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## Licensed Program Maintenance Agreement

Southwire agrees to provide the following Maintenance services to Licensee for the selected program and application (the “Licensed Program”) under the following terms and conditions.

### ***I. Definitions***

**(a) “Agreement”** means, collectively, the End User License Agreement and this Maintenance Agreement for the Licensed Program purchased by Licensee.

**(b) “Annual Maintenance Fee”** has the meaning given thereto in Section III(b) of this Agreement.

**(c) “Current License”** means a license for a Current Version.

**(d) “Current Version”** means version four (4) (for SAG10 software) and version one (1) (for SWRate Pro software) of the Licensed Program and any Updates within the aforementioned version number. Current Versions may include but are not limited to: 4.0, 4.0.0, 4.0.1, 4.1.0 (for SAG10 software) and 1.0, 1.0.0, 1.0.1, 1.1.0 (SWRate Pro software). No versions prior to version four (4) (for SAG10 software) and one (1) (for SWRate Pro) are Current Versions.

**(e) “Documentation”** means the user’s manual and/or other documentation or media made available to Licensee along with the Licensed Program, whether in tangible or electronic form.

**(f) “Error”** means code which exists in the Licensed Program that causes the Licensed Program to fail to operate in the manner specified by the applicable Documentation.

**(g) “Initial Maintenance Fee”** means the fee payable by Licensee upon its initial election to purchase Maintenance for the Initial Term.

**(h) “Initial Term”** means the initial period (whether one, three, or five years in duration) of Maintenance selected by Licensee, during which this Agreement will be in full force and effect.

**(i) “Intellectual Property Rights”** means all copyrights, trademarks, service marks, trade secrets, patents, moral rights, contract rights, and other proprietary rights under the laws of the United States and other countries.

**(j) “Licensed Program”** means Southwire licensed program and application as purchased by Licensee pursuant to a valid EULA, including Documentation, together with any and all Updates.

**(k) “Maintenance”** means, collectively, the Licensed Program maintenance services and Updates provided by Southwire as more particularly described in this Agreement.

**(l) “Maintenance Fees”** means, collectively, the maintenance fees specified in this Agreement, including without limitation the Initial Maintenance Fee and the Annual Maintenance Fees.

**(m) “Southwire”** means Southwire Company, LLC, together with its suppliers and licensors, if any.



**(n) "Update"** means a revision, correction, modification, enhancement, addition or deletion of a feature to the Licensed Program, some of which may be critical to maintaining the integrity of the calculations produced by the Licensed Program.

## **II. Maintenance**

**(a) Availability.** Depending on Licensee's election at the time it purchased rights to use the Licensed Program, Southwire offers Licensed Program Maintenance to holders of Current Licenses on a one-year, three-year, or five-year basis. Payment of Maintenance Fees is required in order to obtain Maintenance for the Licensed Program, including Updates. Maintenance under this Agreement does not cover non-Current Versions of the Licensed Program. Licensee may elect not to renew Maintenance at the end of the Initial Term or any Maintenance Renewal Term (as defined in Section III(b) below) by providing written notice to Southwire of such election not to renew at least sixty (60) days prior to the applicable renewal date. Absent such notice, Southwire will invoice Licensee by email for the Annual Maintenance Fee payable with respect to such Maintenance Renewal Term at least thirty (30) days prior to the applicable renewal date. Nonrenewal of Maintenance will not terminate Licensee's license to use the Licensed Program under the provisions of a separate license agreement. Reinstatement of Maintenance after an election not to renew Maintenance will be subject to a surcharge to upgrade the Licensed Program to the most Current Version of the Licensed Program.

**(b) Representation.** Licensee hereby represents and warrants to Southwire that it holds or is concurrently obtaining a Current License for the Licensed Program listed on the Order Form.

## **III. Maintenance Fees**

**(a) Initial Maintenance Fee.** Upon entering into this Agreement with Southwire, the Initial Maintenance Fee shall become due and payable by Licensee within thirty (30) days of receipt of invoice

**(b) Annual Maintenance Fees.** After the Initial Term, Maintenance Fees shall be charged on an annual basis, payable at the beginning of each Renewal Term (the "Annual Maintenance Fees"). Subject to Licensee's option to terminate Maintenance as set forth in Section II above, the Annual Maintenance Fees shall be due and payable by Licensee to Southwire on each applicable renewal date of this Agreement.

**(c) Payment of Past Maintenance Fees.** Upon purchasing rights to use the Licensed Program, if Licensee elects not to purchase Maintenance, or, after purchasing Maintenance for the Initial Term, if Licensee elects not to renew Maintenance, but Licensee subsequently elects to purchase Maintenance for the first time or to resume Maintenance (as applicable), in addition to the Initial Maintenance Fee or Annual Maintenance Fee (as applicable) that Licensee must pay for the relevant Maintenance term for which Licensee is purchasing Maintenance, Licensee shall also pay an amount equal to the Annual Maintenance Fees (prorated, if applicable) that Licensee would have paid to obtain any past Updates that are necessary to upgrade Licensee's Licensed Program to the then Current Version ("Past Maintenance Fees"). The amount of Past Maintenance Fees that Licensee shall pay pursuant to this Section will be contingent on the amount of time that Licensee used the Licensed Program without purchasing corresponding Maintenance.



## ***IV. Licensee Obligations***

In addition to Licensee's other obligations under this Agreement, including its obligation to pay the fees set forth in Section III, Licensee agrees as follows:

**(a) Designated Contact.** Licensee must provide a "Designated Licensee Contact" and one (1) alternate contact for Support purposes. Only a Designated Licensee Contact, or an alternate if the Designated Licensee Contact is not available, may make requests for Licensed Program assistance. In the event that a specific Designated Licensee Contact, or an alternate, leaves Licensee's employ or position, Licensee shall designate a replacement for the relevant contact. The Designated Licensee Contact is solely responsible for submitting Error reports and receiving communication regarding all Updates, correspondence and other communications concerning the Licensed Program from Southwire. Licensee agrees that during the term of this Agreement it shall at all times maintain at least one (1) person (and one (1) backup) that knows how to operate the Licensed Program.

Licensee shall maintain, at its own expense, all appropriate equipment to provide Southwire with access to Licensee's location of the Licensed Program for the purposes of resolution of performance issues.

## ***V. Southwire Obligations***

**(a) Error Correction.** During the term of the Agreement, and provided the Initial or Annual Maintenance Fee has been paid for such period, Southwire shall use its reasonable efforts to correct any Errors in the Licensed Program, provided the Designated Licensee Contact gives Southwire adequate written notice describing the Error and the Error can be recreated by Southwire, either at its facility or at the Designated Site. In the event it is determined by Southwire that an Error found in the Licensed Program was caused by Licensee, Southwire shall not be responsible for correction of such Error.

**(b) Releases Supported.** Southwire's support and other obligations under this Agreement shall apply only to the latest release and Current Version of the Licensed Program.

**(c) Upgrade Assistance.** Southwire shall reasonably assist Licensee with the performance of Upgrades to the Licensed Program provided by Southwire. Licensee is solely responsible for the installation and implementation of any such Upgrade.

**(d) Modifications.** Southwire shall have no support obligations under this Agreement for a Licensed Program that has been modified in any way by anyone other than Southwire or its representatives.

**(e) Limitations.** Southwire shall have no support obligation under this Agreement for line design or other system issues in connection with usage of the Licensed Program, or for the correction of Errors that are due to (i) a breach by Licensee of the terms of this Agreement, (ii) Errors that cannot be remedied due to operational characteristics of the system on which the Licensed Program is used, (iii) any modifications to the Licensed Program made by Licensee, or (iv) catastrophic events, including but not limited to power outages, water damage, and hardware crashes. Licensee acknowledges that Southwire is under no obligation to perform support services with respect to any hardware, or any software that is not provided to Licensee by Southwire.



**(f) Updates.** Provided the Agreement is in effect and the applicable Annual Maintenance Fee has been paid for such period, Southwire agrees to provide Licensee with access to any Updates to the Licensed Program (at no additional charge) when Southwire makes such Updates generally available to its other licensees then covered by Maintenance. While Southwire currently intends to provide Updates from time to time, Southwire will have no obligation to create any Updates hereunder.

**(g) Support.** Provided the Agreement is in effect and the applicable Annual Maintenance Fee has been paid for such period, Southwire agrees to provide Licensee with phone/email support for the Licensed Program. Support will be available 9 AM (EST) – 4 PM (EST) Monday through Friday, excluding weekdays on which banks in Carrollton, Georgia are closed. First contact on emails or return calls will be made within 24 hours of the initial request during the above hours.

**(h) Inclusion.** Any Updates to the Licensed Program performed under this Section shall be deemed part of the Licensed Program and subject to each of the provisions of this Agreement and the Licensed Program End User License Agreement.

**(i) Downtime Levels.**

**(i)** For purposes of this Agreement, a Unit of Downtime is one period of at least 12 hours during one 24-hour day during which the Licensed Program is not functioning because of problems with the Licensed Program. Downtime does not include (A) problems caused by factors outside of the reasonable control of Southwire, (B) problems resulting from any actions or inactions by Licensee or any third party, (C) problems resulting from the equipment of Licensee and/or a third party not within Southwire's control, or (D) unavailability during scheduled Maintenance periods.

**(ii)** In any calendar month, Southwire warrants that Downtime will not exceed 2 Units of Downtime, excluding, however, regularly scheduled Maintenance. Any regularly scheduled Maintenance will be performed during the hours of 6pm and 8am.

**(iii)** If Downtime exceeds 2 Units of Downtime in any calendar month for more than two months during any six-month period, Licensee may terminate this Agreement without penalty, and shall be entitled to a refund equal to the pro rata fees for the remaining months of the term plus two months.

## ***VI. Limitation of Liability***

IN NO EVENT SHALL SOUTHWIRE BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT. SOUTHWIRE'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE LICENSED PROGRAM, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF FEES PAID TO SOUTHWIRE FOR THE MAINTENANCE TERM IN WHICH SUCH DAMAGES OCCUR, AND ANY AMOUNTS DUE BUT UNPAID HEREUNDER. LICENSEE ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT SOUTHWIRE WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. The limitations set forth above shall not apply with respect to: (i) damages occasioned by the gross negligence or willful misconduct of a Party, (ii) damages

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occasioned by a Party's breach of Article VII (Confidentiality), or (iii) damages occasioned by a Party's violation of the Intellectual Property Rights of the other Party.

## **VII. Confidentiality**

Except as expressly allowed under this Agreement, Licensee will not use or disclose any Licensed Program, Documentation, or any idea, algorithm, source code, intellectual property, proprietary information or trade secrets of Southwire (the "Confidential Information"), except to the extent that Licensee can document that any such item (i) is generally available for use and disclosure by the public without any license or charge; (ii) is otherwise disclosed by Southwire or a third party without breach of a confidentiality obligation; (iii) is independently developed by Licensee without reference to the Confidential Information; or (iv) is required to be disclosed by Licensee by law or any governmental authority; *provided, however*, that Licensee shall notify Southwire as soon as reasonably possible of any such compelled disclosure and give Southwire the opportunity to defend against such disclosure or obtain a protective order in connection therewith. Licensee shall use commercially reasonable efforts, which shall be no less stringent than those efforts that Licensee uses to protect its own software or other similar proprietary property or information, to prevent the Confidential Information from being used by any employee, agent, consultant or other person in any manner that would violate this Agreement. Licensee further agrees to use commercially reasonable efforts to assist Southwire in identifying and preventing any use or disclosure of Confidential Information. Without limiting the foregoing obligation, Licensee shall advise Southwire immediately in the event that Licensee learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement. Licensee acknowledges and agrees that there is no adequate remedy at law for a breach of this Section, that such a breach could irreparably harm Southwire, and that Southwire shall, in the event of such a breach, be entitled to seek equitable relief, including, without limitation, injunctions, without the posting of any bond, in addition to any other remedies.

## **VIII. Termination**

**(a) Termination.** Southwire may terminate this Agreement, effective immediately upon written notice to Licensee, if (i) Licensee breaches any provision in Section VII; (ii) Licensee fails to pay any portion of the Initial Maintenance Fees when due; (iii) Licensee is the subject of a voluntary or involuntary filing of a bankruptcy petition or similar proceeding under state law; or (iv) Licensee becomes insolvent or makes any assignment for the benefit of creditors. In addition, either party may terminate this Agreement upon written notice if the other party materially breaches any other provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching party.

**(b) Effects of Termination.** Upon termination or expiration of this Agreement for any reason other than a termination by Licensee for Southwire's material breach, (i) any unpaid amounts owed to Southwire under this Agreement before such termination or expiration will be immediately due and payable except in the case the termination is the result of Licensee's termination for Southwire's material breach of this Agreement, (ii) all rights granted in this Agreement will immediately cease to exist and (iii) Southwire's obligation to provide Maintenance shall immediately cease.

**(c)** Sections VI, VII, VIII(b) and IX(d), (e), (h) and (l) will survive expiration or termination of this Agreement for any reason.



## ***IX. General Terms and Conditions***

**(a) Audit.** Licensee will permit Southwire or its representatives to review Licensee's relevant records and inspect Licensee's facilities to ensure compliance with this Agreement and only once during the Initial Term or any renewal period. Southwire will give Licensee at least fifteen (15) days advance notice of any such inspection. Licensee and Southwire shall discuss and agree in advance on the scope of review by Southwire. Southwire will conduct such review during normal business hours in a manner that does not unreasonably interfere with Licensee's normal operations and shall be subject to Licensee's security requirements. Southwire and/or its representative must sign a mutually agreeable confidentiality agreement with Licensee prior to conducting such review.

**(b) Assignments.** Licensee may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third party without Southwire's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void.

**(c) Notices.** All notices, consents and approvals under this Agreement must be delivered in writing by courier, by fax, by commercially recognized overnight delivery service (such as FedEx or UPS) or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at their respective addresses, and will be effective upon the earlier of receipt or when delivery is refused. Either party may change its address by giving notice of the new address to the other party. The initial notice address for Licensee is the billing address set forth in the Order Form. The notice address for Southwire is as follows:

Southwire Company, LLC  
One Southwire Drive  
Carrollton, GA 30119  
Attn: General Counsel

**(d) Governing Law and Venue.** This Agreement will be governed by, and interpreted in accordance with, the laws of the State of Georgia without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**(e) Remedies.** The parties' rights and remedies under this Agreement are cumulative. Licensee acknowledges that the Licensed Program contains valuable trade secrets and proprietary information of Southwire, that any actual or threatened breach of Section VII will constitute immediate, irreparable harm to Southwire for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach.

**(f) Force Majeure.** If Southwire is unable to perform any of its obligations hereunder, or Licensee is unable to enjoy a benefit hereunder (including without limitation loss of or failure to provide any product(s) and/or service(s)), due to any event beyond the reasonable control of Southwire, including without limitation severe weather and all other Acts of God, war, terrorism (domestic and/or international, without limitation), fire, heat, cold, explosion, flood, power or telephone failures, acts or omissions of any government or agency thereof, compliance with requirements, rules, regulations or orders of any governmental authority or instrumentality thereof, labor difficulty, supplier failure or delay, civil disorder, or breakdown or malfunction of machinery, transportation facilities or other equipment of any nature, then Southwire's performance shall be excused for the pendency of such event, but Southwire shall use reasonable efforts to limit the duration of any such delay.



**(g) Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**(h) Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

**(i) Confidentiality of Agreement; Announcements.** Neither party shall disclose any terms of this Agreement to anyone other than its affiliates, attorneys, accountants and other professional advisors, except as required by law or as mutually agreed upon and evidenced by prior written consent.

**(j) Construction.** The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”

**(k) Entire Agreement.** Each party acknowledges that it has read this Agreement, understands the terms contained herein, and agrees to be bound by the terms. The parties further agree that the terms contained herein are the complete and exclusive statement of the agreement between the parties which supersedes all prior proposals, understandings, and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement, including without limitation the terms of any Licensee request for proposal or Southwire’s response thereto. IN NO EVENT SHALL THE TERMS OF ANY LICENSEE-ISSUED PURCHASE ORDER SUPERSEDE OR NULLIFY ANY OF THE TERMS CONTAINED HEREIN OR IN THE ORDER FORM. THE ACCEPTANCE BY SOUTHWIRE OF ANY PURCHASE ORDER PLACED BY LICENSEE IS EXPRESSLY MADE CONDITIONAL ON LICENSEE’S ASSENT TO THE TERMS SET FORTH HEREIN, AND NOT THOSE CONTAINED IN LICENSEE’S PURCHASE ORDER. Licensee expressly agrees and acknowledges that in determining to enter into this Agreement that Licensee did not rely on any representation or warranty by anyone other than those expressly set forth in this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties. No claim or action, regardless of form, arising out of this Agreement, may be brought by either party more than two (2) years after the cause of action has arisen.

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