



End User License Agreement (EULA)

This end user license agreement (the "Agreement") is entered into between Siemens Product Lifecycle Management Software Inc., a corporation organized under the laws of Delaware with its principal office located in Plano, Texas in the United States ("SISW"), and the customer which 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 Software and related services.

Prior to downloading the Software, the 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 the Customer has read and understood this Agreement and has accepted these terms and conditions.

If Customer has received the Software solely by means of physical delivery of the Software media, upon installation of the Software the Customer will be prompted to signify its acceptance of these terms by clicking an "agree" button. By clicking the "agree" button and/or by using the Software the Customer has indicated that Customer has read and understood this Agreement and has accepted these terms and conditions. If Customer does not agree with these terms, prior to completing the installation of the Software, the Customer should promptly return the Software media along with proof of purchase to SISW or the authorized SISW channel partner from whom Customer obtained it for a full refund. If Customer has completed the installation of the Software, and/or used the Software, the purchase is nonrefundable.

1. ORDERS

- 1.1 **Ordering Software or Services.** This is an Agreement under which one or more orders for Software and/or Maintenance Services may be placed by Customer and accepted by SISW in accordance with the terms hereof. Each order for Software and/or Maintenance Services shall be set forth in a Licensed Software Designation Agreement, or a similar ordering document that is accepted in writing 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 on 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 Software, Maintenance Services, or Professional Services offered therein.
- 1.2 **Fees.** Customer will pay such prices and fees as are mutually agreed upon by the parties for the Software, Maintenance Services and Professional Services provided pursuant to this Agreement, including shipping, handling, transit insurance coverage and other charges identified in SISW's applicable quotation and any other charges mutually agreed by the parties. Rental License fees and Subscription fees are payable in advance and will be invoiced as specified by the parties in an LSDA. Maintenance Services fees will be set forth on SISW's quotation for such services.
- 1.3 **Delivery and Installation of Software.** Once an LSDA for Software is accepted by SISW, delivery of the Software identified in the LSDA will occur when SISW makes the Software available to Customer by means of electronic download from a website specified by SISW. Physical shipment of the media may be done at SISW's option and will occur as an accommodation to Customer or because certain elements of the Software are not available for electronic download. If a Customer's installation location resides in a taxing jurisdiction that does not apply a transactional tax (such as sales tax) to electronic deliveries only, and Customer desires to avail itself of such provisions, then Customer must opt out of receiving physical shipments and execute an electronic delivery exception form, as specified by SISW, to arrange for electronic delivery only. The Software will be delivered subject to EXW (Incoterms 2010) for deliveries that occur entirely within the United States, Russia, China or India. All other Software will be delivered subject to DAP (Incoterms 2010).
- 1.4 **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 or license of the Software, or its receipt of any 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.

1.5 Invoicing and Payment Terms. For direct sales from SISW or an SISW affiliate to a Customer, SISW will invoice Customer for Software and, if applicable, the annual Maintenance Services fees for the initial maintenance term once the Software has been made available for electronic download. SISW will invoice Customer in advance for each subsequent Maintenance Services renewal term. 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 Software, Maintenance 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.

2. SOFTWARE LICENSE TERMS AND CONDITIONS

2.1 Definitions. The following terms have the meanings set forth below, or as modified with respect to particular products in the Product Specific Terms.

- (a) “Authorized Agents” means Customer’s consultants, agents and contractors who are working on Customer’s premises and who require access to licensed Software and/or Documentation as part of their support of Customer’s internal business.
- (b) “Authorized Users” means (i) Customer’s employees and, (ii) Authorized Agents, provided the Authorized Agents respect the proprietary nature of the Software and Documentation in accordance with the confidentiality provisions of this Agreement.
- (c) “Documentation” means the explanatory printed or electronic materials provided by SISW with respect to a particular Software product, including, but not limited to, license specifications, instructions for the use of the Software and technical specifications.
- (d) “Infrastructure as a Service” or “IaaS” means a cloud accessible hardware environment provided by a third party for the purpose of hosting Customer’s Software licenses and Customer’s data.
- (e) “License Types” refers to the various types of licenses for Software as provided in Section 2.3 of this Agreement or in the Product Specific Terms.
- (f) “Limited Term License” means a license of the Software that is limited in term to a period of time mutually agreed by SISW and Customer in an LSDA. Limited Term Licenses include, but are not limited to, Subscriptions and Rental Licenses.
- (g) “Maintenance Services” means the maintenance, enhancement and support services provided by, or on behalf of, SISW with respect to the Software in accordance with Section 3 of this Agreement and any applicable Product Specific Terms.
- (h) “Perpetual License” or “Extended Term License” means a license of the Software that is not limited in term, but extends indefinitely. Subscriptions and Rental Licenses are not Perpetual Licenses. Unless a license of Software is specified as a Subscription, a Rental License or another type of Limited Term License in this Agreement, the Product Specific Terms, an LSDA or a separate contract between the parties, then the license of Software is deemed to be a Perpetual License. Perpetual Licenses do not include Maintenance Services or Professional Services which must be purchased separately by Customer.
- (i) “Platform as a Service” or “PaaS” means a category of cloud computing services in which a Provider provides a platform allowing customers to develop, run and manage cloud accessible software applications without the complexity of building and maintaining the infrastructure typically associated with developing and launching a cloud accessible application.
- (j) “Product Specific Terms” means those terms and conditions that are (i) different or additional to the terms and conditions contained in this Agreement that apply to certain, specific Software and/or hardware products or product groups, or to specific uses to which the Software may be put, offered by SISW and (ii) set forth on a separate, online site for each set of the Product Specific Terms. The Product Specific Terms will be agreed to separately from this Agreement by means of an LSDA that incorporates the applicable Product Specific Terms by reference, a written amendment to this Agreement that incorporates the applicable Product Specific Terms by reference or by electronic acceptance of the applicable Product Specific Terms online. If there is a conflict between the terms of this Agreement, on the one hand, and the Product Specific Terms, on the other hand, then the Product Specific Terms will prevail in regard to the applicable SISW product, product group or specific use.
- (k) “Product Specific Terms Site” means the separate online URL established by SISW for each set of Product Specific Terms. The Product Specific Terms for each product, product group or specific use will apply only if such product, product group or specific use is set forth on an LSDA, in which case the terms contained in the applicable URL will be incorporated by reference into the applicable LSDA.
- (l) “Professional Services” means professional consulting services provided by, or on behalf of, SISW in connection with the Software pursuant to the terms of this Agreement as modified by the terms of the Product Specific Terms for Professional Services.
- (m) “Provider” means the third party provider of an IaaS cloud accessible hardware environment or a PaaS cloud accessible platform environment.
- (n) “Rental License” means a license whose term is limited to a period of time mutually agreed by SISW and Customer in an LSDA, which will generally be less than one (1) year. A Rental License is renewable by mutual agreement of the parties for an additional limited term or terms following expiration of the initial rental term. A Rental License may, depending on the terms of the LSDA, be converted into a Perpetual License upon payment of a buy-out fee by Customer in accordance with the LSDA. Maintenance

Services for a Rental License are included in the Rental License fee. For renewals of Rental License terms, SISW retains the right to require new license keys to be issued. SISW retains the right to withhold Rental Licenses from certain of its Software products and/or certain of the third party products which SISW has the right to distribute.

- (o) **“Software”** means any software that is licensed or distributed by SISW to Customer under this Agreement. The term “Software” includes the related Documentation for such Software.
- (p) **“Subscription”** means a license whose term is limited to a period of time mutually agreed by SISW and Customer in an LSDA, which will generally be between 12 months and 5 years. A Subscription license is renewable by mutual agreement of the parties for an additional limited term or terms following expiration of the initial Subscription term, but a Subscription license may not be converted to an Extended Term License or Perpetual License. Maintenance Services for a Subscription license are included in the Subscription license fee. For multiple year Subscription terms, SISW retains the right to require new license keys to be issued periodically during the Subscription term. SISW retains the right to withhold Subscription licensing from certain of its Software products and/or certain of the third party products which SISW has the right to distribute.
- (q) **“Territory”** means the country in which a customer initially acquires and installs the Software, unless this definition is modified or expanded with respect to a specific product or product group by the Product Specific Terms.

2.2 License Grant and Conditions.

- (a) **License Grant.** SISW grants to Customer a nonexclusive, nontransferable, limited license to install, and allow Authorized Users to access and use the executable form of the Software in the Territory. The description of the License Types in the following Section 2.3 and the other terms of this Agreement define the scope of the license rights SISW is granting to Customer. No title to or ownership in the Software is transferred to Customer. Title to the Software, and all applicable rights in patents, copyrights, trade secrets and other intellectual property rights inherent in the Software, will remain in SISW or third parties from whom SISW has obtained the right to license the Software. SISW reserves all rights in the Software not explicitly granted herein.
- (b) **Use of Unauthorized Software.** Customer represents and warrants that it will only use SISW software that has been validly licensed to it by SISW or its authorized partner. Any SISW software not duly purchased from SISW or its authorized partner constitutes unauthorized software for purposes of this Agreement. If Customer downloads, installs and/or uses unauthorized software, then SISW has the right to terminate this Agreement in accordance with the terms of Section 4.3 of this Agreement. Furthermore, no refund or credit will be due to Customer as a result of termination of the Agreement, or termination of any Software licenses, Maintenance Services, Professional Services or other products or services provided under this Agreement. All amounts owed to SISW by Customer for services rendered up to the effective date of termination shall remain outstanding and shall be due and payable in accordance with the terms of this Agreement.
- (c) **Software Security and Monitoring.** SISW reserves the right to embed a software security mechanism within the Software to monitor usage of the Software and to verify Customer’s compliance with this Agreement. Such a security mechanism may store data relating to the usage of the Software and the number of times it has been copied, or may communicate with computers controlled by SISW over any type of communications link to exchange communications and report data relating to the usage of the Software, its installation, the system on which it has been installed and the number of times it has been copied or accessed. SISW reserves the right to use license administration software, a license authorization key to control access to the Software and/or a hardware lock device. Customer may not take any steps to avoid or defeat the purpose of any such measures. Use by Customer of any Software without any required security mechanism is prohibited.
- (d) **Third Party and Open Source Software.** The Software may contain or require the use of third party technology that is provided with the Software, including open source software. Third party technology is licensed to Customer either under the terms of this Agreement or under separate license terms that shall be specified in the relevant Documentation, “read me” files, notice files, or other such documents or files (“Technology Subject to a Third-Party License”). Customer’s rights to use Technology Subject to a Third-Party License are subject to such separate license terms and are not restricted in any way by this Agreement and to the extent that a term of this Agreement is in conflict with any applicable mandatory right granted by a third-party license, it shall not apply. If any applicable third-party license requires SISW to furnish source code contained in the Technology Subject to a Third-Party License, SISW shall provide it upon written request, if applicable against payment of the shipping and handling charges. For avoidance of doubt, third party technology that is not Technology Subject to a Third-Party License shall be deemed part of the Software and is licensed to Customer under the terms of this Agreement.
- (e) **U.S. Government Restricted Rights.** The Software is a commercial product that has been developed exclusively at private expense. If the Software is acquired directly or indirectly on behalf of a unit or agency of the United States Government under the terms of (i) a United States Department of Defense (“DOD”) contract, then the Software and Documentation are considered “Commercial Items”, as that term is defined in 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are defined in 48 C.F.R. §252.227-7014(a)(5) and 48 C.F.R. §252.227-7014(a)(1), and used in 48 C.F.R. §12.212 and 48 C.F.R. 227.7202, as applicable, consistent with 48 C.F.R. §12.212, 48 C.F.R. §252.227-7015, 48 C.F.R. §227.7202 through 227.7202-4, 48 C.F.R. §52.227-14, and other relevant sections of the Code of Federal Regulations (“C.F.R.”); or (ii) a Civilian agency contract, then use, reproduction, or disclosure is subject to the restrictions set forth in clause 27.405(b)(2)(i) of the Federal Acquisition Regulation (“FAR”), entitled Acquisition of Existing Computer Software, and any restrictions in the agency’s FAR supplement and any successor regulations thereto, and the restrictions set forth in this Agreement. The United States Government will only have the rights set forth in this Agreement. SISW Software and Documentation are licensed to United States Government end users with only those rights as granted to all other end users, according to the terms and conditions contained in this Agreement. SISW shall not be required to obtain a security clearance or otherwise be involved in

accessing classified information as described in FAR 52.204-2 and the National Industrial Security Program Operating Manual (DoD 5220.22-M).

- (f) **IaaS or PaaS.** If Customer wishes to utilize the IaaS or PaaS environment of a third party to host its Software licenses and data, then Customer will comply with the terms of this Section 2.2(e). The Provider and the IaaS or PaaS environment must be pre-approved by SISW. Once approved, SISW grants to Customer the right and license to install or have installed the Software on the Provider's IaaS or PaaS environment, and to manage, operate, and otherwise exercise, solely for the internal use of Customer, all of Customer's rights as set forth in the Agreement with respect to the Software subject to the following terms and conditions: (i) Customer shall not enter into any agreement with the Provider that gives the Provider or any other unauthorized third party access to the Software, except for consulting services work conducted in the ordinary course of business; (ii) the Software must remain under the sole control of Customer at all times; (iii) Customer shall be solely and ultimately responsible for all acts and omissions of the Provider and the Provider's personnel with respect to the Software, and agrees that a breach of the Agreement caused by any of them shall constitute a breach by Customer; (iv) Customer shall notify SISW in writing if there is any change of control of the Provider, or any sale, transfer or other disposition of the assets of the Provider that relate to the IaaS or PaaS environment, and SISW shall have the right in its reasonable discretion to terminate Customer's right to utilize the Provider's IaaS or PaaS environment if the transferee of control of such assets is not acceptable to SISW; (v) Customer will notify SISW of any access, use, copying or other operation of Customer's licensed copies of any Software by Provider or any other unauthorized third party of which Customer becomes aware; provided that any such access, use, copying or other operation will constitute a breach of the terms of this Agreement and, in addition to any other obligations of Customer resulting from such breach, Customer shall promptly take at its expense all necessary steps to promptly stop such access, use, copying or other operation and to cure the situation; and (vi) Customer hereby agrees to indemnify, defend and hold SISW and its affiliates harmless from any liabilities, losses, claims and expenses resulting from any act by the Provider, Provider personnel or any other unauthorized third party with respect to the Software.

2.3 License Types. The following License Types may be offered with respect to individual Software products or product families. Additional license types may be specified with respect to certain products or product groups as set forth in the Product Specific Terms. The License Type will be specified in an LSDA.

- (a) "**Backup (or Failsafe)**" license means a license that Customer may purchase separately solely to support redundancy on Customer's backup or failsafe installations, and may not be used for any other purpose.
- (b) "**Concurrent User**" licenses means that access to the Software at any given moment will be limited to the maximum number of concurrent Authorized Users for whom licenses have been validly acquired under this Agreement.
- (c) "**Loaner**" license means a license to the Software that is granted to Customer at SISW's option on a temporary basis, not to exceed 90 days, in order to provide Customer with a temporary workaround as part of SISW's maintenance obligations under Section 3, below.
- (d) "**Named User**" licenses means that access to the Software will be restricted to those individuals within Customer's organization that are named by Customer and for whom licenses have been validly acquired under this Agreement. Customer shall have the right to change Named User licenses provided that no individual Named User license may be changed more than once per calendar month.
- (e) "**Node-Locked**" license means that the use of the Software will be restricted to a single workstation specified by Customer. This type of license is usually accompanied by a hardware lock device or dongle to manage this restriction.
- (f) "**Per Product**" license means that the use of the Software will be restricted to the number of third party products with respect to which the Software is interfaced on a one-to-one basis.
- (g) "**Per Server**" license means that the use of the Software is restricted to a single server specified by Customer.
- (h) "**Test/QA**" license means a license that Customer may purchase solely for the purpose of supporting Customer's need for ongoing installation customization, support and testing, and may not be used for any other purpose including, without limitation, for use in a production environment.

2.4 Backup of Software. Customer may copy the Software as reasonably required in conjunction with Customer's permitted use under this Agreement and for backup purposes. Customer will retain and reproduce all copyright or proprietary notices in their exact form on all copies (including partial copies) of the Software made by Customer. The original and all complete and partial copies of the Software, including the intellectual property rights inherent in the Software, will remain the sole property of SISW and will be subject to the terms and conditions of this Agreement. If Customer breaches or threatens to breach the terms of this Section 2.4, 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.

2.5 Customer Responsibilities and Prohibited Actions.

- (a) **Remarketing of Software.** Customer will not cause or permit the loan, publication, transfer of possession (whether by sale, exchange, gift, operation of law or otherwise) of the Software, in whole or in part, to or for any third party, and/or use of the Software as a service bureau.
- (b) **Transfer of Software.** Unless specifically allowed by the terms of this Agreement or as may be required by applicable law, Customer may not distribute, rent, loan, lease, sell, sublicense or otherwise transfer all or any portion of the Software, or any rights granted in this Agreement, to any other person without the prior written consent of SISW.
- (c) **Reverse Engineering or Modifying the Software.**

- (i) **Prohibitions.** Customer will not reverse engineer, decompile, translate, disassemble, or otherwise attempt to discover the source code of the Software. The prohibition against modifying or reverse engineering the Software does not apply to the extent that Customer is allowed to do so by applicable law including, but not limited to, the European Union Directive on the Interoperability of Software or its implementing legislation in member countries. If Customer has purchased a valid license to use SISW's Knowledge Fusion product or a SISW Application Programming Interface (collectively referred to herein as "API's"), then Customer is authorized to use the API's to develop software solely for Customer's internal use in conjunction with the Software and Customer is prohibited from reselling any software developed through the use of the API's unless Customer is separately authorized to do so as a member of a SISW partner program. Customer may not otherwise modify, alter, adapt, or merge the Software.
- (ii) **Allowable Use of API's.** If Customer has purchased a license of Solid Edge, Femap, Preactor, XHQ or Comos software, the software includes API's and Customer is authorized to use the API's in order to develop software for Customer's internal use and for resale to others under terms and conditions at least as stringent as those contained herein. Customer hereby accepts, and SISW hereby disclaims, any and all responsibility for software developed by Customer using the API's.
- (d) **Host Identifier.** With respect to each order for Software under this Agreement, Customer or SISW's authorized channel partner will provide SISW with the host identifier required by SISW and such other information reasonably requested by SISW for each workstation and/or server on which the license management portion of the Software will be installed to permit SISW to generate a license file that will restrict end-user access to only those Software modules licensed under this Agreement and limit use of such Software modules at any given time to the maximum number of licensed Authorized Users.
- (e) **Authorized Agents; Indemnity.** In addition to its own responsibility for compliance with the terms of this Agreement, Customer will ensure that Authorized Agents comply with the terms of this Agreement. Customer hereby agrees to indemnify SISW from and against any and all liabilities, losses, claims, costs and/or expenses incurred by SISW and/or its affiliates as a result of any violation of the terms of this Agreement by any Authorized Agent.

2.6 Warranties and Disclaimers.

- (a) SISW warrants that it has all requisite rights to grant to Customer the rights and licenses purported to be granted pursuant to this Agreement.
- (b) SISW warrants that, as of the date the Software is made available to Customer via electronic download and for a period of 90 days thereafter (the "Warranty Period"), the Software will provide the features and functions generally described in the Documentation and that the media on which the Software is furnished, if any, will be free from defects in materials and workmanship. SISW's entire liability, and Customer's exclusive remedy, during the Warranty Period will be, at SISW's option, to attempt to correct or work around errors, to replace defective media on which Software is installed, if any, or to refund the license fees for the Software involved. Any refund is subject to the return of the Software or defective media to SISW.
- (c) Customer is responsible for the prevention of security issues with regard to its own systems and data, including Software hosted on Customer's systems. Customer's responsibility includes, but is not limited to, undesired invaders of the software such as malware, viruses, spyware or Trojans and SISW disclaims responsibility for any damages incurred as a result of Customer's failure to secure its systems and data.
- (d) EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION 2.6, SISW MAKES AND CUSTOMER RECEIVES NO EXPRESS WARRANTIES. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE SOFTWARE AND ITS FUNCTIONALITY IN ANY COMMUNICATION WITH CUSTOMER CONSTITUTE TECHNICAL INFORMATION AND NOT AN EXPRESS WARRANTY OR GUARANTEE. IN ADDITION, SISW SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, SISW DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

3. SOFTWARE MAINTENANCE TERMS AND CONDITIONS

3.1 Software Maintenance.

- (a) **Basic Maintenance Services.** Software Maintenance Services consist of (a) the provision of Software updates, (b) the provision of Error corrections, as defined herein, for the Software, and (c) the provision of telephone support in connection with the Software. Software Maintenance Services will be provided in accordance with the terms of this Section 3 to those customers who have purchased Maintenance Services under this Agreement for the applicable Software. Software Maintenance Services are, and will continue to be, available under this Agreement only to the extent that these services are made available by SISW with respect to the Software, or any portion of the Software, to its customer base in general.
- (b) **Additional and Optional Maintenance Services.** For certain SISW Software products additional support levels and optional services are available upon request. Enhanced support levels and optional services such as remote support (remote connection upon request), agent based diagnosis service (remote monitoring), corrective onsite service, support for prior versions and extended support hours are available with respect to specific SISW Software products. The terms and conditions under which these services will be provided and the Software products to which they apply are specified in the Product Specific Terms.

- 3.2 Maintenance Term.** Customer may purchase Software Maintenance Services from SISW or an SISW affiliate for an initial annual maintenance term or such other time period that is acceptable to SISW. Thereafter, maintenance services will automatically renew

for successive one (1) year terms unless terminated by either party by providing notice of termination in writing to the other party at least thirty (30) days prior to the expiration of the initial term or any renewal term. If Customer purchases additional Software licenses during the term of this Agreement, SISW reserves the right to adjust the annual maintenance term and pro rate the annual maintenance fees for such add-on Software to be coterminous with the initial Software maintenance term and billing cycle. Certain products and product groups are subject to different renewal terms and conditions as specified in the Product Specific Terms.

- 3.3 New Releases of Software.** New versions of the Software released by SISW may contain Error corrections and/or new or enhanced functionality. A new version may be either a point release denoted by a change to the right of the first decimal point (e.g. V18.0 to V18.1) (a "Point Release") or a major release denoted by a change to the left of the first decimal point (e.g. V18.0 to V19.0) (a "Major Release"). A Point Release will generally consist of corrections to known Errors. A Major Release will generally consist of a new version of the Software that contains new or enhanced functionality. Customer shall have the right to receive new Point Releases and new Major Releases of the Software that are released to SISW's customers in general during any period of time for which Customer has purchased Maintenance Services under this Agreement for the applicable Software. This right does not extend to any release, module, option, future product, or any upgrade in functionality or performance of the Software which SISW develops as a customized product for a single customer or that SISW develops and licenses as a separate product and not for release to customers in general as part of Maintenance Services. Customer is responsible for the installation and implementation of any new version and any required data conversion. Customer remains solely responsible for the configuration of its own equipment and software, including the compatibility of any additional equipment or software with the SISW Software. Certain products and product groups use different definitions for software releases as specified in the Product Specific Terms.
- 3.4 Maintenance of Prior Versions of the Software.** Once a new version of the Software is released, either a Point Release or a Major Release, SISW will maintain the current version it just released and the most current Point Release that relates to the immediately preceding Major Release. For example, if V2.1 is released, SISW will maintain V2.1 and V1.x, where x is the latest Point Release in the V1 series. If a known Error has been corrected in an update to the prior Major Release, SISW retains the right to require the Customer to upgrade to the requisite Point Release that contains the Error correction rather than providing a separate patch or workaround. Certain products and product groups define maintenance obligations for prior versions differently as specified in the Product Specific Terms.
- 3.5 Error Corrections.** An Error means the failure of the Software 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 Software 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 Point Release or Major Release of the Software, at the discretion of SISW. Some SISW Software products may require access to Customer's facilities to perform Maintenance Services. If reasonably requested by SISW, Customer shall allow SISW to perform the Maintenance Services at Customer's facilities and shall provide reasonable facility access, office space and office furnishings for this purpose.
- 3.6 Telephone Support (Standard Hours of Operation).** Customer shall have the right to receive telephone support for specific SISW Software products by calling the number provided by SISW for the support center that supports the specific Software product as listed on the following SISW webpage: <http://www.siemens.com/gtac>. Support will be available during normal business hours for the applicable support center that covers the Territory, except for holidays observed in such locations. If Customer has licensed the Software through a channel partner authorized by SISW, Customer will have the right to receive first line telephone support from the authorized channel partner during normal business hours as established by the authorized SISW channel partner, except on holidays recognized by the authorized channel partner. Customer will also be provided with the ability, by means of an electronic channel via the Internet, to log Software support requests, report suspected Errors, monitor progress on the Customer's prior requests, download Software fixes and workarounds, exchange information on a bulletin board, and obtain access to release notes and other Software information. The electronic channel may not be available for other specific SISW Software products as described in the Product Specific Terms.
- 3.7 Limitation of Remedies.** SISW's sole and exclusive responsibility, and Customer's sole and exclusive remedy, for a failure to correct Software when it does not conform substantially to the Documentation (an "Error") will be that Customer may terminate Software maintenance for the Software that is directly affected by the Error. SISW will thereafter promptly refund the unused portion of the fees paid for the remainder of the then current term of the Software Maintenance Services for the applicable Software.
- 3.8 Initial and Renewal Fees.** For direct orders by Customer to SISW or an SISW affiliate, the fees for Maintenance Services will be set forth on SISW's quotation for such services. SISW reserves the right to increase its maintenance fees prior to the expiration of the initial or any renewal term provided SISW gives notice of the increase more than sixty (60) days prior to the expiration of the then-current term. Purchase of Maintenance Services for a Customer site will be subject to the purchase of such services for all SISW supported Software modules licensed for use at that site. Certain Software products have different terms and conditions with respect to Maintenance Services renewals as specified in the Product Specific Terms.

4. GENERAL TERMS AND CONDITIONS

4.1 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 Software or service that caused the damage or that is the subject matter of the claim. This limitation is not applicable to claims for patent, copyright, and trade secret infringement that are covered by Section 4.2 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.

4.2 Intellectual Property Infringement Indemnity.

- (a) 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 any Software furnished hereunder infringes 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.
- (b) Injunction. If a permanent injunction is obtained against Customer's use of the Software, then SISW will obtain for Customer the right to continue using the Software, or will replace or modify the Software involved so it becomes non-infringing; or, if such remedies are not reasonably available, SISW will grant Customer a refund of the amount received by SISW for the Software involved based on a straight line amortization over 60 months from initial delivery, and accept the return of the Software as the case may be. SISW, in its sole discretion, may provide the remedies specified in this Section prior to the issuance of a permanent injunction.
- (c) Exclusions. Notwithstanding any provision to the contrary in this Agreement, SISW shall not have any liability or indemnification obligations to Customer under this Section 4.2 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 Software, to the extent that Customer's liability for the infringement would have been avoided by the use of a more recent version of the Software, (ii) the combination, operation or use of the Software 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) a modification, adjustment or repair of the Software not made by SISW, (iv) Customer's failure to use a defect correction or patch supplied by SISW to Customer, (v) compliance with designs, plans or specifications provided by Customer to SISW, or (vi) any refusal by Customer to install and use a non-infringing version of the Software offered by SISW to Customer at no cost to Customer as long as such non-infringing version performs substantially the same functions.
- (d) Sole and Exclusive Remedy. This Section 4.2 represents the sole and exclusive liability of SISW to Customer for infringement of the intellectual property rights of a third party under this Agreement.

4.3 Termination. Customer may terminate this Agreement at any time by removing all copies of the Software and Documentation from Customer's computer systems, destroying them and certifying the destruction to SISW in writing. SISW will have the right to terminate this Agreement and/or any Limited Term License and/or Perpetual License granted hereunder immediately on notice to Customer if Customer: (a) violates the licenses restrictions of this Agreement, (b) violates the confidentiality restrictions contained in this Agreement, (c) fails to make any payments when due, including any late charges that may have accrued after such payment became due, or (d) files a petition in bankruptcy, has such a petition filed against it, which petition is not discharged within sixty (60) days after such filing, makes an assignment for the benefit of creditors, if a receiver, trustee, custodian or similar agent is appointed or takes possession of Customer's assets, or if Customer ceases doing business in the ordinary course. In addition, SISW will have the right to terminate this Agreement and/or any Limited Term License and/or Perpetual License granted hereunder if Customer breaches any other obligation or provision of this Agreement which breach remains uncured for a period of thirty (30) days after receipt of notice thereof from SISW.

4.4 Effect of Termination. Upon termination of this Agreement the licenses granted hereunder and all other provisions of this Agreement (except those specified in this Section) shall be terminated and Customer shall immediately cease using the Software, the Documentation and other SISW confidential information and shall permanently delete all electronic copies thereof from Customer's systems. Except as specifically set forth in this Agreement all license fees and Maintenance Services fees are non-refundable. Termination or expiration of this Agreement or any license granted hereunder shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer. Any terms or conditions of the Agreement which by their express terms extend beyond the termination or expiration of the Agreement or which by their nature should so extend shall survive and continue in full force and effect after any termination or expiration of this Agreement.

4.5 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.

4.6 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 the Software and any derivatives thereof are not: (i) downloaded, exported, re-exported (including any "deemed export"), or transferred, directly or indirectly, contrary to any applicable economic sanction or Export Law, or (ii) used for any purpose prohibited by the Export Laws or (iii) delivered to persons/entities otherwise ineligible to acquire, license or use the Software. 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.

4.7 Confidentiality and Data Protection.

- (a) 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 and Authorized Agents. 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 Software 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 Software, 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.
- (b) 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.
- (c) Exclusions. SISW Confidential Information and Customer's Confidential Information are collectively referred to herein as the "Confidential Information". The confidentiality obligations of this Section 4.7 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.
- (d) Data Protection. Customer warrants that it is in compliance with all applicable data protection laws and that it has obtained all necessary consents as required by applicable law in respect of personal data Customer transfers or makes available to SISW for processing in the course of the Software Maintenance Services under this Agreement and will indemnify SISW in respect of all costs, claims, liabilities and demands incurred by SISW in respect of any breach of this warranty.
- (e) Survival of Confidentiality Obligations. This Section 4.7 will survive the expiration or termination of this Agreement for any reason.

4.8 **Audits.** Customer will at all times maintain records specifically identifying the Software licensed under this Agreement, the location of each copy thereof, and the location and identity of the workstations and servers on which the Software is installed. SISW may, during regular business hours and upon reasonable advance notice, conduct an audit to determine Customer's compliance with the terms and conditions of this Agreement. Customer will permit SISW or its authorized agents to access Customer's facilities, workstations and servers and otherwise cooperate fully with SISW in any such investigation and will take all commercially reasonable actions to assist SISW in accurately determining Customer's compliance with the terms and conditions of this Agreement. SISW and its authorized agents will comply with Customer's reasonable security regulations while on Customer's premises.

4.9 **Miscellaneous.**

- (a) **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 licenses 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.
- (b) **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 Software, Maintenance 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.
- (c) **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.
- (d) **Force Majeure.** 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.
- (e) **Validity and Enforceability.** 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.
- (f) **Publicity.** 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.
- (g) **Governing Law.** 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. SISW and Customer hereby submit for the purposes of this Agreement to the exclusive jurisdiction of the courts of Delaware. The UN Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded, shall not apply to transactions under this Agreement.
- (h) **Entire Agreement.** This Agreement 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.