

## END USER LICENSE AGREEMENT

SiMa Technologies, Inc.

### 1. Scope.

**1.1 Important, read carefully:** By clicking the “I agree” or “I accept” button located below, or downloading, installing, copying, or otherwise using the Software, Customer agrees to be bound by the terms and conditions of this End User License Agreement (“**Agreement**”). If Customer does not so agree, Customer is not granted any rights with respect to the Software, and Customer must not download, install, copy, or otherwise use the Software and must promptly delete any partial or full copy of the Software. Upon such return, Customer will receive a refund of the amount paid for the Software, if any.

**1.2** The terms and conditions of this Agreement apply notwithstanding any terms and conditions contained in, referenced in, or accompanying any Order or other document, record, or communication issued by Customer, whether in written, electronic, or any other form (collectively, “**Customer Correspondence**”). Any acceptance of any Customer Correspondence by SiMa is expressly conditioned on Customer’s assent to this Agreement, including, without limitation, any terms and conditions herein that are different from or not contained in such Customer Correspondence. Any terms and conditions contained in any Customer Correspondence that are different from or in addition to those in this Agreement are expressly rejected by SiMa.

**1.3** This Agreement applies only to the Software and Software Services. Any other software, Hardware, or related services provided by SiMa are provided pursuant to SiMa’s applicable terms of sale, license, and services, or other applicable agreements.

**2. Definitions.** For purposes of this Agreement, capitalized terms shall have the meaning assigned to them in this Section 2 or elsewhere in this Agreement.

**2.1** “**Customer**” means the person or entity obtaining the Program or Software Services from SiMa.

**2.2** “**Documentation**” means any manuals, instructions, documentation, specifications, and similar materials, including in electronic form, associated with or relating to the Software or its use.

**2.3** “**Hardware**” means components, devices, equipment, and other hardware products. “Hardware” excludes Software.

**2.4** “**Licensed Rights**” means the copyrights embodied in the Program to the extent SiMa has the right and authority to grant the licenses with respect thereto as set forth in this Agreement.

**2.5** “**Party**” or “**Parties**” means, as applicable, SiMa and/or Customer.

**2.6** “**Program**” means the Software together with any Documentation, and any other software, new versions, updates, upgrades, options, bug-fixes, error corrections, modifications, enhancements, and other releases, in each case to the extent provided to Customer under the terms and conditions of this Agreement. For the avoidance of doubt, nothing in this Agreement shall constitute or be deemed to constitute an obligation of SiMa to provide any of the foregoing.

**2.7** “**SiMa**” means SiMa Technologies, Inc., a Delaware corporation having its principal place of business at 226 Airport Parkway, San Jose, CA 95110.

**2.8** “**Software Services**” means installation, support, maintenance, training, consulting, and other services relating to Software.

**2.9** “**Software**” means any SiMa software accompanied by or referencing this Agreement or identified in the applicable Order Confirmation.

**2.10 “Third Party Products”** means any Hardware or software not originally designed, developed, and/or manufactured by or for SiMa.

### **3. License**

**3.1 License Grant.** The Program is licensed to Customer as set forth in this Section 3, not sold. Subject to all the terms and conditions set forth in this Agreement (including the payment of Fees, if any), SiMa grants to Customer, under the Licensed Rights, a non-exclusive, personal, non-transferable, non-sublicensable right, during the term of this Agreement:

(a) with respect to any Program provided in object code form to Customer under this Agreement, to install and execute that Program in accordance with the Documentation;

(b) with respect to any Program provided in source code form to Customer under this Agreement, to reproduce, modify and create derivative works of that Program (“**Customer Modifications**”), subject to Section 3.5, and

(c) distribute, solely in object code form, such elements of the Program that are designated or specifically intended by SiMa to be distributed, and only together with Customer Modifications adding substantial functionality as integrated into Customer’s system using Hardware purchased by SiMa;

in each case of (a) and (b) and (c), solely to support the integration of Hardware purchased by Customer from SiMa into Customer’s systems and not on a stand-alone basis nor for use in connection with any Third Party Products.

### **3.2 License Restrictions.**

(a) Customer shall not use or authorize the use of the Program or any copy, portion, extract or derivative thereof with any Third Party Products or in any manner other than as expressly permitted herein.

(b) If the Program includes any Software designated by SiMa as pre-commercial Software (“**Evaluation Software**”), then Customer shall not place any such Evaluation Software into commercial use.

(c) Customer shall not copy any object code form of the Program except where such copy is created as an essential step in, and is necessitated by, or constitutes a back-up copy necessary for, the ordinary execution and running of the Program as expressly permitted hereunder.

(d) Except as expressly permitted herein, Customer shall not, and shall not authorize any third party to, (i) alter, adapt, modify, translate, create derivative works of, (ii) subject to Section 3.3, decompile, disassemble or otherwise reverse engineer or attempt to derive the source code of, or any technical data, know-how, trade secrets, processes, techniques, specifications, protocols, methods, algorithms, interfaces, ideas, solutions, structures or other information embedded or used in, (iii) rent, lend, loan, lease, sell, distribute, or sublicense, (iv) remove, alter, or obscure any proprietary or restrictive notices affixed to or contained in, and (v) circumvent or attempt to circumvent any technological protective measure contained in or supported by, the Program or any copy, portion, extract or derivative thereof.

(e) Except as expressly permitted herein, Customer shall not provide, disclose, display or otherwise make available the Program or any copy, portion, extract or derivative thereof, or

permit use of any of the foregoing by or for the benefit of any third party (including, without limitation, on a hosting, service-bureau, file-sharing, time-sharing or subscription service basis).

(f) The Program is licensed, as set forth herein, as a single product. Except as expressly permitted herein, Customer shall not separate the Program, nor use any component parts thereof other than as part of the Program as and in the form provided to Customer under the terms and conditions of this Agreement.

(g) Any permitted distribution of any elements of the Program hereunder shall be subject to terms and conditions consistent with those set forth in this Agreement, including restrictions of use only as part of Customer's system using Hardware purchased by SiMa, disclaimers of any warranty or liability by SiMa, and an acknowledgement of SiMa's ownership of all rights in the Program.

**3.3 Decompilation.** To the extent required by mandatory and non-waivable provisions of applicable law, Section 3.2 shall not preclude Customer from (a) reproducing software code within the Program and translating its form, provided that (i) such acts are performed by Customer and are indispensable to obtain the information necessary to achieve interoperability of an independently created computer program with other programs, (ii) the information necessary to achieve interoperability has not previously been readily available to Customer, (iii) Customer has requested in advance in writing that SiMa make such information available to Customer and SiMa has not done so within reasonable time, and (iv) these acts are confined to the parts of the software code within the Program which are necessary to achieve interoperability; and (b) observing, studying, or testing the functioning of the Program in order to determine the ideas and principles which underlie any element thereof, provided Customer does so in the ordinary execution and running of the Program as expressly permitted hereunder. In no event may Customer (x) use any information obtained pursuant to subclause (a) of this Section 3.3 for any purpose other than to achieve the interoperability of the independently created computer program, (y) provide or disclose such information to others, except to the extent necessary for the interoperability of the independently created computer program, or (z) use such information in the development, production or marketing of a computer program substantially similar in its expression to the Program. No license or right is granted hereunder, whether express, by implication, or otherwise, with respect to any information obtained pursuant to this Section 3.3 or its use.

**3.4 SiMa Retained Rights.** Customer agrees and acknowledges that SiMa (or its licensors, as applicable) owns and shall retain all right, title and interest in and to the Program (including any copies, portions, extracts and derivatives thereof) and any and all intellectual property rights throughout the world relating thereto. Except for the rights expressly granted to Customer by SiMa herein under the Licensed Rights, and the Customer Modifications pursuant to Section 3.5, Customer does not acquire any rights in the Program, including any copies, portions, extracts and derivatives thereof, and Customer agrees and acknowledges that Customer does not and shall not have any other rights, whether by implication, estoppel, or otherwise, with respect to the Program or any intellectual property rights relating thereto.

**3.5 Customer Modifications.** Customer will own all right, title and interest in and to the Customer Modifications, subject to SiMa's and its licensors' retained rights in and to the underlying Program from which the Customer Modifications were derived. Customer may distribute the Customer Modifications to third party recipients, provided that Customer will (a) include in any Customer Modifications all copyright and other proprietary notices contained in the original copy of the underlying Program, and a copyright or other notice sufficient to provide notice of SiMa's (or its licensor's) intellectual property rights in and to such underlying Program, (b) not distribute any Customer Modifications derived from Evaluation Software for commercial use, and (c) not introduce or integrate any open source software into any Program without SiMa's prior written consent. Customer will require any recipient of the Customer Modifications to comply with the foregoing, and will immediately notify

SiMa of any breach (or suspected breach) of the same by any such recipient. Customer assumes all warranties and other obligations with respect to the Customer Modifications, and SiMa will have no responsibility or obligation (and will incur no liabilities) with respect thereto. Customer will not assert any rights in or to Customer Modifications against SiMa or any user of the Program or SiMa Hardware.

**3.6 Program Activation.** If the Program was provided subject to an activation or authorization procedure, or requires a validation key, Customer may not use the Program unless the Program has been properly activated or authorized, or such validation key has been properly obtained and applied, in accordance with the applicable procedures.

**3.7 Third Party Software.** Customer agrees and acknowledges that (a) third party software (including open source software) may be incorporated, embedded or otherwise included in, or provided in connection with the Program, (b) additional or different terms and conditions may apply with respect to such third party software, and (c) use of such third party software is subject to such additional terms and conditions (“**Third Party License Terms**”) to which Customer hereby agrees. A list or the text of any Third Party License Terms may be provided with the Documentation accompanying the Program (including any “help,” “about,” “readme” or similar files contained in the Program), or made available on SiMa’s website (currently at <https://sima.ai/>) or such other website as SiMa may designate from time to time.

#### **4. Paid Software or Services.**

**4.1 Quotes and Orders.** Customer may be required to purchase a license, validation key, or other authorization for the use of certain Software or for access to certain Software Services (including certain updates or upgrades to the Software) (“**Paid Software or Services**”). In such case, SiMa may provide a written quote to Customer for the Paid Software or Services (“**Quote**”) that includes a description thereof (including, for example, technical information, required system environment and architecture, specifications, proposed delivery and performance schedules, license term, and service term) and any proposed fees for the Paid Software or Services (“**Fees**”). All Quotes are non-binding and are subject to, and incorporate by reference, this Agreement. Following receipt of the Quote, Customer may issue to SiMa a written order to license or obtain the applicable Paid Software or Services (“**Order**”). All Orders shall (a) be consistent with, and indicate the date and identification number of, the Quote, (b) be subject to this Agreement, (c) not contain or be subject to any terms or conditions that are different from, inconsistent with, or in addition to this Agreement and the terms of any applicable Quote, and (d) be signed by an authorized representative of Customer. All Orders shall be firm and non-cancelable. SiMa shall be under no obligation to accept any Order, and no Order will be binding on SiMa until accepted by SiMa as follows: if SiMa accepts the Order, then SiMa will issue a written order confirmation (“**Order Confirmation**”) which shall be subject to, and incorporate by reference, this Agreement. Any requested change by Customer to an Order must be mutually agreed upon in writing by the Parties and may require a change in Fees reflecting the inclusion, deletion, or substitution of Paid Software or Services, as well as SiMa’s costs of processing such change. SiMa reserves the right, at any time, to make alterations in design, form, functionality, and scope of the Paid Software or Services and to discontinue its offering of any Paid Software or Services.

**4.2 License Fees.** No later than on the effective date of this Agreement or, if different, by the due date set forth in the applicable Order Confirmation, Customer shall pay to SiMa the applicable Fees. Interest on any late payments shall accrue at the rate of one and one half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less. The Fees and all other charges hereunder do not include, and Customer shall be solely liable (and shall reimburse and indemnify SiMa) for, any taxes not based on SiMa’s net income (including, without limitation, any sales, use, value-added, withholding, property, excise, import or export tax), duties or tariffs imposed or levied by any governmental entity on the Paid Software or Services or in connection with this Agreement or the performance hereof. All Fees shall be increased as may be necessary so that after Customer makes all

deductions or withholdings that may be required by applicable law, SiMa receives an amount equal to the amount payable to SiMa hereunder without any such deductions or withholdings.

**5. Software Services.** Subject to Customer's payment of all applicable Fees to SiMa, SiMa shall use commercially reasonable efforts to provide Software Services to Customer in accordance with SiMa's then-current service and support policy and SiMa's then-current service and support terms (and subject to all other terms and conditions of this Agreement) or as otherwise agreed by SiMa and Customer in writing.

**6. Confidentiality.** The Program and any copies, portions, extracts and derivatives thereof (including the source code of, or any technical data, know-how, trade secrets, processes, techniques, specifications, protocols, methods, algorithms, interfaces, ideas, solutions, structures or other information embedded or used in any of the foregoing) constitutes the confidential information of SiMa ("**Confidential Information**"). Customer shall hold Confidential Information in strict confidence and shall not disclose it to any third party except to such employees of Customer who need to have access and who are bound in writing by confidentiality obligations at least as protective of the Confidential Information as those contained herein. Customer shall not use Confidential Information for any purpose other than as necessary for Customer's use of the Program as expressly authorized in this Agreement. Customer shall exercise the same care that it exercises to protect its own confidential and proprietary information of similar importance (but in no event less than reasonable care) to avoid unauthorized use or disclosure of Confidential Information.

**7. Disclaimer of Warranties.**

**7.1 General Disclaimer.** THE PROGRAM AND SOFTWARE SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PROGRAM IS WITH CUSTOMER. SIMA MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT OR RELATING TO THE PROGRAM, SOFTWARE SERVICES, OR THIS AGREEMENT. SIMA HEREBY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. Without limiting the generality of the foregoing, Customer agrees and acknowledges that there is no warranty or assurance that the Program will be free from defects or errors, or operate or perform without failure or interruption, and that there is no warranty or assurance that any defects or errors, or any failure or interruption in operation or performance will be corrected.

**7.2 High-Risk Uses.** Customer acknowledges that the Program is not fault tolerant, nor designed, manufactured, or intended for use in hazardous environments requiring fail-safe performance (including, without limitation, the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems) in which failure of the Program could lead directly or indirectly to death, personal injury, or severe physical or environmental damage. Without limiting the generality of Section 7.1, SiMa and its licensors shall have no liability arising from use of the Program in any high-risk situations.

**8. Limitation of Liability.**

**8.1 Indirect Damages.** Subject to Section 8.3, in no event shall SiMa (including its officers, directors, employees, agents and other representatives) be liable to Customer (including any other entity or person related to or affiliated with Customer) for any incidental, consequential, indirect, special or punitive damages whatsoever, or for any lost profits or revenue, lost business opportunities, lost or inaccessible data or information, or other pecuniary loss, arising out of or relating to this Agreement or

the subject matter hereof, whether liability is asserted in contract or tort (including negligence or strict product liability) or otherwise, and irrespective of whether SiMa (including its officers, directors, employees, agents and other representatives) has been advised of the possibility of any such damage or loss.

**8.2 Liability Cap.** Subject to Section 8.3, in no event shall SiMa's (including its officers, directors, employees and agents and its suppliers) aggregate liability under or arising out of or relating to this Agreement or the subject matter hereof exceed the greater of (a) ten dollars (\$10.00) and (b) the Fees (if any) paid by Customer to SiMa hereunder for the license of the applicable Program. CUSTOMER ACKNOWLEDGES THAT THE PRICING OF THE PROGRAM AND THE OTHER TERMS AND CONDITIONS OF THIS AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT SIMA WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF ITS LIABILITY.

**8.3 Exclusions.** The limitations of liability in Sections 8.1 and 8.2 do not apply to the extent liability cannot be contractually limited or disclaimed under applicable laws, with respect to bodily injury, and to the extent such damage or loss is the result of SiMa's willful misconduct or gross negligence.

## **9. Term and Termination**

**9.1 Term.** This Agreement and all rights granted hereunder shall be effective until terminated in accordance with this Section 9.

**9.2 Termination.** This Agreement shall immediately terminate if Customer breaches this Agreement, including, without limitation, any failure to pay Fees when due or any unauthorized use or disclosure of the Program or any copy, portion, extract or derivative thereof or of any other Confidential Information. Programs that include any time-out or similar mechanism, or that have been validated for a limited time, shall be deemed to be provided for the time period until such time-out or similar mechanism has been set to become effective by SiMa, or such validation time period has expired, and this Agreement shall immediately terminate upon expiration of such time period. SiMa may also terminate this Agreement upon written notice to Customer if Customer (a) files for or becomes subject to any proceedings under any bankruptcy or insolvency laws, or initiates any action under any such laws for bankruptcy, reorganization, or liquidation, (b) makes a general assignment for the benefit of creditors, (c) fails to generally pay its debts as they become due, or (d) dissolves or fails or ceases to continue business in the ordinary course.

**9.3 Effect of Termination.** Upon termination of this Agreement, all licenses and rights granted to Customer hereunder shall immediately terminate, and Customer shall immediately discontinue any use of the Program and, at SiMa's option, either return to SiMa or destroy the Program and any and all copies, portions, extracts and derivatives thereof and all related media and other materials and Confidential Information in Customer's possession or under its control, and certify the completeness of such return or destruction in writing.

**9.4 Survival.** Sections 1.3, 2, 3.2, 3.4, 3.6, 4.2 (for any Fees accrued but not yet paid at the time of termination), 6, 7, 8, 9.3, 9.4 and 10 shall survive any termination of this Agreement. Without limiting the generality of the foregoing, termination shall not affect Customer's obligation to pay any Fees.

## **10. General**

**10.1 Assignment.** Customer may not assign or delegate this Agreement or any rights or obligations hereunder, whether by agreement, operation of law or otherwise, and any purported assignment or delegation by Customer shall be null and void. SiMa shall have the right to freely assign and delegate this Agreement or any rights or obligations hereunder.

**10.2 Governing Law.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the Parties, and, to the extent federal law is applicable, the laws of the United States of America without giving effect to any choice of law rule that would cause the application of the laws of any other country. The United Nations Convention on the International Sale of Goods (CISG) shall not apply. Customer hereby submits to the non-exclusive jurisdiction of the courts in and for Santa Clara County, California, and Customer hereby waives any objections to the jurisdiction of such courts and any assertion that such courts are an inconvenient forum.

**10.3 Entire Agreement.** This Agreement contains the entire agreement with respect to the subject matter hereof, and supersedes all prior agreements, understandings, negotiations or discussions whether written or oral, between the Parties with respect thereto. In addition, each Party agrees that, in entering in this Agreement, it has not relied on any representations, warranties agreements or understandings not set forth herein. The terms of this Agreement constitute Confidential Information.

**10.4 Waiver.** Any waiver, amendment or modification of this Agreement or any of its provisions, rights, powers or remedies shall not be effective unless made in writing and signed by both Parties.

**10.5 Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

**10.6 Audit.** Customer shall allow SiMa or its designees access to Customer's books and records, during normal business hours, for the purpose of determining Customer's compliance with this Agreement.

**10.7 Government Customers.** If Customer is an agency or instrumentality of the United States Government, the Program is "commercial computer software" and "commercial computer software documentation," and pursuant to FAR 12.212 or DFARS 227.7202, and their successors, as applicable, use, reproduction and disclosure of the Program are governed by the terms of this Agreement.

**10.8 Export.** Customer will not use or otherwise export or re-export the Program except as authorized by United States laws and regulations, including, without limitation, regulations of the U.S. Department of Commerce, and, as applicable, the laws and regulations of other jurisdictions.

**10.9 Customer-Generated Materials.** Customer's use of the Program may result in the generation of certain information and data, which may include information concerning or specific to Customer's use of the Program (collectively "**Customer-Generated Materials**"). Customer hereby grants and agrees to grant SiMa access to such Customer-Generated Materials and any Customer Modifications, and a license to use, process, transfer and otherwise exploit any Customer-Generated Materials and Customer Modifications as may be reasonably necessary for SiMa to provide the Program or Software Services, or verify that Customer's use of the Program is in accordance with the terms and conditions of this Agreement.

**10.10 Feedback.** If Customer provides SiMa with any suggestions, comments, feedback or the like with respect to the Program or Software Services, or any Hardware or other software or services of SiMa (collectively, "**Feedback**"), Customer hereby grants and agrees to grant to SiMa a perpetual, irrevocable, royalty-free and fully-paid-up license to use, disclose and otherwise exploit all Feedback in connection with SiMa's business purposes, including the testing, development, maintenance and improvement of the Program or Software Services, or any such Hardware or other software or services.

**10.11 Customer Warranties.** Customer represents and warrants that Customer will (a) comply with all applicable laws and regulations in connection with the use (and, as applicable, reproduction and distribution) of the Program, Software Services and Customer Modifications, (b) not infringe,

misappropriate, or otherwise violate any rights of any third person, including, without limitation, any intellectual property rights, in connection with the foregoing, and (c) not provide any confidential or other proprietary information of any third party to SiMa. Customer shall defend, indemnify, and hold harmless SiMa and its affiliates (and its and their officers, directors, employees, agents, and other representatives) from and against any and all claims, proceedings, obligations, costs, damages, and other losses and liabilities brought against or incurred by Customer or its affiliates (and its and their officers, directors, employees, agents, and other representatives) arising as a result of Customer's use (and, as applicable, reproduction and distribution) of the Program, Software Services, and Customer Modifications, except to the extent arising from SiMa's willful misconduct or gross negligence.





## Edgematic Order and License Terms

Order for Palette Edgematic	
"Customer"	
Customer Contact Information	
"Order Effective Date"	
"Terms"	Sales, License, and Services Terms attached to this Order

This Order ("**Order**") is made and entered into between SiMa Technologies, Inc. ("**SiMa**") and Customer and is effective as of the Order Effective Date. This Order is subject to and governed by the Terms which are an integral part hereof and incorporated herein by this reference.

### 1. Product; Fees; Term.

Product	<b>Palette Edgematic</b> <i>Palette Edgematic is a no code, graphical user interface SaaS solution for creating and deploying edge ML pipelines on SiMa.ai's Machine Learning system on Chip (MLSoC) platform.</i>
Service Tier	<input type="checkbox"/> Premium <input type="checkbox"/> Enterprise <i>See attached service description. Features are subject to change.</i>



## Edgematic Order and License Terms

<b>Pricing</b>	<i>See attached pricing schedule. Pricing is subject to change, effective upon renewal.</i> Fees include Subscription Fees and additional Usage Fees, as applicable. Subscription Fees are payable in advance for the applicable Subscription Term. Additional Usage Fees will be billed and charged in arrears on a monthly basis. Customer expressly authorizes SiMa and its payment processors and other service providers to charge Customer for Fees on a recurring basis during the Subscription Term, including by charging any credit card or other payment method provided by Customer.
<b>Subscription Term</b>	<input type="checkbox"/> Monthly <input type="checkbox"/> Annually The Subscription Term will commence on the Order Effective Date and will automatically renew on a monthly or annual basis, as applicable, unless Customer cancels the subscription by providing written notice no later than 7 days before the renewal date.

**2. Additional Terms.** Customer's right to access, execute and use the Software may be exercised on Customer's behalf by employees and contractors designated by Customer solely on behalf of and for the sole benefit of Customer. Customer is responsible for any such employees' and contractors' compliance with this Order and the Terms.

**3. Third Party License Terms.** Third Party Materials provided or made accessible in connection with the Product may include computer software (including open source software), applications, pipelines, models (including artificial intelligence and machine learning models), algorithms, training data and data sets, and other information not owned by SiMa that are subject to Third Party License Terms as noted in the



## Edgematic Order and License Terms

Terms. Third Party License Terms may impose additional restrictions, including limitations to research, development, and other non-commercial use.

Relevant Third Party License Terms can be accessed here [\_\_\_\_\_]. **[Note to draft: SiMa to provide location of relevant Third Party License terms.]**

The parties have executed this Order by their respective authorized signatories, effective as of the Order Effective Date.

SIMA TECHNOLOGIES, INC.	CUSTOMER
By:	By:
Printed Name:	Printed Name:
Title:	Title:
Date Signed:	Date Signed:



## Edgematic Order and License Terms

### SERVICE DESCRIPTIONS

SERVICE TIER			
FEATURES	Evaluation Limited to a single user, 1-hour trial Period (Free)	Premium (Paid)	Enterprise (Paid)
Model KPIs (Performance and Power)	✓	✓	✓
Run Pipelines	✓	✓	✓
Download Pipeline		✓	✓
Bring Your Own SiMa Model (tar.gz)		✓	✓
Pipeline Building		✓	✓
Editing Pipelines		✓	✓



## Edgematic Order and License Terms

Bring Your Own Data (Video/Images)		✓	✓
Dynamically Assigned Dev. Kits		✓	✓
Cloud Integration		✓	✓
Dedicated Assigned Dev. Kits - 100% availability			✓
Bring Your Own DevKit (BYOD) <i>(future feature, not currently available)</i>			✓
Dedicated Support with SLA			✓
Sharing Projects & Pipelines Across Users <i>(future feature, not currently available)</i>			✓



## Edgematic Order and License Terms

### PRICING SCHEDULE

Single User License	Monthly (Per User)	Annual (Per User)
Edgematic Premium: Year 1	N/A	\$2,000
Edgematic Enterprise: Year 1	N/A	\$10,000
Edgematic Premium with DevKit (Gen1): Year 1	N/A	\$2,310
DevKit User (existing) purchases Edgematic Premium (35% discount): Year 1	N/A	\$1,560

Multiple User Licenses (2-10 Users)	Monthly (Per User)	Annual (Per User)	Discount
Edgematic Premium: Year 1	N/A	\$2,000	10%
Edgematic Enterprise: Year 1	N/A	\$10,000	10%



## Edgematic Order and License Terms

Edgematic Premium with DevKit (Gen1): Year 1	N/A	\$2,310	10%
DevKit User (existing) purchases Edgematic Premium (35% discount): Year 1	N/A	\$1,560	10%

### SALES, LICENSE, AND SERVICES

#### TERMS SiMa Technologies, Inc.

**1. Scope.** The terms and conditions of this Agreement (as defined below) apply to all Products and Services provided by SiMa to Customer pursuant hereto. **By (a) placing an Order for Products or Services, (b) accepting, using, or paying for any Products or Services provided by SiMa hereunder, or (c) checking or clicking an "I accept" or similar box or button displayed on an online order interface that indicates acceptance of these Sales, License and Services Terms ("Terms"), Customer accepts the terms of this Agreement.** If an individual is accepting this Agreement on behalf of a company or other legal entity, such individual represents and warrants that they have the authority to bind such company or other legal entity to the terms of this Agreement, and "Customer" will refer to such company or other legal entity. Any acceptance of an Order by SiMa

is expressly conditioned on Customer's assent to the terms of this Agreement. This Agreement applies notwithstanding any terms and conditions contained in, referenced in, or accompanying any purchase order or other document, record, or communication issued or otherwise transmitted by Customer, whether in written, electronic, or any other form ("**Customer Correspondence**"). Any terms and conditions contained in any Customer Correspondence that are different from or in addition to the terms and conditions of this Agreement or any terms in SiMa's Order Confirmation are expressly rejected by SiMa. No conduct by SiMa, including, without limitation, provision, shipment, or delivery of any Products or Services, will constitute, or be construed to constitute, SiMa's assent to or recognition of an agreement containing terms and conditions that



## Edgematic Order and License Terms

are different from or are not contained in this Agreement or SiMa's Order Confirmation.

**2. Definitions.** For purposes of this Agreement, capitalized terms have the meaning assigned to them in this Section 2 or elsewhere in this Agreement.

**2.1. "Agreement"** means (a) these Terms, together with (b) applicable Commercial Terms.

**2.2. "Customer"** means the person or entity purchasing or licensing Products or Services from SiMa and identified in SiMa's Order Confirmation.

**2.3. "Evaluation Offerings"** means any Products and Services provided free of charge or for trial or evaluation purposes.

**2.4. "Hardware"** means SiMa's proprietary machine learning system-on-chip products (including developer boards) and any other equipment, devices, and other hardware products that (a) may be offered by SiMa for purchase under this Agreement from time to time, and (b) are identified in SiMa's Order Confirmation.

**2.5. "Intellectual Property Rights"** means (a) patents and patent rights; (b) rights in trade secrets, know-how, and other confidential information; (c) copyrights and similar rights; (d) trademarks and other rights relating to designations of source or origin; and (e) any other intellectual or industrial property rights.

**2.6. "Order"** means a written (including electronic) order for Products and/or Services submitted by Customer through an ordering process established by SiMa for Products and Services, including any such ordering process provided via any online sales portal or

marketplace operated or authorized by or for SiMa.

**2.7. "Order Confirmation"** means an express written (including electronic) communication provided by or on behalf of SiMa indicating SiMa's agreement to provide Products or Services identified in such communication, to the Customer identified in such communication, upon these Terms and any applicable commercial terms specific to the Products and Services identified in such communication (such as type and quantity of Products and Services, Fees, estimated shipping times, any subscription tier and term, and similar terms) ("**Commercial Terms**").

**2.8. "Party" or "Parties"** means, as applicable, SiMa and/or Customer.

**2.9. "Products"** means Hardware and Software provided under this Agreement, together with any accompanying instructions, manuals, and other documentation provided by SiMa with the foregoing ("**Documentation**").

**2.10. "Services"** means technical assistance, support, optimization, training, consulting, and other professional services that (a) may be offered by SiMa under this Agreement from time to time, and (b) are identified in SiMa's Order Confirmation.

**2.11. "SiMa"** means SiMa Technologies, Inc., a Delaware corporation, having an office at 333 West San Carlos Street, Suite 1100, San Jose, California, 95110.

**2.12. "Software"** means SiMa's proprietary algorithms, models, code, tools, and other computer software, in any form and format (including firmware, middleware, APIs, and drivers) that (a) are embedded in or provided by





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SiMa for use in conjunction with Hardware, or (b) may be separately offered by SiMa for licensing or for access on a software-as-a-service basis ("**SaaS Offering**") and are identified in SiMa's Order Confirmation. "Software" also includes other software, new versions, updates, upgrades, options, bug-fixes, error corrections, modifications, enhancements, and other releases

(collectively, "**Release**"), if any, to the extent provided or made accessible to Customer under the terms and conditions of this Agreement. For the avoidance of doubt, nothing in this Agreement will constitute or be deemed to constitute an obligation of SiMa to provide any Releases.

**2.13. "Standard"** means any generally recognized technology or technical standard promulgated, distributed, specified, or published by an entity whose activities include developing, coordinating, promulgating, amending, reissuing, or otherwise producing standardized technology specifications or protocols for adoption by product manufacturers or the public.

**2.14. "Subscription Term"** means, for SaaS Offerings, the period (a) commencing on the effective date of SiMa's Order Confirmation, or otherwise agreed by SiMa in writing, (b) continuing for the period (monthly, annual, or such other period) as identified in SiMa's Order Confirmation, and (c) renewing or ending as set forth in Section 6.8.

**2.15. "Third Party Materials"** means equipment, devices, and other hardware products (including, without limitation, peripherals, and accessories), and computer software (including open source software), applications, pipelines, models (including artificial intelligence and machine learning models), algorithms, training data and

data sets, and other information, in each case not owned by SiMa.

### 3. Orders.

**3.1. Order Acceptance and Changes.** An Order is not binding upon SiMa until it is accepted by SiMa. If SiMa's Order Confirmation is subject to or contains different or additional terms than those set forth or referenced in an Order, SiMa's Order Confirmation constitutes a rejection of the Order and a counteroffer by SiMa under these Terms and the terms of SiMa's Order Confirmation. Similarly, SiMa's processing of payment for or shipment of any Products or Services in response to any Order that is not subject to these Terms, or that differs from SiMa's Order Confirmation, constitutes a rejection of the Order and a counteroffer by SiMa under these Terms and the terms of SiMa's Order Confirmation. Customer's acceptance or use of the applicable Products and Services or payment therefor constitutes Customer's acceptance of SiMa's counteroffer to provide the Products and Services under these Terms and the terms of SiMa's Order Confirmation. SiMa may verify



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Customer's method of payment and shipping address before accepting the Order and may, at its discretion, decline the Order (or any part of the Order). If SiMa declines the Order (or any part thereof), SiMa will attempt to notify Customer using the e-mail address or other contact information provided with the Order. SiMa may also contact Customer (via the e-mail address or other contact information provided by Customer) regarding the status of the Order and to provide Customer with any other notices, disclosures or communications concerning the Order. Any requested change by Customer to an Order must be mutually agreed upon in writing by the Parties and may require a change in Fees reflecting the inclusion, deletion, or substitution of Products and/or Services, as well as SiMa's costs of processing such change. SiMa reserves the right, at any time, to make alterations in design, form, features, functionality, performance, and scope of the Products and Services, to recall Products, and to discontinue its offering of any Products and Services.

### 4. Fees and Payment Terms.

**4.1. Fees.** Products and Services provided under this Agreement are offered at the prices set forth in SiMa's Order Confirmation or, if no prices are set forth in the Order Confirmation, SiMa's then-current listed prices ("**Fees**"). SiMa reserves the right to change its listed prices and fees at any time without notice to Customer. All Fees are based on the delivery terms set out in Section 5.1 below. Unless otherwise set forth in the Order Confirmation, Fees do not include, and Customer will be separately charged and will pay SiMa for, (a) all applicable costs and expenses for shipping and handling,

and (b) any and all taxes, levies, tariffs and fees imposed by any federal, state, local, or foreign authorities (including, but not limited to, sales, use, excise, and value-added taxes, custom duties, and similar tariffs and fees) based upon any payments, fees, or transactions under this Agreement, or levied upon or assessed against Products and/or Services ("**Taxes**").

**4.2. Withholding.** Except as provided below, all amounts payable hereunder by Customer will be made without deduction or withholding for or on account of any tax, deduction, or other charge by any taxation authority. If Customer is required by law to deduct or withhold any amount from or in respect of any payments to SiMa hereunder as SiMa foreign source income, then (a) Customer will pay the relevant taxation authority the minimum amount necessary to comply with the applicable law, (b) Customer will make such payment prior to the date on which interest or penalty is attached thereto, (c) provide to SiMa evidence and receipts of such payment and provide all documents, cooperation, and assistance reasonably requested by SiMa to obtain an exemption, refund, or tax credit for the withheld amounts.

**4.3. Payment Terms.** Fees for SaaS Offerings may include access fees for the applicable Subscription Term ("**Subscription Fees**") and additional fees based on usage ("**Usage Fees**"), as applicable. Subscription Fees are payable in advance for the applicable Subscription Term. Usage Fees will be billed and charged in arrears on a monthly basis (or such other period specified by SiMa in writing). Subject to the foregoing, unless otherwise set forth in the Order Confirmation or otherwise agreed by SiMa in writing, payment of Fees is due when the Order



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is placed. No payment hereunder will be deemed made unless and until the full amount due has been irrevocably credited to SiMa's designated bank account. Upon SiMa's request, Customer will supply additional information relevant to charging for Fees via wire transfer, credit card or other payment method (each such

charge, a "**Transaction**"), including Customer's bank account information or credit card number, the credit card expiration date, verification code, email, phone number, and addresses for billing and notification, and additional information to verify Customer's identity for purposes of completing the

Transaction (such information, "**Payment Information**"). Customer represents and warrants that it has the legal right to use all payment method(s) represented by any such Payment Information. Customer authorizes SiMa to provide the Payment Information to SiMa's third party payment processors and other service providers as necessary to complete the Transaction and to charge the payment method for the Transaction (plus any applicable Taxes, interest, and other charges). Customer expressly authorizes SiMa and its third party payment processors and other service providers to charge Customer for Fees on a recurring basis during the Subscription Term, including by charging any bank account, credit card or other payment method provided by Customer.

**4.4. Interest.** Interest on any late payments or default on payment will accrue at the rate of one and one half percent (1.5%) per month, or the maximum rate permitted by applicable law, whichever is less, from the due date until such amount is paid in full.

**4.5. No Set-Off.** All payments due to SiMa hereunder will

all be made without deduction or set-off, and Customer will have no right to deduct or set-off amounts from payments due to SiMa hereunder, of any kind or nature whatsoever.

**4.6. Other Rights.** SiMa reserves the right to establish credit limits, and to delay shipment or suspend performance pursuant to the Agreement, or require alternate terms and conditions of payment, if any payments to be made by Customer hereunder are past due. Customer will reimburse SiMa for reasonable attorneys' fees and any other costs associated with collecting delinquent payments.

### **5. Shipment and Delivery.**

**5.1. Delivery.** All shipments of tangible items hereunder will be delivered FCA (as such term is defined in the Incoterms 2020) to the delivery address provided by Customer. Software may also be provided electronically through a download link or other means as determined by SiMa. SiMa will package and prepare Products for shipment and storage in accordance with SiMa's standard commercial practices. Unless expressly agreed otherwise in writing, SiMa will ship Products using a suitable carrier of its choice. Estimated shipping dates



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will be specified by SiMa in its Order Confirmation or otherwise communicated by SiMa to Customer. Shipping dates will be approximate only, and SiMa will not be responsible for any failure to meet any specified shipping date as long as SiMa uses commercially reasonable efforts to ship the Products by such date. Products will be deemed delivered upon provision of Products to the carrier or, in the case of Software, when made available to Customer via download link or other means as determined by SiMa ("**Delivery**"). In the event SiMa is unable to ship Products (or a portion thereof) by the estimated shipping date, Customer will grant SiMa a reasonable additional period for shipment of the Products (or such portion). In the event SiMa is unable to ship Products (or such portion) by the end of such additional period, unless the

Parties agree otherwise, Customer may cancel the applicable Order by giving SiMa written notice of such cancellation no later than five (5) days after the end of such additional period, provided that in the event of partial Delivery, Customer may cancel the Order only with respect to the portion of Products that was not Delivered, unless the partial Delivery has no reasonable commercial use for Customer. Upon such cancellation SiMa will refund to Customer any payments actually received by SiMa for such cancelled Order (or portion thereof).

**5.2. Risk of Loss.** Risk of loss will pass to Customer upon Delivery.

**5.3. Inspection and Acceptance.** Customer will inspect Hardware for any failure to comply with the requirements set forth in this Agreement ("**Defect**") promptly upon, but in any event no later than five (5) days from, receipt of

the Hardware ("**Inspection Period**"). In the event of a Defect, and provided that the Defect existed at the time of Delivery, Customer may reject the applicable Defective Hardware by giving written notice thereof to SiMa specifying the Defect and including appropriate information evidencing such Defect. Any Hardware not so rejected within the Inspection Period will be deemed accepted. Customer will provide full access to SiMa and its representatives to such Hardware, and any related information, records, and documents, in order for SiMa to verify any Defects and the cause thereof. In the event of a rightful rejection in accordance with the foregoing, SiMa will use commercially reasonable efforts to ship non-Defective Hardware within a reasonable period of time from SiMa's receipt of the notice of rejection. If SiMa fails to ship non Defective Hardware by the end of such additional period, unless the Parties agree otherwise, Customer may cancel the applicable Order by giving SiMa written notice of such cancellation no later than five (5) days after the end of such additional period. Customer may cancel the Order only with respect to the portion of Hardware that was not so delivered unless partial delivery has no reasonable commercial use for Customer. Upon such cancellation, Customer will request a return authorization from SiMa and, upon receipt thereof, return all such Hardware in accordance therewith to SiMa. Upon receipt of such returned Hardware SiMa will refund to Customer any payments actually received by SiMa for such cancelled Order (or portion thereof).

## 6. Software.

**6.1. Software License.** Software is licensed to Customer



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as set forth in this Section 6, not sold. Subject to all the terms and conditions set forth in this Agreement and any additional license restrictions set forth in the Order Confirmation, with respect to Software not provided to Customer as a SaaS Offering (as defined in Section 6.2), SiMa grants to Customer, under its Intellectual Property Rights embodied in the Software as provided to Customer, a non-exclusive, personal, non-transferable, non-sublicensable right, during the Software license term specified in the Order Confirmation or otherwise

agreed by SiMa in writing, only in accordance with this Agreement and solely for Customer's own internal business purposes, solely with respect to the object code form of the Software as provided to Customer under the terms and conditions of this Agreement, and provided all applicable Fees have been paid by Customer, to execute and use the Software in accordance with the applicable Documentation only as part of or in conjunction with other SiMa Products as provided to Customer under the terms and conditions of this Agreement or other agreement between SiMa and Customer (and not with any Third Party Materials), or as otherwise authorized in writing by SiMa.

**6.2. SaaS Offerings.** For Software provided as a SaaS Offering, SiMa will use commercially reasonable efforts to provide such service in accordance with any uptime and availability targets described in SiMa's applicable documentation as SiMa may update from time to time. SiMa may provide all or any part of the SaaS Offerings directly or through, or with the assistance of, its affiliates, and its and their direct and indirect licensors, licensees, contractors, consultants, vendors, or service

providers (and their respective employees, agents, and other representatives). Customer may access and use the SaaS Offerings, during the Subscription Term, only in accordance with this Agreement, and solely for Customer's own internal business operations for the SaaS Offering's intended purpose as specified by SiMa.

**6.3. User Credentials.** For SaaS Offerings or other Software access, SiMa will provide to Customer's authorized users ("**Users**"), or permit Users to choose, a username and password, and/or provide other access control or security credentials (collectively, "**User Credentials**") that such User may use to access and use the Software or SaaS Offering in accordance with this Agreement. SiMa reserves the right to suspend or revoke User Credentials and access to or use of the Software or SaaS Offering in the event of any misuse, abuse, or failure to comply with the terms and conditions of the Agreement. Customer: (a) is responsible for protecting all User Credentials from disclosure to or discovery by third parties and any unauthorized use by third parties; (b) will not provide any User Credentials to any party other than a single designated User; and (c) will remain fully responsible and liable for (and in no event will SiMa be responsible or liable for) any use, including any misuse, abuse, or unauthorized use, of any User



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Credentials or the Software or SaaS Offerings by Customer's Users, and hereby authorizes any and all transactions, submissions, instructions, authorizations, and other acts initiated through the use of any User Credentials. User Credentials are personal to a specific User and may not be shared or transferred without SiMa's express prior written consent. In the event of any actual or suspected misuse, abuse, or unauthorized use, or any suspected disclosure to or discovery by third parties, of any User Credentials, or of any actual or suspected attempt to engage in any of the foregoing, Customer will immediately notify SiMa. SiMa has the right, but not the obligation, to monitor access and use of the Software

and SaaS Offerings by Customer and Users by any means (including remote access), including without limitation to verify compliance with the Agreement and calculate Fees owed (including any Fees based on usage).

**6.4. Infrastructure.** Customer is responsible for obtaining, maintaining and paying for all hardware, software, network access, and all telecommunications and other services and equipment needed for Customer to access and use any SaaS Offerings ("**Infrastructure**") and for ensuring that all such Infrastructure meets the minimum requirements applicable to such Infrastructure as may be identified by SiMa from time to time.

**6.5. No Copying.** Customer will not copy the Software except where such copy is created (a) in the course of a download of the Software expressly authorized by SiMa, or (b) as an essential step in, and is necessitated by, or constitutes a back-up copy necessary for, the ordinary execution and running of the Software as expressly

permitted hereunder.

**6.6. Restrictions.** Any resale or service bureau business or similar activities with respect to any Software or SaaS Offerings (or portion thereof), or other data or information obtained through the Software or SaaS Offerings, are prohibited. Customer will not use the Software and SaaS Offerings or any copy, portion, extract, or derivative thereof, or any related Documentation, except as expressly authorized herein. Without limiting the foregoing, Customer will not use any Software, SaaS Offerings, or Documentation for purposes of monitoring or analyzing the availability, performance or functionality of the SiMa Products, or for any other benchmarking or competitive purposes, and will not disclose or publish (in any format or medium) any information regarding the foregoing. Customer will not, and will not assist, enable or otherwise permit or allow any third party to, (a) alter, adapt, modify, translate, create derivative works of, (b) decompile, disassemble or otherwise reverse engineer or attempt to derive the source code of, or any technical data, know-how, trade secrets, processes, techniques, specifications, protocols, methods, algorithms, interfaces, ideas, solutions, structures or other information embedded or used in, (c) distribute, rent, lend, loan, lease, sell, sublicense, or otherwise make available to or for use by others, (d) remove, alter, or obscure any proprietary or restrictive notices affixed to or contained in, and (e) circumvent or attempt to circumvent any technological protective measure contained in or supported by, the Software or SaaS Offerings or any copy, portion, extract or derivative thereof.

**6.7. Retention of Rights.** Customer agrees and



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acknowledges that SiMa (or its suppliers or licensors, as applicable) owns and will retain all right, title and interest in and to the Software and SaaS Offerings (including any

copies, portions, extracts and derivatives thereof) and any and all

Intellectual Property Rights throughout the world relating thereto.

**6.8. Subscription Term; Termination of License and SaaS Offering Access.** The Subscription Term will automatically renew on a periodic basis (monthly, annual, or such other period) as identified in SiMa's Order Confirmation, unless Customer cancels the Subscription Term by providing written notice (or otherwise indicating intent to cancel via the cancellation method provided by SiMa) no later than 7 days (or such other period specified in SiMa's Order Confirmation) before the renewal date. Customer's timely cancellation of the Subscription Term will take effect at the end of the then current Subscription Term. Notwithstanding the foregoing, the license term or Subscription Term, as applicable, for any Evaluation Offering will automatically terminate (with immediate effect) upon the end of the applicable trial or evaluation period unless the Customer has transitioned to a paid license or subscription and has paid all applicable Fees. SiMa may terminate the license granted under Section 6.1 or Customer's access

to any SaaS Offering (including by terminating the Subscription Term) if Customer fails to pay any applicable Fees or otherwise breaches any of the terms of this Agreement, including the terms set forth in this Section 6. Upon any such termination or upon the termination of the Subscription Term, Customer will promptly cease all access to and use of the applicable Software or SaaS Offering.

**6.9. No Other Rights.** Except for the limited rights expressly granted herein, nothing in this Agreement will grant or otherwise confer, or be construed to grant or otherwise confer, upon Customer any right, title, interest, or license in, to, or under any Intellectual Property Rights of SiMa, whether express, by implication, estoppel, or otherwise, and all such right, title and interest will be and remain the sole and exclusive property of SiMa.

### **7. Other Obligations and Limitations.**

**7.1. Product Installation and Use.** Customer will ensure that all Products are installed, handled, accessed, and operated, in accordance with the Documentation and SiMa's then-current installation, handling, use, and operation guidelines and standards. Customer will not alter or modify Products in any way, or bundle or





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combine Products with other products without the express prior written consent of SiMa or as expressly permitted in the Documentation. Customer assumes all risk and responsibility for the Products' and Services' suitability for Customer's needs and requirements and for providing the required operating conditions and environment for the Products.

**7.2. Compliance with Law.** Customer will comply with all applicable international, national, state, regional and local laws and regulations, including without limitation any import or export control regulations, in performing its obligations hereunder and in with respect to the Products and Services.

**7.3. No Use for High-Risk Applications.** Products are not designed or intended to be fail-safe, or for use in any application requiring fail-safe performance, such as life support or safety devices or systems, medical devices, nuclear facilities, applications related to the deployment of airbags, or any other applications that could lead to death, personal injury or severe property or environmental damage, or for use in any applications related to the control or operation of vehicles, aircrafts, or other transportation systems (collectively, "**High Risk Applications**"). Customer assumes the sole risk and liability of, and will indemnify and hold harmless SiMa from, any claims, losses, and liabilities arising in connection with, any use of Products in High-Risk Applications.

### 8. Warranties

**8.1. Limited Customer Warranty.** Subject to Section 8.2 through Section 8.5, SiMa warrants, only to Customer, that (a) at the time of Delivery and for one (1) year

thereafter, the Hardware is free from material defects in material and workmanship and substantially conform with the specifications set forth in the Documentation, (b) at the time of Delivery and for one (1) year thereafter, Software (excluding SaaS Offerings) will perform substantially as described in the applicable Documentation, and (c) any Services are performed in a professional and workmanlike manner ("**Limited Customer Warranty**"). The Limited Customer Warranty is extended, and confers rights and benefits, only to Customer. No warranty is provided with respect to SaaS Offerings, but SaaS Offerings may be entitled to SiMa's service level and support policies if so specified in SiMa's Order Confirmation.

**8.2. Trial and Evaluation Use.** Notwithstanding Section 8.1, Evaluation Offerings are provided on an "AS IS" and "AS AVAILABLE" basis, with all faults, and without warranty of any kind, and SiMa hereby disclaims any and all warranties with respect thereto, whether express, implied, or statutory, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement, and any and all warranties that may arise from course of dealing, course of performance, or usage of trade. SiMa is not obligated to provide Customer with support for any Evaluation Offerings or correct any bugs, defects, or errors in any Evaluation Offerings. Notwithstanding Section 9 (Limitation of Liability) and Section 10 (Indemnification), SiMa will have no liability for any harm, damages, or third party claims arising out of or in connection with any Evaluation Offerings.

**8.3. Exclusions.** The Limited Customer Warranty does





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not apply, and is void, in the event of (a) improper use in High-Risk Applications, (b) alterations, or installation, use, operation, maintenance, handling, or modifications, (c) misuse, abuse, accident, neglect, (d) repairs, or any failure to comply with installation, fire, flood, lightning, earthquake, or other natural handling, and operation instructions provided by SiMa or disasters or environmental conditions, (e) power failures, set forth in the applicable Documentation, including any

operation with an incorrect power source, or operation in unsuitable environmental conditions, (f) normal wear and tear, (g) defects resulting from operation with non-SiMa products or components, (h) failure by Customer to promptly install or implement any Release or field correction provided or made accessible by SiMa, (i) SaaS Offerings, and (j) any Evaluation Offerings. SiMa makes no warranty of any kind with respect to any Third Party Materials, which are provided "AS IS," and does not warrant that the Products will operate in combination with other hardware, software, systems, or data not provided by SiMa and specifically qualified by SiMa for use in combination with the Products, or that the operation of or access to the Products will be uninterrupted or error-free.

**8.4. Remedies.** In the event of a breach by SiMa of the Limited Customer Warranty, and provided Customer notifies SiMa of such breach within the applicable warranty period, SiMa will, at its discretion, (a) with respect to covered Hardware, repair or replace such affected Hardware, or, if SiMa determines such repair or replacement is not feasible, refund the Fees paid for

such affected Hardware, and (b) with respect to covered Software, use reasonable efforts to provide a Release designed to allow such Software to perform substantially as described in the applicable Documentation, and (c) with respect to Services, reperform such Services, or, if SiMa determines that such reperformance is not feasible, refund the Fees paid for such affected Services. The foregoing sets forth SiMa's sole and exclusive obligation and liability, and Customer's sole and exclusive right and remedy, in the event of any breach of warranty or other defect of any Products and Services. Any replacement Products are subject to the Limited Customer Warranty to the same extent as the original Product for the remainder of the original warranty period.

**8.5. Disclaimer of Warranties.** EXCEPT FOR THE LIMITED CUSTOMER WARRANTY AS EXPRESSLY SET FORTH HEREIN, (A) SIMA DOES NOT MAKE ANY REPRESENTATIONS OR EXTEND ANY OTHER WARRANTIES IN CONNECTION WITH THIS AGREEMENT OR WITH RESPECT TO THE PRODUCTS OR SERVICES, AND (B) SIMA HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF



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MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

**8.6. Software Products.** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER AGREES AND ACKNOWLEDGES THAT THERE IS NO WARRANTY OR ASSURANCE THAT ANY SOFTWARE PRODUCTS (INCLUDING SAAS OFFERINGS) WILL BE FREE FROM DEFECTS OR ERRORS, OR BE ACCESSIBLE, OPERATE OR PERFORM WITHOUT FAILURE OR INTERRUPTION, AND THAT THERE IS NO WARRANTY OR ASSURANCE THAT ANY DEFECTS OR ERRORS, OR ANY FAILURE OR INTERRUPTION IN ACCESSIBILITY, OPERATION OR PERFORMANCE WILL BE CORRECTED.

**9. Limitation of Liability.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SIMA BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY LOSS OF PROFITS, LOSS OR INTERRUPTION OF BUSINESS, OR LOSS OF USE OR DATA, IN CONNECTION WITH THE PRODUCTS, SERVICES, THIS AGREEMENT, OR THE PARTIES' ACTIVITIES RELATING HERETO, EVEN IF SIMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SIMA'S AGGREGATE LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE PARTIES' ACTIVITIES RELATING HERETO EXCEED THE LESSER OF (A) THE FEES ACTUALLY RECEIVED BY SIMA FROM CUSTOMER UNDER THIS AGREEMENT DURING THE 12 MONTH PERIOD PRECEDING THE FIRST CLAIM BROUGHT BY CUSTOMER, OR (B) FIVE THOUSAND U.S.

DOLLARS (\$5,000).

### **10. Indemnification.**

**10.1. SiMa Indemnity.** SiMa will indemnify and, at its election, defend Customer from and against any third-party claim alleging that the Products alone, and not in combination with anything else, and used in accordance with this Agreement misappropriates, infringes or violates a third party's Intellectual Property Rights, provided that Customer (a) promptly notifies SiMa in writing of the claim; (b) grants SiMa sole control of the defense and settlement of the claim; and (c) provides SiMa with all assistance, information and authority reasonably required for the defense and settlement of the claim. The foregoing states Customer's sole and exclusive remedy, and SiMa's sole and exclusive obligation and liability for claims of misappropriation, infringement, or violation of a third party's Intellectual Property Rights by any Product.

**10.2. Exclusions.** Notwithstanding SiMa's obligations in Section 10.1, SiMa has no obligation to indemnify or defend the following claims: (a) those attributable in whole or in part to any modification by anyone other than SiMa or any unauthorized use of the Products, including any use in High Risk Applications; (b) those based on an allegation that a Product implements or complies with, in whole or in part, as shipped or when used, a Standard; (c) those including an allegation that SiMa, Customer, or a Product indirectly infringes, including by inducing or contributing to another's infringement; (d) any claim (such as a counterclaim) that was made in response to a suit or proceeding first filed by Customer alleging patent



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infringement; (e) those based on Customer's use of the Products or any Customer-generated output; (f) those based on any information, data, documents, files, images, content, applications, pipelines, models, algorithms, training data, data sets, or other inputs submitted, transmitted, or otherwise processed by Customer through a Product; and (g) those alleging that Customer willfully infringed.

**10.3. Customer Indemnity.** Customer will defend, indemnify, and hold harmless SiMa and its affiliates and their officers, directors, employees, and representatives from and against all claims, losses, and liabilities arising from any breach by Customer of any provision of this Agreement (including any failure to comply with applicable Third Party License Terms (as defined in Section 11.9) or any of the facts and circumstances described in Section 10.2.

### 11. General Provisions

**11.1. Notices.** Any notice, request, demand, or other communication required or permitted hereunder will be in writing and will be deemed to be properly given upon the earlier of (a) actual receipt by the addressee or (b) three (3) business days after being sent via private industry courier.

**11.2. Assignment.** Customer will not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or

obligations under this Agreement without the prior written consent of SiMa. Any purported assignment, sale, transfer, delegation, or other disposition, except as expressly permitted herein, will be null and void. SiMa will have the right to freely assign and delegate this Agreement or any of its rights and obligations hereunder, as long as the assignee party assumes SiMa's obligations hereunder, in which case SiMa will be deemed released and such assignment will constitute a novation. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

**11.3. Governing Law.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the Parties, and, to the extent federal law is applicable, the laws of the United States of America without giving effect to any choice of law rule that would cause the application of the laws of any other country. The United Nations Convention on the International Sale of Goods (CISG) will



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not apply. Customer hereby submits to the non-exclusive jurisdiction of the courts in and for Santa Clara County, California, and Customer hereby waives any objections to the jurisdiction of such courts and any assertion that such courts are an inconvenient forum.

**11.4. Waiver.** The waiver by either Party of a breach of or a default under any provision of this Agreement will be in writing and will not be construed as a waiver of any subsequent breach of or default under the same or any other provision of the Agreement, nor will any delay or omission on the part of either Party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

**11.5. Severability.** If any term, clause, or provision of this Agreement will be determined to be invalid, the validity of any other term, clause or provision will not be affected, and such invalid term, clause or provision will be deemed deleted from this Agreement.

**11.6. Relationship of the Parties.** This Agreement will not be construed as creating an agency, partnership, joint venture, franchise, or any other form of association, for tax purposes or otherwise, between the Parties; the Parties will at all times be and remain independent contracting entities and neither Party nor its agents have any authority of any kind to bind the other Party in any respect whatsoever. The Parties agree and acknowledge that Customer is not, and will not be deemed to be, an agent, sales-representative, franchisee, or distributor of SiMa or with respect to the Products and Services.

**11.7. Contingencies.** SiMa will not be liable for any failure to deliver or provide, or delay in delivery or provision of, Products or Services caused by

circumstances beyond its reasonable control which make such performance commercially impracticable, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, terrorism, rebellion, insurrection, sabotage, pandemic, epidemic, quarantine restriction, public health conditions or emergencies, labor disputes, labor shortages, embargoes, or failure or delays in transportation, inability to secure raw materials or machinery, acts of God, acts of any national state, provincial or local government authority, whether or not valid, and judicial action, whether or not valid.

**11.8. Confidentiality.** In connection with this Agreement, including the delivery or provision of Products and the performance of Services, SiMa may provide to Customer, or Customer may otherwise observe, obtain, or have access to, non-public data, materials, and other information of SiMa (including, without limitation, technical data, know-how, trade secrets, specifications, and business information, including with respect to pricing, future products, and the like) ("**Confidential Information**"). Customer will hold Confidential Information in strict confidence and will not disclose it to any third party except to such employees of Customer who need to have access and who are bound in writing by confidentiality obligations at least as protective of the Confidential Information as those contained herein. Customer will not use Confidential Information for any purpose other than as necessary for Customer's use of the Products and Services provided by SiMa to Customer under this Agreement, in accordance with this Agreement. Customer will exercise the same care that it exercises to protect its own confidential and proprietary



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information of similar importance, but in no event less than reasonable care, to avoid unauthorized use or disclosure of Confidential Information.

acknowledges that (a) Third Party Materials, including open source software, may be incorporated, embedded or

### 11.9. Third Party Materials. Customer agrees and

otherwise included in, or provided in connection with the Products, (b) additional or different terms and conditions may apply with respect to such Third Party Materials, including open source software, and (c) use of such Third Party Materials, including open source software, is subject to such additional terms and conditions ("**Third Party License Terms**") to which Customer hereby agrees. The text of any Third Party License Terms is provided either with the Order Confirmation or the Documentation accompanying the Product (including any "help," "about," "readme" or similar files contained in the Product), and/or is accessible by Customer on a website specified in the Order Confirmation or Documentation or otherwise designated by SiMa or at run time level and before installation of the Product. Where applicable the source code for such open source software may be available on SiMa's website. Pursuant to Section 6 of the GNU Lesser General Public License version 2.1 ("LGPLv2.1") and notwithstanding anything in this Agreement to the contrary, Customer is permitted to modify the software licensed under LGPLv2.1 ("**LGPL Software**") (if any) and Product components that, as provided to Customer under the terms and conditions of

this Agreement, link to the LGPL Software (if any) solely for Customer's own use and solely to reverse engineer the LGPL Software (if any) and the Product components that, as provided to Customer under the terms and conditions of this Agreement, link to the LGPL Software (if any), for the sole purpose of debugging such modifications.

**11.10. U.S. Government End Users.** Software and Documentation are "commercial items" as that term is defined in FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and DFARS 227.7202. If the Software and Documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the Software and Documentation will be only those specified in this Agreement.

### 11.11. Trade Law Compliance.

11.11.1. Customer confirms that it is not, nor is it 50% or more owned by, controlled by, or otherwise acting on behalf of for the benefit of a party or parties subject to trade restrictions defined as follows: (i) a party whose



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export privileges have been restricted, including but not limited to listing on the U.S. Bureau of Industry and Security (BIS) Entity

List, BIS Denied Persons List, BIS Unverified List, BIS Military End User List, or any other list of parties subject to export denial maintained by an applicable jurisdiction; (i) a party who is located in, ordinarily resident in, legally organized in or controlled by the government of Belarus, Cuba, Iran, North Korea, Russia, Syria, or the Crimea, Donetsk, and Luhansk regions of Ukraine; (ii) a party subject to sanctions, including but not limited to the U.S. Specially Designated Nationals and Blocked Persons List or any other sanctions the effect of which is to prohibit transactions with U.S. persons.

11.11.2. Customer will comply with all applicable trade controls, including export control and sanctions laws and regulations, in its use of SiMa's Products and Services, and SiMa's Products and Services will not be used to circumvent any trade controls or otherwise without a government authorization when one is required under trade controls. Customer will not use SiMa's Products and Services in support of any end use or activity prohibited by the U.S. Export Administration Regulations or International Traffic in Arms Regulations, including but not limited to the proliferation of nuclear, chemical or biological weapons, missile/rocket delivery systems for such weapons, military or military intelligence activities

in Burma/Myanmar, Belarus, Cambodia, China, Russia, Venezuela or any other country subject to a U.S. or U.N. arms embargo, or the development, production, use, servicing or support of a supercomputer or a semiconductor fabrication facility that produces advanced node integrated circuits in China.

11.11.3. If Customer becomes subject to trade restrictions or uses the SiMa's Products and Services in violation of trade controls, or any change in trade restrictions or trade controls makes continued performance under this Agreement illegal or practically infeasible, such event will constitute grounds for immediate termination of this Agreement, in which event Customer will not be entitled to any refund or other compensation under this Agreement.

**11.12. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, and agreements relating to the subject matter of this Agreement. No amendment or modification of any provision of this Agreement will be effective unless in writing and signed by the duly authorized representatives of SiMa and Customer.



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