



## End User License Agreement for Mobile Applications for Apple® operating systems

Status May 2020

### A. General Conditions for Free of charge and Commercial Mobile Applications for Apple operating systems

By downloading and/or by using the App You confirm that You have read and understood this Agreement and that You have accepted these terms and conditions.

You acknowledge that this Agreement is concluded between You and Siemens, and not with the provider of the online marketplace where the App has been offered. You further acknowledge that Siemens is solely responsible for the licensed App, the content thereof and for any claims, any warranty and any support relating to the licensed App or this Agreement.

You acknowledge that You are responsible for and comply with applicable third-party terms when using Your App (e.g. a wireless data service agreement).

#### 1. Definitions

1. "Agreement" means this End User License Agreement for Mobile Applications.
2. "Siemens" means the company named in the imprint.
3. "App" includes any Free of charge App and Commercial App and means any software – in particular mobile application software –, documentation and information that is made available to You by Siemens under this Agreement.
4. "Free of charge App" is an App which is delivered free of charge.
5. "Commercial App" is an App Siemens will charge a fee for or you have used an In-App Purchase functionality for a Free of charge App.
6. "Country" means the country in which You have your domicile.
7. "In-App-Purchase functionality" means that you have already a Free of charge App and you buy an additional fee-based content, functionality or service of this App. Your App then shall be deemed as a Commercial App.
8. "You" and "Your" refers to the purchaser of the App pursuant to this Agreement and may refer to a natural person or to a legal entity including, but not limited to, a corporation, partnership or a limited liability company.

#### 2. Proprietary Rights/Third party software

The App is protected by copyright laws and other intellectual property laws. Title to this App and any intellectual property rights in the App will at all times remain with Siemens and its third-party suppliers.

In the case the App contains open source software or similar third-party software ("OSS") the OSS is listed in the info section of the App. You are entitled to use the OSS in accordance with the respective license conditions of the OSS. The license conditions of the respective OSS shall prevail over section A.4 of the Agreement with respect to the use of the OSS. If the license conditions of the OSS require the distribution of the source code of such OSS Siemens shall provide such source code on request against payment of shipping and handling charges.

#### 3. Data Use Rights

In connection with the use of the App, Siemens (or Siemens' service providers or suppliers) may obtain, receive or collect data or information, including system-specific data or information or other content, from you or other parties using or having used the App ("Your Data").

You hereby grant Siemens (and Siemens' service providers or suppliers when acting on Siemens' behalf) a non-exclusive, transferable, sublicensable, worldwide, royalty-free, perpetual, nonrevocable license under applicable copyrights and other

intellectual property rights, if any, in all Your Data to provide the App to you and to create derivative works and aggregated data derived from Your Data, Siemens customers and other sources, including without limitation, comparative data sets, statistical analyses, reports and related services (collectively, "Siemens Data"). Siemens utilizes Siemens Data as it sees fit for any purpose.

For processing of any personal data (e.g., names, addresses, telephone numbers, e-mail addresses or complete IP addresses) the parties shall comply with applicable laws on data privacy protection. The Privacy Notice is listed in the info section of the App.

You represent and warrant that You have all rights, permissions and consents necessary to aforesaid use of Your Data as part of the App, and permit Siemens to exercise all of its rights under this Agreement. You, not Siemens nor Siemens' service providers or suppliers, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness, of all of Your Data. Neither Siemens nor Siemens's service providers or suppliers shall be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any of Your

#### 4. Use rights

Siemens grants to You a nonexclusive, non-sublicensable right to use the App solely on Your iOS device within the limits of this Agreement, in particular, but not limited to the export restrictions contained herein.

Siemens reserves all rights not expressly granted to You.

#### 5. Export

Siemens shall not be obligated to fulfill this Agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

You may not use or otherwise export or re-export the App except as authorized by Swiss law, U.S. law, German law, European law and other applicable laws, in particular but not limited to the laws of the jurisdiction in which the App was obtained. In particular, but without limitation, the App may not be exported or re-exported (i) into any country embargoed by the U.S. or other applicable export restriction laws or (ii) to anyone on the U.S. Treasury Department's Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List or is on Title 15, Part 740 Supplement 1 Country Group E of the U.S. code of Federal Regulation or on any other person lists of other applicable export restriction laws. By downloading and/or using the App, You represent and warrant that You are not located in any such country or on any such list. You also agree that You will not use the App in such countries or for any purposes prohibited by applicable law, including, without limitation, the development, design, manufacture, or production of nuclear, missile, or chemical or biological weapons.

To the extent necessary for the purpose of export control audits conducted by government authorities or by Siemens, You shall promptly make available to Siemens, in response to an appropriate request, all information concerning the final recipient, final destination and intended use of App made available by Siemens, as well as the relevant export control restrictions in effect.

You shall fully indemnify and hold Siemens harmless for all claims asserted by government authorities or other third parties against Siemens for non-compliance with the above-mentioned export control obligations by You, and undertake to reimburse Siemens for all losses and expenses incurred in this connection, unless You are not responsible for the

breach of obligations. The foregoing does not entail a reversal of the burden of proof.

## 6. Choice of Law and Jurisdictions

If Siemens refers to Siemens Switzerland AG or Siemens Aktiengesellschaft as defined herein, then the choice of law and jurisdiction shall be as follows: This Agreement shall be governed by the substantive law of Switzerland without reference to that jurisdiction's conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. All disputes arising out of or in connection with this Agreement shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce. The seat of arbitration shall be Zurich, Switzerland. The language to be used in the arbitration proceeding shall be English.

If Siemens refers to Siemens Industry, Inc. as defined herein, then the choice of law and jurisdiction shall be as follows: All the disputes arising out of or in connection with this Agreement shall be resolved in the United States, by a state or federal court located in the State of Illinois. Each party hereto irrevocably consents to personal jurisdiction of such court and that venue is properly laid in such court.

## 7. Taxes

Any and all taxes ("Taxes") except withholding tax, charges and/or other duties imposed by the laws of Your country on any payments to be made by You related to this App under or in connection with this Agreement, shall be borne and paid by You.

## 8. Security information

Siemens provides products and solutions with industrial security functions that support the secure operation of plants, systems, machines and networks.

In order to protect plants, systems, machines and networks against cyber threats, it is necessary to implement – and continuously maintain – a holistic, state-of-the-art industrial security concept. Siemens' products and solutions only form one element of such a concept.

You are responsible to prevent unauthorized access to Your plants, systems, machines and networks. Such systems, machines and components should only be connected to the enterprise network or the internet if and to the extent such a connection is necessary and only when appropriate security measures (e.g. firewalls and/or network segmentation) are in place. Additionally, Siemens guidance on appropriate security measures should be taken into account.

Please visit hereto <https://www.siemens.com/industrialsecurity>.

Siemens' products and solutions undergo continuous development to make them more secure. Siemens strongly recommends that updates are applied as soon as available and that the latest product versions are used. Use of product versions that are no longer supported, and failure to apply latest updates may increase customer's exposure to cyber threats.

To stay informed about the latest security threats, patches and other related measures, published, among, please subscribe to the Siemens Industrial Security RSS Feed under <https://www.siemens.com/industrialsecurity> and visit <http://www.siemens.com/cert/en/cert-security-advisories.htm>.

## 9. Siemens contact address

For questions, complaints or claims regarding the App You can contact Siemens under the contact details in the imprint.

## 10. Enforceability and Severability

You agree that Siemens and the provider of the online marketplace where the App has been offered may enforce this Agreement as it relates to their products and services directly against You.

If any provision of this Agreement is found to be void or unenforceable, it will not affect the validity of any other provision of this Agreement and those provisions will remain valid and enforceable according to their terms.

Modifications to, amendments of and supplementary agreements to this Agreement shall not be binding unless made in writing and signed by the duly authorized representatives of the contract partners. Any waiver of this written form requirement shall likewise be in writing.

Statements per email or other electronic communication shall not be sufficient to fulfill this written form requirement.

## B. Additional Conditions for Free of charge Apps

The following conditions apply only for Free charge Apps.

### No Warranty, Limited Liability

1. The Free of Charge App is provided to You on an "As-is" and "As available" basis, without any maintenance services. Siemens shall correct errors at its own discretion by supplying an update in which the error has been remedied.
2. Siemens, its third party suppliers and the provider of the online marketplace where the Free of Charge App has been offered make no warranties of any kind, including any implied warranty of merchantability or fitness for any particular purpose, non-existence of defects, or against infringement, with respect to the Free of Charge App provided under and pursuant to this Agreement.
3. By reason of the free-of-charge supply of the Free of Charge App and unless otherwise provided for in the Agreement, You shall have no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the contract or tort. Any and all liability in connection with the use of the Free of Charge App and for defects in title related thereto shall be excluded.

## C. Additional Conditions for Commercial Apps

The following conditions apply only for Commercial Apps and for used In-App-Purchase functionalities.

### 1. Defects as to Quality

Siemens shall be liable for defects as to quality ("Defects") as follows:

1. Defective Commercial Apps shall be, at Siemens' discretion, repaired, replaced or provided again free of charge, provided that the reason for the defect had already existed at the time when the risk passed.
2. Claims for repair or replacement are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations; the same shall apply mutatis mutandis in the case of rescission and reduction. This shall not apply in the case of intent, fraudulent concealment of the defect or non-compliance with guaranteed characteristics. The legal provisions regarding suspension of the statute of limitations and recommencement of limitation periods shall be unaffected.
- 1.3 Notifications of a Defect by You shall be given in written form without undue delay.
4. Siemens shall be given the opportunity to repair or to replace the defective Commercial Apps within a reasonable period of time.
5. If repair or replacement is unsuccessful, You are entitled to rescind the Agreement or reduce the remuneration; any claims for damages You may have according to section C.1.7 shall be unaffected.
6. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, or claims based on particular external influences not assumed under the Agreement, or from non-reproducible software errors. Claims based on Defects attributable to improper modifications or repair work carried out by You or third parties and the consequences thereof are likewise excluded.
7. You shall have no claim for damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, the guaranteed characteristics are not complied with, in the case of life, bodily injury or damage to health, and/or intentionally or grossly negligent breach of Agreement on the part of Siemens. The above provisions do not imply a change in the burden of proof to the detriment of You.
8. Any other or additional claims of You exceeding the claims provided for in this section C.1 based on a Defect are excluded.

## 2. Industrial Property Rights and Copyrights; Defects in Title

1. Unless otherwise agreed, Siemens shall provide the Commercial Apps free from conflicting third parties' industrial property rights and copyrights ("IPR") with respect to the country of the place of delivery only. If a third party asserts a justified claim against You based on an infringement of an IPR by the Commercial App made by Siemens and used in conformity with the Agreement, Siemens shall be liable to You within the time period stipulated in section C.1.2 as follows:

- (i) Siemens shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Commercial App concerned or whether to modify the Commercial App such that it no longer infringes the IPR or replace it. If this would be impossible for Siemens under reasonable conditions, You may rescind the Agreement or reduce the remuneration pursuant to the applicable statutory provisions;
- (ii) The above obligations of Siemens shall apply only if You (i) immediately notify Siemens of any such claim asserted by the third party in written form, (ii) do not concede the existence of an infringement and (iii) leave any protective measures and settlement negotiations to Siemens' discretion. If You stop using the Commercial App in order to reduce the damage or for other good reason, You shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
- (iii) Siemens' liability to pay damages is governed by section C.4 of the Agreement;

2. Claims of You shall be excluded if You are responsible for the infringement of an IPR.

3. Claims of You are also excluded if the infringement of the IPR is caused by specifications made by You, by a type of use not foreseeable by Siemens or by the Commercial App being modified by You or being used together with products not provided by Siemens.

4. Any other claims of You against Siemens or its agents or any such claims exceeding the claims provided for in this section C.2, based on a defect in title, are excluded.

### 3. Refund of purchase price

Provided that Siemens fails to conform to the warranty under sections C.1 and C.2, You may notify the provider of the online marketplace and the provider of the online marketplace will refund You the purchase price for the Commercial App. Any additional claims against the provider of the online marketplace are excluded.

### 4. General Liability

1. Unless otherwise provided for in the Agreement, You have no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the Agreement or tort.

2. The above provision does not imply a change in the burden of proof to the detriment of You.

## D. Country Specific Provisions

1. **Egypt.** If You are located in Egypt, the limitations and exclusions in sections B.3 and C.4.1 shall not apply: (i) in cases of willful misconduct and gross negligence; (ii) in cases of bodily injuries or death caused by Siemens' negligence; (iii) in cases of fraud or fraudulent misrepresentation; or (iv) to the extent that liability cannot be limited or excluded according to applicable law.

### 2. Germany.

2.1. If both parties are located in Germany, the limitations and exclusions in sections B.3 and C.4.1 shall not apply: (i) to contractual obligations the fulfillment of which is essential for the due and proper performance of this Agreement (*Kardinalpflichten*) provided that Siemens' liability is limited to damage or loss which is reasonably foreseeable; (ii) in cases of willful misconduct and gross negligence; (iii) in cases of bodily injuries or death caused by Siemens', Siemens' legal representatives', or Siemens' subcontractors' negligence; (iv) in cases of fraud or fraudulent misrepresentation; or (v) to the extent that liability cannot be limited or excluded according to applicable product liability law.

3. **Portugal.** If either party is located in Portugal, the limitations and exclusions in sections B.3 and C.4.1 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 Siemens' negligence; or (iv) in cases of fraud or fraudulent misrepresentations.

4. **Qatar.** If either party is located in Qatar, the limitations and exclusions in sections B.3 and C.4.1 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 Siemens' negligence; or (iv) in cases of fraud or fraudulent misrepresentation.

5. **South Africa.** If You are located in South Africa, the limitations and exclusions in sections B.3 and C.4.1 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 Siemens' negligence; or (iv) in cases of fraud or fraudulent misrepresentation.

6. **Taiwan Area.** If You are located in Taiwan Area, the limitations and exclusions in sections B.3 and C.4.1 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 Siemens' negligence; or (v) in cases of fraud or fraudulent misrepresentation.