

# Software License Terms and conditions

## INTRODUCTORY PROVISIONS

Please read these terms and conditions and all other documents referred to herein (collectively "**Terms**") carefully before you start using the Software. When you start using the Software or sign the License Form, you as a licensee ("**Licensee**") conclude a software license agreement with the Licensor ("**Agreement**"). If you do not agree to these Terms, you must not use the Software.

Software is offered to users who are not a target of any sanctions regime, and do not reside in, nor will use the Software from a country from which such use is prohibited under any applicable sanctions regime or export control laws. By using the Software, you represent that you meet all of the foregoing requirements. If you do not meet these requirements, you must not use the Software. Licensor reserves the right to limit the availability of the Software to any person, entity, area, or jurisdiction at any time.

"**Authorized User**" means an officer, director, or employees of Licensee who Licensee permits to access and use the Software and/or Documentation pursuant to Licensee's license hereunder.

"**Effective Date**" is the effective date of the Agreement, which is the start date agreed in the License Form, provided that the Agreement will not become effective until the License Form is signed by the last party.

"**Documentation**" means Licensor's user manuals relating to the Software available at [www.svsfem.cz](http://www.svsfem.cz).

"**License Form**" is the order form provided by the Licensor.

"**License Term**" starts on the Effective Date and ends on the date set forth in the License Form.

"**Licensor**" is the company SVS FEM s.r.o., incorporated under the laws of the Czech Republic, ID number 15548180, with registered seat at Trnkova 3104/117c, Líšeň, 628 00 Brno, registered in the commercial register maintained by the Regional Court in Brno under file number C 1244.

"**Seat**" is a single device with the supported operating system.

"**Software**" means the executable, object code version of the software identified in the License Form, and any Maintenance Releases provided to Licensee pursuant to the Agreement.

"**Third-Party Products**" means any third-party products provided with or incorporated into the Software, including any open-source software.

## LICENSE

License Grant. Subject to and conditioned on Licensee's payment of Fees and compliance with all the terms and conditions of the Agreement, Licensor hereby grants Licensee a non-exclusive, non-sublicensable, and non-transferable license during the Term to:

use the Software solely for Licensee's internal business purposes up to the number of Seats set forth in the License Form; and

use and make a reasonable number of copies of the Documentation solely for Licensee's internal business purposes in connection with Licensee's use of the Software.

Trial. The Licensor may provide the Licensee with a trial license for use of the Software. In such case, the License Form shall contain the information that the Licensee is being provided with a trial license. The Terms shall apply to the trial license similarly, with the exception of sections 5 and 8.1 - 8-4 which shall not apply. Unless the parties agree otherwise, the trial license is provided free of charge for 1 Seat for the term of 4 weeks days from the signature of License Form. The Licensor does not grant any warranty for the Software, and it is not liable for any defects in the Software within the trial license.

## LICENSE RESTRICTIONS

Restrictions. Licensee shall not use the Software or Documentation for any purposes beyond the scope of the license granted. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, Licensee shall not at any time, directly or indirectly:

- a) copy, modify, or create derivative works of the Software or the Documentation, in whole or in part;
- b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software or the Documentation;
- c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part;
- d) use any hardware or software means that associate more devices to circumvent the quantitative restriction of the license for the agreed number of Seats (prohibition of multiplexing);
- e) remove any proprietary notices from the Software or the Documentation; or
- f) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

Reservation of Rights. Licensor reserves all rights not expressly granted to Licensee in the Agreement. Except for the limited rights and licenses expressly granted under the Agreement, nothing in this Agreement grants, by

implication, waiver, estoppel, or otherwise, to Licensee or any third party any intellectual property rights or other right, title, or interest in or to the Software.

**Ownership.** Licensee acknowledges that, as between Licensee and Licensor, Licensor owns all right, title, and interest, including all intellectual property rights, in and to the Software and Documentation and, with respect to Third-Party Products, the applicable third-party licensors own all right, title and interest, including all intellectual property rights, in and to the Third-Party Products.

**Delivery and Installation.** Licensor shall deliver the Software by making it available for download by the Licensee from its website. Licensee shall install the Software in accordance with the Documentation.

**License Key.** When requested during installation, Licensee shall enter the license key. Each license key can be used only once. Uninstalling the Software from a Seat does not enable the use of the same license key for installation of the Software on a different Seat (uninstallation does not empty the Seat) without Licensor's consent, provided that the Licensor shall not unreasonably withhold its consent.

**Fair Use Policy.** Licensee may use the Software only by an amount of Authorized Users that is reasonable in relation to the maximum amount of Seats. At most, the Customer may allow 5 Authorized Users per Seat to use the Software. If the Licensee intends to use the Software in excess of this amount, it shall contact the Licensee and negotiate in good faith with the intention to increase the amount of Seats. Unless the parties agree otherwise within 30 days of the day when the Licensee is found to have used the Software in excess, the Licensee shall pay Licensor the price for such excessive use calculated as the amount of Authorized Users in excess multiplied by the price per one Seat. Licensee shall pay all such amounts within 15 days of receiving the invoice.

**Remote Deactivation.** In the event of a substantial breach of the Agreement by the Licensee and upon a prior notification in writing requesting the remedy of such breach, Licensor may perform the remote deactivation of the Software until the Licensee remedies the notified breach.

## LICENSEE RESPONSIBILITIES

**General.** Licensee is responsible and liable for all use of the Software and Documentation resulting from access provided by Licensee, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Licensee is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Licensee will be deemed a breach of this Agreement by Licensee. Licensee shall take reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Software and shall cause Authorized Users to comply with such provisions.

**Third-Party Products.** Licensor may distribute Third-Party Products with the Software. Such Third-Party Products are subject to their own license terms referred to in the Documentation. If Licensee does not agree to abide by the applicable terms, then Licensee should not install or use such Third-Party Products. Software also contains open-source software referred to in the Documentation. Licensee acknowledges that such open-source software is not

licensed to Licensee pursuant to the provisions of this Agreement and that this Agreement may not be construed to grant any such right and/or license. Licensee shall have only such rights and/or licenses, if any, to use the open-source software as set forth in the respective licenses.

## **SUPPORT AND MAINTENANCE**

Support Term. Licensor shall provide Licensee with the support and maintenance described herein. Unless the parties agree otherwise in the License Form, support and maintenance is provided only during the License Term.

Support. Licensor shall operate a helpdesk that will answer questions by the Licensee regarding the installation, configuration, and operation of the Software and that will serve as a point for notifying Licensor of any defects. The helpdesk shall be available from 08:00 to 17:00 CE(S)T on workdays in the Czech Republic (i.e. days from Monday to Friday except for holidays and rest days as defined by the Czech law via email [hotline@svsfem.cz](mailto:hotline@svsfem.cz) and phone line +420 530 351 678.

Maintenance. As part of maintenance, the Licensor shall provide periodic updates and upgrades to the Software in order to remedy Defects. Licensor may further, but it not obliged to, provide updates and upgrades to improve the functionality of the Software in accordance with the general advancement of information technology. The update or upgrade is provided when Licensor makes available the installation files to the Licensee and/or allows the Licensee to download it from the its website or otherwise. Maintenance does not include the implementation, installation, neither a setting up of Licensee's operating environment.

Limitations. Maintenance is provided only for the two last versions of the Software versioning scheme (i.e. if the latest version of the Software provided by the Licensor is denominated by the numerals 1.3, then the support and maintenance is provided only for this version and version 1.2). License fees include the price for provision of support and maintenance as described herein up to the workload of 10 hours per month.

Support Fees. Provision of support or maintenance above the extent or limitations provided herein may be subjected to payment of additional support or maintenance fees to the Licensor. Licensor may refuse to provide such additional support.

## **FEES AND PAYMENT**

Fees. Licensee shall pay Licensor the agreed fees without any setoff or withholding for any reason. The fees are payable based on invoice issued by the Licensor within 30 days from the Effective Date.

VAT. Except as otherwise expressly provided, the fees are always specified exclusive of VAT. Licensee undertakes to pay the amount including VAT charged in accordance with the relevant legislation.

Other Taxes. Fees are also exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Licensee hereunder, other than any taxes imposed on Licensor's income. Licensee is solely obliged to bear all

such surcharges so that the Licensor always receives the net amount charged. If Licensee is obliged to pay any amounts, Licensor is entitled to add them to the invoiced fees and to increase the payment to the Licensor.

**Payment.** Licensee shall make all payments to the account and using variable symbol indicated in the invoice. All invoices shall become due and payable 15 days after their dispatch to the Licensee. Licensor shall send the invoices electronically to Licensee's e-mail address stipulated in the License Form.

**Late Payment.** If Licensee fails to make any payment when due then, in addition to all other remedies that may be available:

- a) Licensor may charge contractual penalty on the past due amount at the rate of 0.5 % per each commenced day of delay or, if lower, the highest rate permitted under applicable law; and
- b) if such failure continues for 10 days following written notice thereof, Licensor may prohibit use of the Software and invalidate provided License key until all past due amounts and penalties have been paid, without incurring any obligation or liability to Licensee or any other person.

**Auditing Rights and Required Records.** Licensee agrees to maintain complete and accurate records in accordance with generally accepted accounting principles with respect to matters necessary for accurately determining amounts due hereunder. Licensor may, at its own expense, on reasonable prior notice, periodically inspect and audit Licensee's records with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Licensee has underpaid Licensor with respect to any amounts due and payable during the Term, Licensee shall promptly pay the amounts necessary to rectify such underpayment, together with interest. Licensee shall pay for the costs of the audit if the audit determines that Licensee's underpayment equals or exceeds 10 % for any quarter. Such inspection and auditing rights will extend throughout the Term of this Agreement and continue for a period of two years after the termination or expiration of this Agreement.

## CONFIDENTIALITY

**Confidential Information.** From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information. Confidential information does not include information that, at the time of disclosure is:

- a) in the public domain;
- b) known to the receiving Party at the time of disclosure;
- c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or
- d) independently developed by the receiving Party.

**Obligation of Confidentiality.** The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose confidential Information to the limited extent required in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure shall first give a written notice to the other Party.

**Termination.** On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies of the disclosing Party's confidential information or destroy all such copies and certify in writing to the disclosing Party that such confidential information has been destroyed. Each Party's obligations of non-disclosure with regard to confidential information will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any confidential information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such confidential information remains subject to trade secret protection under applicable law.

#### **LIMITED WARRANTIES AND WARRANTY DISCLAIMER**

**Limited Warranty.** Licensor warrants that during the License Term the Software will perform materially as described in the Documentation. THE FOREGOING WARRANTIES DO NOT APPLY, AND LICENSOR STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.

**Breach.** The limited warranty does not apply and become null and void if Licensee breaches any provision of this Agreement, or if Licensee, any Authorized User, or any person provided access to the Software by Licensee whether or not in violation of this Agreement installs or uses the Software on or in connection with any hardware or software not specified in the Documentation, modifies the Software; or uses any other version of the Software than the latest version of the Software provided by the Licensor.

**Remedies.** If, during the period specified in Section 8.1 the Software fails to comply with the warranty and such failure is not excluded from warranty („Defect“), then Licensor shall, subject to Licensee's promptly notifying Licensor in writing of such failure, at Licensor's sole option, either:

- a) repair or replace the Software by provision of maintenance update or upgrade, provided that Licensee provides Licensor with all information Licensor requests to resolve the reported failure, including sufficient information to enable the Licensor to recreate such failure; or

refund the pro-rata portion of the fees paid in advance for use of the Software during the unused part of the License Term, subject to Licensee's ceasing all use of the Software.

**Sole Remedy.** The remedies set forth in the Section 8.3 are Licensee's sole remedies and Licensor's sole liability under the limited warranty.

**Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8.1, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND LICENSOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. LICENSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE AND DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET LICENSEE'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

#### **INDEMNIFICATION AND LIMITATION OF LIABILITY**

**Licensee Indemnification.** Licensee shall indemnify, hold harmless, and, at Licensor's option, defend Licensor from and against any and all damages, and costs resulting from any third-party claim based on Licensee's, or any Authorized User's: (i) negligence or willful misconduct; or (ii) use of the Software or Documentation in a manner not authorized by this Agreement; (iii) use of the Software in combination with data, software, or hardware not provided by Licensor; (iv) modifications to the Software not made by Licensor; or (v) use of any version other than the most current version of the Software or Documentation delivered to Licensee, provided that Licensee may not settle any third-party claim against Licensor without Licensor's prior consent.

**Limitations of Liability.** IN NO EVENT WILL LICENSOR BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL LICENSOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE LICENSE FEES PAID TO LICENSOR UNDER THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE.

#### **TERM AND TERMINATION.**

**Term.** The term of the Agreement begins on the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until the end date provided in the License Form.

**Termination.** In addition to any other express termination right set forth in the Agreement:

- a) Licensor may terminate the Agreement, effective on written notice to Licensee, if Licensee fails to pay any amount when due hereunder, and such failure continues more than 10 days after Licensor's delivery of written notice thereof; or breaches any of its obligations under Section 3;

either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach is incapable of cure; or being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; or

either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**Effect.** Upon expiration or earlier termination of this Agreement, the license granted hereunder will also terminate, and, without limiting Licensee's obligations under Section 7, Licensee shall cease using and delete, destroy, or return all copies of the Software and Documentation and certify in writing to the Licensor that the Software and Documentation has been deleted or destroyed. Unless otherwise provided in the Agreement, no expiration or termination will affect Licensee's obligation to pay all fees that may have become due before such expiration or termination or entitle Licensee to any refund.

**Surviving Terms.** The rights and obligation of the parties in the Agreement that, by their nature, should survive termination or expiration of this Agreement, will survive any expiration or termination.

## FINAL PROVISIONS

**Notices.** The requirement of written form is met if the electronic text with a simple electronic signature is delivered to the e-mail address of the other Party, or by other electronic means agreed by the parties.

**Entire Agreement.** The Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, these Terms; (b) second, the Order Form; and (c) third, any other documents incorporated herein by reference.

**Assignment.** Neither party may assign or otherwise transfer any of its rights without other party's prior written consent provided that Licensor may assign the Agreement as a whole without Licensee's prior written consent to its affiliate.

**Force Majeure.** In no event will either party be liable for any failure or delay in performance of the Agreement (except for obligations to make payments) to the extent such failure or delay is caused by any circumstances beyond its reasonable control, including acts of God, flood, fire, earthquake, war, terrorism, cyber-attack (including DDoS), invasion, embargoes, strikes, passage of law, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Licensor may terminate the Agreement if a force majeure event continues for a period of 30 days or more.

**Amendment.** No amendment to or modification of the Agreement is effective unless it is in writing, identified as an amendment to this Agreement and signed by each party.

**Severability.** If any term or provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, we shall negotiate in good faith to modify the Agreement so as to effect the original intent to the greatest extent possible.

**Governing Law; Submission to Jurisdiction.** Agreement is governed by and construed in accordance with the internal laws of Czech Republic without giving effect to any choice or conflict of law provision. Any legal suit, action, or proceeding arising out of or related to the Agreement will be instituted exclusively in the courts of the Czech Republic, and each of us irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

## TECHNICAL DETAILS OF THE DOCUMENT

Date of the last revision: 21 st of March 2023

Version of the document: 1.0

Signature of a company's authority:

Managing director