

PROFESSIONAL SERVICES SUPPLEMENTAL TERMS

Siemens Digital Industries Software



These Professional Services Supplemental Terms (“**Professional Services Terms**”) amend the Universal Customer Agreement (“**UCA**”) or End User License Agreement (“**EULA**”) between Customer and SISW solely with regard to Professional Services which have been assigned the alphanumeric code “SERV” on the Order, and to Professional Services performed pursuant to a statement of work referring to the EULA or UCA as its governing agreement (“**SOW**”). These Professional Services Terms, together with the UCA or EULA, as applicable, and other applicable Supplemental Terms, form the agreement between the parties (“**Agreement**”). Capitalized terms used herein have the meaning as defined elsewhere in the Agreement.

1. **PROFESSIONAL SERVICES; CHANGE CONTROL PROCEDURE.** SISW will perform the Professional Services and produce the deliverables described on the Order. SISW and Customer will follow a formal change control procedure with regard to any requested changes to an SOW. Upon submission of a change request by SISW or Customer, SISW will submit charge estimate and schedule impact terms to Customer for written acceptance. If Customer does not provide written acceptance within ten calendar days from the date of submission of the charge estimate and schedule impact terms by SISW, then the change request will not be valid, and SISW will continue performing the Professional Services per the SOW.
2. **PERSONNEL.** SISW has sole discretion regarding the assignment of SISW personnel. SISW personnel performing Professional Services remain the employees of SISW, and SISW is responsible for all compensation and other employment benefits of such employees. SISW may use subcontractors to perform obligations under any applicable Order provided that SISW will remain primarily liable to Customer for all Professional Services performed by SISW subcontractors. While SISW is providing Professional Services and for a period of 12 months thereafter, neither party will directly or indirectly solicit for employment or employ any employee of the other party, or any SISW subcontractor, 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, this Agreement will not prohibit solicitation or employment that results from (i) any executive search or similar business used in the ordinary course of business and in a manner consistent with past practices of such business or (ii) advertising or other publications of general circulation.
3. **CUSTOMER RESPONSIBILITIES.** Customer will perform its obligations set forth in the applicable Order. If SISW is required to perform the Professional Services at a Customer’s location, Customer will make facility access, office space, and communication services available to SISW. Customer will ensure that SISW has the rights to use any third-party software or other third-party intellectual property made available to SISW by Customer as necessary for the performance of Professional Services. Customer will defend any claim brought against SISW to the extent that such claim is due to Customer’s breach of the preceding sentence. Customer will bear the expense of defending such claim and pay any damages and attorneys’ fees finally awarded or in settlement thereof, provided that SISW notifies Customer promptly in writing of the claim and allows Customer to direct the defense or settlement. Customer will not be responsible to pay any settlement made without Customer’s consent. This section survives the expiration or termination of this Agreement.
4. **OWNERSHIP OF DELIVERABLES**
 - 4.1 **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 (“**Pre-existing Material**”).
 - 4.2 **Ownership of Deliverables.** Subject to Sections 4.3 and 4.4 below, SISW will own all intellectual property rights in or related to all deliverables that are developed and delivered by SISW under these Professional Services Terms. SISW also will own all intellectual property rights in or related to any know-how, techniques, concepts or ideas developed in the performance of the Services provided hereunder and related to SISW’s Pre-existing Material.
 - 4.3 **Deliverables Based on Customer’s Software and Technology.** Subject to Section 4.4, Customer will own all intellectual property rights in or related to any deliverables developed hereunder to the extent that such deliverables consist of Customer’s Pre-existing Material, works derived from Customer’s Pre-existing Material, or modifications to Customer’s Pre-existing Material.
 - 4.4 **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.
 - 4.5 **License Grant for Deliverables Owned by SISW.** SISW grants to Customer a perpetual, royalty-free, non-transferable and nonexclusive license to use the deliverables owned by SISW and provided to Customer under an SOW for Customer’s internal business purposes. Unless otherwise specified in the applicable SOW, software deliverables will be in executable form, and Customer is authorized to load, execute, display, store and otherwise use the software for internal purposes.
 - 4.6 **No “Work Made for Hire”.** The Services provided hereunder will not constitute “works made for hire” under any applicable copyright laws. SISW retains ownership of any work in progress under an Order and will not deliver the same until Customer makes full payment in accordance with these Professional Services Terms.
 - 4.7 **No License to Intellectual Property of the Other Party.** Except as expressly provided in this Agreement, neither party grants the other party a license to any of its patents, copyrights, trade secrets or other intellectual property. SISW will be free to use the ideas, concepts, methodologies, processes and know-how developed in the course of performing the Professional Services (collectively “Know-how”), provided that such Know-how excludes Customer’s Pre-existing Material.

5. **WARRANTY.** SISW warrants that the Professional Services will be performed in a professional and workmanlike manner. EXCEPT AS PROVIDED IN THIS SECTION 5, SISW MAKES NO OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PROFESSIONAL SERVICES AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.