

End User License Agreement

This End User License Agreement (“EULA”) and the applicable Supplemental Terms (together, the “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, 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 Professional Services deliverables 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

- (a) “Documentation” means the user documentation with respect to particular Product provided by SISW in print, online or embedded as part of a help function, including technical specifications, license specifications and instructions for Product use.
- (b) “Hardware” means equipment, systems, devices, accessories and parts delivered by SISW, excluding Software storage media.
- (c) “Maintenance Services” means the maintenance, enhancement and support services provided by SISW.
- (d) “Order” means an Order Form that has been signed or affirmatively accepted online by both parties.
- (e) “Order Form” means a Licensed Software Designation Agreement, order form or similar ordering document that incorporates the terms of this Agreement and sets forth the Products and Maintenance Services ordered by Customer and associated fees.
- (f) “Products” means Software, Hardware, operating system software, and firmware incorporated into the Hardware.
- (g) “Professional Services” means professional services provided by or on behalf of SISW.
- (h) “Software” means software licensed or distributed by SISW to Customer hereunder, including updates, modifications, and design data.
- (i) “SISW Technology” means all Products, Documentation provided by SISW hereunder, all Software source code, and all applicable rights in patents, copyrights, trade secrets and other intellectual property rights inherent therein.
- (j) “Supplemental Terms” means those separate terms and conditions that apply to SISW’s Product or services offerings as attached hereto, set forth or referenced in an Order Form, or otherwise agreed by the parties.

2. ORDERS

- 2.1 Ordering Products or Services.** Customer and SISW may enter into one or more Orders for Products and Maintenance Services under this Agreement. With the exception of certain services ordered via the Order Form, orders for Professional Services will be set forth in a statement of work (“SOW”). Each Order and SOW is binding on the parties and is governed by the terms of this Agreement and all applicable Supplemental Terms.
- 2.2 Delivery of Software.** Delivery of the Software occurs when SISW makes the 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. 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).
- 2.3 Taxes.** Customer agrees to pay, and to reimburse SISW or its authorized solution partner for the payment of, any applicable taxes and customs 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 governmental authority on Customer’s use or license of the Products, or its receipt of any services. If Customer is exempt from value-added or sales tax, then Customer 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 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. Customer is responsible for any taxes resulting from making licenses available to users in other geographic regions if permitted under this Agreement.
- 2.4 Payment.** Customer will pay the fees set forth in the applicable Order or SOW within 30 days of the invoice date unless otherwise agreed by the parties. Fees related to Products and Maintenance Services are invoiced in advance unless specified

otherwise in the applicable Order. Professional Services will be invoiced monthly as charges are incurred unless specified otherwise in the applicable SOW.

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 the executable form of the Software and Documentation delivered hereunder for Customer's internal business purposes for the time period specified in the Order, and subject to applicable Supplemental Terms. Customer may copy Software only as required to support the authorized use. SISW or its licensors retain title to or ownership of SISW Technology. SISW reserves all rights in the SISW Technology not expressly granted herein. Customer is liable for a breach of this Agreement by any user of the Products licensed or sold to Customer.
- (b) License Compliance. SISW reserves the right to embed a software security mechanism solely to monitor and report usage of the license granted under this Agreement. The security mechanism does not transmit technical or business data that Customer processes with the Software.
- (c) Third-Party and Open Source Software. The Software may contain third-party technology, including open source software ("Third-Party Technology"). Third-Party Technology may be licensed to Customer under separate license terms if specified in the Documentation, "read me" or similar files. If any applicable third-party license requires SISW to furnish source code to the Third-Party Technology, SISW will provide it upon written request and payment of the 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> which are incorporated herein by reference. SISW may modify such terms from time to time, provided that any modifications are effective only upon Customer's next succeeding renewal of Maintenance Services whether standalone or as part of a rental or subscription, or when Customer otherwise accepts such modifications.

3.3 Customer Responsibilities, Prohibited Actions and Audit.

- (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 the Software to or for the benefit of any third party without the prior written consent of SISW.
- (b) Reverse Engineering or Modifying the Software. Customer will not reverse engineer, decompile or otherwise attempt to discover the source code of the Software. Customer will not otherwise modify, adapt or merge the Software. These prohibitions do not apply to the extent they conflict with applicable law.
- (c) Host Identifier. Customer will provide SISW with the host identifier and such other information reasonably requested by SISW for each workstation or server on which the license management portion of the Software will be installed to permit SISW to generate a license file restricting access to those Software to the scope of the licenses granted under an Order.
- (d) Third Party Hosting and Access to the Software; Indemnity. Customer may not engage a third party to host the Software ("Provider") without SISW's prior written consent, and SISW may require a separate written agreement with the Provider as a condition to such consent. Customer will ensure that any permitted Provider will access the Software solely for Customer's internal business purposes as permitted herein. A breach of this Agreement caused by the Provider will constitute a breach by Customer. Customer will indemnify, defend and hold SISW and its affiliates harmless from all claims, damages, fines and costs arising in connection with Customer's use of the Provider's service.
- (e) Security. Customer is responsible for the prevention of security issues with regard to its systems and data, including Products on Customer's systems. Customer will take commercially reasonable steps to exclude malware, viruses, spyware and Trojans.
- (f) Third-Party Claims. Customer acknowledges that SISW does not control Customer's processes or the creation, validation, sale or use of Customer's end 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.
- (g) Audit. Customer will at all times maintain records identifying the Software, the location of each copy thereof, and the location and identity of workstations and servers on which the 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 the Software is initially made available to Customer under an Order (the "Warranty Period"), the Software will provide the material features and functions described in the Documentation. The foregoing warranty excludes Software provided upon re-mix, as well as error corrections, new versions

of the same product and other deliveries governed by the Maintenance Services terms and conditions. SISW's entire liability and Customer's exclusive remedy during the Warranty Period will be, at SISW's option, to correct or work around errors, replace defective media, or refund the license fees 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 MAINTENANCE 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 WILL BE UNINTERRUPTED OR ERROR FREE.

5. LIMITATION OF LIABILITY AND INDEMNIFICATION

5.1 **Limitation of Liability.** THE ENTIRE, COLLECTIVE LIABILITY OF SISW, SISW AFFILIATES, SISW'S LICENSORS AND THEIR OFFICERS, DIRECTORS AND EMPLOYEES 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 PRODUCT OR SERVICE THAT CAUSED THE DAMAGE OR IS THE SUBJECT OF THE CLAIM. THE FOREGOING LIMITATION DOES NOT APPLY TO SISW'S INDEMNITY OBLIGATION IN SECTION 5.2. IN NO EVENT WILL SISW, SISW AFFILIATES, SISW'S LICENSORS OR THEIR OFFICERS, DIRECTORS OR EMPLOYEES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOST DATA OR PROFITS, EVEN IF SUCH DAMAGES WERE FORESEEABLE. NEITHER PARTY MAY 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 THE CLAIMANT.

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 Products provided hereunder infringe any copyright, any trade secret, or a patent or trademark issues 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 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.
- (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 a perpetual license, and accept the return of the Product. SISW, in its sole discretion, may 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 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 Products in combination with software, equipment or products not provided by SISW, (iv) use of any Product for which SISW has ceased to offer Maintenance Services to customers generally; (v) any change to the Products not made by SISW, or (vi) compliance with specifications provided by Customer.
- (d) **Sole and Exclusive Remedy.** This Intellectual Property Infringement Indemnity Section represents 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. Customer may terminate this Agreement at any time by providing written notice to SISW. SISW may terminate this Agreement or any license granted hereunder immediately on notice (i) for reasonable cause, including without limitation Customer's filing or being filed in bankruptcy, Customer ceasing to do business, or any breach of Sections 2.4, 3, 7 or 8 of this EULA, or (ii) for any other breach that remains uncured after thirty (30) days' notice thereof.

6.2 **Effect of Termination.** Upon termination of this Agreement the licenses granted hereunder automatically terminate. Upon termination of any license, Customer will immediately remove, destroy or certify destruction of all copies of SISW Technology and other SISW Confidential Information, and certify the removal and destruction in writing to SISW. No refund or credit will be given as a result of termination under this Section 6. Termination of this Agreement or any license granted hereunder will not relieve Customer's obligation to pay fees owed. Sections 2.3, 4.2, 5.1, 6.2, 7, and 8 survive termination of this Agreement.

7. EXPORT COMPLIANCE

7.1 Export. SISW's obligations under this Agreement are conditioned upon, and Customer agrees to comply with, all applicable export and re-export control regulations, embargoes and sanctions including, but not limited to, those of the United States (the "Export Laws"). Customer represents that all products provided hereunder and any derivatives thereof will not be (i) downloaded, exported, re-exported (including any "deemed export"), or transferred, directly or indirectly, contrary to the Export Laws, (ii) used for any purpose prohibited by the Export Laws or (iii) delivered to persons/entities otherwise ineligible to acquire or use the products provided hereunder. SISW may conduct the necessary Export Laws checks and, upon request, Customer will promptly provide SISW with any necessary information. Customer will indemnify and hold harmless SISW against any claim, action, damages, fines and costs relating in any way to Customer's noncompliance with Export Laws.

7.2 Data Handling. If Customer is disclosing 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.

8. CONFIDENTIALITY AND DATA PROTECTION

8.1 Confidential Information. "Confidential Information" means all information disclosed by one party to the other under this Agreement that is marked as confidential or the confidential nature of which is evident to a reasonable person. SISW Confidential Information includes SISW Technology and any information Customer derives from benchmarking the SISW Technology. The receiving party will (i) use Confidential Information only as required to exercise rights or perform obligations under this Agreement, (ii) protect Confidential Information from unauthorized use or disclosure, and (iii) not copy the Confidential Information without the prior written consent of the disclosing party. Customer will not disclose SISW Confidential Information to any third party other than financial, tax and legal advisors, and the authorized users of the Products as defined in the Supplemental Terms. SISW will not disclose Customer Confidential Information to any third party, other than to its employees, affiliated companies, consultants, contractors, and financial, tax and legal advisors without the prior written consent of Customer. Neither party will disclose the terms of this Agreement in connection with this Agreement without the prior written consent of the other party, which will not be unreasonably withheld. Notwithstanding the foregoing, 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. Customer accepts that the terms set out at <https://www.plm.automation.siemens.com/global/en/legal/online-terms/general-data-protection.html> are incorporated into this Agreement where SISW processes any personal data of data subjects who are in the European Union on behalf of Customer in connection with this Agreement. Customer will indemnify SISW against any claim, damages, fines and costs relating 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, 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.

9.3 License Rights Applicable to the U.S. Government. The Products and Documentation are commercial products that were developed exclusively at private expense. If the Products are acquired directly or indirectly for use by the U.S. Government, then the parties agree that the Products and Documentation 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, including requests for changes or enhancements, (collectively “Feedback”) in the course of using or evaluating the Products or receiving Maintenance Services or Professional 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 failure in performance due to any cause beyond its reasonable control provided the delayed party promptly notifies the other party and uses commercially reasonable efforts to correct the failure.
- 9.6 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.
- 9.7 Notices.** Notices relating to this Agreement will be in writing and sent to the party’s address as specified in the applicable Order Form or SOW. A party may change its address for receipt of notice by delivery of written notice to the other party.
- 9.8 Governing Law and Jurisdiction.** This Agreement will be governed by the substantive laws, excluding choice-of-law rules, of (i) the State of Delaware, United States for all Orders entered by an SISW affiliate in North or South America, provided that Brazilian law will apply for all Orders entered between an SISW affiliate in Brazil and a Brazilian entity, (ii) Hong Kong for all Orders entered by an SISW affiliate in Asia or Australia, provided that Japanese law will apply for all Orders entered between an SISW affiliate in Japan and a Japanese entity, and (iii) Switzerland for all other Orders. All disputes arising out of or in connection with this Agreement will be: (a) subject to the exclusive jurisdiction and venue of the federal courts of Delaware for all Orders governed by Delaware law, provided all Orders governed by Brazilian law will be subject to the exclusive jurisdiction and venue of the Court of São Caetano do Sul-SP, (b) finally settled under the rules of arbitration of the International Chamber of Commerce (ICC) with Hong Kong as the seat of arbitration for all Orders governed by Hong Kong or Japanese law, or (c) finally settled under the rules of arbitration of the ICC with Zurich, Switzerland as the seat of arbitration for all Orders governed by Swiss law. In any arbitration, the arbitrators will be appointed in accordance with the ICC rules, the language used will be English, and orders for the production of documents will be limited to the documents on which each party specifically relies in its submission. Notwithstanding the foregoing, SISW may bring an action to enforce or preserve its intellectual property rights in the jurisdiction where the Products are being used. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- 9.9 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 executed by authorized representatives of both parties. In the event of a conflict between this Agreement and any Supplemental Terms, the Supplemental Terms prevail. In the event of a conflict between this Agreement or Supplemental Terms and an Order Form or SOW, the Order Form or SOW prevails with respect to the Products or services ordered thereunder. The terms of any purchase order or similar Customer document are excluded; such terms will not apply to SISW Technology, Maintenance Services or Professional Services, and will not supplement or modify this Agreement.