

Siemens Xcelerator Marketplace

Partner Terms



These Siemens Xcelerator Marketplace Partner Terms (“Marketplace Terms”) are entered into between Siemens Aktiengesellschaft (“Siemens”) and the Partner identified in the registration form who accepted these terms through an electronic system specified by Siemens. These Marketplace Terms govern the activities which the parties undertake on and connected with the Siemens Xcelerator Marketplace. Any pre-existing agreements between the parties remain unaffected by these Marketplace Terms.

1. Definitions

“**Siemens Xcelerator Marketplace**” or “**Marketplace**” means an online marketplace operated by or on behalf of Siemens allowing Partner to Promote Partner Products and/or combined solutions including Partner Products available at <https://marketplace.siemens.com/s/>.

“**Promote**” or “**Promotion**” means listing the Partner Products on the Marketplace and either linking to an existing marketplace where customers can obtain or purchase the Partner Products or providing contact features routing to Partner for the Partner Product.

“**Marketing Material**” means any documents, information, and other content provided by or on behalf of Partner for or in connection with the marketing and/or provision of the Partner Product. Marketing Material includes trademarks, designations and logos in the form provided by Partner to Siemens (with any modifications to optimize their viewing). Marketing Material is part of the Partner Product.

“**Marketplace Services**” means the services provided by Siemens to enable Partner to engage in the Promotion of Partner Products.

“**Partner Product**” means any software (including edge applications) or cloud services which Partner promotes to customers through the Marketplace, any IoT-enabled hardware, any related technical support Partner provides and content description information and any related Marketing Material or any other service offerings of Partner.

“**Party**” means Partner and/or Siemens, depending on the context.

2. Siemens Xcelerator Marketplace.

- 2.1. **Siemens Xcelerator Partner.** The Marketplace is currently a digital product catalogue which enables customers and customer prospects to find, explore, learn about Siemens products, solutions consisting of a combination of Siemens’ and Partner’s Products and/or Partner Products. Siemens aims to onboard partner products (offerings) which complement Siemens’s solutions, contribute to the Topics and Vertical Markets defined for the Marketplace and add value to the customers. These partner offerings can be developed by partners on a continuous basis, at their own expense. A Partner on the Siemens Xcelerator Marketplace can also be referred to as “Partner”, the offering of a Partner as “Partner Offering”.
- 2.2. **Submission.** Partner is responsible for (i) the evaluation and testing of the Partner Product as to its technology, functionality, performance, security, and user interface; (ii) compliance of the Partner Product with the Partner Offering requirements as described in the Partner Guide available on the partner page of the Marketplace and any other requirements set out in these Marketplace Terms.
- 2.3. **Placement; No Guarantee.** The type of placement, category or order in which the listing of a Partner Product occurs on the Marketplace will be neutral with regard to the origin of offerings and is subject to the criteria identified in the Partner Offerings Guidelines and Siemens will take into consideration Partner’s requests; the ultimate placement however will be subject to Siemens’ sole discretion. Siemens does not guarantee that any Partner Product listed on the Marketplace will sell, that Partner will make any particular amount of money in promoting or selling Partner Products on the Marketplace.
- 2.4. **Rights in the Siemens Xcelerator Marketplace and Siemens Xcelerator Marketplace Services.** All rights, title, and interest in and to the Marketplace and the Marketplace 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 affiliates, its business partners, and/or licensors.
- 2.5. **Rights in the Partner Product.** During the term of these Marketplace Terms, Partner grants Siemens, its affiliated companies and its business partners a worldwide, nonexclusive, transferable, sub-licensable, royalty-free right to: (i) list, promote, and otherwise digitally make available the Marketing Material on the Marketplace; (ii) use Partner’s Marketing Material as authorized by Partner; and (iii) access, display, promote, and otherwise use the Partner Product(s) in connection with demonstrating it to potential customers.
- 2.6. **General Use Restrictions.** Unless otherwise provided in these Marketplace Terms, Partner will not cause or permit the resale, transfer, sublicensing, or publication of any Marketplace Service, or use it for the benefit of any third party without the prior written consent of Siemens. Partner will not use Marketplace Services for the purpose of developing or enhancing any product that is competitive with the Marketplace or any Marketplace Service. The restrictions set out in this section do not apply to the extent they conflict with mandatory applicable law.
- 2.7. **Warranty; Support; Availability.** Siemens provides the Marketplace “as is” without warranty, indemnity or other commitments. Limited general support for the Marketplace is available via the following e-mail address: marketplace.gbs@siemens.com. Partner can email issues to Siemens in English language. Siemens reserves the right to interrupt the availability of the Marketplace and/or Marketplace Services to conduct maintenance or perform updates or other changes, whether scheduled or unscheduled, in Siemens’ sole discretion.

- 2.8. **Ratings and Feedback.** Siemens may implement mechanisms that rate, or allow customers or users to rate, and provide feedback about a Partner Product, Partner's performance in connection with a Partner Product and the Marketplace. Siemens may make these ratings and feedback publicly available.
- 2.9. **Changes & Remuneration.** As the Marketplace evolves over time, Siemens reserves the right to change these Marketplace Terms or any Marketplace Service provided hereunder from time to time, amongst other Siemens may charge Partner for the marketing of Partner Products subject to prior written approval of the Partner. Siemens will notify Partner of any material changes at least 60 days prior to the change effective date specified in the notice. If the change has a material adverse impact on Partner and Partner does not agree to the change, Partner may terminate these Marketplace Terms 30 days prior to the change effective date. For the avoidance of doubt, any transactions of Partner Products will be subject of additional terms to be agreed upon in a separate document.
- 2.10. **Responsibility for the Partner Product.** Partner is responsible for the Partner Product(s) and any related Marketing Material. Partner in particular represents and warrants the following: (i) Partner owns all rights necessary to distribute each Partner Product listed on the Marketplace as contemplated by these Marketplace Terms; (ii) each Partner Product conforms in all respects to the description and documentation made available by Partner on the Marketplace and otherwise; (iii) no Partner Product infringes any third party's intellectual property rights; (iv) each Partner Product (including information about applicable fees) and all Marketing Material are, at all times, accurate, complete, not misleading, and in compliance with applicable law and the terms of the Marketplace Terms, and in particular comply with privacy and data protection laws and meet any security or other standards of the industries for which they are intended or useful; (v) each Partner Product can be legally distributed in the countries where the Marketplace is available in accordance with the Export Laws applicable to such distribution and (vi) Partner shall update Marketing Material for Marketplace and provide it to Siemens prior to any update/changes to the Partner Products. Partner will indemnify Siemens and its affiliated companies against any third-party claims, damages, fines, and cost (including attorney's fees and expenses) relating in any way to (i) any breach of these Marketplace Terms by Partner or (ii) any violation of laws or regulations, or rights of others by Partner Products presented on the Marketplace.
- 2.11. **Partner Feedback.** If Partner provides any ideas or feedback regarding the Marketplace or any Marketplace Service, including suggestions for changes or enhancements, support requests and error corrections (collectively "Feedback"), Feedback may be used by Siemens without condition or restriction.

3. Term, Termination and Suspension

- 3.1 **Term.** These Marketplace Terms become effective upon digital signature by both Parties for an indefinite term.
- 3.2 **Termination.** Siemens and Partner may terminate these Marketplace Terms for convenience at any time with 60 days prior written notice. Either Party may terminate these Marketplace Terms with immediate effect in the event of the other Party's material breach of these Marketplace Terms which remains uncured for a period of 30 days from receipt of notice specifying the breach by the other Party. Siemens may immediately terminate these Marketplace Terms upon notice to Partner (i) for reasonable cause, including, without limitation, Partner's non-compliance with the Partner Offerings Guideline, (ii) Partner's filing for bankruptcy or having bankruptcy proceedings filed against it, (iii) Partner ceasing to do business, or (ii) in order to comply with applicable law or the requests of government authorities.
- 3.3 **Effect of Termination.** Upon effectiveness of any termination of these Marketplace Terms, Siemens may take down Partner as an Partner and Partner Products from the Marketplace.

4. Export Control

- 4.1 Partner shall comply with all applicable sanctions, embargoes and (re-)export control regulations, and, in any event, with those of the European Union, the United States of America and the jurisdiction in which the Marketplace is made available to the Partner (collectively "Export Regulations").
- 4.2 In particular, Partner shall not, unless permitted by the Export Regulations or respective governmental licenses or approvals, (i) access or use the Marketplace from any location prohibited by or subject to comprehensive sanctions (currently Cuba, Iran, North Korea, Syria, and the Crimea, Donnetsk and Luhansk regions of Ukraine) or to license requirements according to the Export Regulations; (ii) grant access to, transfer or otherwise make available Marketplace to any individual or entity designated on a sanctioned party list of the Export Regulations; (iii) use the Marketplace for any purpose prohibited by the Export Regulations (e.g. use in connection with armaments, nuclear technology or weapons); (iv) upload or provide for upload to the Marketplace any content unless it is non-controlled (e.g. in the EU: AL = N; in the U.S.: ECCN = N or EAR99).
- 4.3 Siemens shall not be obligated to fulfill any commitment 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.

5. Code of Conduct

The Partner represents and warrants that it, its employees and any party acting on its behalf will adhere to the [Code of Conduct](#).

6. General & Liability

- 4.4 These Marketplace Terms stipulate conclusively the rights and obligations of the parties with respect to its subject matter. These Marketplace Terms and any amendment hereto must be executed by all parties in writing or via a tool for electronic signatures. Neither party may assign its rights or obligations without the prior written consent of the other, except that Siemens may assign to

an affiliated entity or an acquirer of all or substantially all of the business to which the Marketplace Terms pertains. The rights and claims granted to Siemens under these Marketplace Terms shall also apply to the benefit of Siemens' affiliated entities.

4.5 Siemens' liability for defects shall be determined in accordance with Section 2.7. Any further liability of Siemens is excluded unless required by law, e.g. under the Act on Product Liability or in cases of willful misconduct, gross negligence, personal injury or death, failure to meet guaranteed characteristics, fraudulent concealment of a defect or in case of breach of fundamental contractual obligations.

7. Applicable Law, Dispute Resolution

These Marketplace Terms will be governed by the substantive laws, excluding choice of law rules, of the Federal Republic of Germany. All disputes arising out of or in connection with these Marketplace Terms shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. The seat of arbitration shall be Munich, Germany. The language to be used in the arbitration proceeding shall be English.

Partner

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