

OEM License Agreement

Agreement Number: [Click here to enter text.](#)

Agreement Effective Date: [Click here to enter text.](#)

Licensee: Siemens Industry Software Inc., a Delaware corporation, with its principal place of business at 5800 Granite Parkway, Suite 600, Plano, TX 75024 ("SISW")

Licensor: DRIMCo GmbH, a German
Am Moosfeld 13
81 829 Munchen
Germany

1. Definitions

- 1.1 "Affiliated Company" means any entity which directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control of the party in question. For the purpose of the aforementioned sentence "control" shall mean the ownership of more than 50% of the voting power of an entity or the power to direct or cause the direction of the management and policies of such entity, whether by contract or otherwise.
- 1.2 "Confidential Information" means all information disclosed by one party to the other under this Agreement that is marked as confidential or where the confidential nature of the information disclosed is evident to a reasonable person.
- 1.3 "Customer" means a third party who is offered or acquires a license to the Integrated Product, the Licensed Product or a service based on the Integrated Product or the Licensed Product through the Distribution Channel.
- 1.4 "Defect" shall mean any non-conformity of the Licensed Product with the terms of this Agreement or Licensor's documentation relating to the Licensed Product, a design flaw, malfunction or security vulnerability.
- 1.5 "Distribution Channel" means all sales and distribution channels used by SISW, including its direct channels such as sales offices as well as its Affiliated Companies and indirect channels such as resellers and distributors.
- 1.6 "Integrated Product" means a SISW product into which the Licensed Product is embedded or incorporated.
- 1.7 "Licensed Product" means Licensor's software products listed in **Schedule 1**, including related documentation, manuals and marketing materials (sales kits). Licensed Product includes source and/or the

object code form of software products and all releases, upgrades, updates and other revisions that become available for the Licensed Product during the term of this Agreement, including successor products.

- 1.8 “Maintenance and Support” means the services provided by Licensor under Section 3 of this Agreement.
- 1.9 “OSS” or “Open Source Software” means software which may be or is classified or treated or considered free software, freeware, open source software, public domain software or other software distributed or licensed under similar licensing or distribution models such as, but not limited to, the GNU General Public License (GPL), GNU Lesser Public License (LGPL), Mozilla Public License (MPL) and BSD licenses.
- 1.10 “OSS Source Code” means the source code of any and all OSS used directly or indirectly in the Licensed Product, including build scripts and information regarding the build environment to the extent required by the applicable OSS licenses.
- 1.11 “Support Services” means an offering by SISW or the Distribution Channel to Customers who receive the Licensed Product or an Integrated Product. Support Services may include technical support, new releases, upgrades and updates, defect fixes and workarounds as well as training.

2. Grant of Licenses and Delivery

- 2.1 Licensor grants SISW and the Affiliated Companies of SISW a nonexclusive, worldwide license to use the Licensed Product as part of an Integrated Product or, if applicable, stand-alone, as follows:
 - 2.1.1 to use, reproduce, integrate or bundle the Licensed Product as part of an Integrated Product;
 - 2.1.2 to modify the Licensed Product and to create derivative works of the Licensed Product as required to create an Integrated Product and to use such Integrated Product as contemplated herein;
 - 2.1.3 to sublicense and distribute the Licensed Product to Customers through the Distribution Channels subject to licensing terms and contracting processes that SISW uses for its own products;
 - 2.1.4 to permit Customers (or their service provider on their behalf) to copy the Licensed Product for distribution within their global organizations in accordance with the respective license models (e.g. concurrent licenses) as agreed between Customer and SISW;
 - 2.1.5 to make available the Licensed Product to Customers as part of a software-as-a-service offering, cloud or similar offering or as part of a broader service offering;
 - 2.1.6 to translate, copy, modify and use the Licensed Product by SISW and to have it copied, translated, modified and used by Affiliated Companies and the Distribution Channel as well as their respective employees, consultants and contractors (i) internally, including without limitation for development and quality assurance tests; (ii) for demonstrations and benchmarks for potential sales; (iii) to provide Support Services to Customers; (iv) for consulting and/or design development services; and (v) for integration, interoperability, development of interfaces and joint marketing efforts;
 - 2.1.7 to temporarily sublicense the Licensed Product to prospective Customers worldwide through the Distribution Channel for pre-release testing, evaluation, training, migration, support, backup or development purposes; and

- 2.1.8 to sublicense the Licensed Product to SISW's third party marketing or development partners for purposes including, but not limited to, integration, interoperability, development of interfaces and joint marketing efforts.
- 2.2 SISW is authorized but not obliged to use Licensor's name and trademarks and those of Licensor's third party licensors whose products are included in the Licensed Product in connection with the exercise of the rights granted according to Section 2.1 above.
- 2.3 Licensor will deliver the Licensed Product to SISW through a mutually agreed upon mechanism within 3 days of the Effective Date of this Agreement. Licensor shall deliver to SISW the OSS Source Code in machine-readable format. Licensor shall provide **Schedule 6** electronically (in machine-readable format) and include a list of incorporated OSS components (name, version) as well as a full and accurate list of all licenses that must be disclosed when using or distributing the OSS Source Code as incorporated into the Licensed Product, and copyright statements and acknowledgements as required by the applicable OSS licenses. Licensor shall inform SISW of any telemetry functionality included in the Licensed Product including information on the type of data transmitted, the recipients and the reasons why such telemetry is in compliance with any applicable privacy laws.
- 2.4 No other license and no right of ownership to the Licensed Product, the Integrated Product or any other intellectual property is transferred between the parties and each party and their respective third party licensors retain full ownership to their respective intellectual property. SISW shall be the sole owner of any modifications to the Licensed Product made by or on behalf of SISW.
- 2.5 Nothing in this Agreement will prohibit either party from directly or indirectly independently developing, marketing, distributing, or licensing similar products or from establishing a business relationship with any third party with products similar to those of the other party. SISW makes no representations as to the level of marketing and sales effort it will provide or the number of sales that will be made.
- 2.6 SISW may provide licenses of SISW Products to Licensor to enable Licensor to perform its obligations under this Agreement. Such licenses of SISW Products, if any, are identified in the Limited Use License Agreement ("LULA") of Schedule 9 to this Agreement. Licensor agrees to access and use such SISW Products only in accordance with and pursuant to the terms and conditions of the LULA.

3. Maintenance and Support

- 3.1 During the term of this Agreement, Licensor shall provide Maintenance and Support as set forth in **Schedule 3**. In case of any conflicts between **Schedule 3** and the main body of this Agreement, the provisions of the main body shall prevail.
- 3.2 If Licensor provides a modified version of the Licensed Product as part of Licensor's obligations under this Section 3, Licensor shall update **Schedule 1** and **Schedule 6** as needed and provide any updated OSS Source Code. SISW and its Customers are not obliged to use any modified versions of the Licensed Product and SISW may continue to distribute prior versions of the Licensed Product as specified herein.
- 3.3 Licensor will notify SISW in writing at least 24 months prior to any material changes or the discontinuance of any Licensed Product. The Licensed Product will not be considered to be discontinued by Licensor if a successor product is made available by Licensor that is substantially similar in functionality to the original Licensed Product. Such successor product shall be considered a Licensed Product under this Agreement. If

the Licensed Product undergoes a material architectural change or is discontinued by Licensor, Licensor will make Maintenance and Support available for the discontinued product for a minimum period of two years following the discontinuation.

- 3.4 Licensor shall support each version of the Licensed Product for a period of at least three years from the date the Licensed Product is provided to SISW or the general release of such version to Licensor's customer base, whichever is later. A modified version of the Licensed Product that fixes a Defect of a prior version shall be considered adequate support of such prior version unless the modified version requires a material change to the operating environment or is not backward compatible with the prior version of the Licensed Product. Upon request of SISW, Licensor shall offer extended support for an additional two years at reasonable cost.
- 3.5 Under no circumstances shall Licensor be granted access to any systems of SISW, Affiliated Companies, the Distribution Channel or Customer that contain personal data of such entity. In the event Licensor is provided access to any personal data, e.g. for the purpose of performing Maintenance and Support, such access will be granted in writing by an authorized representative of SISW and Licensor agrees to comply with the data protection terms and conditions set forth in **Schedule 4**.
- 3.6 Failure of Licensor to provide Maintenance and Support for any reason will be a material breach of this Agreement. Licensor will use all available efforts to cure this breach as quickly as possible. If Licensor does not cure such breach within 30 days of receipt of a respective notice, in addition to any other rights and remedies SISW may have, Licensor will provide the source code of the Licensed Product to SISW consistent with its obligations under Section 3.7. Licensor grants SISW a license to use the Licensed Product source code to provide Support Services for so long as SISW is licensing the Licensed Product under this Agreement and no support fees shall be due to Licensor during any such period. Following a reasonable period during which Licensor has returned to fulfilling its Maintenance and Support obligations, Licensor may request that SISW certify the return or destruction of all copies of the Licensed Product source code. Licensed Product source code will be considered Confidential Information of Licensor. Licensor and SISW acknowledge and agree that SISW will suffer irreparable harm if release of the source code to SISW is delayed and that SISW may obtain injunctive relief to compel Licensor's performance under this Section.

3.7 **Source Code Escrow.**

3.7.1 Licensor will, at Licensor's expense, place the source code of the Licensed Product along with its build, setup and design documentation, compiler requirements, including compiler configuration, third party software requirements, including code from commercial or cost free sources, and any other necessary information and data to build and execute the Licensed Product (collectively the Source Documentation) and including the latest Updates to the Licensed Product, in escrow with provisions authorizing release to SISW upon the occurrence of a Triggering Event.

3.7.2 A "Triggering Event" will be deemed to have occurred if, during the term of this Agreement, Licensor (i) should cease to provide maintenance or support for the Licensed Product for any reason other than a breach of this Agreement by SISW; (ii) should cease business operations generally or transfer all or substantially all of its assets or obligations set forth in this Agreement to a third party which has not assumed all of the obligations of Licensor; (iii) ownership or control has been acquired by a competitor of SISW and, after taking into account all relevant factors, SISW in good faith determines that there is a reasonable likelihood of a significant competitive threat to SISW arising out of such change of ownership

or control, and, as a result of such change of ownership or control, there is substantial uncertainty as to Licensor's continued ability to perform, in all material respects, its obligations under this Agreement; (iv) should make or suffer to be made an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy; (v) should seek or consent to or acquiesce in the appointment of a receiver for liquidation; or (vi) Licensor or a majority of its stockholders takes any action looking into dissolution or liquidation of Licensor, unless such action is solely for the purpose of business re-organization and/or amalgamation.

3.7.3 If a Triggering Event occurs, upon written notice from SISW, Licensor will deliver to SISW one machine readable object-code copy of the latest version of Licensed Product and Source Documentation for each of the computer hardware platforms and operating systems for which Licensor had supported the Licensed Product as of the date of the Triggering Event, and one copy of the source code of each currently supported version of the Licensed Product for each of such computer hardware platforms and operating systems. SISW will have all necessary rights to use, modify, enhance, distribute, license, sublicense and make and own derivatives to the source code.

4. Other Licensor Obligations

- 4.1 During the term of this Agreement, Licensor will regularly inform SISW of Licensor's product planning roadmap and strategic plans for the development of releases, upgrades and updates to the Licensed Product to enable SISW to plan Integrated Product functionality and releases accordingly. SISW, at its option, may provide input to the roadmaps and strategic plans which Licensor shall reasonably consider.
- 4.2 Licensor shall provide the marketing and training services set forth in **Schedule 5**.
- 4.3 Upon request of SISW, Licensor shall reasonably support SISW in installing the Licensed Product at SISW's development sites and shall train SISW personnel in using the Licensed Product at no additional charge to SISW.
- 4.4 If Licensor receives an unsolicited offer by a third party to acquire all of the shares of Licensor or substantially all of the technology constituting Licensed Product, Licensor will notify SISW and provide the terms of the offer to SISW. If SISW notifies Licensor in writing within 60 days of receipt of notice that SISW is matching or exceeding the third party offer, Licensor will proceed with the transaction with SISW. If Licensor decides to solicit offers to acquire all of the shares of Licensor or substantially all of the technology constituting Licensed Product, Licensor will notify SISW of its intent. If SISW provides an offer equal to or better than Licensor's market value to Licensor in writing within 60 days of receipt of notice, Licensor will proceed with the transaction with SISW.

5. Fees, Reports and Payment

- 5.1 SISW will pay to Licensor the fees described in **Schedule 2**.
- 5.2 All pre-determined fees shall be invoiced by Licensor after their due date as set forth in **Schedule 2**. Pre-determined fees are payable by SISW within 90 days after receipt of the respective invoice. Transactional fees (e.g. License Royalty Fees, Maintenance Royalty Fees, etc. as identified in **Schedule 2**) shall be payable in quarterly installments within 60 days following the end of each calendar quarter. SISW will provide a statement showing the calculation of such fees with the payment.
- 5.3 If a Customer returns an Integrated Product or Licensed Product or withholds payment for any reason, SISW may withhold the applicable payment due to Licensor until payment is received from the Customer

or, if payment has already been made to Licensor, SISW will receive a credit from Licensor in an amount equal to the amount of such payment.

- 5.4 If any license fees depend on the number of users, only the number of permitted simultaneous users shall be counted for purposes of calculating the royalty. If any license fees depend on the number of copies made, only the number of copies that can be used simultaneously shall be counted for purposes of calculating the royalty. If different versions of the Licensed Product or the Integrated Product are delivered to a Customer, fees will only be due for one version.
- 5.5 The fees in **Schedule 2** shall be the complete remuneration for all rights granted and services provided by Licensor to SISW under this Agreement. Use of the Licensed Product by SISW and the Distribution Channel, as well as their respective employees, consultants and contractors, in support of their marketing, development and Support Services efforts, including but not limited to demonstration, evaluation, beta testing, benchmark, instruction and training; use of the Licensed Product and the Integrated Product by the Customer for temporary evaluations and beta testing; use by third party marketing, technology or development partners for purposes including, but not limited to, integration, interoperability, development of interfaces and joint marketing efforts; as well as use of the Licensed Product and Integrated Product by SISW research partners and accredited education institutions and their students for non-commercial use will be free of any fees.
- 5.6 Income taxes assessed against Licensor are the responsibility of Licensor. If SISW is required by law to withhold taxes from fees due under this Agreement, payments to Licensor will be net of such tax withholdings. SISW will not reimburse Licensor for taxes withheld. If Licensor is exempt from tax or is eligible for a reduced rate of withholding tax pursuant to an income tax treaty, Licensor is responsible for completing and providing documentation (including W-9 or W-8BEN) to SISW. SISW will withhold income taxes at the maximum jurisdictional tax rate from all payments to Licensor until all necessary documentation is provided. SISW will provide Licensor with copies of tax filings remitted to taxing authorities.
- 5.7 Licensor guarantees that fees payable by SISW under this Agreement are at least as favorable as Licensor's best pricing to its customers or distribution channels under equivalent conditions to this Agreement. Licensor will notify SISW if it extends more favorable pricing to any other licensee, and the fees owed under this Agreement will be reduced accordingly. The revised fees will be effective as of the date the other licensee received the more favorable pricing. To assure compliance with this Section, a reputable auditor appointed by SISW may audit Licensor at SISW's discretion, but not more than often than annually, at SISW's expense and with 30 days advance notice.

6. Confidentiality

- 6.1 The receiving party will (i) use Confidential Information only as required to exercise its rights or perform its obligations under this Agreement and (ii) protect Confidential Information from unauthorized use or disclosure. Neither party will disclose Confidential Information of the other to any third party without prior written consent of the other party, other than to financial, tax and legal advisors and consultants, and as required to perform the rights and obligations under this Agreement. Neither party will disclose the execution or the terms of this Agreement without the prior written consent of the other party. Consent to a general press release will not be unreasonably withheld.

6.2 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.

7. Term and Termination

7.1 This Agreement takes effect on the Effective Date and may be terminated by Licensor by providing three years prior written notice. SISW may terminate this Agreement for any reason upon three months prior written notice.

7.2 Either party may terminate this Agreement if the other party is in material breach of any provision of this Agreement and does not remedy such breach within 60 days after having received a written notification of such breach. SISW shall have the right to immediately terminate this Agreement (a) in case a third party acquires all or substantially all of the technology constituting the Licensed Product or a total cumulative interest of greater than 25% of the assets or capital stock of Licensor measured from the Effective Date; or (b) in case of Licensor's insolvency or inability to pay debts as they become due, voluntary or involuntary bankruptcy proceedings by or against Licensor or the appointment of a receiver or assignee for the benefit of creditors. Licensor shall promptly inform SISW of any such circumstances.

7.3 The Distribution Channel shall be entitled to close any open opportunities for a period of six months from the termination date of this Agreement and any licenses granted to Customers in closing such opportunities shall survive the termination of this Agreement.

7.4 All licenses to the Licensed Product granted by the Distribution Channel under this Agreement will survive any termination of this Agreement. SISW's rights under Section 2 will survive for the purpose of fulfilling SISW's contractual obligations to existing Customers, including, without limitation, SISW's right to provide authorization codes and Support Services to Customers that have a contractual right to use or obtain such products or Support Services.

7.5 Upon request of SISW and for a period of two years after any termination, Licensor will continue to provide support to the Distribution Channel and Customers as described in Section 3 and SISW shall continue to pay to Licensor the agreed fees for Maintenance and Support. Failure of Licensor to provide such support services will be subject to SISW's rights under Section 3.6.

7.6 The sections on Confidentiality, Term and Termination, Representations and Warranties, Indemnification, Limitation of Liability, Export Control and Miscellaneous will also survive any termination or expiration of this Agreement.

8. Representations and Warranties

- 8.1 Licensor represents and warrants that: (a) it has the right to enter into this Agreement and to grant the licenses described in Section 2 and to provide the services described in Sections 3 and 4; (b) all third party content or intellectual property rights in the Licensed Product (if any) are fully disclosed in **Schedule 6** to this Agreement; (c) the Licensed Product will meet, at a minimum, the performance and functional specifications set forth in the documentation and is free from material defect and malfunctions; and (d) Support and Maintenance and other services provided under this Agreement are provided with due care and at professional standards by personnel that are adequately skilled and trained for the provision of the respective services.
- 8.2 Licensor represents and warrants that exploitation of the Licensed Product as contemplated by this Agreement will not infringe any patent, copyright or proprietary rights and the Licensed Product does not contain any misappropriated trade secrets of any third party.
- 8.3 Licensor represents and warrants that all OSS included in the Licensed Product is comprehensively listed and marked as such in **Schedule 6**. Licensor represents and warrants that it complies with all applicable OSS license conditions. Licensor represents and warrants that the OSS as used in the Licensed Product will not require SISW to (a) grant licenses to the Integrated Product or the Licensed Product free of charge or (b) to publicly disclose the source code of the Integrated Product.
- 8.4 Licensor represents and warrants as to the Licensed Product: (i) it was not developed under a U.S. Government contract; (ii) no U.S. public funds were employed to develop it; and (iii) if the Licensed Product or part of the Licensed Product has been developed with public funding, SISW will have no other obligations than those specified in this Agreement, in particular SISW shall not be obliged to pay any amount and/or grant any rights to the Integrated Product to the funding authority or to any other third party. A breach of this Section 8.4 by Licensor will be deemed a material breach of this Agreement entitling SISW to (i) terminate this Agreement under Section 7.2 above and, if applicable, (ii) claim reimbursement from Licensor for any amount due by SISW to any given funding authority.
- 8.5 Licensor represents and warrants it will comply with the IT security provisions set forth in **Schedule 7**.

9. Indemnification

- 9.1 Licensor shall, at its expense, defend, indemnify and hold harmless SISW, Customers and the Distribution Channel against any loss, cost, expense, or liability arising out of any claim by a third party against SISW, Customers or the Distribution Channel alleging (a) the Licensed Product violates a third party's patent, copyright, trade secret, or proprietary right; (b) failure or inaccuracy of the Licensed Product resulted in death or personal injury; or (c) failure or inaccuracy of the Licensed Product resulted in the damage, loss or destruction of real or tangible personal property. Licensor's obligations under this Section are irrespective of any transfer or sublicense of the Licensed Product or the success of the claim. SISW agrees to (i) notify Licensor in writing within a reasonable time after SISW's receipt of written notice of such claim, action or allegation of infringement; (ii) use reasonable efforts to provide information known to SISW and assistance to settle or defend the action at Licensor's expense; and (iii) grant Licensor control of the defense or settlement of the action subject to SISW's reasonable approval.
- 9.2 If an injunction or order is obtained restricting SISW's, Customer's or the Distribution Channel's rights to the Licensed Product or if Licensor determines that the Licensed Product is likely to become the subject of a claim of infringement or violation of a patent, copyright, trade secret or other proprietary right of a third

party, Licensor will, at its option and expense: (a) procure the rights to the Licensed Product contemplated by this Agreement; or (b) replace or modify the Licensed Product so that it becomes non-infringing provided such modification or replacement does not adversely affect the specifications for or the use or operation of the Licensed Product. If neither (a) nor (b) is reasonably available, Licensor will refund all fees paid for such Licensed Product and secure a release of SISW and Customers from any further liability. Nothing in this Section will prevent SISW from pursuing additional remedies available in law or equity.

10. Limitation of Liability and Insurance

- 10.1 The liability of both parties for any damages resulting out of or in connection with this Agreement shall be limited to the higher of (a) the fees paid by SISW under this Agreement or (b) \$1,000,000. This limitation of liability shall not apply to (i) cases of willful misconduct or gross negligence, (ii) indemnification obligations, (iii) breaches of confidentiality, representations and warranties, export compliance or the applicable data protection terms and conditions or (iv) damage covered by the insurance maintained by Licensor as required under the terms of this Agreement.
- 10.2 SISW SHALL NOT BE LIABLE FOR ANY CLAIMS AGAINST LICENSOR BY ANY OTHER PARTY NOR SHALL SISW BE LIABLE FOR LOSS OF PROFITS, INTERRUPTION OF SERVICE, OR FOR ANY OTHER INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES.
- 10.3 During the term of this Agreement Licensor shall maintain all insurance required by law or this Agreement, including, but not limited to, at a minimum: (a) worker's compensation and related insurance as prescribed by the laws of the state in which Licensor's performance under this Agreement takes place, (b) employer's liability insurance with limits of at least \$3,000,000 for each occurrence, (c) comprehensive automobile liability insurance, each with limits of at least \$1,000,000 for bodily injury, including death, to any one person, and \$1,000,000 on account of any one occurrence and \$1,000,000 for each occurrence of property damage, and (d) professional liability insurance covering Licensor's errors and omissions with a limit of liability of \$1,000,000 each loss/aggregate. Licensor will, if requested by Licensee, provide Licensee with certificates of the foregoing insurance coverage.

11. Export Compliance

- 11.1 Licensor shall comply with all applicable export control, customer and foreign trade regulations ("Foreign Trade Regulations"). Licensor shall advise SISW in writing within two weeks of signing of this Agreement by both parties, and in case of any changes without undue delay, of any information and data required by SISW to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including without limitation all applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN).
- 11.2 Licensor shall be liable for any expenses and/or damage incurred by SISW due to any breach of the obligations hereunder, unless Licensor is not responsible for such breach.

12. Corporate Responsibility in the Supply Chain

- 12.1 Licensor shall comply with the principles and requirements of the 'Code of Conduct for Suppliers and Third Party Intermediaries' located at www.siemens.com/code-of-conduct/managementssystems (hereinafter referred to as the "Code of Conduct").

12.2 If requested by SISW, not more than once per calendar year, Licensor shall, at its option, either provide SISW with (i) a written self-assessment in the form provided by SISW or (ii) a written report approved by SISW describing the actions taken or to be taken by Licensor to assure compliance with the Code of Conduct.

12.3 SISW and its authorized agents and representatives, or a third party appointed by SISW and reasonably acceptable to Licensor, shall be entitled (but not obliged) to conduct inspections at Licensor's premises in order to verify Licensor's compliance with the Code of Conduct.

Any inspection may only be conducted upon prior written notice of SISW, during regular business hours, in accordance with the applicable data protection law and shall neither unreasonably interfere with Licensor's business activities nor violate any of Licensor's confidentiality agreements with third parties. Licensor shall reasonably cooperate in any inspections conducted. Each party shall bear its expenses in connection with such inspection.

12.4 In addition to any other rights and remedies SISW may have, in the event of (i) Licensor's material or repeated failure to comply with the Code of Conduct or (ii) Licensor's denial of SISW's right of inspection as provided for in Section 12.3, after providing Licensor reasonable notice and a reasonable opportunity to remedy, SISW may terminate this Agreement and/or any purchase order issued hereunder without any liability whatsoever.

Material failures include, but are not limited to, incidents of child labor, corruption and bribery, and failure to comply with the Code of Conduct's environmental protection requirements. The notice and opportunity to remedy provision shall not apply to violations of requirements and principles regarding child labor as set out in the Code of Conduct or willful failures to comply with the Code of Conduct's environmental protection requirements.

13. Miscellaneous

13.1 This document, including its schedule(s), contains the entire agreement of the parties and supersedes all prior or contemporaneous agreements, written or oral, between the parties relating to the subject matter. This Agreement may only be modified by a written document signed by an authorized representative of each party.

13.2 This Agreement and the rights and responsibilities under it are not assignable by either party without the prior written consent of the other party. If SISW consents to assignment of this Agreement, the assignee shall sign an Assignment and Assumption Agreement expressly agreeing to assume and be bound by the provisions of this Agreement. Notwithstanding the foregoing, SISW may assign this Agreement or the rights and responsibilities under it to an Affiliated Company or in connection with a sale, merger, corporate reorganization, or divestiture of the portion of its business that is utilizing the Licensed Product. This Agreement will inure to the benefit of and will be binding upon the respective successors and assigns.

13.3 All notices required by this Agreement, including requests for a press release or public statement, shall be given in writing to the contact information contained in **Schedule 8**, or to any updated information provided by one party to the other in writing.

13.4 The failure by either party at any time to enforce its rights under this Agreement will not be construed as a waiver of such rights and no waiver by either party will be valid unless it is contained in a signed writing.

13.5 This Agreement will be governed by the laws of the State of New York, excluding choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. All disputes arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts in New York City, USA.

13.6 **Dispute Resolution and Arbitration.**

13.6.1 **Settlement Negotiations Among The Parties.** If any dispute (“Dispute”) arises in connection with this Agreement, the responsible representatives of the parties shall attempt, in fair dealing and in good faith, to settle such Dispute. If a party provides written notification to the other party that such attempt has failed, then each party shall promptly appoint in writing a senior representative duly authorized to resolve such Dispute. Each party shall give notice of the appointment of such senior representative to the other party and such senior representatives shall try to reach an amicable settlement. If such senior representatives have not been appointed and/or are not able to reach an amicable settlement within a time period of 30 (thirty) days after the appointment of the first senior representative or such other time period as the parties may agree in writing, then either party may, by written notification to the other party, require that the Dispute be submitted for resolution by arbitration pursuant to Section 13.5.2 below. Nothing in this and the following Sections shall limit the right of the parties to seek relief intended to preserve the status quo or interim measures, such as preliminary injunctions, from any court of competent jurisdiction and/or an arbitral tribunal. If a claim in Dispute may become time barred due to an applicable statute of limitations, the parties shall agree upon a suspension of such statute of limitations during the settlement process set forth in this Section. The suspension shall be agreed and documented in a way to be effective under the applicable law. If the parties cannot reach an appropriate agreement on such suspension sufficiently in advance of the time bar becoming effective, the party whose claim may become time barred may initiate arbitration proceedings pursuant to Section 13.6.2 below irrespective of the prerequisites of this Section.

13.6.2 **Arbitration.**

13.6.2.1 All Disputes arising out of or in connection with this Agreement, which are not settled pursuant to sub-Section 13.5.1 of this Section, including any question regarding the existence, validity or termination or any subsequent amendment of the Agreement, and all claims in connection with it in respect of which no Dispute exists but which require enforcement, shall be finally settled in accordance with the Rules of Arbitration (“Rules”) of the International Chamber of Commerce (“ICC”).

13.6.2.2 If the value of the total matter in dispute, including the value of any counterclaims, is \$1 million (USD) or above, the expedited procedure provisions of the Rules shall not apply, and the arbitral tribunal shall consist of three arbitrators. If the tribunal consists of three arbitrators, each party shall nominate one arbitrator for confirmation by the ICC. Both arbitrators shall agree on the third arbitrator within thirty (30) days after their appointment. Should the two arbitrators fail to reach agreement on the third arbitrator within the thirty-day period, the ICC shall select and appoint the third arbitrator.

13.6.2.3 The seat of arbitration shall be Zurich, Switzerland. The applicable law to the dispute resolution under this Agreement shall be the laws of the State of New York, USA.

13.6.2.4 The language to be used in the arbitration shall be English.

13.6.2.5 The IBA Rules on the Taking of Evidence in International Arbitration as current as on the Effective Date of this Agreement shall apply. The work product of an (outside or in-house) attorney and communication between an (outside or in-house) attorney and a client shall be subject to the privilege provided for in Article 9 section 2 of said IBA Rules and shall not be disclosed.

13.6.2.6 Consolidation of arbitration pending under the Rules into a single arbitration shall only be possible if all parties have agreed to consolidation.

13.6.2.7 Upon request of a party, the arbitral tribunal shall order any claiming or counterclaiming party to provide security for the legal and other costs of any other party related to that claim or counterclaim, by way of bank guarantee or in any other manner and upon such terms as the arbitral tribunal considers appropriate.

13.7 If any provision (or portion of a provision) of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions and provisions will not in any way be affected or impaired.

Licensors Siemens Industry Software Inc.

By:	By:
(Authorized Representative)	(Authorized Representative)
Name	Name
Title	Title
Date	Date

By:
(Authorized Representative)
Name
Title
Date

Schedule 1: Licensed Product

1. Licensed Product

The following products are licensed under this Agreement:

Product Name/Identifier	Description	List Price	Source/Object Code	Operating System/Hardware Platform
Polarion for Tender Management	Polarion ALM Named user license together with DRIM Named user license	250 USD per month per Named user subscription	Distribution bundle is provided by Siemens combining both Siemens and DRIMCo binaries	All supported OS and HW platforms of Siemens Polarion

Schedule 2: Fees

1. Additional Definitions

- 1.1 “Net Revenue” means the net amount of revenue recognized from sales of licenses to the Licensed Product or the Integrated Product or the provision of Support Services provided to Customers. Such sales shall include the granting of subscriptions and term licenses. The calculation of Net Revenue will reflect applicable discounts and will exclude amounts invoiced for any other product, shipping, taxes, duties or other amounts.
- 1.2 “List Price” means the total undiscounted list price as identified on the SISW U.S. price list for the applicable “perpetual” product license.

2. License Fees and Maintenance and Support Fees

- 2.1 SISW will pay fees to Licensor for all rights and licenses granted under this Agreement as follows (“License Royalty Fee”):
- 29 % of Net Revenue recognized in the reporting period until the total Fees paid to Licensor reaches ten million dollars (\$10,000,000.00). Thereafter, SISW shall pay Licensor 25% of Net Revenue.
- 2.2 Maintenance Royalty Fees are not applicable under this contract as licensing option will include only subscription.
- 2.3 If the Licensed Product is not sold as part of an Integrated Product but as part of a bundled unit with other SISW products, the royalty fees paid to Licensor will be based on the ratio of the List Price of the Licensed Product as compared to the sum of the List Price of the other products in the bundled unit. SISW will pay the same percentage listed in Sections 2.1 and Section 2.2 for bundled products. The following example is provided solely for the purpose of illustrating how applicable fees are calculated.
- Example: SISW licenses Licensed Product with other products for \$50,000. The List Price of the Licensed Product is \$10,000 and the sum of the List Price of the other SISW products is \$90,000. The royalty owing to Licensor for the bundled software in this example is \$50,000 times 10% (fraction attributable to the Licensed Product as part of the bundle) times the percent of royalty identified in Sections 2.1 and 2.2.
- 2.4 The Licensed Product and the Integrated Product may be sold to Customers under terms that allow Customer’s Affiliated Companies to use the software and under terms that allow Customers to transfer licenses to their Affiliated Companies or third parties (e.g. as part of a merger, acquisition or corporate re-organization). No such use by Affiliated Companies or transfer shall lead to additional fees being due to Licensor.

Schedule 3: Maintenance and Support

1. Additional Definitions

- 1.1 “Initial Version” shall be the first Version of the Licensed Product delivered under this Agreement as per **Schedule 1**.
- 1.2 “Update” shall mean any Licensed Product which corrects a Defect of the Licensed Product and/or includes non-significant improvements of the Licensed Product. An Update is usually but not necessarily denominated by a change in the numerals after the decimal point of the Licensed Product’s versioning scheme (e.g. the “3” in version 4.3). Updates shall be considered part of the Licensed Product.
- 1.3 “Upgrade” shall mean any Licensed Product which includes a significant improvement of the Licensed Product. Upgrades may also include error corrections. An Upgrade is usually but not necessarily denominated by a change in the numerals before the decimal point of the Licensed Product’s versioning scheme (e.g. the “4” in version 4.3). Upgrades shall be considered part of the Licensed Product.
- 1.4 “Version” shall mean the release level of the Licensed Product resulting from the latest Upgrade to the Licensed Product.

2. Delivery of Updates and Upgrades

- 2.1 Licensor shall provide periodic Updates and Upgrades to the Licensed Product in order to remedy any Defects of the Licensed Product and in order to improve the functionality of the Licensed Product. Such improvements shall be made in accordance with the general advancement of information technology and shall, as a minimum requirement, enable the usage of the Licensed Product together with the most current versions of any other software that the Licensed Product requires for its use or that it otherwise interacts with.
- 2.2 Updates and Upgrades shall be provided by means of electronic download under the license terms set forth in this Agreement. SISW shall not be obliged to use or distribute Updates and Upgrades and may continue to distribute prior Versions along with any Updates and Upgrades.
- 2.3 All Updates and Upgrades shall be free from Defects, shall not adversely affect the functionality of the Licensed Product as agreed in this **Schedule 3** and this Agreement and shall not cause an undue training requirement or require other adjustments to be made to the hardware or software required to run the Licensed Product or the Integrated Product. The warranty provisions of this Agreement shall apply to all Updates and Upgrades, provided that the remediation of Defects shall take place as set forth in this **Schedule 3**.

3. Supported Versions

Updates and Upgrades for the Initial Version shall be provided until the following date:	Aligned with Siemens End-of-life date for bundled Siemens Polarion version.
Each upgraded Version shall be supported for the	Aligned with Siemens End-of-life

following period:	date for bundled Siemens Polarion version.
Extended support for each upgraded Version shall be available for the following period (subject to additional charges):	[insert extended support period and additional charges]
Special requirements for interfaces	N/A

4. Defect Correction

- 4.1 Licensor shall remedy all Defects in the supported Versions of the Licensed Product that are reported by SISW or that become known to Licensor through other sources. Remediation shall take place by delivery of a patch, an Update or Upgrade. Delivery of a workaround solution that reasonably enables continued usage of the Licensed Product or the Integrated Product shall not be considered remediation but may lead to a reclassification of the Defect based on the impact of the workaround solution on the usage of the Licensed Product.
- 4.2 Licensor shall operate a sufficiently staffed helpdesk that will answer questions by SISW and the Distribution Channel regarding the installation, configuration and operation of the Licensed Product and that will serve as a point for notifying Licensor of any Defects. The helpdesk shall be available as follows:

Helpdesk operating hours	[insert hours and time zone as required by the business case]
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- 4.3 All Defects shall be notified and documented as follows:

Notification of Defects by SISW to Licensor shall be made by the following means:	Using Siemens Support System
Operation of test systems or reference configuration:	Available for every supported Siemens Polarion version and provided by Licensor at the moment of given Siemens Polarion version code freeze date.
Tool used to document Defects:	Siemens Support System
Special requirements for Defect documentation:	[insert special requirements]

4.4 The categorization of a Defect by either party shall be indicative but shall not be binding on the other party. However, if SISW suggests a Defect categorization, Licensor shall treat the Defect according to such category unless Licensor has reason to believe that such classification is wrong. Defects shall be categorized as follows.

Priority 1	Defects with a high impact or great urgency, e.g. Defects where the user is not able to use the Licensed Product/Integrated Product or basic functions of the Licensed Product/Integrated Product. Priority 1 Defects may also be given in case of information security vulnerabilities with a high severity level.
Priority 2	Defects with a medium impact or medium urgency, e.g. if notwithstanding the Defect, the user is able to use the Licensed Product partially, the major functions are useable; however the Defect causes significant use restrictions and requires additional work and/or expenses. Priority 2 Defects may also be given in case of information security vulnerabilities with a medium severity level.
Priority 3	Defects with a minor impact or low urgency, e.g. if notwithstanding the Defect, the user is able to use the Licensed Product but several features of the Licensed Product are not useable, which leads to minor restrictions of use. Priority 3 Defects may also be given in case of information security vulnerabilities with a minor severity level.
Priority 4	All other Defects.

4.5 For the purposes of calculating reaction and remediation times, the following definitions shall apply:

Notification Time	Notification Time shall be the time when Licensor becomes aware of a Defect.
Classification Time	Classification Time shall be the time when Licensor <ul style="list-style-type: none"> (i) has carried out a reasonable classification or has confirmed SISW's classification of the Defect, (ii) has documented the Defect, (iii) has assigned the Defect remediation to a qualified representative of Licensor and (iv) has informed SISW of (i) to (iii) above.
Reaction Time	Reaction Time shall be the difference between Classification Time

	and Notification Time.
Resolution Time	Resolution Time shall be the time when Licensor <ul style="list-style-type: none"> (i) has remedied the Defect, (ii) has made the remediation available to SISW (e.g. a patch, Update or Upgrade) and (iii) has informed SISW of the respective remediation and the steps required to implement it.
Remediation Time	Remediation Time shall be the difference between Resolution Time and Notification Time.

The Reaction Time objective shall be as follows:

Priority 1	[insert time period]
Priority 2	[insert time period]
Priority 3	[insert time period]
Priority 4	[insert time period]

The Remediation Time objective shall be as follows:

Priority 1	[insert time period]
Priority 2	[insert time period]
Priority 3	[insert time period]
Priority 4	[insert time period]

4.6 Licensor shall set up and maintain a support website dedicated to the Licensed Product. The website shall include FAQs to address frequent questions regarding the usage of the Licensed Product or the correction of Defects and “How-to-pages” containing expert advice by Licensor’s trained personnel.

Schedule 4: Data Privacy Terms

[Use PL template or Not Applicable]

Schedule 5: Marketing and Training

1. Licensor will provide sales kit materials to SISW for use by the Distribution Channel. Licensor will reasonably contribute to the creation of a joint sales kit, including a demonstration package.
2. Upon reasonable request of SISW, Licensor personnel shall participate in joint sales calls and demonstrations.
3. Licensor will develop training courses to train employees and contractors of SISW and the Distribution Channel on the Licensed Product. Licensor will hold two classes for up to ten participants at selected SISW offices, to be agreed upon by the parties, at no charge to SISW. Additional training may be provided at no charge, to allow for high quality sales contact and support, such as training on new releases. Each party will pay its own travel expenses.
4. Licensor will provide to SISW pre-sales and post-sales support, including participating in Customer visits, industry conferences and trade shows, joint sales calls, demonstrations and benchmark support, for Licensed Product as reasonably requested by SISW.

Schedule 6: Third party IP rights

Third Party Licensor	Third Party Software (include OSS)	Component	Version	License	Usage	Source/Home Page

Schedule 7: IT Security Provisions

1. Licensor shall take appropriate organizational and technical measures to ensure the confidentiality, authenticity, integrity and availability of Licensor operations as well as products and services. These measures shall be consistent with good industry practice and shall include an appropriate information security management system consistent with standards such as ISO/IEC 27001 or IEC 62433 (to the extent applicable).
2. Licensor shall:
 - 2.1 implement appropriate standards, processes and methods to prevent, identify, evaluate and repair any vulnerabilities, malicious code and security incidents in products and services which shall be consistent with good industry practice and standards such as ISO/IEC 27001 or IEC 62443 (to the extent applicable);
 - 2.2 continue to support and provide services to repair, update, upgrade and maintain products and services including the provision of patches to SISW remedying vulnerabilities for the reasonable lifetime of the products and services;
 - 2.3 provide to SISW a bill of materials identifying all third party software components contained in the Licensed Product (third party software shall be up to date at the time of delivery to SISW);
 - 2.4 grant to SISW the right, but SISW shall not be obliged, to test or have tested products for malicious code and vulnerabilities at any time, and shall adequately support SISW; and
 - 2.5 provide SISW a contact for all information security related issues (available during business hours).
3. Licensor shall promptly report to SISW all relevant information security incidents occurred or suspected and vulnerabilities discovered in any Licensor operations, services and products, if and to the extent SISW is or is likely to be materially affected.
4. Licensor shall take appropriate measures to achieve that its subcontractors and licensors shall, within a reasonable time, be bound by obligations similar to the provisions of this Schedule 7.
5. Upon SISW's request, Licensor shall provide written evidence of its compliance with this Schedule 7 including generally accepted audit reports (e.g. SSAE-16 SOC 2 Type II).

Schedule 8: Notices

If to Licensor:

And also to:

If to SISW:

And also to:

Siemens Industry Software Inc.
Senior Vice President and General Counsel
5800 Granite Parkway, Suite 600
Plano, Texas 75024
Generalcounsel.sisw@siemens.com

Schedule 9: Limited Use License Agreement

LIMITED USE LICENSE AGREEMENT

1. **Definitions.** Terms
 - 1.1. **“LULA”** means this Limited Use License Agreement.
 - 1.2. **“Business Purpose”** means the business purpose identified in Attachment 1 to this LULA.
 - 1.3. **“Installation Site”** means Your facility at which You will install and access and use the SISW Products, as identified in Attachment 1 to this LULA.
 - 1.4. **“SISW Products”** means the software or hardware, including firmware incorporated into the hardware, licensed or distributed by SISW to You hereunder identified in Attachment 1, including any updates, upgrades or new releases to the SISW Products and the associated documentation.
 - 1.5. **“You” or “Your”** means the licensee of the SISW Products under this LULA and the “Licensor” as defined under the Agreement.
2. **GRANT OF LICENSES.**
 - 2.1. Except as expressly stated in this LULA, SISW grants to You and You accept from SISW a license to access and use the SISW Products solely from the Installation Site and for the Business Purpose in accordance with and pursuant to the terms of this LULA, the current SISW End User License Agreement located at <https://www.plm.automation.siemens.com/global/en/legal/online-terms/index.html>, and the Supplemental Terms identified in Attachment 1 (together the “SISW License Terms”).

Renewals, or additional licenses, of SISW Products under this LULA will be governed by the SISW License Terms, including all applicable Supplemental Terms, in effect on the date of such renewals or additional licenses. Any references to “Customer” throughout the SISW License Terms in connection with the licenses granted under this LULA shall be interpreted as meaning “You” or “Your”.
 - 2.2. In the event of a conflict or ambiguity by and between the terms and conditions of this LULA, the above identified SISW End User License Agreement or Supplemental Terms; the governing terms and conditions shall be in the order of: this LULA, the Supplemental Terms and the SISW End User License Agreement.
3. **Term and Termination.** The Term and Termination provisions of the Agreement with which this Schedule is included shall apply to this LULA. Notwithstanding the previous sentence, this LULA and the licenses of SISW Products hereunder will terminate effective immediately if You fail to comply with any of the terms and conditions contained herein and all license rights granted will cease upon any termination of this LULA. Within 15 days after termination of the license rights granted herein or this LULA for any reason, You will destroy the original and all copies of the SISW Products in all forms, and will certify to SISW in writing that such obligation has been fulfilled.
4. **DISCLAIMER OF WARRANTY.** THE SISW PRODUCTS FURNISHED UNDER THIS LULA ARE PROVIDED “AS-IS” WITHOUT WARRANTY AND WITHOUT ANY OBLIGATIONS TO INDEMNIFY AND DEFEND YOU, YOUR AFFILIATES, OR ANY USER. SISW AND ITS LICENSORS MAKE NO WARRANTIES OF ANY KIND WITH RESPECT TO THE SISW PRODUCTS PROVIDED UNDER THIS LULA, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR AGAINST INFRINGEMENT.

5. **LIMITATION OF LIABILITY.** IN ADDITION TO ANY OTHER LIMITS OF LIABILITY CONTAINED IN THE AGREEMENT, WITH RESPECT TO THE LICENSES OF SISW SOFTWARE PROVIDED TO YOU UNDER THIS AGREEMENT, IN NO EVENT SHALL SISW OR ITS LICENSORS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS) WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF SISW OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL SISW OR ITS LICENSORS' LIABILITY UNDER THIS LULA, IF ANY, EXCEED THE SUM OF \$1,000.00 (USD).

6. **MISCELLANEOUS**

6.1 In the event of a conflict between the terms of the Agreement and this LULA, the terms of this LULA govern with respect to any licenses of SISW Products to You.

6.2 SISW may, in its sole discretion, provide maintenance services for the SISW Products as described in the SISW License Terms.

6.3 All notices required by this LULA shall be made in accordance with Section 13.3 of the Agreement.

6.4 The governing laws under Section 13.5 of the Agreement applies to the licenses provided under this LULA.

ATTACHMENT 1

- Business Purpose:** You are authorized to access and use the SISW Products identified in Section 2 of this Attachment 1 solely for the purpose of testing compatibility between the SISW Products and Your Licensed Products (as defined under the Agreement) and for QA and/or direct support thereof. You are prohibited from using the SISW Products for: commercial purposes, in production, as part of a service offering to customers, for consulting services other than Maintenance & Support provided under the OEM Agreement, or for any purposes competitive to SISW by You for any reason.
- SISW Products** (includes, if applicable identification of applicable Supplemental Terms and Conditions):

Product Code	Product Name	Order Form Code	Applicable Supplemental Terms	Quantity
PLN*		POLAR	Polarion Supplemental Terms https://www.plm.automation.siemens.com/global/en/legal/online-terms/polarion.html	

- Your Installation Site(s):** (You agree you shall only install the SISW Products at the following sites and to update this information as appropriate and applicable):

Your Installation Site(s)	
Full Corporate Name (Corporate Entity):	
Address:	
State/Province:	
City:	
Postal Code:	
Country:	
VAT or Corporate ID #:	
Contact Name:	
Contact Phone:	
Contact Email:	
Server/HostID/Ethernet Address:	
Workstation Platform:	
Operation System/Version:	
Existing Server ID:	

- LULA Termination Date:** This LULA will run coterminous with the Agreement.

- License Contacts:**

Your Contacts	SISW Contacts
	OEM Partner Program Office Siemens Industry Software Inc. 2000 Eastman Drive Milford, OH 45103 USA E-mail: techpartner.plm@siemens.com