

お客様のご依頼により、内容参照のみに使用する日本語版エンド・ユーザ・ライセンス契約書および組み込みソフトウェア補足条項を提供いたします。但し、日本語版と英語版の解釈が異なる場合は、英語版が優先して適用されます。Upon Customer's request, SISW will provide a Japanese version of the End User License Agreement and Embedded Software Supplemental Terms for reference purposes only. However, if there is a difference in interpretation between the Japanese and English versions, the English version shall govern.



END USER LICENSE AGREEMENT

This End User License Agreement (“**EULA**”) and the applicable Supplemental Terms (together, this “**Agreement**”) are entered into between the Siemens entity named on the Order (“**SISW**”) and the customer that accepted this Agreement (“**Customer**”). This Agreement may be accepted by manual signature or electronic signature, or through an electronic system specified by SISW. In the electronic system, Customer will be prompted to accept these terms by clicking a button. Clicking the button or using the Products or Services indicates that Customer has read, understood and accepted these terms. If Customer does not accept this Agreement, Customer must return the Product(s) to SISW or its authorized solution partner prior to installation or use for a refund.

1. DEFINITIONS

“**API**” means application programming interface.

“**Documentation**” means user documentation provided by SISW for Software, Hardware, or Services, in print, online, embedded as part of a help function, or in license files, “read me” files, header files, or similar files. Documentation includes license specifications, technical specifications, API information, and instructions for use.

“**Hardware**” means hardware equipment, devices, accessories, and parts delivered by SISW hereunder, including firmware incorporated therein.

“**Maintenance Services**” means Product maintenance, enhancement, and technical support services provided by SISW.

“**Order**” means an order form (Order Form), statement of work (SOW), Licensed Software Designation Agreement (LSDA), or similar ordering document that (i) incorporates the terms of this Agreement and sets forth the Products and Services ordered by Customer and any associated fees and (ii) has been agreed by manual or electronic signatures of both parties or agreed through an electronic system specified by SISW. In the electronic system, Customer will be prompted to accept by clicking a button.

“**Products**” means Software, Hardware, and Documentation.

“**Professional Services**” means training, consulting, engineering or other professional services provided hereunder by or on behalf of SISW, typically pursuant to a statement of work (SOW).

“**Services**” means Maintenance Services and Professional Services.

“**Software**” means software licensed by SISW to Customer hereunder, including updates, modifications, design data, and all copies thereof. Software includes associated APIs, as well as scripts, toolkits, libraries, reference or sample code, and similar materials.

“**SISW IP**” means all patents, copyrights, trade secrets, and other intellectual property rights in or related to Products or Services.

“**Supplemental Terms**” means those separate terms and conditions that apply to Products or Services as attached hereto, set forth or referenced in an Order, or otherwise agreed by the parties.

2. ORDERS

2.1 **Ordering Products or Services.** The parties may enter into one or more Orders for Products or Services under this Agreement. Each Order is binding on the parties and is governed by the terms of this EULA and all applicable Supplemental Terms.

2.2 **Delivery of Software.** Delivery of Software occurs when SISW makes Software available to Customer via electronic download from a website specified by SISW. Physical shipment of the media may be done at SISW's option, as an accommodation to Customer, or because certain elements of the Software are not available for electronic download. Software will be delivered subject to EXW (Incoterms 2020) for deliveries that occur entirely within the United States, Russia, China, or India. All other Software will be delivered subject to DAP (Incoterms 2020).

2.3 **Payment.** Customer will pay the fees set forth in the applicable Order within 30 days of the invoice date unless otherwise agreed by the parties. Unless specified otherwise in the applicable Order, fees related to Products and Maintenance Services are invoiced in advance and Professional Services will be invoiced monthly as charges are incurred.

2.4 **Taxes.** All prices are exclusive of any taxes and any other fee. Customer agrees to pay or reimburse SISW or its authorized solution partner for the payment of any applicable taxes or duties including, but not limited to, sales taxes, value added taxes, goods and services taxes, consumption taxes, or any other fee that is imposed by any government authority on Customer's use of or license to the Products or Customer's receipt of any Services. If Customer is exempt from value-added or sales tax, then it must provide a valid, timely, and executed exemption certificate, direct pay permit, or other such government-approved documentation to SISW or its authorized solution partner. If Customer is required by law to make any income tax deduction or to withhold income tax, after the application of reductions available

under international treaties, from any sum payable directly to SISW hereunder, Customer will promptly effect payment thereof to the applicable tax authorities, and will also promptly provide SISW with official tax receipts or other evidence issued by the applicable tax authorities to support a claim for tax credit relief. Notwithstanding the foregoing, Customer is responsible for, and will indemnify SISW for, any taxes, including withholding taxes, resulting from making licenses available to users in geographic regions outside the country in which Customer is located as per the Order.

3. SOFTWARE LICENSE AND PRODUCT MAINTENANCE SERVICES TERMS

3.1 License Grant and Conditions.

- (a) License Grant. SISW grants Customer a nonexclusive, nontransferable, limited license to install and use Software and related Documentation for Customer's internal business purposes for the time period specified in the Order, and subject to the applicable Supplemental Terms. Software is provided in object code form only, unless otherwise specified in this Agreement. Software is the trade secret of SISW or its licensors. Customer may copy Software only as required to support the authorized use. Each copy must include all notices and legends embedded in Software and affixed to its medium or container as received from SISW. SISW or its licensors retain title to and ownership of Software and SISW IP. SISW reserves all rights in Products and SISW IP not expressly granted herein.
- (b) License Compliance. SISW reserves the right to embed a reporting mechanism in Software to determine unauthorized use of licenses. The mechanism does not transmit technical or business data that Customer processes with Software.
- (c) Third-Party and Open Source Software. Products may contain third-party technology, including open source software ("**Third-Party Technology**"). Third-Party Technology may be licensed by third parties under separate terms ("**Third-Party Terms**"). Third-Party terms are specified in the Documentation and control solely with respect to Third-Party Technology. If Third-Party Terms require SISW to furnish Third-Party Technology in source code form, SISW will provide it upon written request and payment of any shipping charges.

3.2 Maintenance Services Terms. Maintenance Services are governed by the terms found at <https://www.plm.automation.siemens.com/global/en/legal/online-terms/mes/index.html> and are incorporated herein by reference.

3.3 Customer Responsibilities.

- (a) Transfer and Remarketing of Software. Unless otherwise provided in this Agreement or required to be permitted by applicable law, Customer will not cause or permit the transfer, loan, lease, publication, or use of Software to or for the benefit of any third party without the prior written consent of SISW.
- (b) Reverse Engineering, Modification, Use of APIs. Customer will not reverse engineer, decompile, or otherwise attempt to discover the source code of Software. Customer will use Software provided in source code form only to modify or enhance Software for its authorized use. Customer will not otherwise modify, adapt, or merge Software. Customer will not subject Software to any open source software license that conflicts with this Agreement or that does not otherwise apply to such Software. Customer will not use Software for the purpose of developing or enhancing any product that is competitive with Software. Customer will only use APIs identified as published in the Documentation and only as described therein to support the authorized use of Software. The restrictions set out in this Section do not apply to the extent they conflict with mandatory applicable law.
- (c) Third Party Hosting of Software; Indemnity. Customer may only engage a third party to host Software ("**Provider**") with SISW's prior written consent. SISW may require a separate written agreement as a condition to such consent. Software hosted by a Provider must remain under Customer's sole control at all times, unless management and operation of Software by the Provider is explicitly approved by SISW, in which case Customer will ensure that the Provider manages and operates Software in conformance with this Agreement and solely for Customer's internal business purposes as permitted herein. If Customer becomes aware of any actual or suspected unauthorized use or disclosure of Software, Customer shall immediately terminate Provider's access to Software. A breach of this Agreement caused by a Provider will constitute a breach by Customer. Customer will indemnify and hold SISW and its affiliates harmless from all claims, damages, fines, and costs (including attorney's fees and expenses) arising in connection with Customer's use of the Provider's services. Customer will notify SISW if the Provider or its relevant business comes under the control of a third party, in which case SISW may withdraw its prior consent.
- (d) Security. Customer is responsible for the security of Customer's systems and data, including Products on Customer's systems. Customer will take commercially reasonable steps to exclude malware, viruses, spyware, and Trojans.
- (e) Third-Party Claims. Customer acknowledges that SISW does not control Customer's processes or the creation, validation, sale, or use of Customer's products. SISW will not be liable for any claim or demand made against Customer by any third party, except for SISW's obligations to indemnify Customer against infringement claims as expressly set forth herein.
- (f) Responsibility for Users. Customer is liable for a breach of this Agreement by any user of the Products or Services.
- (g) Host Identifier. Customer will provide SISW with sufficient information, including the host identifier for each workstation or server upon which the license management portion of Software will be installed, for SISW to generate a license file enabling Software access per the scope of the licenses granted under each Order.
- (h) Audit. Customer will at all times maintain records identifying Software, the location of each copy thereof, and the location and identity of workstations and servers on which Software is installed. SISW may, during regular business hours and upon reasonable advance notice, conduct an audit of Customer's compliance with this Agreement. Customer will permit SISW or its authorized agents to access facilities, workstations, and servers and take all commercially reasonable actions to assist SISW in determining compliance with this Agreement. SISW and its agents will comply with reasonable security regulations while on Customer's premises.

4. WARRANTIES AND DISCLAIMERS

4.1 **Defects.** SISW warrants that, for a period of 90 days following the date Software is initially made available to Customer under an Order, it will provide the material features and functions described in the Documentation. The foregoing warranty excludes (i) Software provided at no charge, (ii) Software provided upon re-mix, (iii) Software that is designated as retired or not generally supported as of the date of the Order, and (iv) deliveries governed by the Maintenance Services terms. SISW's entire liability and Customer's exclusive remedy for a breach of this warranty will be, at SISW's option, to correct or work around errors, or replace defective Software or refund license fees paid for defective Software returned by Customer.

4.2 **Disclaimer.** SISW MAKES NO WARRANTIES EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS AGREEMENT. REPRESENTATIONS ABOUT PRODUCTS, FUNCTIONALITY, OR SERVICES IN ANY COMMUNICATION WITH CUSTOMER CONSTITUTE TECHNICAL INFORMATION, NOT A WARRANTY OR GUARANTEE. SISW DISCLAIMS ALL OTHER WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. SISW DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

5. LIMITATION OF LIABILITY AND INDEMNIFICATION

5.1 **Limitation of Liability.** THE ENTIRE, COLLECTIVE LIABILITY OF SISW, SISW'S AFFILIATES, SISW'S LICENSORS, AND THEIR REPRESENTATIVES, FOR ALL CLAIMS AND DAMAGES RELATED IN ANY WAY TO THIS AGREEMENT, IN THE AGGREGATE AND REGARDLESS OF THE FORM OF ACTION, WILL BE LIMITED TO THE AMOUNT PAID TO SISW FOR THE SOFTWARE LICENSE, HARDWARE, OR SERVICE THAT GAVE RISE TO THE CLAIM. THE FOREGOING LIMITATION DOES NOT APPLY TO SISW'S INDEMNITY OBLIGATION IN SECTION 5.2. IN NO EVENT WILL SISW, SISW'S AFFILIATES, SISW'S LICENSORS, OR THEIR REPRESENTATIVES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOSS OF PRODUCTION, INTERRUPTION OF OPERATIONS, OR LOST DATA OR PROFITS, EVEN IF SUCH DAMAGES WERE FORESEEABLE. FOR PRODUCTS AND SERVICES PROVIDED AT NO CHARGE, SISW, SISW'S AFFILIATES, SISW'S LICENSORS, AND THEIR REPRESENTATIVES, SHALL HAVE NO LIABILITY WHATSOEVER. CUSTOMER MAY NOT MAKE A CLAIM UNDER THIS AGREEMENT MORE THAN TWO YEARS AFTER THE EVENT GIVING RISE TO THE CLAIM IS OR SHOULD HAVE BEEN DISCOVERED BY CUSTOMER.

5.2 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 on a claim that any Product infringes any copyright, any trade secret, or a patent or trademark issued or registered by the United States, Japan, or a member of the European Patent Organization, and will pay all damages finally awarded against Customer by a court of competent jurisdiction or agreed in a settlement, provided that Customer gives SISW (i) prompt written notice of the claim, (ii) all requested information and reasonable assistance related to the claim, and (iii) sole authority to defend or settle the claim. SISW will not admit liability or incur obligations on Customer's behalf without Customer's prior written consent, which shall not be unreasonably withheld.

(b) **Injunction.** If a permanent injunction is obtained against Customer's use of a Product, SISW will obtain for Customer the right to continue using the Product or will replace or modify the Product to become non-infringing. If such remedies are not reasonably available, SISW will refund the fees paid for the enjoined Product for the remainder of the license term, or amortized over 60 months from the initial delivery of Hardware or a perpetual license, and accept the return of the Product. SISW may, in its sole discretion, provide the remedies specified in this Section to mitigate infringement prior to the issuance of an injunction.

(c) **Exclusions.** Notwithstanding anything to the contrary herein, SISW will not have any liability or indemnification obligation to Customer to the extent that an infringement claim arises out of (i) use of a prior version of the Product to the extent that a current version is non-infringing, (ii) failure to use a correction, patch, or new version of the Product offered by SISW that performs substantially the same functions, (iii) use of the Product in combination with software, equipment, data, or products not provided by SISW, (iv) use of a Product provided at no charge (v) use of a Product that is designated as retired or not generally supported as of the date of the Order, (vi) deliverables resulting from Professional Services, (vii) any adjustment, modification, or configuration of a Product not made by SISW, or (viii) instructions, assistance, or specifications provided by Customer.

(d) **Sole and Exclusive Remedy.** Section 5.2 sets forth the sole and exclusive liability of SISW to Customer for infringement of third-party intellectual property rights.

6. TERMINATION

6.1 **Termination.** Licenses for a limited term terminate upon expiration of the term. SISW may immediately terminate this Agreement or any Product license granted or Services provided hereunder upon notice to Customer (i) for reasonable cause, including, without limitation, Customer's unauthorized installation or use of SISW software, Customer filing or being filed in bankruptcy, Customer ceasing to do business, or any breach of Sections 2.3, 3, 7, or 8 of this EULA, (ii) in order to comply with the law or requests of governmental entities, or (iii) for any other breach that remains uncured after 30 days' notice thereof.

6.2 **Effect of Termination.** Upon termination of this Agreement, the licenses granted and Services provided hereunder automatically terminate. Upon termination of any license, Customer will immediately remove and destroy all copies of Software, Documentation, and other SISW Confidential Information, and certify such removal and destruction in writing to SISW. No refund or credit will be given as a result of termination under Section 6. Termination of this Agreement or any Services or license granted hereunder will not relieve Customer of its obligation to pay the total fees set forth in any Order, which fees will become due and payable immediately upon termination. Sections 2.3, 2.4, 4.2, 5.1, 6.2, 7, 8 and 9.8 survive termination of this Agreement.

7. EXPORT COMPLIANCE

7.1 **Export.** SISW's obligations under this Agreement are conditioned upon Customer's compliance with, and Customer agrees to comply with,

all applicable export and re-export controls, embargoes, and economic and trade sanctions laws and regulations, including in any event, those of the United States and the European Union (“**Export Laws**”). Customer represents that any Products and Services provided hereunder and any derivatives thereof will not be (i) downloaded or accessed by a Sanctioned Person, (ii) exported, re-exported (including any ‘deemed exports’), shipped, distributed, delivered, sold, resold, supplied, or otherwise transferred, directly or indirectly, to any Sanctioned Person or otherwise in a manner contrary to the Export Laws, (iii) used for any purpose prohibited by the Export Laws, or unless expressly authorized by SISW in writing, (iv) used for non-civilian purposes (e.g. armaments, nuclear technology, weapons, any other usage in the field of defense and military). Without limiting the foregoing, Customer represents and warrants that (i) it is not a Sanctioned Person, and (ii) it will not download or otherwise access, or facilitate a third party’s download or access of, any Product or Services from a Sanctioned Country. Customer will, at least once per year, review and update its list of users who have access to a Product or Services and confirm that no such user is a Sanctioned Person and that all such users may continue to access Products and Services in compliance with Export Laws. SISW may conduct the necessary Export Laws checks and, upon request, Customer will promptly provide SISW with any necessary information. “**Sanctioned Country**” means a country or territory that is itself the subject or target of any comprehensive trade or economic sanctions (currently Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine). “**Sanctioned Person**” means any person (i) listed in the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Department of Treasury’s Office of Foreign Assets Control or in any Export-Control-Related list of designated persons maintained by the U.S. Department of Commerce, the U.S. Department of State, the United Nations Security Council, the European Union, any Member State of the European Union, or the United Kingdom; (ii) operating, organized, or resident in a Sanctioned Country; (iii) the government of, or acting for or on behalf of the government of, Venezuela or a Sanctioned Country; or (iv) owned or controlled by one or more such persons.

7.2 **Information Disclosure.** If Customer discloses to SISW any information that is (i) Covered Defense Information or Controlled Unclassified Information as defined in U.S. Government regulations or (ii) subject to Export Laws that require controlled data handling, Customer will notify SISW personnel in advance of each instance of disclosure and will use the notification tools and methods specified by SISW.

7.3 **Remedies, Indemnification.** In the event that Customer fails to comply with any provision of Section 7 or violates any Export Laws in connection with Products or Services, SISW will have the right to take action in accordance with the terms of this Agreement and as required by U.S. law or the applicable law. Further, Customer will indemnify and hold harmless SISW, its affiliates and their representatives against any claims, damages, fines, and costs (including attorney’s fees and expenses) relating in any way to Customer’s noncompliance with Section 7, including Customer’s violation or alleged violation of any Export Laws.

7.4 **Impediments.** SISW will not be obligated to perform under this Agreement if such performance is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions including, but not limited to, embargoes or other sanctions imposed by the United Nations, the European Union, or the United States.

8. CONFIDENTIALITY AND DATA PROTECTION

8.1 **Confidential Information.** “**Confidential Information**” means all information disclosed by one party or any of its affiliates to the other party under this Agreement that is marked as confidential or the confidential nature of which is evident to a reasonable person. SISW Confidential Information includes the terms of this Agreement, Products, Services, SISW IP, and any information Customer derives from benchmarking the Products or Services. The receiving party will (i) not disclose Confidential Information, except on a need-to-know basis to its employees, affiliates’ employees, consultants, contractors, and financial, tax and legal advisors; and with respect to the use of Products solely as authorized by the agreed license terms, (ii) use and copy Confidential Information only as required to exercise rights or perform obligations under this Agreement, and (iii) protect Confidential Information from unauthorized use or disclosure. The receiving party (i) will ensure that all its recipients of Confidential Information are bound by confidentiality obligations and use restrictions at least as restrictive as those herein, and (ii) will be liable for compliance with this Section by each of its recipients. SISW and its affiliates may name Customer as a customer on their websites and in customer lists and other marketing materials.

8.2 **Exclusions.** The foregoing confidentiality obligations 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 receiving party in violation of this Agreement; (ii) becomes available to the receiving party from a source other than the disclosing party, provided that the receiving party has no reason to believe that such source is itself bound by a legal, contractual, or fiduciary obligation of confidentiality; (iii) was in the receiving party’s possession without an obligation of confidentiality prior to receipt from the disclosing party; (iv) is independently developed by the receiving party without the use of, or reference to, the disclosing party’s Confidential Information; or (v) is required to be disclosed by a governmental agency or law, so long as the receiving party promptly provides the disclosing party with written notice of the required disclosure, to the extent such notice is permitted by law, and cooperates with the disclosing party to limit the scope of such disclosure.

8.3 **Data Protection.** When SISW processes personal data on Customer’s behalf in connection with Products or Services, the terms set out at <https://www.plm.automation.siemens.com/global/en/legal/online-terms/general-data-protection.html> are incorporated herein by reference and shall apply to the use of such Product and Services. Customer will indemnify and hold harmless SISW, its affiliates and their representatives from any claims, damages, fines, and costs (including attorney’s fees and expenses) relating in any way to Customer’s noncompliance with applicable data protection laws.

9. ADDITIONAL TERMS AND CONDITIONS

9.1 **SISW Affiliates.** Companies directly or indirectly owned or controlled by SISW’s ultimate parent company may exercise SISW’s rights and fulfill SISW’s obligations under this Agreement. SISW remains responsible for its obligations hereunder.

9.2 **Assignment.** This Agreement will extend to and be binding upon the successors 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.

- 9.3 **License Rights Applicable to the U.S. Government.** Products and Services are commercial products that were developed exclusively at private expense. If Products or Services are acquired directly or indirectly for use by the U.S. Government, then the parties agree that the Products and Services are considered ‘Commercial Items’ and ‘Commercial Computer Software’ or ‘Computer Software Documentation’, as defined in 48 C.F.R. §2.101 and 48 C.F.R. §252.227-7014(a)(1) and (a)(5), as applicable. Software and Documentation may only be used under the terms and conditions of this Agreement as required by 48 C.F.R. §12.212 and 48 C.F.R. §227.7202. The U.S. Government will only have the rights set forth in this Agreement, which supersedes any conflicting terms or conditions in any government order document, except for provisions which are contrary to applicable mandatory federal laws. SISW will not be required to obtain a security clearance or otherwise be involved in accessing U.S. Government classified information.
- 9.4 **Feedback.** If Customer provides any ideas regarding the Products or Services, including suggestions for changes or enhancements, (collectively “Feedback”) in the course of using or evaluating the Products or Services, Customer agrees that such Feedback may be used by SISW without condition or restriction.
- 9.5 **Force Majeure.** Neither party will be liable for delay or failure to perform due to any cause beyond its reasonable control, which could not have been prevented by good industry practice, provided the delayed party promptly notifies the other party.
- 9.6 **Notices.** Notices relating to this Agreement will be in writing and sent to the party’s address as specified in the applicable Order. A party may change its address for receipt of notice by delivery of written notice to the other party.
- 9.7 **Language.** If SISW provides a translation of the English language version of this Agreement, the English language version of this Agreement will control in the event of any conflict.
- 9.8 **Governing Law and Jurisdiction.** This Agreement shall be subject to the applicable laws set forth in the table below, as set forth therein, without reference to any conflict of laws rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any dispute arising out of or in connection with this Agreement shall be resolved as set forth in the table below.

If the SISW entity named on the Order is in:	the applicable law shall be:	Any dispute arising out of or in connection with this Agreement shall be:
a country in North or South America, with the exception of Brazil,	the laws of the State of Delaware, United States.	subject to the jurisdiction of the courts of the State of Delaware, USA. Each party hereby irrevocably submits itself to the personal jurisdiction of the relevant court of the State of Delaware for any such disputes.
Brazil,	the laws of Brazil.	subject to the jurisdiction and venue of the Court of Sao Caetano do Sul-SP, Brazil.
a country in Asia or Australia/Oceania, with the exception of Japan,	the laws of Hong Kong.	finally resolved by binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (“ ICC Rules ”). The seat of arbitration shall be Hong Kong.
Japan,	the laws of Japan.	finally resolved by binding arbitration in accordance with the ICC Rules. The seat of arbitration shall be Hong Kong.
a country not covered by any of the above,	the laws of Switzerland.	finally resolved by binding arbitration in accordance with the ICC Rules. The seat of arbitration shall be Zurich, Switzerland.

In the event that a dispute is subject to arbitration as described in the table above, arbitrators shall be appointed in accordance with the ICC Rules, the language used for proceedings shall be English, and orders for the production of documents shall be limited to the documents on which each party specifically relies in its submission. Nothing in this Section shall restrict the right of the parties to seek interim relief intended to preserve the status quo or interim measures in any court of competent jurisdiction. Notwithstanding the foregoing, to the extent permissible under applicable laws and to the extent it would not result in the invalidity or inapplicability of this Section, the parties agree that SISW, at its sole discretion, may bring an action in the courts of the jurisdiction(s) where the Products or Services are being used or Customer has its place of business, (i) to enforce its intellectual property rights or (ii) for the payment of fees related to Products or Services.

- 9.9 **No Waiver; Validity and Enforceability.** The failure to enforce any provision of this Agreement will not be construed as a waiver of such provision. 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 be affected, and such provision will be deemed restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.
- 9.10 **Entire Agreement and Order of Precedence.** This Agreement constitutes the full and complete agreement between the parties with respect to the subject matter hereof and supersedes any previous or contemporaneous agreements or communications, whether written or verbal, relating to such subject matter. This Agreement may not be varied other than in writing by manual signatures or electronic signatures of authorized representatives of both parties. In the event of a conflict between this EULA and any Supplemental Terms, the Supplemental Terms prevail. In the event of a conflict between this Agreement and an Order, the Order prevails with respect to the Products or Services ordered thereunder. The terms of any purchase order or similar Customer document are excluded and such terms will not apply to any Order for Products or Services, and will not supplement or modify this Agreement.

EMBEDDED SOFTWARE SUPPLEMENTAL TERMS

These Embedded Software Supplemental Terms (“**Embedded Terms**”) amend the End User License Agreement (“**EULA**”) between Customer and SISW solely with regard to embeddable Software and tooling Software enabling the development and embedding of embeddable Software,

including without limitation any Products identified on the Order as EMB-IES or as EMB-EPS, (“**Embedded Software Products**”). These Embedded Terms together with the EULA and other applicable Supplemental Terms form the agreement between the parties (“**Agreement**”).

1. **DEFINITIONS.** Capitalized terms used herein have the meaning as defined elsewhere in the Agreement. The following additional definitions apply to these Embedded Terms:

- (a) “**Authorized Agents**” means Customer’s consultants, agents and contractors who require access to Embedded Software Products in support of Customer’s business. For products identified on the Order Form as EMB-IES, this only includes consultants, agents and contractors who are working on Customer’s premises or are accessing the Embedded Software from anywhere in the Territory through a connection to the Customer’s wide-area network.
- (b) “**Authorized Use**” means the specific license restriction variables for the Embedded Software as set forth in the Order, e.g. hardware (including ECU, Processor, etc), Platform, software, product restrictions, user restrictions, etc.
- (c) “**Authorized Users**” means Customer’s employees, and any Authorized Agents.
- (d) “**Brand**” means an automotive product line by one automotive company, which is sometimes also known as a “**Make**” as expressly identified on the Order.
- (e) “**Customer Product**” means (i) for EMB-EPS Products, a product identified on the Order which will be developed and/or manufactured by Customer or an Authorized Agent on behalf of Customer or (ii) for EMB-IES Products, a moving machinery or any component thereof, excluding ultra-hazardous use-cases (including aerospace and aviation, nuclear power, chemical and/or biological reactors, petrochemical, military), but including military marine transportation vessels.
- (f) “**Electronic Control Unit**” or “**ECU**” means a specific logical printed circuit board with a particular defined microcontroller on it, which is packaged into housing equipped with a connector and which contains the functionality, as expressly identified on the Order.
- (g) “**Embedded Software**” means an Embedded Software Product comprising application, operating system, firmware, driver components, which are supposed to be embedded and executed on a device it was designed for.
- (h) “**Executable Code**” means a compiled program translated into a machine-readable format that can be loaded into memory and run by a processor.
- (i) “**Linkable Object Code**” means linkable code resulting from the translation, processing, or compiling of Source Code by a computer into machine-readable format.
- (j) “**Legitimate User**” means a user of a Customer Product that (i) acquired the Customer Product lawfully, and (ii) uses the Embedded Software embedded on the Customer Product strictly limited to the extent reasonably necessary for using the Customer Product and in line with applicable copyright laws.
- (k) “**Platform**” means a common foundation or design environment shared across multiple car models, Brands or automotive companies, as expressly identified on the Order.
- (l) “**Processor**” means the specific microprocessor to be used with Embedded Software and implemented in Customer’s Product.
- (m) “**Site**” or “**Authorized Location**” or “**Development Location**” means a single physical Customer location where the Embedded Software Product is permitted to be used by Authorized Users. Provided that an Authorized User’s official and customary place of work is a licensed Site, occasional use of the Embedded Software Product by such user from locations other than that Site (e.g., use from that user’s residence, an airport, a hotel, etc.) shall be regarded as use on the Site and in compliance with the Site restriction.
- (n) “**Territory**” means the Site(s) or geographic area specified on the Order where Customer is licensed to install and use the Embedded Software Product. If not specified on the Order nor elsewhere in the Agreement, the Territory shall be the country in which the Customer has its principal place of business.
- (o) “**Tool Software**” means computer program(s) used by software developers to create, develop, compile, debug, assemble, link or otherwise maintain Embedded Software which, by its nature, does not need to become part of Embedded Software, such as software source code generators, make-, config- and build-files or example code.

2. **LICENSE AND USE TYPES.** The following license and use types may be offered with respect to individual Embedded Software Products. Additional license and use types may be specified with respect to certain products as set forth in an Order. Each license may be used only by Authorized Users in the Territory and for the term as specified in the Order.

- 2.1. “**Floating**” license means that access to the Tool Software at any given moment is limited to the maximum number of Authorized Users indicated on the Order.
- 2.2. “**Node-Locked**” license means that the use of the Tool Software, is restricted to a single workstation specified by Customer and may include a hardware lock device or dongle to manage this restriction. Such hardware lock devices or dongles are mobile, which means they are freely transportable to another workstation within the Territory without issuing a new license file.
- 2.3. “**Per Product**” license means that the use of the Embedded Software Product is restricted to the Customer Product(s) on which the Embedded Software Product is permitted to be installed as per the specified Authorized Use.
- 2.4. “**Development**” license means:
 - i. For Embedded Software Products identified in the Order as EMB-IES: The non-exclusive, non-transferable right to embed Linkable Object Code of Embedded Software for installation in a hardware system for the Authorized Use and for Customer’s internal purpose

of configuring, compiling and assembling the Embedded Software Source Code into Linkable Object Code and/or Executable Code to perform software testing without integrating it into moving machinery or any test version thereof or any commercial distribution.

- ii. For Embedded Software Products identified in the Order as EMB-EPS: Subject to the restrictions of the respective Authorized Use, the non-exclusive, non-transferable right to use, test, demonstrate, modify and make copies of the Embedded Software, especially to get such Embedded Software configured, debugged, compiled, assembled, linked and get embedded in its Executable Code form into a Customer Product by Authorized Users.
- 2.5. **“Production”** license means:
- i. For Embedded Software Products identified in the Order as EMB-IES: The non-exclusive, non-transferable right to embed Linkable Object Code of Embedded Software for installation in a hardware system for the Authorized Use and purpose of configuring, compiling and assembling the Embedded Software source code into Linkable Object Code and/or Executable Code in order to integrate it into Customer Products and worldwide distribute it with Customer Products or any test versions thereof.
 - ii. For Embedded Software Products identified in the Order as EMB-EPS: Subject to full compliance with Section 2.4.ii, the non-exclusive, non-transferable right to worldwide distribute Customer Products, which have the Executable Code of the Embedded Software embedded.
- 2.6. **“Perpetual”** license means a license to use the Embedded Software Products that extends indefinitely. Unless otherwise set out in the Order, Perpetual licenses do not include Maintenance Services.
- 2.7. **“Subscription”** means a license for a limited term as identified on the Order. Maintenance Services are included in the Subscription license fee. For multiple-year Subscription terms, SISW may require new license keys to be issued during the term.

3. OTHER PROVISIONS

- 3.1. **Default License Grant.** Unless licensed under a Floating license, or Node-Locked license, SISW grants to Customer a non-exclusive, non-transferable license to have the executable version of the Tool Software used or installed by Authorized Users, limited to Customer’s internal business purposes for the time period specified in the Order only. All licenses granted for Embedded Software are Development licenses unless explicitly designated to be Production licenses on the Order.
- 3.2. **Sublicense Grant and Termination.** Subject to the license restrictions of the respective Production license, Customer has the non-exclusive, non-transferable, sublicensable (including the right to grant further sublicenses) and perpetual right:
- i. to distribute the executable version of the Embedded Software embedded on a Customer Product to Legitimate Users of the Customer Product; and
 - ii. to have the executable version of the Embedded Software embedded on a Customer Product used by Legitimate Users, strictly limited to the extent reasonably necessary for using such a Customer Product;
- Any expiration or termination by SISW shall not affect any sublicenses granted to Legitimate Users prior to SISW’s termination or an expiration.
- 3.3. **Source Code.** If any Embedded Software or portions thereof are provided in source code form, Customer will use the source code only for correction of software errors, and/or enhancement, compilation according to the agreed compiler specification, or modification of the Embedded Software for the Authorized Use. SISW’s support and warranty obligations and liability shall only apply to Embedded Software in its unmodified state and only as provided by SISW.
- 3.4. **Customer Reporting.** In addition to audit rights stipulated in the Agreement, Customer shall at all times maintain records identifying: the identity and location of all entities currently using Embedded Software Products, including any contractors, the number of units distributed by Customer; or, a description of the Customer Product(s), Processors, ECU, Brand or Platform for which the Embedded Software Products are being used. Customer shall provide such requested information within thirty (30) calendar days from the date of SISW’s request.

4. PORTING SERVICES

Standardized porting services, which are designated as “Port” or “Porting Service” on the Order, entail the customization of the Embedded Software Products to function on or with a hardware configuration as specified in an addendum to the Order. Any Order for such porting services accepted by SISW will automatically amend the Authorized Use of the Embedded Software Products to be ported to the new hardware configuration.