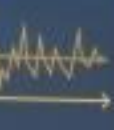




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*Ingenuity for life*

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# Siemens Sensformer™

Digital Services

Master Agreements – APAC

[siemens.com/sensformer](https://www.siemens.com/sensformer)



# Digital Services Master Agreement

July 2018 APAC.

## 1. Subject Matter and Scope

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

1.2. **DSMA.** This DSMA governs your use of certain Services provided to you by us from time to time on or in relation to a cloud-based Platform or other services, subject to our agreement on respective Order Forms. The DSMA incorporates by reference the Acceptable Use Policy and the Order Form. The foregoing documents, except the Order Form, or links to such documents will be available at [www.siemens.com/sensformer/terms](http://www.siemens.com/sensformer/terms) (the “Document Repository”)

1.3. **Definitions.** Certain capitalized terms used in this document are defined in Section 15. Other capitalized terms shall have the meaning given to them in this document.

1.4. **Contract Formation.** We are only obliged to provide you with the Services if we accept your order of Services through an Order Form.

1.5. **Out of Scope.** The Services always exclude (i) the provision of any software or services that are not provided to you by Siemens (including Applications or on-premise software provided by Third Parties and external websites), even if they interoperate with the Services, can be accessed from the Services or are offered on an online marketplace provided by Siemens; (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 or any data transmission from and to any other connection point or data center; and (iii) any hardware intended for the connection of devices, systems, or other equipment to the Platform. 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 Order Form. We will use commercially reasonable efforts to make the Services available to you, subject to operational requirements, including maintenance and security. Where

availability levels are specified in a Transaction Document, such provisions prevail.

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 the 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 the 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; and/or (iv) security risks. We will notify you of any material degradation of functionality or the discontinuation of a Service at least 90 days prior to the change effective date specified in the notice and you may terminate the degrading 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 remainder of the Subscription Term. We do not maintain prior versions of a Service.

2.4. **Changes to the DSMA.** The DSMA 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 the Order Form. Any change to the DSMA 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 Transaction Document. 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.

**2.5. Subcontractors.** To support the rendering of the Services, we may use personnel and resources in various countries, including subcontractors. We may engage our Affiliates and any other Third Party business partner as subcontractors for the provision of the Services and the use of such subcontractors or third parties is integral to Siemens' ability to provide this Service to you. You agree to provide all reasonable cooperation that, in our reasonable opinion, is required to transfer certain parts of the Service provision to existing or other subcontractors. Such subcontractors may impose additional terms on your use of this Service and you agree to abide by such terms. In addition, should a subcontractor introduce any new or modified terms related to your use of this Service during the Subscription Term, you will use your best efforts to comply with any such new or modified terms. The current terms and conditions of platform provider are located at [www.azure.microsoft.com/en-us/support/legal/](http://www.azure.microsoft.com/en-us/support/legal/)

**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 and Third Party Applications for Siemens' internal purposes, including: (i) for security and availability reasons; (ii) to the extent required to ensure compliance with the DSMA; (iii) to detect, prevent, and suspend any use of Services exceeding the permitted use under the DSMA, 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 to 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

**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 DSMA.

**2.8. Location of Service performance.** Services are provided at data centers and/or technical support at support centers which may be located outside your country of residence. A list of the locations of data centers and support centers is available in the M2M Platform product sheet.

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

**3.1. Use Rights.** We grant you the non-transferable, non-sublicensable, time-limited and revocable right to access and use, and permit Third Parties to access and use, the Services for your internal purposes as end-user, subject to the limitations set out in the DSMA. Where expressly permitted in the Order Form, you may also access and use and permit Third Parties to access and use Services. 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.

**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, any of your employees or any Third Party to whom you facilitate or permit access to the Services, and all liabilities or other consequences arising from such activities or use, as if these were your own acts. This does not apply to the extent a damage or breach is caused by our violation of the DSMA. 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 DSMA. Should you become aware of any violation of your obligations under the DSMA you will immediately terminate the relevant person's access to the Services. You acknowledge and agree that your Users who submit declarations and/or notifications to us (e.g. Order Forms) 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) 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. ii) not copy, sell, resell, license, transfer, assign, sublicense, rent, lease, or otherwise make available the Services or the Platform in whole or in part to any of your Affiliates or any Third Party (unless permitted under the DSMA or the applicable Order Form or required by Law), (iii) not translate, disassemble, decompile, reverse engineer or otherwise modify, tamper with, repair or attempt to discover the source code of any software contained in the Services (unless permitted under



the DSMA or the applicable Order Form or required by Law); and (iv) not create derivative works of, or based on, any parts of the Services or the Platform. You shall remain responsible for the security of your systems and of on-premise hardware and software.

**3.5. Obligations when Using Third Party Applications.** If you use our Services to access an Application which you developed or which is provided to you by a Third Party (“Third Party Application”), you acknowledge and agree that: (i) any contractual relationship regarding the use of a Third Party Application and any related services or product is solely between you and the provider of the Third Party Application; (ii) Siemens is under no obligation to test, validate or otherwise review Third Party Applications; (iii) Siemens does not assume any obligation or responsibility with regard to the use of Third Party Applications, its support or any other related services or products, whether or not they are designated by Siemens as “certified” or otherwise; and (iv) the use of a Third Party Application may enable the provider of the Third Party Application to collect and use Your Content and data regarding a User’s usage of the Third Party Application and/or to transfer copies of Your Content and usage data of the Third Party Application outside the Platform. Siemens shall not be responsible for any consequences resulting from any access to Your Content through a Third Party Application.

**3.6. 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 your responsibility for: (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 your own 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 DSMA 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 prevent the security of Siemens’ systems from being affected.

**3.7. Information Obligations.** You will provide information or other materials related to Your Content as we reasonably request to verify your compliance with the DSMA. 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; and (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.

**3.8. 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 a Service 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 the interpretation of the outcome from such processing and any reliance on such outcome.

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

Not applicable

#### **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 DSMA. 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 right, 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 related to the Services and/or the Platform provided by you or on your behalf.

#### **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-confirming Service so that it conforms to the warranty, or (ii) if such restoration may not be, in our opinion, available within a reasonable time or with reasonable efforts, to terminate the non-confirming Service and refund any prepaid amounts for such Service on a pro-rata basis for the remainder of the Subscription Term.

**6.2. LIMITATIONS.** SECTION 6.1 SETS OUT THE EXCLUSIVE WARRANTY FROM US AND IT REPLACES ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, OR ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PUR-

POSE, COURSE OF DEALING AND 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 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 prompt written notice of such claim, 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; or (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 reasonably available, 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 DSMA.

**7.2. Indemnity by You.** You will indemnify Siemens and its suppliers and contractors and each of their respective em-

ployees, 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 DSMA, (iv) the operation, your combination or use of the Services in conjunction with any of Your Content and/or in conjunction with any Third Party software, materials and/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 incorrect statements contained in information material which you use or provide to us for use with Third Parties; (viii) any claims by any User or any Third Party to which you facilitate or permit access to the Services; (ix) the use of your trademarks, designations and logos as authorized by you; (x) your use of Siemens' trademarks, designations and logos in breach of the authorization granted to you in an Order Form; and (xi) 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 DSMA, regardless of the form of action, whether in contract, tort (including negligence) or otherwise, will not exceed, in the aggregate, the maximum of EUR 100,000.00 (onehundredthousand) (or equivalent in local currency) per event.

**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, loss of use, loss of interest, income, profit or savings, loss arising in connection with your use of the Third Party Application or any related services, 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; (iii) in cases of bodily



injuries or death caused by our negligence; and (iv) in cases of fraud or fraudulent misrepresentation.

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 immediately upon notice 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. Term, Termination**

10.1. **Termination.** The DSMA takes effect upon our acceptance of the Order Form.

10.1.1. **Termination for Convenience.** The Subscription Term and any renewal of a Subscription Term will be specified in the Order Form. During a Subscription Term, the DSMA and/or a Service may not be terminated for convenience.

10.1.2. **Termination for Cause.** Either Party may terminate a Service for cause in case of the other Party's material breach, if such breach remains uncured for a period of 30 days from receipt of notice of 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 DSMA for cause include: (i) acts or omissions that entitle us to a suspension or limitation as per 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 and/or your Affiliates which, 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.

10.2. **Effect of Termination.** On termination of a Service for any reason, subject to Section 10.3, you shall immediately: (i) cease using the affected Services; and (ii) return or, if instructed by us, destroy or delete all Materials relating to the affected Services. The termination of the DSMA shall be deemed to constitute the termination of each of the Services. Except as otherwise set out in the DSMA, 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 10.1.2. (i), we will refund a reasonable portion of any prepaid amounts for the applicable Service for the remainder of the Subscription Term. Any terms and conditions of the DSMA, which by their nature should survive a termination or expiry, shall survive and continue in full force and effect after such termination or expiry.

10.3. **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 DSMA 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 for the implementation of the DSMA or as otherwise permitted by the DSMA 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 are bound to appropriate confidentiality obligations and who need to know that information for the implementation of the DSMA or who are otherwise permitted by the DSMA to use this information

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 DSMA, (iii) as required by Laws or governmental order. Should any Third Party (including governmental bodies) contact us with a request to disclose Confidential Information and/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 prevented from doing so by Laws or governmental order. If we are compelled to disclose Confidential Information and/or any of Your Content to any Third Party,

we will promptly notify you and provide a copy of the request unless we are prevented from doing so by Laws or governmental order. We may further disclose Confidential Information and/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) ensure that Your Content is neither classified under EU / German (AL = N) nor US export control regulations ("not subject to EAR" [ECCN = N] or, if subject to EAR, not classified under CCL [ECCN = 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 particular 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 DSMA if such performance is prevented by any impediments arising out of national or international foreign trade or customs requirements or 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, Test or Previews**

**13.1. Provision of Services.** Where we enable you to access and use Services free of charge, including but not limited to, certain free online support services, or 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 further limitations in the DSMA, 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.

**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 their 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 EUR 1,000.00 (or equivalent in local currency).

## **14. General Provisions**

**14.1. Assignment.** The DSMA will extend to and be binding upon the successors and permitted assigns of the Parties. We may assign the DSMA or any right granted therein or individual orders to any of our Affiliates that assume our obligations. You shall not assign the DSMA, in whole or in part, or any of the rights granted therein 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 DSMA 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, acts of sabotage or terrorism.

**14.4. Dispute Resolution.** All disputes arising out of or in connection with the DSMA, 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 Singapore. 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 DSMA shall be governed by and construed in accordance with the Laws of Singapore, 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 DSMA 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 the receipt of a notice by you 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 [www.support.energy@siemens.com](mailto:www.support.energy@siemens.com). 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 DSMA 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. Update of Terms.** In addition to other rights we have under the DSMA to amend terms and conditions, we reserve the right to update or modify the terms of the DSMA from time to time to reflect, in particular, updates to and further developments of Services in accordance with Section 3.3, or changes in Laws (the terms of the DSMA affected by such update or modification referred to as "Updated Terms"). We will inform you about any Updated Terms by providing you access to the Updated Terms and by giving you at least thirty (30) days' prior notice, unless (i) we notify you of a shorter notice period and such shorter notice is necessary to implement changes in Laws (including to comply with an injunction or judgment) or to reflect any change in the Services agreed with or imposed by our subcontractors or (ii) you agree with us on a new or additional Order Form during such thirty (30) day period in which case the Updated Terms shall apply also to Services which we render to you on the basis of other Order Forms. You may terminate the Services affected by the Updated Terms prior to the end of the notification period if the continuance of the Services with the Updated Terms has a material adverse effect on (i) your rights, obligations, liabilities or responsibilities with respect to the Services

or (ii) your use of the Services. If you have not made use of your termination right as per the previous sentence, the Updated Terms shall become binding on the Parties on the expiry of such notification period. The Parties' other termination rights shall remain unaffected. In the event of termination of Services, access will be not be granted from the time of effectiveness of termination and consequences as set out under article 10.2. and 10.3 shall apply.

**14.9. 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, Siemens and you shall have the limited right to disclose the terms of the DSMA to their bona fide financial, tax and legal advisors subject to appropriate confidentiality obligations.

**14.10. Data Privacy.** Both Parties shall comply with Laws governing the protection of personal data.

**14.11. Entire Agreement.** The DSMA 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 DSMA 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.

**14.12. Order of precedence.** In the event of a conflict or inconsistency the documents prevail in the following descending order: (i) Order Form; , (ii) the Acceptable Use Policy; and (iii) this document at hand. If a document is provided in different languages, the English language version of that document prevails.

**14.13. Independent Contractors.** For all purposes, the Parties will be deemed to be independent contractors and nothing contained in the DSMA 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 policy located at [www.siemens.com/sensformer/terms](http://www.siemens.com/sensformer/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 DSMA 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 DSMA 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 DSMA 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; (v) has been released by the disclosing Party for non-confidential use.

15.7. **"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.

15.8. **"Laws"** means any law, rule, regulation, norm, and 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.

15.9. **"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.

15.10. **"Order Form"** means a document, electronic form or an online instrument provided by Siemens for the ordering of Services and their description.

15.11. **"Party"** means you and/or us, depending on the context.

15.12. **"Platform"** means a Siemens cloud-based platform solution on which the Services are provided. Platform includes cloud-based solutions that underlie software-as-a-service, platform-as-a-service or managed service offerings from Siemens.

15.13. **"Platform APIs"** means Siemens' application programming interfaces that are integrated with the Platform. Platform APIs are part of the Platform and the Services.

15.14. **"Services"** means the services as described in the Order Form and Materials.

15.15. **"Siemens"** means Siemens AG (Germany) and its Affiliates.

15.16. **"Subscription Term"** means the period for which a Service is agreed as specified in the Order Form.

15.17. **"Third Party"** means any person or legal entity other than you or Siemens. Third Party includes your Affiliates.

15.18. **"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.

15.19. **"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. **Australia.** If you are located in Australia, references to the «Applicable Law» contained in Sections 6.2, 8.4 and 13.4 shall be replaced by references to the «Applicable Law and subject to Section 8.6».

A new Section 8.6 is added as follows:

**Non-Excludable Provisions.** Nothing in this DSMA excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by legislation that cannot lawfully be excluded or limited, including, to the extent applicable under the Australian Consumer Law in the Competition and Consumer Act 2010 (Cth) (a "Non-Excludable Provision"). To the maximum extent permitted by law, our entire liability for breach of a Non-Excludable Provision in relation to this DSMA is limited to (at our option) re-supplying Services or paying the cost of having Services resupplied.

16.2. **India.** These country specific provisions apply if both Parties are located in India. In such case: Sections 8.3 of this document shall be replaced as follows:

**Limitation on Claims.** Any claims against Siemens shall be brought by serving a written notice to Siemens no later than twelve (12) months from the event giving rise to the respective claim.

Sections 14.4 of this document shall be replaced as follows:

**Dispute Resolution.** All disputes arising out of or in connection with the DSMA, 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 Delhi, India. 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.

Sections 14.5 of this document shall be replaced as follows:

**Applicable Law.** The DSMA shall be governed by and construed in accordance with the Laws of India, 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. **Japan.** These country specific provisions apply if both Parties are located in Japan. In such case Section 8.4 of this document shall be replaced as follows:

**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 the Applicable Law; (ii) in cases of our willful misconduct and gross negligence; (iii) in cases of bodily injuries or death caused by our negligence; and (iv) in cases of our fraud or fraudulent misrepresentation.

16.4. **Malaysia.** These country specific provisions apply if either of the Parties are located in Malaysia. In such case Section 8.3 of this document shall be replaced as follows:

**Limitation on Claims.** Any claims against Siemens shall be brought by serving a written notice to Siemens no later than twelve (12) months after the event giving rise to the respective claim, after which no claims arising out of that event may be made against Siemens.

16.5. **Pakistan.** These country specific provisions apply if you are located in Pakistan. In such case the following sentence shall be added after the second sentence of Section 4.1:

In the event any payments are required to be paid outside Pakistan, you hereby represent that you have obtained all licenses, approvals and permits (including approval by the State Bank of Pakistan) for remittance of all amounts payable to us under this DSMA.

16.6. **South Korea.** These country specific provisions apply if both Parties are located in Korea. In such case Section 8.4. of this document shall be replaced as follows:

**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 gross negligence; (iv) in cases of fraud or fraudulent misrepresentation.

16.7. **Taiwan.** These country specific provisions apply if you are located in Taiwan. Section 8.4 of this document shall be replaced as follows:

**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) to the extent that liability cannot be limited or excluded according to applicable consumer protection or product liability laws; (iii) in cases of willful misconduct and gross negligence; (iv) in cases of bodily injuries or death caused by our negligence; and (v) in cases of fraud or fraudulent misrepresentation.