

# 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.

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/or Concurrent Users and is referred to as the “production” server.

The XHQ license additionally permits the licensed XHQ Software to be installed on one Intel-class server with a maximum of two physical CPU sockets for solution development purposes only. In this case, the installation is limited to access by 10 Concurrent Users only but otherwise has the same XHQ license options enabled as in the production server and is referred to as the “development” server. The development server may not be used as an additional production server. The sole purpose of a development 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 in order to be 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 “Named Users” concurrently.

c) Regarding “Perpetual Licenses”, “Backup (or Failsafe) Licenses”, “Extended Term Licenses” and “Subscription 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:

- a) No part of the XHQ Software is designed, manufactured or intended for use or resale as a part of on-line 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.
- b) SISW does not warrant, guarantee, or make any representations regarding the use, or the results of the use, of the XHQ Software, the Documentation or any other written materials in terms of accuracy, reliability, currency, or otherwise. No liability is assumed for damage incurred directly or indirectly from errors, omissions, or discrepancies between the XHQ Software and the Documentation. The entire risk as to the results and performance of the XHQ Software is assumed by Customer.

#### **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) Software Maintenance Services. Software maintenance services do not include services for customizations of the XHQ Software.
- b) New Releases. 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) Maintenance for Prior Releases. With respect to XHQ Software, the most current release and the two preceding releases will be supported.

- d) Error Correction. Precondition for Error Correction as described in the Agreement is frequently that the reported non-compliance 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) Telephone Support. In addition to the Telephone Support as described in the Agreement an XHQ Call Center is available during the hours defined by the licensed maintenance service level for bug-reporting and registration purposes. Information about XHQ Software hotline support hours is provided under the following link:  
[http://www.plm.automation.siemens.com/en\\_us/support/gtac/index.shtml](http://www.plm.automation.siemens.com/en_us/support/gtac/index.shtml).
- f) Initial and Renewal Fees. 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.
- g) Exclusions. The following issues are not covered by, or included in, the XHQ Software maintenance services:
- (1) Improper Use. 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) Unauthorized Modifications. 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) Unapproved Software or Hardware. 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) Accident. 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) Failure of Customer to meet its obligations under the Agreement and this XHQ Amendment.