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14.3. High Risk Activities. Licensee acknowledges that the Software and Tools are not fault tolerant and are not designed, manufactured or intended by Swell and its licensors for incorporation into products intended for use or resale in hazardous, dangerous to life or potentially life-threatening environments requiring fail-safe performance, in which the failure of products could lead directly to death, personal injury or severe physical or environmental damage ("High Risk Activities"). Licensee acknowledges that it is Licensee's responsibility to determine the suitability of the Software or Tools for any application, including but not limited to those that are High Risk Activities. To the extent Licensee is aware that the Licensed Software is, or is likely to become, used in High Risk Activities, Licensee shall immediately notify Swell of such use and in what capacity.

14.4. Succession and Assignment. This Agreement will be binding upon and inure to the benefit of the parties and their permitted successors and assigns. Neither party may assign this Agreement, or any part of this Agreement, without the prior written approval of the other party except that Swell may assign this Agreement to a third party without the consent of, but with notice to, the other party with the sale of the Software, Tools or both.

14.5. Export Control. Commodities, technology and software (collectively referred to as "items") shared pursuant to this Agreement are subject to the export control laws of the United States and other countries that may lawfully control the export of such items. Providing support services with respect to items that are controlled as defense or military items may also be subject to such laws. Accordingly, Licensee agrees it will not transfer these items or furnish the services except in compliance with the export laws of the United States and any other country that may lawfully control the export of such items or the provision of such services. Licensee further agrees to indemnify and hold Swell harmless from any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including attorneys' fees) that Swell may incur due to Licensee's non-compliance with applicable export laws, rules and regulations. Licensee agrees to immediately notify Swell of any violation of any export law, rule or regulation, which may affect Swell or relate to the activities covered under this Agreement.

14.6. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflict of law provisions. Any litigation will be subject to the exclusive jurisdiction of the state or federal courts in Texas, USA. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

14.7. Notices. All notices and communications under this Agreement to Licensee will be made at the address provided on the Order and notice to Swell will be made in writing, at the following address:

Swell Software
C/O Freescale Semiconductor, Inc.
6501 William Cannon Drive
Austin, Texas 78735
Attention: General Counsel
Facsimile: (512) 895-3982



14.8. Headings; Counterparts. The headings to the sections of this Agreement are for ease of reference only and will not affect the interpretation or construction of this Agreement. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which will be deemed to be an original instrument. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile) will be considered an original.

14.9. Relationship of the Parties. Swell and Licensee are independent contractors, and nothing in this Agreement will be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither party will make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other party's name or on its behalf.

14.10. Use of Name. Licensee agrees that Swell may, upon Licensee's prior consent (such consent not to be unreasonably withheld or delayed) use Licensee's name in Swell's customer lists and marketing materials and issue a press release generally describing the party's relationship under this Agreement. In addition to the foregoing, Licensee hereby grants Swell a non-exclusive license during the Term of this Agreement to list Licensee's name and display Licensee's logo in the Partner or Customer section of Swell's website.

14.11. Waiver and Severability. Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver will be effective only with respect to the specific obligation described therein. The failure of either party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. If any provision of this Agreement is held for any reason to be invalid or unenforceable the remaining provisions of this Agreement will be unimpaired and, unless a modification or replacement of the invalid or unenforceable provision is further held to deprive a party of a material benefit, in which case the Agreement will immediately terminate, the invalid or unenforceable provision will be replaced with a provision that is valid and enforceable and that comes closest to the parties' intention underlying the invalid or unenforceable provision.