

BUILDING PRODUCTS SPECIFIC TERMS



Version: January 2023

These Building Products Specific Terms (“**BP Terms**”) set out the terms and conditions for the subscription of cloud-services (“**Cloud Services**”, each a “**Cloud Service**”) and other subscription offerings (“**Other Subscription Offerings**”, each a “**Other Subscription Offering**”) offered by Siemens for Building Products. The BP Terms amend the Universal Customer Agreement in the version as available under <https://www.siemens.com/universalcustomeragreement-tc> (“**UCA**”) with respect to the Cloud Services and the Other Subscription Offerings. Each individual Cloud Service and Other Subscription Offering is described in the Documentation accompanying the individual Order and constitutes an Offering within the meaning of the UCA. The BP Terms together with the UCA, the Documentation, the Order and any other Supplemental Terms form the agreement between Siemens and the Customer (“**Agreement**”).

1. DEFINITIONS

Capitalized terms used that are not expressly defined herein shall have the meaning as defined in the UCA:

“**Affiliate**” shall mean any entity that controls, is controlled by, or is under common control with either Party; in this context, “control” means ownership, directly or indirectly, of a majority of the outstanding equity of an entity.

“**Collected Data**” shall have the meaning as set forth in Section 5.1

“**Connected Device**” shall mean a physical or virtual computer appliance or other Hardware, that is communicating to a Cloud Service via Internet.

“**High Risk System**” shall mean 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. 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.

“**Minimum Terms**” shall mean the minimum terms provided by Siemens that set out the contractual terms and conditions Customer shall use in any of its contractual relationships related to access to and use of Offerings.

“**Remote Services**” shall have the meaning as set forth in Section 3.7

“**Territory**” shall mean the geographic area as agreed between Customer and Siemens. If no geographic area is defined, the geographic area shall be the country, in which the ordering Customer entity is located.

“**Third Party**” shall mean a party other than Customer or Siemens.

“**User**” shall mean a person or entity that accesses an Offering under this Agreement, whether such access is given by Customer, by Siemens at Customer’s request, or by a Third Party authorized by Customer.

2. GENERAL

2.1 **Order of Precedence.** In case of inconsistencies between the UCA, the BP Terms, any other supplemental terms and the Order, the following order of precedence shall:

- (i) Order, including Documentation
- (ii) BP Terms
- (iii) UCA
- (iv) any other Supplemental Terms.

2.2 **Authorized Access and Use.** Each Offering may be accessed and used only (i) by the agreed number of Users, (ii) for the Entitlements, (iii) during the Subscription Term (iv) within the Territory, provided that Customer meets its obligations with all applicable export control laws, and (v) in accordance with the Documentation and the Agreement. If the respective Entitlements and pricing model allows, Customer may re-assign the right to access and use the Offerings between uniquely identified individual Users over time. Where the number of Users is restricted, Customer may not re-assign the right to access and use of the Offering so frequently as to enable sharing by multiple Users, Indirect use of an Offering via Connected Devices used by Customer does not reduce the number of User rights that Customer needs to acquire.

2.3 **Changes to the Agreement.** Siemens may update the terms of the Agreement during a Subscription Term, provided any such update does not (i) have a material adverse effect on Customer’s rights (e.g. with respect to Entitlements or service levels) or (ii) result in a material degradation of the security measures maintained by Siemens with regard to the Offerings or Collected Data. The foregoing shall not limit Siemens’ ability to make changes to the terms of the Agreement (i) to comply with applicable laws, (ii) address a material security risk, (iii) to reflect changes made to the Offerings in accordance with any change provision in the Agreement, and/or (iv) that are applicable to new features, supplements, enhancements, capabilities or additional Offerings provided as part of Customer’s subscription to the Offering at no extra charge. Any change to the terms of the Agreement shall apply from the date as notified by Siemens or published on the website as referenced in the Order or otherwise by Siemens. Siemens shall use commercially reasonable efforts to notify Customer with reasonable notice prior to such change or as agreed elsewhere in the Agreement.

- 2.4 **High Risk Use.** Customer acknowledges and agrees that (i) the Offerings are not designed to be used for the operation of or within a High Risk System if the functioning of the High Risk System is dependent on the proper functioning of the Offering and (ii) the outcome from any processing of data through the use of the Offering is beyond Siemens' control. Customer shall indemnify Siemens, its Affiliates, its subcontractors, and their representatives, against any third-party claims, damages, fines and cost (including attorney's fees and expenses) relating in any way to any use of an Offering for the operation of or within a High Risk System.
- 2.5 **IT-Security.** Unless otherwise stipulated in the Documentation or in the Agreement, the following security principles apply for the Offerings: Siemens maintains a formal security program that is designed to protect against threats or hazards to the security of Collected Data. Providers of Siemens' cloud infrastructure are required to (i) implement and maintain a security program that is modelled after, inter alia, the ISO 27001 or any standard that is substantially equivalent to ISO 27001 and that is designed to provide risk management and security controls that correspond in principle to the certification of the providers under ISO 27001 and (ii) have the adequacy of their security measures verified either by Siemens or independent auditors. Siemens' Offerings (i) employ firewalls, anti-malware, intrusion detection/prevention systems (IDS/IPS), and corresponding management processes designed to protect service delivery from malware and (ii) is operated under a security governance modelled after ISO 27001. This Section contains Siemens' entire obligation regarding the security of Collected Data and the Offerings.
- 2.6 **Connected Devices and IT Security.** Unless otherwise agreed in a separate service agreement, where Customer intends to connect or have connected any sites or systems via Connected Devices to the Cloud Services (the "**Connected Objects**"), Customer acknowledges that Customer is and always remains in control of and is responsible for Connected Objects and the condition and operation of the sites where the Connected Objects are located. The Cloud Services are not intended to substitute the proper surveillance of the Connected Objects by Customer. Siemens recommends Customer to integrate the Connected Objects and its connection to the Cloud Services into a holistic, state-of-the-art industrial security concept. Customer shall ensure that any technical amendments and changes made in connection with the Cloud Services to the Connected Objects or to the technical environment on connected sites (including Remote Services) are compatible with the IT security concept and individual security requirements of Customer. Siemens recommends Customer to regularly create backup copies of all relevant data, in particular software, data contained in on-site equipment, it being understood that Customer remains solely responsible for the availability and recovery of any of its data stored in and used by the Customer in the Customer's Objects.
- 2.7 **Updates for Offerings.** Siemens, its affiliates, service providers and/or suppliers, at their sole discretion, make available firmware updates, enhancements, changes, modifications, security patches, bug fixes or additional functionality ("**New Functionalities**") to the Offering, including the software running in cloud infrastructure as part of the Cloud Services contained within the Offering or Software used on, in or for the Connected Devices. Such New Functionalities may be (i) provided by Siemens with reasonable notice before such New Functionalities are available and/or (ii) pushed automatically via Remote Services or any other online access available. In case Customer opts for manual installation, the responsibility for the New Functionalities and its installation is with Customer. Non-current versions of the Offering may not be supported by Siemens and may not be updated to future versions. New Functionalities do not necessarily need to have the same functionalities as the previous versions. The license for New Functionalities of an Offering shall be as set forth in the Entitlements and the Agreement for the Offering. Customer agrees to the foregoing and releases Siemens and its affiliates, service providers and/or suppliers from all liability arising from such action to the extent permitted by law.
- 2.8 **Third Party Content.** Customer specifically acknowledges that (i) Siemens is under no obligation to test, validate, or otherwise review Third Party Content, and (ii) Third Party Content may collect and use Collected Data and data regarding a User's usage of Third Party Content.
- 2.9 **Agreement Prevailing.** Customers and/or Users may (i) download a mobile application, which is connected to and/or part of the Cloud Service and by doing this accept terms of use for such mobile application and/or (ii) use the "Sign-up tab" at the website of the Cloud Services to obtain their respective Siemens ID, and by doing this notice terms of use on the site and accept terms and conditions posted on this Siemens ID site and/or (iii) accept terms of use in connection with a payment service to process an Order for the Cloud Services. In case any of these terms of use and/or terms and conditions are inconsistent with the terms and conditions of the Agreement, the Agreement shall prevail between Customer and Siemens.

3. ENTITLEMENTS

- 3.1 **Documentation.** The specifics of the Offerings and Entitlements are described in the applicable Documentation which is incorporated by reference herein. Documentation may include information such as applicable limits or other attributes and metrics, prerequisites, or scaling factors for the pricing such as number of Users or asset attributes, and additional third-party terms which prevail for third-party software, technology, data and other materials, including open-source software licensed from third parties.
- 3.2 **Use Rights of End-Customer for internal business purposes.** Customer shall use the Offerings in accordance with the Entitlement as defined in the Section 3.1 of the UCA and specified in the applicable Documentation.

- 3.3 **Extended Use Rights for End Customer.** Where extended licensed use rights for Offerings are agreed between Siemens and the Customer in accordance with a Documentation, Customer (i) may authorize its Affiliates to access and use Customer's Account for the Offerings for Customer's and/or Customer Affiliate's internal business purpose and/or (ii) may authorize Third Parties to access and use Customer's account for the Offerings for Customer's internal business purposes and/or (iii) may authorize its Affiliates to authorize Third Parties to access and use the Customer's account for the Offerings for Customer's and/or Customer's Affiliate's respective internal business purposes.
- 3.4 **Extended Use Rights for Partners.** Subject to the Subscription Plan agreed and within the limitations set out in the Agreement, Customer shall (i) use the Offerings in accordance with the Entitlement as defined in the Section 3.1 of the UCA and specified in the applicable Documentation and ii) may authorize its customers to access and use Customer's account for the Offerings for Customer's internal business purposes and / or (iii) may authorize its Affiliates to authorize their customers to access and use the Customer's account for the Offerings for Customer's and/or Customer's Affiliate's respective internal business purposes.
- 3.5 **Contractual Relationship.** Customer acknowledges and agrees that in any of the aforementioned cases of extended use rights (i) any contractual relationship related to access to and use of Offerings is solely between Customer and the User, and (ii) Siemens shall provide the Offerings only to Customer and shall not assume any obligations or responsibilities directly towards Users with regard to their access to or use of the Offerings. Customer's provision of and access to the Offerings to Users under an account is subject to Customer ensuring that usage of the Offerings by all Users is in accordance with the provisions of this Agreement in particular that User shall comply at all times with applicable laws, Minimum Terms provided by Siemens, if any, and the AUP. Customer shall remain responsible for the enforceability and enforcement of this Agreement and Users compliance with applicable laws. Where required by law, Customer shall enter into appropriate agreements with Users to process and protect their data (including personal data). Such agreements between Customer and Users shall allow Siemens and its subcontractors to process any data (including personal data) of Customer and its Users as described herein. Customer shall be responsible to obtain all necessary permissions to access third party devices, installations, and systems and to apply all necessary updates and upgrades to the devices, installations, ad systems.
- 3.6 **Content Sharing.** Where agreed between Siemens and Customer, Customer may share Customer Content and access to certain Customer Content (read or read and write) with a third party ("**Receiving Party**") under a collaboration ("**Collaboration**"). Once the Collaboration is established, the sharing party shall be able to share selected Customer Content with the Receiving Party ("**Sharing**"). Collaboration and individual Sharing require prior approval of the Receiving Party. It is expressly understood that the Collaboration is only between the Receiving Party and the sharing party and Siemens is not a party thereto, and the outcome of any Collaboration and Sharing of Customer Content is beyond Siemens' control, visibility and responsibility. Customer is responsible for the implementation of measures required to reasonably protect Customer Content from misuse by any third party.
- 3.7 **Specific Terms for Remote Service.** Where agreed between Siemens and Customer and where the Offering provides a means for secured remote login, remote engineering, or data transfer to such Offering ("**Remote Service**"), Customer may make use of the Remote Service provided Customer is the owner of or is entitled by the owner of such customer system to exert such Remote Service. Customer acknowledges that network data traffic such as across the Internet may be subject to local restrictions or prohibitions, including but not limited to those regarding encryption (e.g. use of tunnels), data sensitivity (e.g. production-related data), or cross-border traffic. It is Customer's responsibility to check if such local restrictions or prohibitions apply and to only use the Offerings in compliance with applicable law. If the Cloud Services provide for the option to add additional parties to control the customer system, and Customer makes use of this option in line with the Entitlements set forth in Section 3.4, Customer is fully responsible for actions of third parties to which Customer provided the access. If agreed between Siemens and Customer, Customer may create an account with the right to make use of the Remote Service in accordance with the requirements set forth in Section 3.5 above.
- 3.8 **No Charge-Offerings, Previews.** Previews may be provided as updates of the respective Offering and made available to Customer in a test instance for Customer's review prior to deploying it in production. Siemens may request Customer to provide Feedback for any No-Charge-Offerings and/or Previews. Siemens shall have the right to use such Feedback in line with Section 13.4 of the UCA.

4 SUBSCRIPTION TERMS/RENEWALS/FEE CHANGES

- 4.1 **Subscription.** Customer shall subscribe to such Offering according to the subscription plan defined in the Documentation and/or the Order and in accordance with this Agreement. Customer may subscribe for such Offering directly with Siemens or via a third party authorized by Siemens. The Offering may be provided on a metered pricing, entitlement pricing or any other basis defined in the Documentation, the Order, the Agreement or as elsewhere agreed between Siemens and Customer or Customer and a third party authorized by Siemens.
- 4.2 **Subscription Term.** Other than defined in Section 10.1 of the UCA, if Customer and/or Siemens wish to not renew a Subscription Term, Customer or Siemens may inform the respective other Party one day before the end of the Subscription Term. Offerings which are based on a one-time credit point system (as defined in the webstore identified in the Documentation of the respective Offering) do not have a fix subscription term and do not renew automatically but expire once all credits are utilized. The fees during any renewed Subscription Term will be the same as those changed during the preceding Subscription Term, unless (i) Siemens notifies Customer about different future fees at least **60** days prior to the end of the then-current Subscription Term or (ii) fees for renewed Subscription Term(s) are specified on the Order.

5 DATA USAGE

Section 6.2 of the UCA shall be replaced by sections 5.1 to 5.2:

- 5.1 **Siemens Right to Use Data.** In connection with the use of the Offerings, Siemens and/or Siemens Affiliates (or where required Siemens's and/or Siemens Affiliates' service providers or suppliers) may obtain, receive, collect, store and process Customer Content, system-specific data, meta data, automatically generated data, or any other type of information, data or content from Customer, Users, Connected Devices or third parties using or having used the Offering ("**Collected Data**"). Customer hereby grants Siemens and/or Siemens Affiliates (and Siemens's service providers or suppliers when acting on Siemens's and/or Siemens Affiliate's behalf) a non-exclusive, transferable, sublicensable, worldwide, royalty-free, perpetual, non-revocable license under applicable copyrights and other intellectual property rights, if any, in all Collected Data to (i) provide the Offerings, (ii) improve the Offerings, (iii) provide new and additional offerings, enhance its offerings with new features, modifications, changes as Siemens and/or Siemens Affiliates see fit, and (iv) create derivative works and aggregated data derived from Collected Data, other Siemens customers, third parties and other sources, including without limitation, comparative data sets, statistical analyses, reports and related services (collectively, "**Siemens Data**"). Siemens utilizes Siemens Data within its sole and absolute discretion for any purpose. Siemens Data does not incorporate information and data specifically identifying the Customer or third parties as company and/or personal data of Users. While Collected Data may contain Confidential Information of Customer or personal data of Users, Siemens Data does not.
- 5.2 **Customer Warranty.** Customer represents and warrants that it has obtained all rights, permissions and consents necessary for Siemens to the aforesaid use of Collected Data as part of the Offering, and permits Siemens and/or Siemens Affiliates to exercise all of its rights under this Agreement. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Content. Neither Siemens, Siemens Affiliates nor Siemens's or Siemens Affiliate's service providers or suppliers shall be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Collected Data and/or Siemens Data.
- 5.3 **Manually Stored Data.** In case that Customer manually stores data with or in the Offering, Customer is solely responsible for such data and any consequences out of or in connection with this activity; in case that this data is subject to additional legal provisions (including regulatory provisions) Customer shall inform Siemens and/or Siemens Affiliates prior to said storage to enable further analysis by Siemens and/or Siemens Affiliates. If and to the extent Siemens accepts such storage, and the data processing is subject to special requirements, Customer and Siemens shall agree on an amendment to this Agreement regarding the data handling in writing signed by both.
- 5.4 **Data Hosting.** Collected Data will be hosted within the location defined in the Documentation.
- 5.5 **Connected Devices.** Whenever Customer would disconnect a Connected Device from the Cloud Service, the Collected Data related to such disconnected device which was uploaded, created and/or modified by Customer via the Cloud Services before such disconnection will remain stored in the Cloud Services, unless Customer requests Siemens and Siemens agrees to (i) perform removal on behalf of the Customer and (ii) return such Collected Data to Customer. Terms and conditions for such removal shall be agreed between Siemens and Customer. It shall be Customer's sole responsibility to proceed at its own costs with any action it deems necessary to ensure that all Connected Devices are disconnected from the Cloud Services without undue delay from the date on which the Customer's account is deactivated or, as applicable, from the date of expiration or termination of the Offerings.
- 5.6 **Data Privacy.** The terms and conditions of section 6.1 of the UCA shall apply. The Data Privacy Terms, including the Offering specific technical and organizational measures, described [under https://www.siemens.com/dpt/si](https://www.siemens.com/dpt/si), shall apply and are incorporated herein by reference.

6 ASSIGNMENT TO SIEMENS AFFILIATES

Siemens shall have the right to transfer the rights and obligations under this agreement to any of its Affiliates as per the start of a new subscription term provided that Siemens informs Customer about such change at least 60 days in advance. Customer may choose not to renew the Subscription term as per section 4.2.