SIEMENS STANDARD SOFTWARE LICENSE TERMS AND CONDITIONS

1. **APPLICABLE TERMS.** This Agreement governs the license of Software to Licensee by Siemens. These terms and any applicable addenda, Siemens proposal, price quote, purchase order, or Confirmation of Order issued by Siemens form the parties' final agreement ("Agreement"). Siemens' proposal, offer or acceptance is conditioned on Licensee's acceptance of this Agreement. Any additional or conflicting terms in Licensee's request for proposal, specifications, purchase order or any other written or oral communication are not binding on Siemens unless separately signed by Siemens. Siemens' failure to object to Licensee's additional or conflicting terms does not operate as a waiver of any terms contained in this Agreement. Any purchase of products or services shall be subject to a separate written agreement. If Licensee received the Software prior to executing this Agreement, and installs, copies or otherwise uses the Software, Licensee shall, by doing so, indicate that Licensee has read and understood this Agreement and accepted these terms and conditions. Licensee is not entitled to install or use the Software if Licensee does not agree with these terms. In such an event, Licensee should promptly contact Siemens for instructions on return or certified destruction of the Software.

2. **DEFINITIONS.** The following terms have the meanings set forth below.
2.1. "Affiliate" means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof that directly or indirectly, controls or is controlled by or is under common control, with respect to Siemens or Licensee, is not a competitor of, or in litigation or arbitration with, Siemens or Licensee, as the case may be.
2.2. "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.
2.3. "Authorized Users" means (i) Licensee's employees and (ii) Authorized Agents, provided the Authorized Agents comply with the terms of this Agreement.
2.4. "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.
2.5. "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.
2.6. "License Metrics" means the particular metric restrictions for a relevant Software License Type as indicated in the Confirmation of Order, the Product Specific Terms or other written document by Siemens and may include concurrent user, named user, per machine, per server, per device, or per time usage, or any other metric agreed to by Siemens and Licensee.
2.7. "License Type" means a Limited Term License, Perpetual License or Extended Term License.
2.8. "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.
2.9. "Licensee" means the party that is acquiring rights to the Software pursuant to the terms of this Agreement.
2.10. "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 Agreement. Maintenance Services do not include services performed by Siemens during the Warranty period.
2.11. "Perpetual License" or "Extended Term License" means a license of Software that is not limited in term, but, subject to the terms of this Agreement, extends indefinitely. Perpetual Licenses do not include Maintenance Services or professional services which must be purchased separately.
2.12. "Product Specific Terms" means those terms and conditions that are (i) different or additional to this Agreement that apply to the Software and (ii) which terms are available to Licensee either as an Exhibit to this Agreement or in a separate document outside of this Agreement. If there is a conflict between the terms of this Agreement and the Product Specific Terms, then the Product Specific Terms will prevail.
2.13. "Rental License" means a license whose term is limited to an agreed to period of time.
2.14. "Software" means the software that is licensed or distributed by Siemens to Licensee under the terms and conditions of this Agreement. "Software" includes the related Documentation.
2.15. "Territory" means the country in which Siemens has licensed rights to the Software as indicated in the Confirmation of Order, Product Specific Terms or this Agreement. If no Territory is identified, the Territory shall be limited to the country in which the Software is delivered or otherwise made available to Licensee.

3. LICENSE GRANT AND CONDITIONS.

3.1. **License Grant.** Subject to the terms and conditions of this Agreement, including any Product Specific Terms, Siemens grants to Licensee a nonexclusive, nontransferable, limited license to allow Authorized Users to access and use the executable form of the Software, to the extent to which the same has been enabled by Siemens through use of license key or other mechanism for use by Licensee, in the Territory. The license granted to Licensee shall be of the License Type and be subject to the License Metrics set forth in the Confirmation of Order, the Product Specific Terms or other written document by Siemens. No title to or ownership in the Software is transferred to Licensee. 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 Siemens or third parties from whom Siemens has obtained the right to license the Software. Siemens reserves all rights in the Software not explicitly granted herein.

3.2. **Backup of Software.** Licensee may make one copy of the Software for archival backup purposes only, unless otherwise restricted under the applicable Product Specific Terms. Licensee shall retain and reproduce all copyright or proprietary notices in the backup copy of the Software. Siemens retains all rights to the original and backup copy of the Software. The backup copy will also be subject to the terms and conditions of this Agreement

3.3. **Delivery of Software.** Delivery of the Software shall be as in the Confirmation of Order or from the Software purchase order number contained in the Confirmation of Order, in conjunction with the associated order data of the Siemens catalog valid at the time of the Confirmation of Order. If the Software is provided by Siemens on a data medium or made available for electronic download by Siemens, the license granted to Licensee in 3(a) shall include the right to install such Software in accordance with the Confirmation of Order.

3.4. **Use of Unauthorized Software.** Licensee represents and warrants that it will only use Siemens software that has been validly licensed to it by Siemens or its authorized partner. Any Siemens software not duly licensed from Siemens or its authorized partner constitutes unauthorized software. If Licensee downloads, installs and/or uses unauthorized software, then Siemens has the right to terminate this Agreement in accordance with the terms of Article 6 below.

3.5. **Software Security and Monitoring.** Siemens reserves the right to embed a software security mechanism within the Software to monitor usage of the Software and to verify Licensee's compliance with this Agreement. Such security mechanism may communicate with computers controlled by Siemens to exchange communications and report and store 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. Siemens reserves the right to use license administration software, a license authorization key to control access to the Software and/or a hardware lock device. Licensee may not take any steps to avoid or defeat the purpose of any such measures. Use by Licensee of any Software without any required security mechanism is prohibited. Siemens shall be entitled to access data available from the Licensee for Software maintained by remote service for the term of the Agreement. Licensee grants Siemens the further right to use data collected for Siemens optimization purposes.

3.6. **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 ("OSS"). Third party technology is licensed to Licensee 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"). Licensee'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, such term shall not apply. If applicable, Siemens will furnish OSS source code contained in the Technology Subject to a Third-Party License upon written request and subject to Licensee's payment of shipping and handling charges. Third party technology that is not Technology Subject to a Third-Party License shall be deemed part of the Software and is licensed to Licensee under the terms of this Agreement. The terms of any third-party license (if any) that apply to the licensed Software are either: a) specified in the Product Specific Terms, b) separately accompany the licensed Software and are automatically presented for acceptance prior to first use of such Software by an Authorized User in accordance with the Confirmation of Order (such as applicable License Type and License Metrics) obtained from Siemens, or c) are specified in the "read me" file or document for the licensed Software. The terms of such third-party licenses are herein incorporated by reference to this Agreement.

3.7. **Other Third Party Software Not Provided.** Except where the parties agree in writing to the contrary, Licensee is solely responsible for ensuring that: (i) the system on which the licensed Software is installed, run and/or used contains all third party software not contained in or bundled with the Software as delivered and that is necessary to run, install, interface with, and/or use such Software ("Other Third Party Software"), and (ii) Licensee and/or Licensee's system fulfill the requirements of all required licenses for such Other Third Party Software.

3.8. **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. Siemens Software 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. Siemens 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).

4. **PRICING AND PAYMENT.** Prices and payment terms are: (i) as stated in Siemens' proposal, or if none are stated; (ii) Siemens' standard prices in effect when Siemens receives Licensee's purchase order; or if neither (i) nor (ii) applies, then Siemens' standard prices in effect when delivered or otherwise made available to Licensee.

4.1. <u>Payment</u>. Unless otherwise agreed to, all payments are due net thirty (30) days from the invoice date in United States Dollars.

4.2. <u>Taxes</u>. Licensee must pay any and all federal, state or local taxes (other than taxes based on Licensor's income) including sales taxes imposed in connection with the purchase of the license of the Software under this Agreement or the purchase of Maintenance Services in connection with this Agreement.

4.3. <u>Late Payments</u>. Late payments shall bear interest at an annual percentage rate of twelve percent (12%) or the highest rate allowed by law, whichever is lower.

5. **LICENSEE RESPONSIBILITIES AND PROHIBITED ACTIONS.**

5.1. <u>Remarketing of Software</u>. Licensee 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.

5.2. <u>Transfer of Software</u>. Unless specifically allowed by the terms of this Agreement, or as may be required by applicable law, Licensee may not distribute, rent, 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 Siemens.

5.3. <u>Reverse Engineering or Modifying the Software</u>.

    5.3.1. Prohibitions. Licensee 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 Licensee is allowed to do so by applicable law.

    5.3.2. Licensee shall not be entitled to remove any alphanumeric identifiers, trademarks or copyright notices from the Software, the data medium, or Documentation supplied under this Agreement.

5.4. <u>Host Identifier</u>. With respect to each order for Software under this Agreement, Licensee or Siemens' authorized channel partner will provide Siemens with the host identifier required by Siemens and such other information reasonably requested by Siemens for each workstation and/or server on which the license management portion of the Software will be installed to permit Siemens 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.

5.5. <u>Authorized Agents; Indemnity</u>. 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 Agreement by any Authorized Agent.

6. **TERM AND TERMINATION.** The term of this agreement shall be as specified in the Confirmation of Order. Siemens will have the right to terminate this Agreement and/or any Limited Term License and/or Perpetual License granted hereunder immediately on notice to Licensee if Licensee: (a) violates the license restrictions of this Agreement; (b) breaches Article 3(d); (c) fails to pay an undisputed invoice within sixty (60) days; 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 Licensee's assets, or if Licensee becomes insolvent or otherwise ceases doing business in the ordinary course. In addition, Siemens will have the right to terminate this Agreement and/or any Limited Term License and/or

Perpetual License granted hereunder if Licensee 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 Siemens.

7. **EFFECT OF TERMINATION.** Upon termination of this Agreement, the licenses granted hereunder and all other provisions of this Agreement (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 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 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 Agreement shall survive and continue in full force and effect after any termination of this Agreement.

8. **FORCE MAJEURE / DELAYS.** If Siemens' performance is delayed by any cause beyond its reasonable control (regardless of whether the cause was foreseeable), including without limitation acts of God, strikes, labor shortage or disturbance, fire, accident, war or civil disturbance, delays of carriers, cyber-attacks, terrorist attacks, failure of normal sources of supply, or acts or inaction of government, Siemens' time of performance will be extended by a period equal to the length of the delay plus any consequences of the delay. Siemens will notify Licensee within a reasonable time after becoming aware of any such delay.

9. **LICENSEE'S REQUIREMENTS.** Siemens' performance is contingent upon Licensee timely fulfilling all of its obligations under this Agreement. These obligations include the Licensee supplying all documents and approvals needed for Siemens to perform, including but not limited to technical information and data, drawing and document approvals, and necessary commercial documentation. Siemens may request a change order for an equitable adjustment in prices and times for performance, as well as for any additional costs or any delay resulting from the failure of Licensee or Licensee's contractors, successors or assigns to meet these obligations.

10. **WARRANTIES.**
10.1. Unless otherwise stated in the Confirmation of Order or other Siemens writing, Siemens warrants that, as of the date the Software is delivered or otherwise made available to Licensee via electronic download and for a period of ninety (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. Siemens' entire liability, and Licensee's exclusive remedy, during the Warranty Period will be, at Siemens' sole 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 or destruction of the Software or defective media to Siemens.
10.2. This warranty does not apply to Software delivered by Siemens but produced by others. The warranty for Software produced by others shall be the warranty as stated by the relevant software producer.
10.3. This warranty will apply only provided that: (i) the Software is not modified, changed, or altered by anyone other than Siemens or its suppliers, unless authorized by Siemens in writing; (ii) there is no change by anyone other than Siemens to the Products for which the Software is ordered; (iii) Licensee is using the Software in a proper manner in compliance with all operating instructions included in the Documentation; (iv) the nonconformity is not caused by Licensee, Licensee's Siemens-authorized transferee, or any of their agents, servants, employees, or contractors, or any third party; (v) Licensee or Licensee's Siemens-authorized transferee promptly notifies Siemens in writing of the nonconformity after it is discovered; and (vi) all fees for the Software due to Siemens have been paid.
10.4. Licensee is responsible for the prevention of security issues with regard to its own systems and data, including Software hosted on Licensee's systems. Licensee's responsibility includes, but is not limited to, undesired invaders of the software such as malware, viruses, spyware or trojans and Siemens disclaims responsibility for any damages incurred as a result of Licensee's failure to secure its systems and data.
10.5. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS ARTICLE 10, SIEMENS MAKES AND LICENSEE RECEIVES NO EXPRESS WARRANTIES. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE SOFTWARE AND ITS FUNCTIONALITY IN ANY COMMUNICATION WITH LICENSEE CONSTITUTE TECHNICAL INFORMATION AND NOT AN EXPRESS WARRANTY OR GUARANTEE. IN ADDITION, SIEMENS SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, SIEMENS DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

11. LIMITATION OF LIABILITY.   NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SIEMENS IS NOT LIABLE, WHETHER BASED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COSTS OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION AND DATA, LOSS OF POWER, VOLTAGE IRREGULARITIES OR FREQUENCY FLUCTUATION, CLAIMS ARISING FROM LICENSEE'S THIRD PARTY CONTRACTS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE.

SIEMENS' 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 SIEMENS FOR THE SOFTWARE LICENSED UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRECEEDING THE DATE GIVING RISE TO THE CLAIM. THIS LIMITATION IS NOT APPLICABLE TO CLAIMS COVERED BY ARTICLE 12 OF THIS AGREEMENT.

LICENSEE AGREES THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 11 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT AND MUST BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF SIEMENS HAS BEEN ADVISED BY LICENSEE OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS ARTICLE 11 EXTEND TO SIEMENS' AFFILIATES, PARTNERS, PRINCIPALS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS, AGENTS AND SUCCESSORS AND ASSIGNS.

12. PATENT AND COPYRIGHT INFRINGEMENT.
12.1. 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. Siemens is not responsible for any settlement made without its prior written consent. Licensee shall not make any admission(s) which might be prejudicial to Siemens and shall not enter into a settlement without Siemens' 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.
12.2. Siemens will have no duty or obligation under this Article 12 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; or (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. 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 12.
12.3. THIS ARTICLE 12 IS AN EXCLUSIVE STATEMENT OF SIEMENS' DUTIES AND LICENSEE'S REMEDIES RELATING TO PATENTS, TRADE SECRETS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF.

13. CONFIDENTIALITY.
13.1. Both during and after the term of this Agreement, the parties will: (i) treat as confidential all information obtained from the disclosing party and all information compiled or generated by the disclosing party under this Agreement for the receiving party, including but not limited to business information, manufacturing information, technical data, drawings, flow charts, program listings, software including the Software and Documentation, plans and projections 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 the receiving party on notice of its confidential nature ("Confidential Information"); (ii) not use such Confidential Information except as expressly set forth herein; and (iii)

not disclose such Confidential Information to any third party. 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. Each party will prevent the disclosure and protect the confidentiality of the other party's Confidential Information by using the same means it uses to protect its own Confidential Information, but in any event not less than reasonable means.   However, Siemens has the right to share Licensee's Confidential Information with its affiliates, agents and contractors, provided those recipients have executed a written non-disclosure agreement no less stringent than Article 13 in its entirety. 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.

13.2. Nothing in this Agreement requires a party to treat as confidential any information which: (i) is or becomes generally known to the public, without the fault of the receiving party; (ii) is disclosed to the receiving party, without obligation of confidentiality, by a third party having the right to make such disclosure; (iii) was previously known to the receiving party, without obligation of confidentiality, which fact can be demonstrated by means of documents which are in the possession of the receiving party upon the date of this Agreement; (iv) was independently developed by receiving party or its representatives, as evidenced by written records, without the use of discloser's Confidential Information, or (v) is required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order, provided that the party required to disclose by law will promptly advise the originating party of any requirement to make such disclosure to allow the originating party the opportunity to obtain a protective order and assist the originating party in so doing.

13.3. It is Siemens' policy not to unlawfully or improperly receive or use confidential information, including trade secrets, belonging to others. This policy precludes Siemens from obtaining, directly or indirectly from any employee, contractor, or other individual rendering services to Siemens, confidential information of a prior employer, client or any other person which such employee, contractor, or individual is under an obligation not to disclose. Licensee agrees to abide by this policy.

13.4. This Article 13 will survive the expiration or termination of this Agreement for any reason.

14. 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 Agreement 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.

15. FEEDBACK. To the extent that Licensee gives feedback on the Software to Siemens or its subcontractors, Licensee hereby assigns to Siemens all rights to such feedback (including any suggestions, enhancement requests, recommendations or other feedback) provided by the Licensee and its Authorized Users of the Software and shall treat such feedback as Confidential Information of Siemens in accordance with the obligations set forth herein. Licensee further agrees to ensure that it obtains such rights to Feedback from the Authorized Users and to provide Siemens all reasonable assistance necessary to perfect any intellectual property rights resulting from any feedback.

16. AUDITS.   Licensee 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. 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 Agreement. 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 Agreement. Siemens and its authorized agents will comply with Licensee's reasonable security regulations while on Licensee's premises.

17. SOFTWARE MAINTENANCE TERMS AND CONDITIONS. In addition to any warranty services that Siemens may provide as set forth in Article 10, 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.

18. NON-WAIVER. Any waiver by a party of strict compliance with this Agreement must be in writing, and any failure by the parties to require strict compliance in one instance will not waive its right to insist on strict compliance thereafter.

19. **MODIFICATION OF TERMS.** This Agreement may only be modified by a written instrument signed by authorized representatives of both parties.

20. **ASSIGNMENT.** Neither party may assign all or part of this Agreement, or any rights or obligations under this Agreement, 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, Affiliate, or 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 Agreement 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 Agreement and/or assign proceeds of this Agreement without Licensee's consent.

21. **APPLICABLE LAW AND JURISDICTION.** This Agreement is governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. BOTH SIEMENS AND LICENSEE KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO THIS AGREEMENT. Each party agrees that claims and disputes arising out of this Agreement must be decided exclusively in a federal or state court of competent jurisdiction located in a state in which either Licensee or Siemens maintains its principal place of business. Each party submits to the personal jurisdiction of such courts for the purpose of litigating any claims or disputes.

22. **SEVERABILITY.** If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not in any way be affected or impaired. A court may modify the invalid, illegal or unenforceable provision to reflect, as closely as possible, the parties' original intent.

23. **COMPLIANCE WITH LAWS; EXPORT / IMPORT.** The parties agree to comply with all applicable laws and regulations. Licensee acknowledges that Siemens is required to comply with applicable export/import laws and regulations relating to the sale, export, import, transfer, assignment, disposal and use of the Software, including any export / import license requirements. Licensee agrees that the Software will not at any time directly or indirectly be used, exported, imported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with any export / import laws and regulations. Siemens' continuing performance hereunder is conditioned on compliance with such export / import laws and regulations at all times and Siemens shall have the right to terminate this Agreement if Licensee fails to comply with such export / import laws and regulations.

24. **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, Siemens shall be permitted to name Licensee as a customer of Siemens on Siemens' website, in company presentations, customer lists and in other Siemens 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.

25. **NUCLEAR.** Unless expressly authorized in writing by Siemens, the Software must not be used in or in connection with a nuclear facility or application. If Licensee uses any Software in connection with any nuclear facility or activity, it does so at its own risk and Licensee will indemnify, defend and hold Siemens harmless, and waives and will require its insurers to waive all right of recovery against Siemens, for any damage, loss, destruction, injury or death resulting from a "nuclear incident," as defined in the Atomic Energy Act of 1954, as amended, whether or not due to Siemens' negligence. Siemens' consent to Licensee's use of the Software in connection with any nuclear facility or application will be subject to additional terms and conditions that Siemens deems necessary to protect its interests.

26. **SURVIVAL.** The articles titled "Patent and Copyright Infringement," "Limitation of Liability," "Confidentiality," "Delivery, Title and Risk of Loss or Damage," "Export/Import Compliance," "Feedback," and "Nuclear" survive termination, expiration or cancellation of this Agreement.

27. **ORDER OF PRECEDENCE AND CONTRADICTION OF TERMS.** In the event of inconsistency between or among these provisions, the following order of precedence shall govern: 1) The Confirmation of Order; 2) Exhibits to this Agreement; 3) This Agreement.

28. **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.