XHQ Software
Product Specific Terms

Siemens Product Lifecycle Management Software Inc., or one of its Siemens Industry Software affiliated companies (collectively referred to herein as "SISW"), has entered into a software license and services agreement with a customer for SISW software, which may have taken the form of a written agreement signed by both parties or a click-wrap or online agreement agreed to by the customer electronically (referred to herein as the "Agreement"). These terms and conditions (the "XHQ Amendment") are specific to XHQ software ("XHQ Software") and not to any other software offered by SISW. These terms are additional to the terms in the Agreement and, to the extent that these terms are in conflict with the terms of the Agreement, these terms will take precedence and supersede the terms of the Agreement with respect to XHQ Software. Sections and topics not mentioned in this XHQ Amendment shall apply as set forth in the Agreement.

1. **Definitions.** The following definitions are specific to XHQ Software and not to any other Software provided under the Agreement.

   a) "Documentation." The XHQ Documentation is available in English. It may only be used in conjunction with the installation and use of the XHQ Software. It is provided in digital format with the XHQ Software.

   b) "Quick Start Packs" are modules that complement the "XHQ Software". Quick Start Packs are not "ready to use" and need to be customized before they can be used for any particular purpose. It is solely Customer's responsibility to modify and complete Quick Start Packs to meet Customer's specific needs. Quick Start Packs, when unchanged, offer the same Warranty terms and conditions as outlined in the Agreement, but are not covered by maintenance, support and are not entitled to free upgrades to subsequent versions. Customer may, at their discretion, hire XHQ Delivery Services to maintain, enhance or modify the Quick Start Packs as professional services projects on terms and pricing that is mutually acceptable to the parties. Modified Quick Start Packs are not covered by warranty.

   c) "Helper tools": these are tools that automate or expedite tasks that would otherwise be labor intensive. Helper tools offer the same Warranty terms and conditions as outlined in the Agreement, but do not include maintenance, support and are not entitled to free upgrades to subsequent versions. Customer may, at their discretion, hire XHQ Delivery Services to enhance or modify the Helper tools as professional services projects on terms and pricing that is mutually acceptable to the parties.

   d) "Incident Report (IR)": it shall mean a Customer query related to the XHQ Software which is dealt with within the scope of the Software Maintenance Terms and Conditions outlined in section 6 of this document.

   e) "Multiplexing": it shall mean the use of hardware or software to pool connections or reroute information.

   f) "Response Time": the time elapsed from the receipt of a support incident via one of the channels provided by SISW (web portal, telephone, e-mail) and the first response from an SISW support specialist/technician.

2. **License Grant and Conditions.** In addition to the license grant and conditions as stipulated in the Agreement, the following conditions shall apply.

   The XHQ license permits the licensed XHQ Software to be installed on one Intel-class server with a maximum of two physical CPU sockets only. The usage is limited to the number of licensed Named Users and is referred to as the "production" server.

   An XHQ license for "non-production" servers can only be installed on one Intel-class server with a maximum of two physical CPU sockets, with the purpose of solution development and solution testing only. The installation is limited to be accessed only by the number of licensed users as defined in the "non-production" product description, but otherwise has the same XHQ license options enabled as in the production server and is referred to as the "non-production" server.

   The "non-production" server may not be used under any circumstance as an additional production server nor to temporarily replace a production server which may be momentarily inoperable. The sole purpose of a "non-production" server is to allow solution development or solution testing without impacting the production server. XHQ solution content updates from the development server are typically transferred to the production server in regular intervals by the solution administrator. This is needed to make the XHQ content updates accessible to the end users.

   Customer may not install XHQ Software on a physical Intel-class server with more than two physical CPU sockets.

   Customer may use a virtual server only if the underlying hardware configuration of the physical server does not exceed the licensed physical CPU socket count as described above. XHQ Software cannot be used or licensed on a virtual server where the underlying physical server, either alone or when used in a cluster, would exceed the maximum capability of two physical Intel-class server CPU sockets.

   If Customer intends to transfer the license key of the XHQ Software to another Server it shall notify SISW with a reasonable notice period prior to the intended transfer. In such cases, SISW shall allow such transfer to another Server up to three (3) times per calendar year at no charge and will issue a new license key to the Customer.

3. **License Types.** The special License Types available for the XHQ Software are defined further in this Section. For avoidance of doubt, License types defined in the Agreement, but not explicitly mentioned in this Section, are not applicable.

a) "Named User License" means that the XHQ Software may be used by the licensed number of Named Users. Apart from Authorized Users, a Named User may also be a computer system as well as all instances of indirect access to the XHQ Software which can, for example, occur via computer system interconnections acting as Named Users of the XHQ Software and interfacing between the XHQ Software and other Customer systems. For example, multiplexing or redistributing data from the XHQ Software via an intermediary system does not avoid the need to license all individual users or computer systems that access the data from the intermediary system as Named Users. The use of the Multi-Site (Tiered Connector) delivered with XHQ does not count as indirect access for the purposes of this definition. Customer shall have the right to change Named User licenses provided that no individual Named User license may be changed more than once per calendar month.

b) "Concurrent User License" means that the XHQ Software may be accessed at any moment by, at most, the maximum licensed number of "concurrent users".

c) Regarding "Perpetual Licenses", "Backup (or Failsafe) Licenses", "Extended Term Licenses", "Subscription Licenses" and "Per Server Licenses" the terms of the Agreement shall apply.

4. **Limited Warranty and Disclaimers.**

In addition to the disclaimers contained in the Agreement, the following shall apply:

No part of the XHQ Software is designed, manufactured or intended for use or resale as a part of online control equipment or in hazardous environments requiring fail-safe performance, such as online control of aircraft, air traffic, aircraft navigation or aircraft communications, or in the design, construction, operation or maintenance of any nuclear facility, direct life support machines, or weapons systems, in which the failure of the XHQ Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). LICENSOR AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. Customer warrants that they will not use the XHQ Software for High Risk Activities.

5. **Other Licensing Issues.**

a) The Customer shall update the XHQ Software in accordance with the installation rules specified in the documentation which is delivered with the XHQ Software. Notices contained in the Documentation, or provided separately by SISW, concerning discontinuance of support for older releases of the XHQ Software shall be binding on the Customer.

b) Database Software. The XHQ Software may include embedded database software ("Database Software"). Usage of the Database Software is exclusively restricted to its use with the XHQ Software. Customer is prohibited from, among other activities, any of the following:

(1) timesharing, service bureau, subscription service, or rental use of the Database Software;

(2) title to or usage of the Database Software being passed to any other person;

(3) (direct usage of the Database Software except as part of the solution using the Software;

(4) installation, usage, or running the Database Software on any computer system upon which the XHQ Software is not installed. The Database Software may be used only in conjunction with the XHQ Software; and

(5) distribution or other dissemination of the Database Software.

c) Compliance with License Agreements for products not supplied by SISW. Use of the XHQ Software may require modifications to certain existing Customer license agreements with other vendors. It is the sole responsibility of Customer to comply with such agreements. Customer is responsible for obtaining any supporting software required for use of the XHQ Software, including any operating system software, database software, or third party applications software and for the interoperability between the supporting software and the XHQ Software.

d) Third Party and Open Source Software. The XHQ Software may contain or require the use of third party technology that is provided with the XHQ Software, including open source software. Third party technology is licensed to Customer either under the terms of this Agreement or under separate license terms that shall be specified in the relevant Documentation, "read me" files, notice files, or other such documents or files ("Technology Subject to a Third-Party License"). Customer's rights to use Technology Subject to a Third-Party License are subject to such separate license terms and are not restricted in any way by this Agreement and to the extent that a term of this Agreement is in conflict with any applicable mandatory right granted by a third-party license, it shall not apply. If any applicable third-party license requires SISW to furnish source code contained in the Technology Subject to a Third-Party License, SISW shall provide it upon written request, if applicable against payment of the shipping and handling charges. For avoidance of doubt, third party technology that is not Technology Subject to a Third-Party License shall be deemed part of the XHQ Software and is licensed to Customer under the terms of this Agreement.

6. **Software Maintenance Terms and Conditions.**

   a) <u>Software Maintenance Services</u>. Software maintenance services do not include services for customizations of the XHQ Software.

   b) <u>New Releases</u>. XHQ Software releases are categorized as major or minor. The first digit represents the version of the major release. The second digit (behind the point) represents the version of the minor release. Both major and minor releases contain significant extended functionality and may contain bug fixes.

   c) <u>Maintenance for Prior Releases</u>. With respect to XHQ Software, the most current release and the two preceding releases will be supported.

   d) <u>Error Correction</u>. Precondition for Error Correction as described in the Agreement is frequently that the reported incompliance to the documentation is reproducible in a neutral XHQ system environment, meaning a pre-installed XHQ system environment including third party software as described in the Documentation.

   e) <u>Support channels:</u> in addition to the Telephone Support as described in the Agreement, a web portal and email address may also be used to contact XHQ customer support. The most current information on how to contact XHQ customer support can be found in the XHQ product documentation which is delivered with the Software.

   f) <u>Incident Priority Classes</u>:

   • Critical (Severity 1, Critical Problem): A critical Problem with the Licensed Software is one that severely impacts the continued usage of one or more critical functions of the Licensed Software and prevents the customer from normal usage across all users of the Licensed Software.

   The Problem must severely affect critical business operations on a production system (i.e. on a production XHQ server, not a development or test system). No work-around acceptable to the customer exists.

   • High (Severity 2, Major Problem): A major Problem is one that affects or continually restricts a significant functionality subset of the Licensed Software for a majority of users.

   The Problem is of a time-sensitive nature and important to the long-term productivity of the customer.

   No work-around acceptable to the customer exists.

   • Medium / General (Severity 3, Minor Problem or Major problem with work-around): A (i) minor Problem that marginally affects or restricts functionality of the Licensed Software, but does not have a major effect on customer usage; or (ii) major Problem of the Licensed Software, for which a work-around acceptable to the customer exists.

   The Problem is of a time-sensitive nature and important to long-term productivity, but is not causing an immediate work stoppage and customer usage can continue in a restricted fashion.

   The Problem may also be one causing an immediate work stoppage for an individual installation of client software.

   • Low (Severity 4, no impact): A (i) minor Problem with the Licensed Software, which has no effect on the customer's usage; or (ii) minor Problem with the Licensed Software, for which a work-around acceptable to the customer exists; or (iii) documentation error; or (iv) request for a new feature or functionality in the existing product.

   The Incident/Problem is not of a time-sensitive nature or important to long-term productivity, and is not causing an immediate work stoppage and operation can continue in an unrestricted fashion.

   This is the default severity level if an Incident severity level is not otherwise specified.

   g) <u>Software Maintenance Service Levels and Response Times</u>: the following support levels are available, with the corresponding Response Times. The standard support level is Bronze, with Silver and Gold being optional premium levels.

   • Bronze Support Services: 9 x 5 hours support. 9 hours per day, 5 days per week. Monday to Friday. Daylight Saving Time is honored.

   Choice of one coverage zone out of the following options (default: Americas):
   • Americas (15-1 GMT)
   • Europe (8-17 GMT)
   • Asia (1-10 GMT)

   Excludes national holidays as defined by the following countries for the related coverage zone:
   • USA (Americas)
   • Germany (Europe)
   • Singapore (Asia)

   Example Americas: implies coverage from 7:00 AM to 5:00 PM, Pacific Time, Monday to Friday, excluding US national holidays.

- Silver Support Services: 24 x 5 hours support. 24 hours per day, 5 days per week. Monday to Friday. Daylight Saving Time is honored.

  Choice of one coverage zone out of the following options (default: Americas):
  - Americas
  - Europe
  - Asia

  The weekly start/end times of coverage follow the local times of the following countries in each coverage zone:
  - California/USA (Americas)
  - Germany (Europe)
  - Singapore (Asia)

  Example Americas: *implies coverage from midnight on Sunday until midnight on Friday, Pacific Time, Monday to Friday.*

- Gold Support Services: 24 x 7 hours support. 24 hours per day, 7 days per week.

The following table describes the Response Times for the available support levels, based on the Incident Priority Class. SISW will use commercially reasonable efforts to meet the response times mentioned below.

	Critical	High	Medium/General	Low
Bronze Support Services	2 hours	8 hours	48 hours	96 hours
Silver Support Services	1 hour	4 hours	8 hours	48 hours
Gold Support Services	1 hour	4 hours	8 hours	48 hours

h) <u>Initial and Renewal Fees</u>. The maintenance fee for XHQ Software is payable in annual increments at the beginning of every calendar year in advance. For the year in which the license is purchased and maintenance services commence the maintenance fee will be pro-rated to cover the period of time from the commencement of the services until December 31st of that year.

i) <u>Exclusions</u>. The following issues are not covered by, or included in, the XHQ Software maintenance services:

(1) <u>Improper Use</u>. Any problem resulting from the misuse, improper use, unauthorized alteration, or damage of the XHQ Software or use of the XHQ Software that deviates from any operating procedures established by SISW in the applicable Documentation; or

(2) <u>Unauthorized Modifications</u>. Any problem caused by modifications, alteration or addition or attempted modification, alteration or addition in any release of the XHQ Software not made or authorized in writing by SISW; or

(3) <u>Unapproved Software or Hardware</u>. Any problem resulting from the combination of the XHQ Software with Customer hardware, software or equipment after initial installation of the XHQ Software to the extent such combination has not been approved in the Documentation or in writing by SISW; or

(4) <u>Accident</u>. Operation of the XHQ Software with other media not meeting or not maintained in accordance with the manufacturer's specifications; or causes other than ordinary use; or

(5) <u>Failure of Customer</u> to meet its obligations under the Agreement and this XHQ Amendment.

j) <u>Third Party Software</u>. SISW only certifies that Third Party Software will function in conjunction with the XHQ Software in accordance with its related Documentation. Any other use of Third Party Software by Customer, whether as a stand-alone product or in conjunction with the XHQ Software, has not been tested and is not certified by SISW. While SISW may assist Customer with the interoperability of Third Party Software with the XHQ Software, SISW has no obligation to support Third Party Software.