

SERVICE LEVEL AGREEMENT FOR SERVICE OFFERINGS

1. Service Level Agreement

This Service Level Agreement for Service Offerings (this “SLA”) sets forth the System Availability metrics to which Siemens Industry Software Inc. (hereinafter referred to herein as “SISW”), will commit for the production version of each Service Offering offered for subscription. Any terms not otherwise defined herein shall have the meanings set forth in the Cloud Services Agreement (the “Agreement”) entered into between SISW and Customer.

This SLA shall not apply to any Service Offering for which a System Availability metric is explicitly set forth in the applicable Supplemental Terms and Conditions for such Service Offering or for which the applicability of service level metrics is explicitly excluded in the Agreement.

2. Definitions

“**Downtime**” means all of the time in a Month during which the production version of a Service Offering is not available, except for Excluded Downtime, as defined below.

“**Month**” means a calendar month.

“**Monthly Subscription Fees**” means the monthly (or if applicable, 1/12 of the annual) subscription fees paid for the Cloud Service which did not meet the System Availability metrics.

“**Regular Maintenance Window**” means, with respect to a Service Offering, the regular period during which SISW may schedule Downtime for maintenance to or upgrades of such Service Offering, as set forth in this SLA.

3. System Availability Metrics and Credits

3.1 Claim process, Reports

With respect to SISW’s failure to meet its obligations under this SLA for a particular Service Offering, Customer shall be entitled to whatever remedies are described in this SLA with respect to such Service Offering. Any remedy provided to Customer shall be the sole and exclusive remedy available to Customer with respect to a failure by SISW to meet its obligations under this SLA.

Claims under this SLA must be made in good faith and by submitting a support case within thirty (30) days after the end of the relevant Month in which SISW did not meet the System Availability metric. Any claims not submitted by Customer within the specified time period may be denied by SISW and SISW will have no further obligation to Customer with respect to such failure to meet the System Availability metric for the Service Offering.

SISW will provide to Customer a monthly report describing the System Availability for an applicable Service Offering either (i) by email following Customer’s request to its assigned SISW account manager, (ii) through the System, or (iii) through an online portal made available to customers, if and when such online portal becomes available.

3.2 System Availability Metric

$$\text{System Availability (expressed as a percentage)} = \frac{\text{Uptime (in seconds) during a Month}}{\text{Total Time (in seconds) during a Month}}$$

The System Availability metric will be considered met successfully if the applicable Service Offering is available for use (i) 99.95% of the time for SISW Premium Cloud Support deployments or (ii) 95% of the time for SISW Standard Cloud Support deployments.

If SISW is unable to meet the System Availability metric for a Service Offering three (3) or more times in a calendar year, then Customer will have the right to terminate the Agreement without penalty.

Excluded Downtime	All of the Downtime during a Month that is attributable to: (i) a Scheduled Downtime within a Regular Maintenance Window as described in Section 4 of this SLA; (ii) any other Scheduled Downtime where Customer has been notified at least 24 hours prior to such Scheduled Downtime; or (iii) unavailability caused by factors outside of SISW’s reasonable control, such as unpredictable and unforeseeable events that could not have been avoided even if reasonable care had been exercised.
Scheduled Downtime	Downtime for a Service Offering that is scheduled by SISW as set forth in Section 4 of this SLA, “Maintenance Windows for Service Offerings”
Total Time	All of the time during a Month, less any Excluded Downtime
Uptime	All of the time during a Month when a Service Offering is available for production use.

4. Maintenance Windows for Service Offerings

SISW may designate a downtime period during the Regular Maintenance Windows listed below, and such periods will be considered Scheduled Downtime. Where “Local Time” is referenced, this refers to the location of the data center where the Service Offering is hosted.

The Regular Maintenance Windows will be:

Maintenance Windows	
Regular Maintenance	Weekly Friday 10:00 p.m. to Monday 3:00 a.m. US Pacific Time
Upgrades	Up to 4 times per year from Friday 10:00 p.m. to Monday 3:00 a.m. US Pacific Time

SISW reserves the right to extend or change the times of the Regular Maintenance Windows for Service Offerings. SISW will use commercially reasonable efforts to notify Customer at least 72 hours prior to the occurrence of a Scheduled Downtime for a Service Offering.