

Professional Services

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 “Professional Services Amendment”) are specific to professional consulting services provided by SISW or one of its affiliates to Customer. 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 professional consulting services provided by SISW.

PROFESSIONAL SERVICES TERMS AND CONDITIONS

1. **Definitions.** The following terms have the meanings set forth below.
 - 1.1 “Professional Services” means those professional consulting services set forth in an SOW.
 - 1.2 “SOW” means a statement of work in a form that is provided by Customer to, and is accepted in writing by, SISW. Each SOW must, among any other terms that are mutually acceptable to the parties, incorporate the terms of the Agreement, as amended herein, by reference, describe in reasonable detail the professional consulting services to be provided by SISW, and set forth the fees payable to SISW in regard to such services.
2. **Professional Services; Change Control Procedure.** SISW will perform the Professional Services, and produce the deliverables, described in an SOW. SISW and Customer will follow a formal change control procedure in regard to any requested changes to the SOW including in regard to the scope of work, approach, schedule, charges, or deliverables associated with the Professional Services. Upon submission of a change control request by SISW or Customer, SISW will complete a charge estimate and schedule impact and submit those terms to Customer for written acceptance. If the change control request, including the associated charge estimate and schedule impact terms, is so approved by Customer, then SISW will proceed with the services as set forth in the SOW and as so amended pursuant to the change control request. If the change control request is not accepted by Customer within 10 calendar days from the date of submission of the associated charge estimate and schedule impact terms by SISW, then the change control request will be considered null and void and SISW will continue performing the Professional Services without giving effect to the requested change order.
3. **Personnel.** SISW reserves the sole right to determine the allocation of SISW personnel in providing Professional Services. SISW personnel performing Professional Services will be and remain the employees of SISW, and SISW will provide for and pay the compensation and other benefits of such employees, including salary, health, accident and workers' compensation benefits and all taxes and contributions which an employer is required to pay relating to the employment of employees. SISW will have the right to use subcontractors in performance of its obligations under any applicable SOW provided that SISW will remain primarily liable to Customer for any work performed by its subcontractors. While SISW is providing Professional Services under an SOW and for a period of 12 months after the completion of such Professional Services, neither party will solicit, directly or indirectly, for employment or employ any employee of the other party, or of a SISW subcontractor, who is or was actively involved in the performance, consumption or evaluation of the applicable Professional Services without the prior written consent of the other party. Notwithstanding the foregoing, the parties acknowledge and agree that this Agreement will not prohibit solicitation through, and offers of employment that result from, (i) any executive search or similar business used by SISW or by any of its affiliates in the ordinary course of business and in a manner consistent with past practices of such business on behalf of clients other than SISW or (ii) advertising or other publications of general circulation.
4. **Customer Responsibilities.** Customer will perform its obligations set forth in the applicable SOW. In addition, to the extent reasonably required by SISW to perform the services at Customer facilities, Customer will make available to SISW facility access, office space, office furnishings, telephone and telecopy services, utilities, office supplies, and duplicating services. If the services require that any software licensed or otherwise provided to Customer by third parties be disclosed to SISW, or used or accessed by SISW, Customer will, at no expense to SISW, obtain all consents, licenses and sublicenses necessary for SISW to perform its services in connection with the third party software. Customer will defend any claim brought against SISW to the extent that such claim is due to Customer's failure to fulfill Customer's obligations under the preceding sentence. Customer will bear the expense of such defense and pay any damages and attorneys' fees finally awarded by a court of competent jurisdiction which are attributable to such claim or which result from a settlement thereof, provided that SISW notifies Customer promptly in writing of the claim and allows Customer to fully direct the defense or settlement of such claim. Customer will not be responsible for any settlement or compromise made without Customer's consent. This section will survive the expiration or termination of this Agreement for any reason.

5. Ownership of Deliverables.

- 5.1 Pre-existing Software and Technology. Each party will retain all rights in any software, ideas, concepts, know-how, development tools, techniques or any other proprietary material or information that it owned or developed prior to the inception of a Professional Services project, or acquired or developed thereafter without reference to or use of the intellectual property of the other party.
- 5.2 Third Party Software and Technology. All software and technology that is licensed by a party from a third party vendor will be and remain the property of such vendor.
- 5.3 Deliverables Based on SISW Software and Technology. Subject to any third party rights or restrictions, SISW will own all intellectual property rights in or related to all deliverables that are developed and delivered by SISW under this Agreement, provided that they consist of pre-existing SISW software or SISW software development tools (“SISW Tools”), modifications thereto developed as part of the Services, or works derived from pre-existing SISW software or SISW Tools developed as part of the Services.
- 5.4 Special Performance Engineering Technology and Know-how. SISW retains all rights in or related to any know-how, techniques, concepts or ideas, developed in the performance of the Services provided hereunder and related to the field of functional performance engineering technologies such as, but not limited to model based systems engineering (“MBSE”), noise-vibration-harshness (“NVH”) testing and analysis, durability, structural analysis, kinematics and dynamics analysis (collectively “Special Performance Engineering Technology”).
- 5.5 Deliverables Based on Customer’s Software and Technology. Subject to any third party rights or restrictions, Customer shall own all intellectual property rights in or related to any deliverables that do not constitute pre-existing SISW software, SISW Tools, modifications thereto or works derived therefrom, or Special Performance Engineering Technology as defined in Section 5.4 above, that are developed as part of the Services.
- 5.6 License Grant for Deliverables Owned by SISW. With respect to deliverables owned by SISW, Customer is hereby granted a license to use the deliverables provided by SISW to Customer as part of a services project. If the deliverable is software, it will be in object code form and Customer is authorized to load, execute, display, store and otherwise use the software. Upon payment in full for such deliverable, the license granted to Customer in this Section will be perpetual, royalty-free, non-transferable and nonexclusive and will be limited to Customer's internal use of such copy.
- 5.7 No “work made for hire”. The Services provided hereunder shall not constitute “works made for hire” under any applicable copyright laws. Ownership of work in progress under a SOW shall remain with SISW until such time as title to a deliverable transfers, if at all, in accordance with this Agreement.
- 5.8 No License to Intellectual Property of the Other Party. No licenses will be deemed to have been granted by either party to any of its patents, copyrights, trade secrets or other intellectual property except as otherwise expressly provided in this Agreement. SISW will be free to use the ideas, concepts, methodologies, processes and know-how that are developed or created in the course of performing the services so long as SISW does not use, or make reference to, the intellectual property or proprietary information of Customer.
- 6. Warranty.** SISW represents and warrants that the services will be performed in a professional and workmanlike manner. EXCEPT AS PROVIDED IN THIS SECTION 6, WITH RESPECT TO THE PROFESSIONAL SERVICES SISW MAKES NO OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
7. **Contracting Legal Entity and Governing Law.** Notwithstanding the terms of the Agreement, an SOW will be entered into with respect to an individual services project between Customer and SISW or the SISW affiliate that will be responsible for performing the services. The law that will govern the professional services project represented in an SOW will be the law of the jurisdiction in which SISW or the applicable SISW affiliate is located.