

SIEMENS VersiCharge App End User License Agreement and Terms of Use for Android

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Status July 2020

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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, then 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 affiliates as well as 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 affiliates as well as 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 in consideration for Siemens providing 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 shall utilize 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 Data.

4. Use rights

Siemens grants to You a non-exclusive, non-sublicensable right to use the App solely on Your Android™ 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 respecting claims asserted by government authorities or other third parties against Siemens for non-compliance with the above-mentioned export control obligations by You, and shall 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

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.

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. 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 parties. 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 of 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 EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, NONEXISTENCE OF DEFECTS, COURSE OF DEALING OR USAGE OF TRADE 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:

- 1.1 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 App was acquired.
- 1.2 Claims for repair or replacement are subject to a claims limitation period 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 intentional misconduct, fraudulent concealment of the defect. The legal provisions regarding suspension of the statute of limitations and implementation of the claims limitation periods shall be unaffected.
- 1.3 Notifications of a Defect by You shall be given in written form without undue delay.
- 1.4 Siemens shall be given the opportunity to repair or to replace the defective Commercial Apps within a reasonable period of time.
- 1.5 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.
- 1.6 There shall be no claims based on Defect in cases of non-material 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.
- 1.7 You shall have no claim for damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, in the case of life, bodily injury or damage to health, and/or intentional misconduct or grossly negligent performance of its obligations under the Agreement on the part of Siemens.
- 1.8 Any other or additional claims by You beyond the claims provided for in this section C.1 based on a Defect are excluded.

2. Intellectual Property Rights and Copyrights; Defects in Title

- 2.1 Unless otherwise agreed, Siemens shall provide the Commercial Apps free from conflicting third parties' intellectual property rights and copyrights ("IPR") with respect to the country of the place of delivery only. If a third party asserts a valid 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 pursuant to its reasonable efforts, 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 make admissions concerning 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.3 of the Agreement;
- 2.2 Claims of You shall be excluded if You are responsible for the infringement of an IPR.
- 2.3 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.
- 2.4 Any other claims of You against Siemens or its agents or any such claims beyond the claims provided for in this section C.2, based on a defect in title, are excluded.

3. General Liability

- 3.1 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.
- 3.2 The above provision does not imply a change in the burden of proof to the detriment of You.

D. Country Specific Provisions

1. Not Used.

2. Germany.

- 2.1 If both Parties are located in Germany, the limitations and exclusions in sections B.3 and C.3.1 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.

2.2 **Not Used.**

3. **Portugal.** If either Party is located in Portugal, the limitations and exclusions in sections B.3 and C.3.1 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.

Acceptable Use Policy

April 2019 Siemens, Operating Company Smart Infrastructure

This Acceptable Use Policy (“**Policy**”) sets out terms with which you must comply when using our services.

1. No Illegal, Harmful, or Offensive Use of your content

You shall not use, encourage, promote, facilitate, or instruct others to use, the services for any illegal, harmful, or offensive use. Your content must not be illegal, harmful, or offensive. In particular, your use of the services, your content, and your use of your content shall not:

- (i) be in violation of any laws or rights of others;
- (ii) be harmful to others, or Siemens’ operations or reputation, including by offering or disseminating fraudulent goods, services, schemes, or promotions, make-money-fast schemes, ponzi or pyramid schemes, phishing, farming, or other deceptive practices;
- (iii) enter, store or send hyperlinks, enable access to external websites or datafeeds, including embedded widgets or other means of access, in or as part of your content, for which you have no authorization, or which are illegal;
- (iv) be defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable;
- (v) subject Siemens or its business partners to liability.

2. No violation of use restrictions

You shall not:

- (i) 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 third party (unless permitted otherwise by us or required by laws);
- (ii) 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 or the platform (unless permitted otherwise by us or required by laws);
- (iii) create derivative works of, or based on, any parts of the services or the platform;
- (iv) change or remove any notices or notations from the services or the platform that refer to intellectual property rights or brand names; and
- (v) imitate the “look and feel” of any of Siemens’ website or other user interface, nor the branding, color combinations, fonts, graphic designs, product icons or other elements associated with Siemens; and
- (vi) upload to the platform any of your content that is subject to a license that, as a condition of use, access, and/or modification of such content, requires that any Siemens’ or Siemens’ business partners’ software or service provided by Siemens and interacting with or hosted alongside your content: (a) are disclosed or distributed in source code form; (b) are licensed to recipients for the purpose of making derivative works; (c) are licensed at no charge; (d) are not used for commercial purposes; or (e) are otherwise encumbered in any manner.

3. No Abusive Use

You shall not do any of the following:

- (i) use the services in a way intended to avoid or work around any use limitations and restrictions placed on such services, such as access and storage restrictions or to avoid incurring fees;
- (ii) access or use the services for the purpose of conducting a performance test, building a competitive product or service or copying its features or user interface or use the services in the operation of a business process outsourcing or other outsourcing or a time-sharing service;
- (iii) interfere with the proper functioning of any of Siemens’ systems, including any overload of a system by mail bombing, news bombing, broadcast attacks, or flooding techniques;
- (iv) engage in any activity or modification or attempt to modify the platform or the services in such a way as to negatively impact on the performance of the platform or the services.

4. No Security Violations

You shall not use the services in a way that results in, permits, assists or facilitates any action that constitutes a threat to the security of the platform or the services.

You shall in particular:

- (i) before accessing the services, during use, and when transferring your content, take all reasonable precautions against security attacks on your system, on-site hardware, software or services that you use to connect to and/or access the platform, including appropriate measures to prevent viruses, trojan horses or other programs that may damage software;
- (ii) not interfere with or disrupt the integrity or performance of the services or other equipment or networks connected to the platform, and in particular not transmit any of your content containing viruses, trojan horses, or other programs that may damage software;
- (iii) not use the services in a way that could damage, disable, overburden, impair or compromise any of Siemens’ systems or their security or interfere with other users of the platform;
- (iv) not perform any penetration test of or on the services or the platform without obtaining our express prior written consent; and
- (v) not connect devices to the services that do not comply with industry standard security policies (e.g., password protection, virus protection, update and patch level).

5. Reporting

If you become aware of any violation of this Policy, you will immediately notify us and provide us with assistance, as requested by us, to stop, mitigate or remedy the violation.