confidential Information that (i) is or becomes generally available to the public other than as a result of disclosure by the party who receives the Confidential Information ('Recipient") in violation of this Agreement; (ii) becomes available to the Recipient from a source other than the party who discloses the Confidential Information ("Discloser"), provided that the Recipient has no reason to believe that such source is itself bound by a confidentiality or nondisclosure agreement with the Discloser or is otherwise prohibited from disclosing such Confidential Information by a legal, contractual or fiduciary obligation; (iii) was in the Recipient's possession prior to receipt from the Discloser without a corresponding obligation of confidentiality; (iv) is independently developed by the Recipient without the use of, or reference to, the Discloser's Confidential Information; or (v) is required to be disclosed by the Recipient by a governmental agency or law, so long as the Recipient promptly provides the Discloser with written notice of the required disclosure, to the extent such notice is permitted by law, and coordinates with Discloser in an effort to limit the nature and scope of such required disclosure.

13.4   Survival of Confidentiality Obligations.   This Section 13 will survive the expiration or termination of this Agreement for any reason.

14. **System Security Breach**.   SISW shall promptly inform Customer of any instance where a breach of data security or a breach of the terms of this Agreement has led to the disclosure of Customer Data to an unauthorized third party. Unless SISW has failed to implement and maintain commercially reasonable security measures with respect to the Cloud Services, and such failure is the sole cause of a security breach, SISW shall have no liability to Customer or any third party for a security breach that results in an unauthorized disclosure of any Customer Data. The provisions of this Section will survive the expiration or termination of this Agreement for any reason.

15. **Service Trials**. If SISW agrees to provide Customer access to a Service Offering on a trial or evaluation basis, the following provisions shall apply to such trial or evaluation use of the Service Offering. With respect to such trial or evaluation use of a Service Offering, where the provisions of this Section 15 conflict with any other provision of this Agreement, the provisions of this Section 15 shall control.

15.1   Rights Granted. SISW grants to Customer a nonexclusive, nontransferable, limited right to access and use the Service Offering, as defined in the Service Level Agreement, in a test environment solely for trial purposes. The Service Offering shall not be used for commercial, professional or productive purposes, for commercial training or any other for-profit purposes, including testing, analysis and benchmarking. If during the term of any such trial, SISW updates the Service Offering, the updated Service Offering will remain subject to the terms and conditions of this Section 15. Customer is not authorized to, and agrees not to, (i) permit use of, or disclose information regarding, the Service Offering to any person other than Customer's employees who have a need to know to perform the trial; or (ii) decompile, disassemble or reverse engineer the Service Offering. SISW reserves all rights in the Service Offering not explicitly granted herein.

15.2   Customer Obligations. Customer acknowledges SISW's representation that the Service Offering constitutes and contains valuable trade secrets and confidential business information of SISW and/or its third party suppliers. Customer will hold such information in confidence and take the precautions necessary to safeguard the confidentiality of such information. If Customer or any of Customer's employees breach or threaten to breach the obligations of the Agreement as amended herein, SISW will have the right, in addition to such other remedies which may be available to it, to seek injunctive relief enjoining such acts or attempts, it being acknowledged and agreed by Customer that monetary damages are inadequate to protect SISW. The obligations of confidence and nondisclosure set forth in this Section 15.2 will survive any termination of the Agreement as amended herein. SISW's third party suppliers may enforce the Agreement as amended herein as it relates to their portions of the Service Offering directly against Customer.

15.3   Disclaimer of Warranties. Trials of a Service Offering are provided to Customer on an "as-is" basis, and irrespective of any provisions to the contrary in this Agreement, including the Service Level Agreement, trial usage shall not include any SISW support or service level commitments. Customer acknowledges and agrees that the input of data and the accuracy and adequacy thereof, including the output generated as a result of such input, is under Customer's exclusive control. Any use made by Customer of the data output, or any reliance thereon, is Customer's sole responsibility. SISW AND ITS THIRD PARTY SUPPLIERS MAKE NO WARRANTIES OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR AGAINST INFRINGEMENT, WITH RESPECT TO THE SERVICE OFFERING PROVIDED UNDER AND PURSUANT TO THIS AGREEMENT. In no event will SISW and/or its third party suppliers be liable to Customer for any claims or damages whatsoever arising out of or related to this Agreement, regardless of the form of action, whether in contract, tort or otherwise.

15.4   Term and Termination. Trial rights will extend for a limited, finite period of time specified by SISW. Any trial rights will terminate effective immediately if Customer fail to comply with any of the terms and conditions contained herein. Updates to a Service Offering will not, by implication, extend the term of the trial license beyond the term specified for such Service Offering. Customer acknowledges that SISW is under no obligation to save or provide Customer a copy of any data stored in the System upon expiration or termination of any trial rights to a Service Offering.

16. **Data Privacy**.

16.1   Each party shall comply with the applicable laws and regulations governing the protection of personally-identifiable information (PII).

16.2   Subject to Section 16.1, SISW may process PII of Customer as an independent controller for its own business purposes, in particular to make the Cloud Services available to Customer, to manage Customer's account and provide notices to Customer, for billing purposes, and to comply with SISW's contractual obligations and applicable law.

16.3   If provision of a Service Offering entails the processing of PII contained in Customer Data, the terms of the Data Processing Agreement shall apply.

17. **Limited Warranty and Disclaimer**.

17.1   SISW warrants that, subject to the provisions of Section 4, it will at all times maintain the Cloud Services in substantial conformance with the features and functions generally described in the Documentation and will use commercially reasonable efforts to restore the Cloud Services to substantial conformance should a nonconformity be identified and confirmed by SISW. Customer's sole remedy for any breach of the above warranty shall be termination of this Agreement.

17.2   EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN THIS SECTION, SISW MAKES AND CUSTOMER RECEIVES NO EXPRESS WARRANTIES. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE CLOUD SERVICES AND THEIR FUNCTIONALITY IN THE DOCUMENTATION OR ANY COMMUNICATION WITH YOU CONSTITUTE TECHNICAL INFORMATION AND NOT AN EXPRESS WARRANTY OR GUARANTEE. IN ADDITION, SISW SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, SISW DOES NOT WARRANT THAT THE OPERATION OF THE CLOUD SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

17.3 THE CLOUD SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS THAT ARISE DUE TO THE NATURE OF INTERNET COMMUNICATIONS. SISW IS NOT RESPONSIBLE FOR ANY DELAYS, DATA LOSS, BANDWIDTH CHARGES, OR ANY OTHER COSTS OR DAMAGES THAT RESULT FROM SUCH PROBLEMS OR FOR ANY UNAVAILABILITY OF THE CLOUD SERVICES CAUSED BY NETWORK PROBLEMS OR ANY TECHNOLOGY NEEDED TO USE THE CLOUD SERVICES THAT IS NOT PROVIDED BY SISW.

18. **Collection of Data and Feedback**. SISW shall be entitled to use data it collects in accordance with applicable law that relates to Customer's use of the Cloud Services, provided that any such data shall be anonymized so that neither SISW nor any third party could identify Customer solely using such data. SISW shall not be obligated to share any such data with Customer, and SISW may use such data for any business purpose, including without limitation improving the Cloud Services. In addition, Customer grants to SISW a worldwide, perpetual, irrevocable, transferable, royalty-free license to use any suggestion, recommendation, feature request, or other feedback provided by Customer or its users related to the operation of the Cloud Services, and to incorporate any of the above into the Cloud Services.

19. **Customer Actions Affecting SISW's Provision of the Service**. Customer agrees to indemnify, defend, and hold harmless SISW from and against any liabilities, losses, or claims that result from actions of Customer that cause a third party to terminate, suspend, or inhibit the ability of a Provider to perform its obligations as necessary for SISW to be able to continue to offer the Cloud Services. The provisions of this Section will survive the expiration or termination of this Agreement for any reason.

20. **SISW Change of Provider**. Customer agrees to provide all reasonable cooperation needed by SISW should it become necessary or desirable, in SISW's sole discretion, for SISW to use a new or different Provider.

21. **Third-Party Monitoring**. SISW may appoint a third party to collect and maintain information relating to Customer's use of the Service for SISW's internal business purposes, including without limitation monitoring Customer's use for compliance with the Entitlement and for any unauthorized use of the Service.

22. **Flowdown of Terms from Providers**. Customer acknowledges that SISW may use one or more Providers to provide any portion of the System and that SISW's use of such Providers is integral to SISW's ability to provide the Service to Customer. Such Providers may impose additional terms upon Customer's use of the Service, and Customer agrees to abide by such terms. In addition, should a Provider introduce any new or modified terms related to Customer's use of the Service, Customer will use its best efforts to comply with any such new or modified terms.

23. **Miscellaneous**.

23.1 Precedence. In the event of a conflict between this Agreement and any other agreement between SISW and Customer, this Agreement will govern Customer's use of the Cloud Services.

23.2 Assignment. This Agreement will extend to and be binding upon the successors, legal representatives and permitted assigns of the parties. However, this Agreement and the rights granted hereunder may not be assigned, sublicensed, or otherwise transferred (by operation of law or otherwise) by Customer without the prior written consent of SISW.

23.3 Purchase Order Not Binding. Except for an LSDA, no terms or conditions contained in any purchase order, memorandum or other instrument issued by Customer and purporting to cover the purchase of Cloud Services or any other products or services provided under this Agreement shall be binding on the parties and any such order, memorandum or other instrument shall be null and void and shall have no legal force or effect.

23.4 Notices. All notices required by or relating to this Agreement will be in writing and will be sent to SISW to the attention of Legal Department, 5800 Granite Parkway, Suite 600, Plano, Texas 75024 or to the SISW affiliate that processed the order under the applicable LSDA; and to Customer at such address as provided by the Customer; or to such other address as either party may specify by written notice to the other.

23.5 No Waiver. The failure of either party to enforce at any time any of the provisions of this Agreement will in no way be construed to be a waiver of such provision, nor in any way affect the validity of this Agreement or any part thereof, or the right of the other party thereafter to enforce each and every provision.

23.6   <u>Force Majeure</u>. Neither party shall be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of the parties), provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses commercially reasonable efforts to promptly correct such failure or delay in its performance.

23.7   <u>Validity and Enforceability</u>. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

23.8   <u>Publicity</u>. Except as may be required by applicable law, neither party shall disclose the terms of this Agreement or issue a press release in connection with the subject matter hereof without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, SISW shall be permitted to name Customer as a customer of SISW on SISW's website, in company presentations, customer lists and in other SISW marketing materials and each party shall have the limited right to disclose the terms of this Agreement to its bona fide financial, tax and legal advisors subject to appropriate confidentiality obligations.

23.9   <u>Governing Law</u>. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Delaware, without giving effect to any choice-of-law rules that may require the application of the laws of another jurisdiction. The UN Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, the application of which is expressly excluded, shall not apply to transactions under this Agreement.

23.10   <u>Entire Agreement</u>. This Agreement, including the Service Level Agreement, Support Annex, and Data Processing Agreement (if applicable), constitutes the full and complete statement of the agreement between the parties with respect to the subject matter hereof and supersedes any previous or contemporaneous agreements, understandings or communications, whether written or verbal, relating to such subject matter. This Agreement may not be varied other than in writing executed by the duly authorized representatives of both parties.