

# Digital Services Agreement

April 2020, Americas

## 1. Subject Matter and Scope

1.1. **Parties.** The Digital Services Agreement (“**DSA**”) is agreed between the Siemens entity (“**we**”, “**us**”, or “**our**”) and the contracting person or entity (“**you**” or “**your**”) indicated in the Order Form.

1.2. **DSA.** This DSA governs your use of certain Services provided to you by us from time to time on or in relation to a cloud-based Platform, subject to mutual agreement on respective Order Forms. The DSA incorporates by reference the Acceptable Use Policy, the Data Privacy Terms and the Specification Documents.

1.3. **Definitions.** Capitalized terms used in this document shall have the meaning ascribed to them in Section 15 or elsewhere in this document.

1.4. **Contract Formation.** We are only obliged to provide you with Services if we accept your Order Form for such Services. Each Order Form, upon acceptance by us, shall be binding on the Parties.

1.5. **Out of Scope.** The Services always exclude (i) the provision of any software or services that are not specified by Siemens in the Specification Documents, even if they interoperate with the Services; (ii) the transmission of data or software to and from the exit of the wide area network of the data centers used by us to provide the respective Service; and (iii) any hardware intended for the connection of devices, systems, or other equipment to the Platform other than explicitly specified in the Specification Documents. You are responsible for securing and maintaining an internet connection and suitable connectivity to the Services at your own expense.

## 2. Provision of Services

2.1. **Service Standards.** We provide the Services materially in accordance with the features and functionalities set out in the Specification Documents. We will use commercially reasonable efforts to make the Services available to you subject to operational requirements including maintenance and security.

2.2. **Security.** We maintain a formal security program that is designed to protect against threats or hazards to the security of Your Content and prevent unauthorized access to Your Content. Providers of our cloud infrastructure are required to (i) implement and maintain a security program that complies, inter alia, with ISO 27001 or a successor standard (if any) that is substantially equivalent to ISO 27001 and that is designed to provide at least the same level of protection as evidenced by the certification of the providers under ISO 27001 and (ii) have the adequacy of their security measures annually verified by independent auditors. The Platform (i) employs firewalls, anti-malware, intrusion detection/prevention systems (IDS/IPS),

and corresponding management processes designed to protect service delivery from malware and (ii) is operated under a security governance model aligned with ISO 27001 and IEC 62443, including regular penetration testing. This Section contains Siemens’ entire obligation regarding the security of Your Content, the Platform, and the Services.

2.3. **Changes to the Services.** We provide Services in a multi-user environment and must therefore reserve the right to modify and discontinue Services. We may modify a Service at any time without degrading its functionality or security features. For current subscriptions, we may degrade the functionality of a Service or discontinue a Service only in case of (i) legal requirements; (ii) changes in the Services imposed by Siemens’ subcontractors; (iii) the termination of our relationship with a provider of software and/or services used by us which are material for the provision of such Service; (iv) lack of customer acceptance; and/or (v) security risks. We will notify you of any material degradation of functionality or the discontinuation of a Service and the effective date at least 80 days prior to such change, and you may terminate the modified Service 30 days prior to the change effective date. In the event of such termination or discontinuation of a Service, we will refund any prepaid amounts for the applicable Service on a pro-rata basis for the remaining Subscription Term. We do not maintain prior versions of a Service.

2.4. **Changes to the DSA.** The terms of the DSA published at the date of an Order Form shall apply until the end of the Subscription Term for the Services agreed in such Order Form and to all Services subsequently ordered and designated as related Services in an Order Form. Any change to the DSA will only apply from the beginning of a renewed subscription, unless a change during a current Subscription Term is required as a result of a change of Laws or permitted in a Specification Document or in order to reflect any changes in the Services agreed with or imposed by Siemens’ subcontractors (including changes in open source software license terms) or when we introduce new features, supplements, enhancements, capabilities or Services (e.g. that were not previously included with the subscription, but added for no additional fee). Should a change during a Subscription Term have a material adverse effect on your rights, obligations, or use of the Services, you may terminate the affected Service within 30 days following our notice. In case of such termination, we will refund any prepaid amounts for the applicable Service on a pro-rata basis for the remaining Subscription Term.

2.5. **Subcontractors, Location of Data Centers.** To support the rendering of the Services, we may use personnel and resources in various countries, including subcontractors. The locations of data centers used by us for the storage of Your Content at rest are set out in Specification Documents.

2.6. **Monitoring of Usage.** Without limiting any of our rights in Section 5.1, Siemens or Siemens’ subcontractors may monitor Users’ usage of Services for Siemens’ internal purposes,

including: (i) for security and availability reasons; (ii) to ensure compliance with the DSA; (iii) to detect, prevent, and suspend any use of Services exceeding the permitted use under the DSA, and otherwise as necessary for payment and billing purposes (also in relation to Third Parties); (iv) to provide you with reports on Users' use of the Services; and (v) to offer you, in accordance with any applicable legal requirements, other products or services that are not yet part of the Services. You will not block or interfere with our monitoring, but may use encryption technology or firewalls to help keep Your Content confidential. We may also use usage information on an aggregated basis to improve the Services, other Siemens products and services, and Siemens' subcontractors' services.

**2.7. Data Privacy.** Each Party shall comply with all applicable data privacy laws and regulations governing the protection of personal data in relation to their respective performance under the DSA. If we act as your processor of personal data, our Data Privacy Terms apply to your use of the relevant Services.

### **3. Use of Services**

**3.1. Use Rights.** We grant you the non-transferable, non-sub-licensable, time-limited and revocable right to access and use, and permit Third Parties to access and use, the Services for your internal purposes as an end-user, subject to the limitations set out in the DSA. In any case, Services on the Platform may only be accessed by Users (including Third Parties) via your Account using access credentials provided by you, by Siemens at your request, or by a Third Party authorized by you. Unless otherwise agreed, the number of permitted Users for a Service shall be on a named-User basis. Access may be reassigned between uniquely identified individual Users over time, but not so frequently as to enable sharing by multiple Users.

**3.2. Credentials.** You shall: (i) carefully store access credentials and security tokens and protect them from unauthorized access; (ii) not gain access to the Services by any means other than your Account or other means permitted by us; (iii) not circumvent or disclose the authentication or security of your Account, the Platform or any host, network, or account related to the Platform; (iv) not use a false identity or credentials of another person to gain access to your Account, the Platform, or the Services; and (v) ensure that any credentials are used only by the individual who was granted the credentials. We may change access credentials if we determine in our reasonable discretion that a change is necessary.

**3.3. Responsibility for Users and Other Persons.** You are responsible for all activities that occur under your Account and any use of the Services by any User, your employees, or any Third Party to whom you facilitate or permit access to the Services and all liabilities or other consequences arising therefrom as if these were your own acts. This does not apply to the extent damage or a breach is caused by our violation of the DSA. You will ensure that all Users, your employees, and any Third Party to whom you facilitate or permit access to the Services comply with your obligations under the DSA. Should

you become aware of any violation of your obligations under the DSA you will immediately terminate the relevant person's access to the Services. You acknowledge and agree that Your Users who submit declarations, notifications, or orders to us act on your behalf and have the legal authority to bind you.

**3.4. Obligations when Using Services.** You are responsible that your use of the Services complies with the Laws at all times. You shall (i) obtain at your own expense any rights, consents, and permits from vendors of software and services used by you in connection with the Services which are necessary for Siemens and its subcontractors to provide the Services and (ii) always keep up to date any software that we provide to you as part of the Services by installing updates and patches as they become available. You shall remain responsible for the security of your systems and of on-premises hardware and software.

**3.5. Your Content.** You are responsible for the development, content, management, use, and quality of Your Content and the means by which you acquire and share Your Content. This includes: (i) the technical operation of Your Content including compatibility of any calls you make to a Service with the Platform APIs; (ii) the transfer or copying of Your Content to data centers outside your country of residence in compliance with Laws; (iii) taking steps to maintain legally required or otherwise appropriate security and protection, including backup and archiving, of Your Content; (iv) any document retention or archiving obligations resulting from Laws or company policies; and (v) ensuring that Your Content can be used by Siemens and its business partners as permitted under this DSA without violating Laws or rights of others. You shall properly handle any notices and claims sent to you claiming that Your Content violates Third Party's rights or Laws. We will not delete any of Your Content during the Subscription Term unless such deletion is required by a governmental body, to avoid or limit the liability of Siemens or any Third Party, or to protect the security of Siemens' systems.

**3.6. Information Obligations.** You will provide information or other materials related to Your Content that we reasonably request to verify your compliance with the DSA. If you become aware of any of the following actual or potential events you shall promptly provide us with reasonable information and assistance regarding their mitigation and resolution: (i) unauthorized use of your Account; (ii) loss or theft of your Account information; (iii) circumstances or incidents affecting the security of the Platform or Services; or (iv) measures by authorities or court decisions specifically relating to your use of Services or the Platform which may affect the Platform or the Services.

**3.7. Limited Reliance.** You acknowledge and agree that (i) our Services are not designed to be used for the operation of or within a High Risk System if the functioning of the High Risk System is dependent on the proper functioning of the Services and (ii) the outcome from any processing of data through the use of the Services is beyond our control. You are responsible

for the use and interpretation of the outcome from such processing and any reliance on such outcome.

#### 4. **Fees, Payment Terms and Taxes**

4.1. **General.** You agree to pay all applicable fees specified for the Services and, at the then-current price, all fees for use of Services exceeding the agreed usage or authorizations. Any change of our fees will only apply from the beginning of a renewed subscription. Unless otherwise provided in the applicable Order Form, fees are due upon receipt of the invoice and payable at no extra cost for us and without any deduction within 30 days of the invoice date using one of the payment methods we support. Any overdue payment shall accrue interest at the lower of (i) the rate of 2 % per month or (ii) the highest rate legally permitted.

4.2. **Taxes.** All prices and payments relating to the Services are exclusive of any applicable taxes, customs and import duties, levies, and charges of any kind whatsoever. Any such taxes, customs and import duties, levies, and charges that may be imposed on or paid by us shall be borne or reimbursed by you. Any sums to be paid to us shall be net of any applicable taxes, duties and levies that might be levied or withheld on payments made by you to us. Should any such taxes, duties or levies be levied or withheld by you on payments due to us, then you shall gross up the net payments to us by such an amount necessary to ensure that we receive a net amount equal to the full amount invoiced. In any case, you are obligated to provide us promptly with the official tax receipt, which confirms the tax payment on our behalf.

#### 5. **Proprietary Rights**

5.1. **Rights in Your Content.** We will not acquire any rights, title, or interest in or to Your Content, except as granted under the DSA. Siemens and its business partners have a worldwide, non-exclusive, transferable, sub-licensable, royalty-free right to use, host, store, transmit, display, modify, and reproduce Your Content for the purpose of providing the Services.

5.2. **Rights in the Platform, Services, Feedback.** All rights, title and interest in and to the Platform and the Services, including any know-how and any part and improvement thereof, and all intellectual property rights in or to the foregoing shall remain wholly vested in Siemens, its business partners, and/or licensors. You grant Siemens a worldwide, perpetual, irrevocable, unlimited, transferable, sub-licensable, fully paid, royalty-free license to use any suggestion, recommendation, feature request, or other feedback provided by you or on your behalf related to the Services and/or the Platform.

#### 6. **Limited Warranty**

6.1. **Conformance with Service Standards.** We warrant that the Services will be provided as set forth in Section 2.1. If Services fail to perform as warranted hereunder, to the extent permissible under Applicable Law, our sole obligation and your exclusive remedy will be (i) to use commercially reasonable

efforts to restore the non-conforming Service so that it conforms to the warranty, or (ii) if such restoration would not be commercially reasonable, to terminate the non-conforming Service and refund any prepaid amounts for such Service on a pro-rata basis for the remaining Subscription Term.

6.2. **LIMITATIONS.** SECTION 6.1 SETS OUT THE EXCLUSIVE WARRANTY FROM US AND IT REPLACES ALL OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT, OR ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, QUALITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, SIEMENS DOES NOT WARRANT THAT THE SERVICES WILL BE FAIL-SAFE, FAULT-TOLERANT, UNINTERRUPTED, ERROR FREE, FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT, OR THIRD PARTY SOFTWARE WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. THIS SECTION 6.2 DOES NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

#### 7. **Indemnification**

7.1. **Intellectual Property Infringement.** If a Third Party asserts a claim against you that the Services infringe such Third Party's patent or copyright, we will defend you against or, at our option, settle such claim and pay amounts (including costs) finally awarded by a court of competent jurisdiction against you or included in a settlement approved by us.

7.1.1. **Notices.** You will give us written notice of such claim without undue delay, allow us to control the defense and settlement, and reasonably cooperate with us in this regard. Your failure to provide such notice or cooperation will release us from our obligations under this Section 7.1 if, and to the extent, we are materially prejudiced by such failure.

7.1.2. **Exceptions.** Our obligations in this Section 7.1 shall not apply to the extent that any such infringement claims arise from: (i) your failure to use the most current version of the Services or a defect correction or patch made available by us; (ii) the combination, operation, or use of the Services in conjunction with any of Your Content or with any Third Party software, equipment, materials, services or products; (iii) an adjustment or configuration of the Services not made by us; (iv) any use of the Services following our notification to you to discontinue such use; or (v) our compliance with designs, plans, or specifications provided to us by you or on your behalf.

7.1.3. **Injunction.** If a permanent injunction is obtained against you due to an infringement pursuant to Section 7.1, then we will, at our sole discretion: (i) obtain for you the right to continue using the Services; (ii) replace or modify the Services so that they no longer infringe the relevant intellectual property right; or (iii) if neither of the remedies in (i) or (ii) are commercially reasonable, grant you a pro-rata refund of amounts prepaid by you for use of the affected Services, and you shall immediately cease to use the affected Services. We

may decide to provide the remedies specified in this Section prior to the issuance of a permanent injunction.

**7.1.4. Sole and Exclusive Remedy.** To the extent permissible under Applicable Law, this Section 7.1 represents the sole and exclusive remedy available to you against Siemens for infringement of intellectual property rights under the DSA.

**7.2. Indemnity by You.** You will indemnify Siemens, our suppliers and contractors, and each of their respective employees, officers, directors, and representatives from and against, and, at Siemens' option, defend Siemens from, any claims, damages, liabilities, losses, costs and expenses (including reasonable attorney's fees) arising from or in connection with: (i) Your Content; (ii) any violation of Laws or rights of others by your use of the Services; (iii) any breach by you of the DSA; (iv) operation, combination, or use of the Services in conjunction with any of Your Content and/or in conjunction with any Third Party software, materials, or services; (v) an adjustment or configuration of the Services made by you or a Third Party to which you facilitate or permit access to the Services, including Users; (vi) our compliance with designs, plans, or specifications provided to us by you or on your behalf; (vii) any claims by any User or any Third Party to which you facilitate or permit access to the Services; (viii) your use of Siemens' trademarks, designations, and logos in breach of the authorization granted to you in a Specification Document; and (ix) the use of a Service for the operation of or within a High Risk System, if the functioning of a High Risk System depends on the proper functioning of a Service or a Service caused a High Risk System to fail. Section 7.1.1 shall apply mutatis mutandis.

## **8. Limitation of Liability**

**8.1. Limitation.** Except for our obligation under Section 7, Siemens' entire liability for all claims, damages, and indemnities arising out of or related to the DSA, regardless of the form of action, whether in contract, tort or otherwise, will not exceed, in the aggregate, the fees paid to us by you during the 12 months preceding the date on which the claim arose for the specific Service giving rise to the claim.

**8.2. Disclaimer.** In no event will Siemens be liable for any amounts for loss of production, interruption of operations, contractual claims against you by any Third Party, damage to property, loss or corruption of Your Content or other data, loss of use, loss of interest, income, profit or savings, costs associated with data recovery or re-creation, or indirect, incidental, consequential, exemplary, punitive, or special damages, even if Siemens has been advised of the possibility of such damages in advance, and all such damages are expressly disclaimed.

**8.3. Limitation on Claims.** Any claims against Siemens shall be brought no later than 12 months after the event giving rise to the respective claim. Thereafter all claims arising out of that event against Siemens shall be barred.

**8.4. Scope of Limitations and Exclusions.** The limitation and exclusion in this Section 8 shall not apply: (i) to the extent that liability cannot be limited or excluded according to Applicable Law; (ii) in cases of willful misconduct and gross negligence; (iii) in cases of bodily injuries or death caused by our negligence; and (iv) in cases of fraud or fraudulent misrepresentation. In cases of gross negligence, liability is limited to the amount of foreseeable loss that would have been prevented through the exercise of due care.

**8.5. Beneficiaries.** Any limitations and exclusions of liability shall also apply to the benefit of any employees, officers, directors, representatives, suppliers, subcontractors, and any person used by Siemens in performing any of our obligations.

## **9. Temporary Suspension**

**9.1. Our right to Suspend.** We may suspend or limit Users' use of a Service, or portion thereof, immediately if we reasonably determine that there is a material breach of your obligations or a security incident or threat to the security of the Platform in connection with your access to or use of Services; or if such suspension or limitation is required by Laws, a court decision, or a request from a governmental body. Breaches for failure to pay fees within 10 days after receipt of a reminder or failure to comply with Sections 3 or 12 constitute material breaches. In addition, we may throttle or terminate computing jobs that we determine degrade the performance of the Services or any component of the Services.

**9.2. Effect of Temporary Suspension.** Your obligation to pay fees remains unaffected. If you can reasonably remedy the cause of the suspension or limitation, we will notify you of the actions that you must take to reinstate the Services. The suspension or limitation will be lifted as soon as the reason for such suspension or limitation no longer exists. Our right to terminate pursuant to Section 10 and all other rights and remedies we may have remain unaffected.

## **10. Termination**

**10.1. Termination for Convenience.** The Subscription Term and any renewal of a Subscription Term will be specified in the Order Form. A Service may not be terminated for convenience during the Subscription Term.

**10.2. Termination for Cause.** Either Party may terminate a Service for cause in the event of the other Party's material breach if such breach remains uncured for a period of 30 days from receipt of notice specifying the breach by the other Party. Only the Service affected by the material breach may be terminated. Events that entitle us to terminate a Service and/or the DSA for cause include: (i) acts or omissions that entitle us to a suspension or limitation pursuant to Section 9 that remain uncured for a continuous period of 60 days; (ii) our obligation to comply with Laws or requests of a governmental body; (iii) a change in control of you or your Affiliates that, according to our reasonable opinion, adversely affects our position, rights, or interests; and (iv) your ceasing to operate in the ordinary

course, making an assignment for the benefit of creditors or similar disposition of your assets, or becoming the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding.

**10.3. Effect of Termination.** On termination of a Service for any reason, subject to Section 10.4, you shall immediately: (i) cease using the affected Service; and (ii) return or, if instructed by us, destroy or delete all Materials relating to the affected Service. Termination of the DSA shall be deemed as termination of all Services. Except as otherwise set out in the DSA, you must pay to us all fees due at the time of termination and all fees paid by you to us are non-refundable. In case of termination for cause by you in accordance with Section 10.2, we will refund a reasonable portion of any prepaid amounts for the applicable Service for the remaining Subscription Term. Any terms and conditions of the DSA, which by their nature should survive a termination or expiry, shall survive and continue in full force and effect after such termination or expiry.

**10.4. Post-Termination Phase.** After termination of a Service, we will remove Your Content that is associated with such Service from the Platform, unless otherwise provided under the DSA or agreed in writing. However, upon your request made within 30 days following the termination date, we will assist you in transitioning certain parts of Your Content to an alternate technology for additional fees and under separately agreed terms, to the same extent that we make such services generally available to all our customers. You acknowledge that some of Your Content may be retained by us as part of our disaster recovery backup of the Platform until deletion of such files in accordance with our policies.

## **11. Confidentiality, Compelled Disclosure**

**11.1. Confidentiality Obligations.** Each Party shall treat Confidential Information disclosed by the other Party or its Affiliates as confidential, only use it in connection with the Services or as otherwise permitted under the DSA (i.e. in the respective Specification Documents), and not disclose such Confidential Information to anyone except to those Users, employees, Affiliates, business partners and advisors, and the respective employees of such Affiliates, business partners and advisors who need to know that information for implementation of the DSA and who are bound to appropriate confidentiality obligations or as explicitly specified in the respective Specification Documents.

**11.2. Compelled Disclosure.** We will not disclose Confidential Information and/or any of Your Content to any Third Party except (i) as instructed by you, (ii) as permitted in the DSA, or (iii) as required by Laws or governmental order. Should any Third Party (including governmental bodies) contact us with a request to disclose Confidential Information or any of Your Content, we will redirect such Third Party to request that data directly from you and may provide your basic contact information unless we are prohibited from doing so by Laws or

governmental order. If we are compelled to disclose Confidential Information or any of Your Content to any Third Party, we will promptly notify you and provide a copy of the request unless we are prohibited from doing so by Laws or governmental order. We may further disclose Confidential Information or Your Content to Third Parties in order to report to them potential violations of Laws in connection with your use of the Services.

## **12. Export Control and Sanctions Compliance**

**12.1. Export and Sanctions Laws.** You agree to comply with all applicable sanctions (including embargoes) and (re-)export control laws and regulations including (to the extent applicable) those of the Federal Republic of Germany, the European Union, and the United States of America (collectively "**Export and Sanctions Laws**").

**12.2. Your Obligations.** You are obliged: (i) to deny and prevent access to Services from any location prohibited by or subject to sanctions or license requirements according to Export and Sanctions Laws; (ii) to continuously check any of your customers and any Users against applicable sanctioned party lists; (iii) not to grant access to the Services, including any Materials, or the Platform to any individual or entity designated on any of these lists; and (iv) to ensure that Your Content is non-controlled, e.g. in the EU or Germany (AL = N) or in the U.S. (ECCN = N or EAR99).

**12.3. Information Requirements.** If required to enable authorities or Siemens to conduct export control or sanctions compliance checks, you, upon request by Siemens, shall promptly provide Siemens with all information pertaining to the particular destination, end user, and intended use of Services provided by Siemens, including information on you, your customers, and Users.

**12.4. Right to Withhold Performance.** We shall not be obligated to perform under the DSA if such performance is prevented by any impediments arising out of national or international foreign trade or customs requirements, any embargoes, or other sanctions. You further acknowledge that Siemens may be obliged under Export and Sanctions Laws applicable to Siemens to limit or suspend access by you and/or Users to the Services.

## **13. Limitations for Free of Charge Services, Trials, Beta**

**13.1. Provision of Services.** Where we enable you to access and use Services free of charge, e.g., certain free online support services, services for testing and evaluation purposes, "trial" services, "pre-release", "beta", or "preview" versions (such Services collectively "**Free of Charge Services**"), the limitations under this Section 13 apply in addition to any additional limitations in the DSA, including Sections 6.2 and 8.

**13.2. Change, Limitation, Suspension.** We may change, limit, or discontinue any Free of Charge Service and your access to and use of any Free of Charge Service in our sole discretion. Your Content may be deleted upon the expiration or discontinuation

of the Free of Charge Service, unless specific migration to the related paid Services is available and agreed.

**13.3. Service Standards and Limited Use Right.** Free of Charge Services for testing or evaluation and any “pre-release”, “beta”, or “preview” versions may only be used for the purpose of evaluating their functionality and to provide feedback to Siemens. Such Free of Charge Services may not comply with the normal security standards as per Section 2.2, their performance and availability may be lower than paid Services, personal data may not be processed, and productive use is at your own risk.

**13.4. Warranty and Liability.** Except to the extent prohibited by Applicable Law, Free of Charge Services are provided “as is” without warranties of any kind and in the then-current version made available by us from time to time without support and availability commitments. We are not obliged to offer post-termination assistance. Siemens’ entire liability for all claims, damages, and indemnities arising out of or related to your use of a Free of Charge Service will not exceed, in the aggregate, the amount of USD 1,000.00 (or the equivalent amount in local currency).

#### **14. General Provisions**

**14.1. Assignment.** The DSA will extend to and be binding upon the successors and permitted assignees of the Parties. We may assign the DSA or any right granted thereunder or individual orders to any of our Affiliates that assume our obligations. You shall not assign the DSA, in whole or in part, or any of the rights granted thereunder without our prior written consent.

**14.2. Set-off, Retention.** You may only set off claims or assert a right of retention with regard to claims that are uncontested by us, are ready for decision, or have been confirmed by final court judgment.

**14.3. Force Majeure.** Neither Party shall be liable for any failure or delay in its performance under the DSA due to any cause beyond its reasonable control, including acts of God, earthquake, fire, flood, embargo, riot, sabotage, attacks on IT systems by Third Parties (e.g., hacker attacks), labor shortage or dispute, acts or omissions of civil or military authorities, war, or terrorism.

**14.4. Dispute Resolution.** All disputes arising out of or in connection with the DSA, including the formation, interpretation, amendment, breach, or termination thereof, shall be finally settled under the rules of arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with such rules. The seat of arbitration shall be New York, NY, USA. The language to be used in the arbitration shall be English. Any orders for the production or disclosure of documents shall be limited to the documents on which each Party specifically relies in its submission(s). Nothing in this Section 14.4 shall restrict the right of the Parties to seek interim relief intended to preserve the status quo or interim measures in any court of competent jurisdiction.

**14.5. Applicable Law.** The DSA shall be governed by and construed in accordance with the Laws of the state of New York, USA, without giving effect to any choice-of-law rules that may require the application of the law of another jurisdiction. The UN Convention on Contracts for the International Sale of Goods shall not apply.

**14.6. Notices.** We may provide notice to you under the DSA by: (i) posting a notice on your Account or (ii) sending a message to the email address provided to us as part of the ordering process for an Order Form or then associated with your Account. It is your responsibility to regularly visit your Account and to keep your email address current. If you do not comply with such obligation or if your receipt of a notice fails because of technical issues related to equipment or services which are under your or your subcontractors’ control, notices shall be deemed to have been provided to you 2 days following the date of such notice. Notices to us shall be sent to the email address provided in the respective Order Form. Notwithstanding the foregoing, notices of claims or notices regarding disputes shall always be sent by facsimile or postal mail to the contact addresses provided in the respective Order Form.

**14.7. Validity and Enforceability.** If any provision of the DSA is held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the Parties as nearly as possible in accordance with Applicable Law.

**14.8. Publicity.** Except as may be required by Applicable Law, neither Party shall issue a press release in connection with the subject matter hereof without the prior written consent of the other Party, which shall not be unreasonably withheld. Notwithstanding the foregoing, the Parties shall have the limited right to disclose the terms of the DSA to their bona fide financial, tax, and legal advisors subject to appropriate confidentiality obligations.

**14.9. Entire Agreement.** The DSA constitutes the full and complete statement of the terms agreed between the Parties with respect to the subject matter thereof and supersedes any previous or contemporaneous agreements, understandings, or communications, whether written or verbal, relating to its subject matter. The reference to a document that refers to another document shall be deemed to also include such other document, unless otherwise stated therein. Subject to Section 2.4, the DSA may not be varied other than in writing executed by the duly authorized representatives of both Parties or via an online mechanism, if so provided explicitly for such purpose by us. No other terms and conditions shall apply.

**14.10. Order of Precedence.** In the event of a conflict or inconsistency the documents prevail in the following descending order: (i) Order Form; (ii) Specification Documents; (iii) the Data Privacy Terms; (iv) the Acceptable Use Policy; and (v) this document at hand. If a document is provided in different

languages, the English language version of that document prevails.

14.11. **Independent Contractors.** For all purposes, the Parties will be deemed to be independent contractors, and nothing contained in the DSA will be deemed to constitute a joint venture, partnership, employer-employee relationship or other agency relationship. Neither Party is, nor will either Party hold itself out to be, vested with any power or right to contractually bind or act on behalf of the other Party.

## 15. Definitions

15.1. **“Acceptable Use Policy”** means the document of the same name located at [www.mindsphere.io/terms](http://www.mindsphere.io/terms).

15.2. **“Account”** means one or more web-based accounts, individually or collectively, enabling access to and use of certain Services provided on the Platform through a unique URL (i.e. web-address) assigned by Siemens, including any subtenants established under the Account.

15.3. **“Affiliate”** means a corporation or other legal entity, directly or indirectly, owned or controlled by, or owning or controlling or under common control with one of the Parties where “control” shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation or other entity.

15.4. **“Applicable Law”** means the law specified in Section 14.5.

15.5. **“Application”** means software that is deployed on the Platform and/or interoperates with the Platform via Platform APIs.

15.6. **“Confidential Information”** means any information disclosed by a Party or its Affiliate to the other Party under or in connection with the DSA and which is – when disclosed – identified as “Confidential” or consists of information that, by its nature or context, is sufficient to put the receiving Party on notice of its confidential nature. In addition, any information and materials obtained by you in connection with the DSA or your receipt of Services, including the performance and availability of the Services, the Platform, information regarding Siemens’ or our business partners’ business strategies and practices, methodologies, trade secrets, know-how, pricing, technology, software, application programming interfaces, application programming interface signatures, product plans, and information regarding Siemens’ employees, clients, vendors and consultants, are deemed to be our Confidential Information. Confidential Information does not include information that: (i) is generally available to the public without breach of the DSA and without any wrongdoing; (ii) is or becomes available to the recipient from a source other than the Party who discloses the Confidential Information, provided that the recipient has no reason to believe that such source is itself bound by a confidentiality obligation or that such source has obtained the information through any wrongful or tortious conduct; (iii) was lawfully in the recipient’s possession prior to

receipt from the other Party without a corresponding obligation of confidentiality; (iv) is independently developed by the recipient without the use of, or reference to, Confidential Information; or (v) has been released by the disclosing Party for non-confidential use e.g. in a Specification Document.

15.7. **“Data Privacy Terms”** means the document of the same name located at [www.mindsphere.io/terms](http://www.mindsphere.io/terms).

15.8. **“High Risk System”** means a device or system that requires enhanced safety functionalities such as fail-safe or fault-tolerant features to maintain a safe state where it is reasonably foreseeable that failure of the device or system could lead directly to death, personal injury, or catastrophic property damage. Without limitation, High Risk Systems may be required in critical infrastructure, direct health support devices, aircraft, train, boat, or vehicle navigation or communication systems, air traffic control, weapons systems, nuclear facilities, power plants, medical systems and facilities, and transportation facilities.

15.9. **“Laws”** means any law, rule, regulation, norm, or directive including, without limitation, industry or company specific regulations, co-determination rights of the works council, data privacy, telecommunication, energy law, IT security law, export control, sanctions, and regulation pertaining to the protection of classified information.

15.10. **“Material”** means any software, sample code, scripts, libraries, software development kits, technology, documentation, and other proprietary material or information made available to you by or on behalf of us in relation to our provision of Services.

15.11. **“Order Form”** means a document, electronic form, or online instrument provided by Siemens for the ordering of Services.

15.12. **“Platform APIs”** means Siemens’ application programming interfaces that are integrated with the Platform or the Services. Platform APIs are part of the Platform and the Services.

15.13. **“Party”** means you or us, depending on the context.

15.14. **“Platform”** means a Siemens proprietary cloud-based platform solution on which the Services are provided. Platform includes Siemens’ operating system MindSphere as well as other Siemens branded cloud-based solutions that underlie software-as-a-service, platform-as-a-service, or managed service offerings from Siemens.

15.15. **“Services”** means (i) the cloud services as described in the Specification Documents and (ii) Materials.

15.16. **“Siemens”** means Siemens AG (Germany) and its Affiliates.

15.17. **“Specification Documents”** means the documents which describe and/or further govern the Services and which are referenced in the Order Form.

15.18. **“Subscription Term”** means the period for which a Service is agreed as specified in the Order Form.

15.19. **“Third Party”** means any person or legal entity other than you or Siemens. Third Party includes your Affiliates.

15.20. **“User”** means an individual who has access credentials to your Account, including individuals of Third Parties, or who is otherwise authorized by you to access your Account. Access to your Account includes access to any subtenant that you establish under your Account, to any Application associated with your Account, to Your Content, and/or the Services.

15.21. **“Your Content”** means any information, program, software, Application, code in any form, script, library, or data that is entered, uploaded onto, or stored on the Platform in connection with your or any User’s use of Services under your Account. Your Content excludes the Services and the Platform.

## 16. Country Specific Provisions

16.1. **Argentina.** These country specific provisions apply if either Party is located in Argentina. In such case, a new Section 14.12 shall be added to this document, as follows:

**Electronic Signature.** The execution or acceptance of the DSA by any of the Parties through an electronic signature (as such term is defined in Law 25,506) and or electronic mechanism such as a “click through” or “click and accept” mechanism, shall be considered valid and authentic. The Parties agree that for purposes of the DSA, electronic signatures shall have the same force and effect as handwritten or digital signatures and that the resulting agreement shall be binding and enforceable for both Parties.

16.2. **Brazil.** These country specific provisions apply if both Parties are located in Brazil. In such case:

Section 8.3 of this document shall be replaced as follows:

**Limitation on Claims.** Any claims against Siemens shall be brought no later than thirty-six (36) months after the event giving rise to the respective claim, after which all claims arising out of that event against Siemens shall be barred.

Section 14.4 of this document shall be replaced as follows:

**Dispute Resolution.** The Parties including their successors in any capacity hereby irrevocably agree to resolve any and all disputes arising out of or in connection with the DSA, including its existence, validity, enforceability, interpretation, performance, or termination (**“Dispute”**), exclusively through arbitration, administered by the center for arbitration and mediation of the Chamber Of Commerce Brazil-Canada (**“CAM-CCBC”**), in accordance with its arbitration rules (**“Arbitration Rules”**) and law 9.307/96. The arbitral tribunal shall be composed of three arbitrators appointed in accordance with the arbitration rules. The seat of arbitration shall be the City of São Paulo, State of São Paulo, Brazil and the language of arbitration shall be English. The proceedings shall be confidential. The Parties may seek judicial assistance in support

of arbitration through the interim relief measures provided in law 9.307/96, for which purposes the courts of the City of São Paulo, State of São Paulo, Brazil shall hold exclusive jurisdiction to the exclusion of any other. For the avoidance of doubt, a Party’s submission for judicial interim relief in support of arbitration shall not be construed or interpreted as a waiver by any of the Parties to the choice of arbitration as the exclusive method for resolving a Dispute.

Section 14.5 of this document shall be replaced as follows:

**Applicable Law.** The DSA shall be governed by and construed in accordance with the Laws of the Federative Republic of Brazil without giving effect to any choice-of-law rules that may require the application of the law of another jurisdiction. The UN Convention on Contracts for the International Sale of Goods shall not apply.

16.3. **USA.** These country specific provisions apply if both Parties are located in the USA. In such case, Section 14.4 of this document shall be replaced as follows:

**Venue.** For any claim, dispute or controversy arising out of or in connection with the DSA, including the formation, interpretation, amendment, breach or termination thereof, the Parties hereby irrevocably consent to the venue and jurisdiction of the federal courts located in the Southern District of New York.