

SOFTWARE LICENSE/WARRANTY ADDENDUM

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ARTICLE 1: ORDER OF PRECEDENCE AND CONTRADICTION OF TERMS

1.1 Licensee shall comply with the terms of this Addendum and the Exhibits hereto in addition to the terms of the Sales Agreement, which terms and conditions shall also apply to Software licensed under this Addendum. In the event of inconsistency between or among these provisions, the following order of precedence shall govern: 1) Exhibits to this Addendum; 2) This Addendum; and, 3) The Sales Agreement. For the avoidance of doubt, if provisions of this Addendum expand the scope of any provision of the Sales Agreement, but without contradicting it, then the provision shall apply to the Software licensed under this Addendum as augmented by this Addendum.

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ARTICLE 2: SOFTWARE LICENSE TERMS AND CONDITIONS

2.1 **Definitions.** The following terms have the meanings set forth below.

- (a) “Authorized Agents” means Licensee’s consultants, agents and contractors who are working on Licensee’s premises and who require access to the Software and/or Documentation solely for their support of Licensee’s internal business.
- (b) “Authorized Users” means (i) Licensee’s employees and (ii) Authorized Agents, provided the Authorized Agents comply with the terms of this Addendum.
- (c) “Confirmation of Order” means a statement or document provided by Siemens acknowledging and accepting the Licensee’s order including the purchase of a license to Software or otherwise acknowledging the Software license grant to Licensee, including but not limited to a certificate of license.
- (d) “Documentation” means the explanatory printed or electronic functional specification materials provided by Siemens with respect to the Software, including, but not limited to, license specifications, instructions for the use of the Software and technical specifications.
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- (g) “License Type” means a Limited Term License, Perpetual License or Extended Term License.
- (h) “Limited Term License” means a license of the Software that is limited in term to a period of time mutually agreed by Siemens and Licensee. Limited Term Licenses include, but are not limited to Rental Licenses.
- (i) “Licensee” means the party that is acquiring rights to the Software pursuant to the terms of this Addendum and any applicable Sales Agreement.
- (j) “Maintenance Services” means the maintenance, enhancement and support services provided by, or on behalf of, Siemens with respect to the Software under terms and conditions either in a separate written agreement or an exhibit to this Addendum. Maintenance Services do not include services performed by Siemens during the Warranty period.

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- (l) "Product Specific Terms" means those terms and conditions that are (i) different or additional to this Addendum that apply to the Software or to specific use of the Software with a Product and (ii) which terms are available to Licensee either as an Exhibit to this Addendum or in a separate document outside of this Addendum. If there is a conflict between the terms of this Addendum and the Product Specific Terms, then the Product Specific Terms will prevail.
- (m) "Rental License" means a license whose term is limited to an agreed to period of time.
- (n) "Sales Agreement" means any agreement for the sale of Products or Services between Siemens and Licensee under which Software is licensed or otherwise distributed by Siemens.
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- (e) Authorized Agents; Indemnity. Licensee will ensure that Authorized Agents comply with the terms of this Agreement and agrees to indemnify Siemens from and against any and all liabilities, losses, claims, costs and/or expenses incurred by Siemens and/or its affiliates as a result of any violation of the terms of this Addendum by any Authorized Agent.

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ARTICLE 3: SOFTWARE MAINTENANCE TERMS AND CONDITIONS

- 3.1 Software Maintenance.** In addition to any warranty services that Siemens may provide as set forth in Article 2, Licensee may purchase (if offered by Siemens) Maintenance Services consistent with the terms and conditions set forth in an exhibit attached hereto or other written agreement between the parties.

ARTICLE 4: GENERAL TERMS AND CONDITIONS

- 4.1 Limitation of Liability.** Siemens' entire liability for all claims or damages arising out of or related to this Addendum, 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 Siemens for the Software licensed under this Addendum . This limitation is not applicable to claims covered by Article 4.2 of this Addendum.

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- (a) Siemens will, at its option and expense, defend or settle any suit or proceeding brought against Licensee based on an allegation that the Software or use thereof for its intended purpose constitutes an infringement of any Patent Cooperation Treaty country member's patent or misappropriation of a third party's trade secret or copyright in the country where the Software is delivered by Siemens. Licensee will promptly give Siemens written notice of the suit or proceeding and the authority, information, and assistance needed to defend the claims. Siemens shall have the full and exclusive authority to defend and settle such claim(s) and will pay the damages and costs awarded in any suit or proceeding so defended. Licensee shall not make any admission(s) which might be prejudicial to Siemens and shall not enter into a settlement without Siemens' consent. Siemens is not responsible for any settlement made without its prior written consent. If the Software, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Licensee is enjoined, Siemens will, at its option and expense, either: (i) procure for Licensee the right to continue using the Software; (ii) replace it with substantially equivalent non-infringing Software; or (iii) modify the Software so it is non-infringing.

- (b) Siemens will have no duty or obligation under this Article 4.2 if the Software is: (i) supplied according to Licensee's design or instructions and compliance therewith has caused Siemens to deviate from its normal course of performance; (ii) modified by Licensee or its contractors after delivery; (iii) combined by Licensee or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Licensee; or (iv) any refusal or failure by Customer to install and use the most current version or a non-infringing version of the Software offered or otherwise made available by Siemens to Customer as long as such non-infringing version performs substantially the same functions. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Licensee must protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Licensee under this Article 4.2.
- (c) THIS ARTICLE 4.2 IS AN EXCLUSIVE STATEMENT OF SIEMENS' DUTIES AND LICENSEE'S REMEDIES RELATING TO PATENTS, TRADE SECRETS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF.

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4.4 Effect of Termination. Upon termination of this Addendum or the associated Sales Agreement, the licenses granted hereunder and all other provisions of this Addendum (except those specified in this Article) shall be terminated and Licensee shall immediately cease using the Software, the Documentation and other Siemens confidential information and shall permanently delete all electronic copies thereof from Licensee's systems. Except as specifically set forth in this Addendum, 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 Licensee's obligation to pay all fees that have accrued or are otherwise owed by Licensee up to the effective date of termination. All Licensee obligations under this Addendum shall survive and continue in full force and effect after any termination of this Addendum or Sales Agreement to which this Addendum is attached.

4.5 Confidentiality and Data Protection.

- (a) The parties agree that the Software and Documentation shall be considered Confidential Information and be subject to the confidentiality terms and conditions under the Sales Agreement. If Licensee conducts benchmarks or other tests concerning the Software, including any content or functionality of Siemens' third party licensors, or hardware, then the results shall constitute Siemens' Confidential Information and shall not be published or otherwise revealed to any third party, without the prior written consent of Siemens.
- (b) Licensee has the right to share Siemens' Confidential Information with Authorized Users and Authorized Agents provided those recipients are subject to the same confidentiality obligations set forth herein. If a party breaches any of its obligations with respect to confidentiality or unauthorized use or disclosure of the other party's Confidential

Information hereunder, the disclosing party shall be entitled to obtain equitable and injunctive relief in addition to all other remedies that may be available to protect the disclosing party's interests.

- (c) Nothing in this Agreement requires a party to treat as confidential any information which was independently developed by receiving party or its representatives, as evidenced by written records, without the use of discloser's Confidential Information.
- (d) **Data Protection.** Licensee represents and 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 Licensee transfers or makes available to Siemens for processing in the course of this Addendum or any related maintenance and/or support services and will indemnify Siemens in respect of all costs, claims, liabilities and demands incurred by Siemens in respect of any breach of this warranty.
- (e) **Survival of Confidentiality Obligations.** This Article 4.5 will survive the expiration or termination of this Addendum or Sales Agreement for any reason.

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

4.7 Assignment. Neither party may assign all or part of this Addendum, or any rights or obligations under this Addendum without the prior written consent of the other; but, either party may assign its rights and obligations, without recourse or consent to, any parent, wholly owned subsidiary, or affiliate or affiliates successor organization (whether as a result of reorganization, restructuring or sale of substantially all of a party's assets). However, Licensee shall not assign this Addendum to: a competitor of Siemens; an entity in litigation with Siemens; or an entity lacking the financial capability to satisfy Licensee's obligations. Any assignee expressly assumes the performance of any obligation assigned. Siemens may grant a security interest in this Addendum and/or assign proceeds of this Addendum without Licensee's consent.

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4.9 Relationship of the Parties. For all purposes, Licensor and Licensee will be deemed to be independent contractors and nothing contained herein will be deemed to constitute a joint venture, partnership, employer-employee relationship or other agency relationship. Neither party is, nor will either party hold itself out to be, vested with any power or right to contractually bind or act on behalf of the other party.

**DRAFT SAMPLE MAINTENANCE TEMPLATE- TO BE POPULATED WITH RELEVANT
DETAILS FOR SPECIFIC BU'S**
Maintenance Services

Siemens and Licensee have concluded a **Software License Warranty/Addendum or Standard Software Terms and Conditions** for the Software, executed on **[Month, Day, Year]** (the "Agreement"); and the Parties agree that the Maintenance Services for the licensed Software shall be provided in accordance with the following terms.

Definitions:

"**Additional Maintenance Services**" has the meaning given in Section __ below.

"**Initial Maintenance Services**" has the meaning given in Section __ below.

"**Maintenance Fees**" means the fees for Maintenance Services set forth in the Sales Agreement.

"**Maintenance Services**" means the maintenance services that Siemens is to provide under the this Exhibit in support of the Software as set forth here, and includes the right to receive...**[Updates? Releases?]**

"**Service Levels**" means the levels of responsiveness...described in Exhibit C to this Exhibit.

"**Update**" means...

"**Release**" means...

1.1 Initial Maintenance Services. Commencing on the delivery date set forth in Section __ of the Agreement, Siemens will provide Maintenance Services to Licensee for a period of ____ days (the "**Initial Maintenance Period**"), subject to payment of the Maintenance Fees set forth in the Sales Agreement.

1.2 Additional Maintenance Services. On the anniversary of the delivery date of the Software (i.e., upon expiration of the Initial Maintenance Period), so long as Siemens offers Support Services generally to its customers, Licensee shall have the right to renew Support Services for subsequent ____ periods (each such period, an "**Additional Maintenance Period**") at an annual fee as set forth by Siemens. Licensee shall notify Siemens in writing of Licensee's intention to renew Maintenance Services no later than forty-five (45) days before any anniversary of the delivery date and shall pay Siemens' invoice for such Additional Maintenance Period in accordance with the payment terms of the Sales Agreement.

1.3 Effect of Maintenance Discontinuation. Licensee's license to use the Software and Documentation under this...**[does the license to the Software continue if Maintenance is discontinued?]**

1.4 Service Levels. The Service Levels shall be....

1.5 Scope of Support Services. Subject to the timely payment of all Maintenance Fees, Siemens will provide Maintenance Services for the...**[which release of which version?]** Licensee shall be responsible for independently obtaining and maintaining all IT security programs and processes. Unless otherwise agreed in writing by the parties, Maintenance Services shall not be provided for customized software, integration or implementation.

1.6 Content and Control of Support Services. Support Services include, subject to Siemens' then-current standard terms: (a) the right to receive **[Releases and Updates at no additional cost?]**; (b) a direct response (by email, telephone or otherwise, in Siemens' discretion) to Licensee with respect to inquiries concerning the performance, functionality, operation of or deficiencies in the Software; and (c) commercially reasonable efforts to resolve problems or performance deficiencies of the Software according to the Service Levels. Siemens will have the sole right to control and directly supervise the method, manner and details of the Support Services.