



# SUPPORT AND UPDATE AGREEMENT (“SUA”)

August 2020

Concerning support and maintenance for Embedded Trust™, IAR Embedded Workbench®, IAR Visual State®, IAR Build Tools and Secure Desktop Provisioner from IAR Systems AB

## PREAMBLE

**THIS SUPPORT AND UPDATE AGREEMENT (THE "SUA") APPLIES TO SERVICES RENDERED CONCERNING PRODUCTS LICENSED BY IAR SYSTEMS AB INCLUDING ANY OF ITS SUBSIDIARIES ("IAR SYSTEMS") OR DISTRIBUTORS ("IAR DISTRIBUTORS"), TO YOU ("THE LICENSEE").**

*The order confirmation from IAR Systems, or when applicable, the agreement between IAR Systems and the Licensee, will set out, apart from the applicable licensed product and license fee (which will also be stated in the Invoice), (a) if the License in question is a PC-locked license or a Multi-user license, (b) in case of a Multi-user License with the allowed number of simultaneous users, (c) the period under which the Support and Update services defined herein will be valid, if any. Any acceptance of a quotation from IAR Systems regarding Support and Update services, any opening of a package where these terms have been stated or referred to, or any use of IAR Systems Software, is subject to these terms and conditions.*

*For the avoidance of doubt, the Support and update services defined in this SUA can be made available to the Licensee: (a) as a time-limited service included with a purchase of certain products licensed by IAR Systems, (b) as a time-limited service offered separately together with a purchase of certain products licensed by IAR Systems, or (c) as a time-limited prolongation of the services offered under either (a) or (b) above.*

**YOU AS A USER OF THE LICENSED PRODUCTS STATED ABOVE AND ON THE INVOICE, WILL BIND THE CORPORATION OR ORGANIZATION ALSO SET OUT ON THE INVOICE TO THIS AGREEMENT, BY OPENING OF A PACKAGE OR INSTALLING SOFTWARE OR ACCEPTING AN OFFER OR QUOTATION FROM IAR SYSTEMS (BY ISSUING A PURCHASE ORDER) OR BY THE PAYMENT OF AN INVOICE FROM IAR SYSTEMS WHERE THIS AGREEMENT HAS BEEN STATED OR REFERRED TO. IF YOU ARE NOT IN AGREEMENT WITH THE TERMS HEREIN, OR DO NOT HAVE THE AUTHORITY TO BIND YOUR CORPORATION OR ORGANIZATION TO THESE TERMS, YOU SHALL IMMEDIATELY CONTACT IAR SYSTEMS AND CONSEQUENTLY, YOU ARE NOT ENTITLED TO ANY OF THE SERVICES DEFINED HEREIN.**

## I Definitions

In addition to terms defined elsewhere in this SUA, or in the IAR Software License Agreement or the IAR Signature Software License Agreement, the terms listed below are defined (with precedence) as follows:

- 1.1 **“Advice”** means the help desk consultations which are provided by IAR to the Licensee and which are not related to investigation of an Error.
- 1.2 **“Contact Person”** means the principal person who is identified by the Licensee and who is responsible for dealing and communicating with IAR with all issues pertaining to the use, application and, Support of Product(s) at a specific Site.
- 1.3 **“Documentation”** means a copy of the documentation, in hard copy or machine-readable form, as further defined in the SLA.
- 1.4 **“IAR”** means collectively IAR Systems and IAR Distributors
- 1.5 **“IAR Support Website”** means the web pages provided by IAR for Support.
- 1.6 **“Error”** means any reproducible failure of the Product to perform in all material respects in accordance with IAR’s product specifications and/or Documentation.

- 1.7 **“Error Severity Level”** means the assignment made by IAR Systems to a reported Error assessing the severity of the Error.
- 1.8 **“Error Correction”** means an action performed by IAR in response to a reported Error.
- 1.9 **“Product”** means the software and Documentation licensed to the Licensee under the conditions of the SLA and as further defined in the SLA. Software that is i) added to the Product for the purpose of training or demonstration, such as application example code, or ii) provided by a third party for the interoperability between the Product and a third party product, are, unless otherwise explicitly stated, not included in the Product.
- 1.10 **“SPR”** means the Software Problem Report sent by the Licensee to IAR in order to request investigation in an Error.
- 1.11 **“Repair time”** means the number of Working Days from when an Error is fully reported to when an answer, resolution, or a workaround which rectifies the Error or reduces the Error Severity Level is proposed to the Licensee.
- 1.12 **“Response time”** means the time from when a complete SPR has been received by IAR Systems, to when it has been acknowledged and confirmed to the Licensee by a technical support person at IAR.
- 1.13 **“Site”** means the physical premises of the Licensee as further defined in the SLA.
- 1.14 **“SLA”** means the main IAR Software License Agreement and/or Signature Software License Agreement, its appendices, as the same may be amended from time to time in accordance with the provisions thereof.
- 1.15 **“PC-locked License”, “Mobile License”, “Multi-user License”, and “Network License”** shall have the meanings as set out in the SLA.
- 1.16 **“Support”** means IAR’s obligations and services further described in this SUA, primarily divided into Advice and Error investigation.
- 1.17 **“Support Call Number”** is the number, which is sent to a Licensee in the response to an issued SPR. This number should be referred to in all contacts regarding the case.
- 1.18 **“SUA Period”** means the period in time when the services under this SUA is provided to the Licensee.
- 1.19 **“Unmodified Product”** means the Product as delivered by IAR.
- 1.20 **“Service release”** contains minor modifications of a Product, which incorporates corrections of Errors in order to improve the quality without any significant functional additions of the Products.
- 1.21 **“Feature release”** can incorporate functional additions, enhancements, modifications, and corrections of Errors in order to improve the quality of the Product.
- 1.22 **“Working Day”** means a normal eight (8) hour business day in the country/state where Support is to be performed by IAR Systems.

## 2 Relation to Software License Agreement

- 2.1 This SUA defines services between IAR and the Licensee in addition to license grants, services, and other obligations under the SLA or SSLA, as given in Section 11 of the SLA/SSLA. This SUA explicitly governs i) Availability and the Licensee’s use and license grants of service or feature releases, and ii) IAR’s services such as Advice and Error investigations and Error Corrections, under the SUA Period.
- 2.2 Unless explicitly stated otherwise in communication between IAR Systems and the Licensee, it is assumed that a SUA for a given Product at a Licensee’s Site covers all existing licenses of such Product at that Site, and that the Licensee is obligated to pay for Support services accordingly. It is explicitly prohibited to have a SUA for only a portion of licenses in a Multi-user License such as a Network License.

## 3 Support Service

- 3.1 Subject to full advance payments for the SUA Period as defined in Section 6, IAR will perform the Support as defined in this Section 3.
- 3.2 A Licensee using the latest release of a Product is entitled to Support under the terms and conditions of this SUA. Notwithstanding the foregoing, IAR will provide Support for a release of the Product that has been publically released by IAR Systems during the last six months.
- 3.3 Unless explicitly stated otherwise, IAR will not provide an Error Correction, if i) the Licensee is requesting such for an older version of the Product other than the most recently issued, or ii) the Error has been corrected in a later release.
- 3.4 Support includes Help desk advice, Error analysis, Error resolution, and updates to newer releases and versions as further described in this Section 3.4.
- 3.4.1 Help desk advice: The help desk services include e-mail and telephone consultations during Working Day business hours. E-mail is the recommended communication mechanism for case tracking purposes. The Advice is intended to answer questions about the use and operation of the Product in cases where the Documentation is incomplete or unclear, and will be provided to a reasonable extent, proportional to fees paid for the SUA services. Advice may also be provided in local language and in local time zones, from IAR

Distributors or IAR Systems regional support offices. Help Desk Advice does not include training and tutoring of the Licensee's staff; such training services might be offered separately to the Licensee by IAR.

- 3.4.2 **Error analysis:** IAR makes an analysis of the reported problem, tries to reproduce the problem where applicable and feasible, and isolates the Error, if any. Support does not include an analysis of the Licensee's applications or in normal cases interoperability between the Product and other products or software. The Licensee's obligation in this respect is to provide, to a reasonable extent, information about the suspected Error based on the instructions from IAR, in a timely manner and coherent form.
- 3.4.3 **Error resolution:** The resolution of the problem could be an answer, a workaround or a correction of the Error. IAR does not normally supply an Error Correction in order to achieve only one specific Error Correction of the Product. Accordingly, Error Corrections of the Product may include additional Error Corrections that are not related to the reported Error. Furthermore, a correction of an Error will in most cases be made available to the Licensee only as part of a service or feature release. Corrections of Errors are normally based on the latest release.
- 3.4.4 **Updates to newer releases:** Service and feature releases are made generally available from time to time by IAR. The Licensee is, during the SUA Period, entitled to receive and use, under the existing SLA, any new releases made available from IAR Systems. A release shall be deemed issued when the Licensee receives written information about its availability, or the release becomes available on dedicated web pages (e.g. IAR Systems "My Pages"), whatever comes first.
- 3.5 IAR Systems has no obligation to provide Support under this SUA for Product(s) that have been modified. Accordingly, if the Licensee has modified the Product, the Licensee may only report Errors that relates to the Unmodified Product. It is the responsibility of the Licensee to verify that any Error is reproducible in the Unmodified Product. All Error Corrections will be made in the Unmodified Product. **MODIFYING THE PRODUCT CAN CONSTITUTE A BREACH OF THE LICENSE RIGHTS, AS GIVEN IN SECTION 4 AND OTHERWISE IN THE SLA/SSLA.** Furthermore, IAR Systems has no obligation to provide Support under this SUA for Product(s) running on other host machine hardware or host operating systems than those explicitly stated at time of entering into the SLA for the corresponding Products, or as amended by a service or feature release.
- 3.6 Licensee Contact Person
- 3.6.1 The Contact Person shall be deemed authorized by the Licensee to make decisions on behalf of the Licensee with respect to all requests to IAR for Support. If a Licensee has Product(s) at more than one Site or is involved in more than one project, the Contact Person shall appoint additional Contact Person(s) at each Site and/or for each project to receive and disseminate information received from IAR relevant to Product(s) at such location or for such project. If the Licensee does not clearly name a Contact Person, then IAR Systems may assume that the person filing the original SPR is the authorized Contact Person.
- 3.6.2 As soon as a Contact Person is replaced, the Licensee shall notify IAR thereof.
- 3.6.3 The Licensee's Contact Person shall ensure that the license number for the Product and other information that validates that the Licensee is entitled to receive Support from IAR is readily at hand, and shall present such information to IAR at first contact for each case, even if not solicited for such information.
- 3.7 Error reporting
- 3.7.1 What is here stated in Sections 3.7 to 3.9 prerequisites that all communication between the Licensee and IAR Systems is in comprehensible written form in the English language, except when explicitly agreed otherwise. IAR Systems will use reasonable efforts to minimize overhead from language translations between the Licensee, IAR Distributor, and IAR Systems.
- 3.7.2 Prior to issuing an SPR, the Licensee shall undertake all relevant actions to consult the Documentation and support material such as release notes and technical notes that are available on the IAR Website.
- 3.7.3 In order to maximize the turn-around time efficiency it is essential that the Licensee provide IAR with an SPR that is as complete as possible. There shall only be one reported Error per SPR.
- 3.7.4 Each SPR will normally be assigned a Support Call Number. The Licensee is encouraged to use the Support Call Number in all further contacts with IAR concerning a reported Error. Failure by Licensee to provide the Support Call Number in further contacts with IAR relating to an SPR will waive IAR's responsibility in terms of Response and Repair Times.
- 3.7.5 IAR will not be obligated to resolve the identified Error if the Licensee does not make all reasonable efforts to collaborate with IAR to resolve the identified Errors. This could mean providing access to Licensee-specific hardware and software. IAR is aware that under certain circumstances the Licensee may be prohibited to send adequate information (such as source code) to IAR as such information may be privileged. It is however the Licensee's responsibility to rewrite or restructure such information so that it becomes non-privileged, and furnish such information to IAR.
- 3.7.6 Each Software Problem Report shall contain, inclusive but not limited to, the following information:
- Licensee company name
  - Licensee company division or project
  - Submitter name and e-mail address, and name of Licensee Contact Person
  - A Support Call Number if such has been given by IAR in earlier communication relating to the reported Error
  - Description and logging of the Error and its impact on the Licensed Programs performance

- A preliminary Error Severity Level for the general classification of the Error(s) in one of the four classes as specified below
- A description of the command(s) and procedures that reveal the Error(s)
- A description of the hardware and software environment
- Specification of release and version of the Product(s) in question
- A short description of the Errors
- Examples of input
- The resulting output
- The expected output
- The license number of the licensed program
- Any special circumstances surrounding the discovery of the Error(s), and all material needed to reproduce the Error at IAR.

### 3.8 Error Severity Levels

#### 3.8.1 IAR uses the following four (4) severity levels to categorize reported Errors:

- Critical level:** The Product(s) functionality is inoperable causing critical impact to business operations if functionality is not restored quickly. If the Error is occurring during the development phase of the Licensee's product, the Error hinders all of the Licensee's development, integration, or testing in such a critical way that development progress is halted. No viable workaround is known.
- Serious level:** The Product(s) functionality operates with severely reduced capacity causing significant impact to business operations. If the Error is occurring during the development phase of the Licensee's product, the Error has serious impacts on the development, integration, or testing, OR several critical modules in the Product(s) are inoperable. A workaround may be available, but severely reduces the Licensee's productive use of the Product(s).
- Moderate level:** The Product(s) functionality operates with moderate reduced capacity causing slight impact to business operations. If the Error is occurring during the development phase of the Licensee's product, the Error has minor impacts on the development, integration or testing, OR a single critical module in the Product(s) is inoperable.
- Minor Level:** The Product(s) functionality operates abnormally. If the Error is occurring during the development phase of the Licensee's product, the development, integration, or testing is inconvenienced, OR a single non-critical module in the Product(s) is inoperable. Alternately, the Licensee requires information or assistance with respect to Product(s) capabilities, installation, Documentation, or configuration.

The SPR should include the Licensee's advice on the Error Severity Level. Upon receiving the SPR, IAR will judge whether the advised severity level corresponds to those defined in this Section 3.8.1. In case IAR reasonably finds that the reported Error does not meet the advised severity level, then IAR will contact the Licensee with information about the Error Severity Level assigned by IAR. If no severity level is advised by the Licensee, the Error will automatically be deemed to be Minor Level.

### 3.9 Response and Repair Time

3.9.1 Once IAR Systems receives an SPR, IAR Systems will use reasonable efforts to respond in accordance with the Response Time for the Error Severity Level of the Error as defined in the tables 3.9.3. In its response, IAR Systems may, if applicable, indicate any disagreement with respect to the Licensee's advised Severity Level as further defined under Section 3.8.1. In the case that IAR Systems deems that the information provided in the SPR is insufficient for IAR Systems to start investigating the Error, the response will include a statement to this fact.

3.9.2 IAR Systems will use reasonable efforts to resolve the Error or reduce the Error Severity Level of the Error via a workaround or a correction of the Error in accordance with the Repair Time. However, there could be conditions when IAR will not be able to meet the defined Repair Times. Such conditions could include poor collaboration from the Licensee (as exemplified in 3.4.2, 3.5, 3.7 and elsewhere), insufficient information in the SPR (as defined in Section 3.9.1), difficulties for IAR to reproduce the problem and other circumstances outside of IAR's control, or incur substantial costs to IAR not in proportion to fees paid for the service. The best effort approach here defined shall be interpreted as that IAR's ambition is to resolve or reduce a problem within the time frames given below in nine cases out of ten (90%). Notwithstanding the foregoing, IAR Systems recognizes that Errors defined as Critical or Serious can impose a major inconvenience for the Licensee and IAR Systems will therefore use its reasonable best efforts to provide a correction of the Error as soon as possible, irrespectively of the Repair Times defined herein.

#### 3.9.3 Time frames

Severity Level	Response Time (From Filing SPR with IAR Systems)	Repair Time
Critical	1 Working Day	No more than 15 Working Days
Serious	1 Working Day	No more than 30 Working Days
Moderate	2 Working Days	At next scheduled service or feature release (unless such scheduled release is planned within the next 45 Working Days), but not later than one year.
Minor	2 Working Days	At IAR's discretion

## **4 Support Period**

- 4.1 Following the initial SUA Period, which might have been included as part of the original Software License procurement, the SUA Period will be prolonged with consecutive one (1) year periods subject to the Licensee's payments of the fees as further defined in Section 6 of this Agreement.

## **5 Term and Termination**

- 5.1 This SUA will be in force as long as any of the Products are covered by the SUA Period.
- 5.2 A Party may terminate this Agreement immediately upon written notice to the other Party if the other Party should enter into either voluntary or compulsory liquidation, or become insolvent or enter into composition with its creditors or corporate reorganization proceedings or if execution be levied on any goods and effects of the other Party or the other Party should enter into receivership. Each Party undertakes to notify the other Party in writing of any such circumstances as described in this section.
- 5.3 A Party may terminate this Agreement immediately upon written notice to the other Party if the other Party materially fails to comply with its obligations under this Agreement (including any provision for payment) which by default is continuing thirty (30) days after the non-defaulting Party has given the defaulting Party written notice thereof; provided, however, that if such default is incapable of cure, the non-defaulting Party may terminate this Agreement immediately upon written notice to the defaulting Party.
- 5.4 This SUA shall immediately terminate in the case that the corresponding SLA for the Product(s) terminates.

## **6 Support fees and Payment**

- 6.1 The fees for a SUA Period shall be paid in advance of such period.
- 6.2 IAR shall be entitled to adjust the applicable SUA Period fee. Any such adjustment shall be communicated to the Licensee in writing, at least 60 days in advance.
- 6.3 The payment terms for such fees shall be as defined in the SLA, Section 6.

## **7 Force Majeure**

- 7.1 IAR shall not be liable for damages to the Licensee resulting from delays in the performance of services hereunder caused by circumstances or events beyond its reasonable control, including, but not limited to, labor disputes, inability to procure export licenses, legally imposed travel restrictions, natural catastrophe, war, civil disturbance, shortages in materials or labor, delays in receipt of materials or products from subcontractors.

## **8 Confidentiality**

- 8.1 Each party acknowledges that the information provided by either party under this Agreement relating to a certain SPR and limited to information relevant for either party to be able to fulfill its obligations hereunder, is proprietary and confidential and agrees not to disclose such information to others and to take reasonable measures to ensure that employees and other officers shall not disclose such information to others. The provisions of this paragraph shall survive the termination of this Agreement for any reason whatsoever. The foregoing restrictions on disclosure shall not apply to information (a) in the public domain at the time of its disclosure or communication to the other party; (b) that entered the public domain through no fault of either party subsequent to the time of its receipt by such party; or (c) required to be disclosed by order of a court or other governmental agency having jurisdiction thereof, provided in such case the party shall give the other party prompt notice thereof. Both parties acknowledge that in all other respects than referred to above, the provisions regarding confidentiality in the SLA shall apply.

## **9 Limitation of Liability**

- 9.1 IAR shall in no event be liable with respect to Support or for breach of this Agreement for special, indirect, incidental, punitive, or consequential damages, including, but not limited to, loss of profits or revenue, loss of use of any software or product whether by the Licensee or any customer of the Licensee or users of the Licensee's products for any other damages. IAR's liability on any claim for any loss or damage arising out of, or connected with the Support shall in no case exceed the yearly SUA fee for the related Product(s).
- 9.2 The Licensee shall in no event be liable under this Agreement for special, indirect, incidental, punitive, or consequential damages, including, but not limited to, loss of profits or revenues.
- 9.3 The limitation of liability described in Section 9 does not apply to liability pursuant to mandatory applicable law for death, personal injury, loss of or damage to property, or in cases of intentional illegal actions or gross negligence.

## **10 General**

- 10.1 General terms for the interpretation of this SUA, dispute resolution, jurisdiction etc., shall be those in the SLA, specifically referring to Section 15.