

## End User License Agreement for Mobile Applications for Apple operating systems (such as but not limited to iOS products, Apple Watch, Apple TV): Free of charge and Commercial versions

Status: January 2018

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

#### 1. Definitions

- 1.1 "Agreement" means this End User License Agreement for Mobile Applications.
- 1.2 "Siemens" means Siemens Aktiengesellschaft, a German corporation with its head offices in Munich and Berlin and its affiliated companies that are directly or indirectly owned or controlled by the ultimate parent company Siemens Aktiengesellschaft.
- 1.3 "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.
- 1.4 "Free of charge App" is an App which is delivered Free of charge.
- 1.5 "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.
- 1.6 "Country" means the country in which You have your domicile.
- 1.7 "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.
- 1.8 "You" and "Your" refers to the purchaser of 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

- 2.1 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.
- 2.2 In the case the App contains open source software or similar third-party software (hereinafter referred to as "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.3 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.
- 2.3 Siemens will not acquire any rights, title or interest in or to your data that is entered in connection with Your use of the App. You hereby grant Siemens a worldwide, non-exclusive, transferable, sub-licensable, royalty free right to use, host,

transmit, display, modify, copy, access, analyze and reproduce Your data for the purpose of providing You the App functionalities in accordance with the Agreement.

#### 3. Use rights

Siemens grants to You a nonexclusive, non sublicensable right to use the App solely on Your Apple 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.

#### 4. Support:

You should have your operating system up to date. Siemens provides App updates for the up-to date version of the operating system. Older versions of the operating system may not in any case be supported by Siemens.

#### 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 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 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.

#### 5. Choice of Law and Jurisdictions

This Agreement shall be governed by the substantive law of Germany 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. If You are a merchant according to the definition of the German Commercial code, for all disputes arising out of or in connection with this Agreement the exclusive place of jurisdiction shall be Munich, Germany.

## 6. Taxes

Any and all taxes (hereinafter "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.

To the extent the double taxation convention between Your Country and the Federal Republic of Germany allows Siemens to credit Taxes imposed on and paid by Siemens according to the laws of Your Country against Taxes imposed on and to be paid by Siemens according to the laws of the Federal Republic of Germany. You shall upon Siemens' request submit to Siemens official tax receipts issued by the tax authorities of Your Country evidencing the payment by You of Taxes in Your Country on behalf of Siemens.

To the extent the double taxation convention between the Federal Republic of Germany and Your Country entitles Siemens to claim reduction of or an exemption from Taxes imposed on and to be paid by Siemens according to the laws of Your Country, the regulations in the foregoing paragraphs shall apply until Siemens has obtained the relevant tax reduction/exemption certificate (or the like) from the tax authorities of Your Country, if so required by the aforementioned double taxation convention and/or the law of Your Country to validate the aforementioned claim for Tax reduction/exemption. Siemens and You shall jointly use all reasonable efforts to obtain such Tax reduction/exemption certificate if any, without undue delay and Siemens shall immediately after its receipt send a copy thereof to You.

## 7. 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. 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 with appropriate security measures (e.g. use of firewalls and network segmentation) in place.

For additional information on industrial security measures that may be implemented, please visit <https://www.siemens.com/industrialsecurity>.

Siemens' products and solutions undergo continuous development to make the more secure. Siemens strongly recommends to apply product updates as soon as available and to always use the latest product versions. 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 product updates, subscribe to the Siemens Industrial Security RSS Feed under <https://www.siemens.com/industrialsecurity>.

## 8. Siemens contact address

For questions, complaints or claims regarding the App You can contact Siemens under

Siemens AG, Wittelsbacher Platz 2, 80333 Munich  
[answers.siemens@googlemail.com](mailto:answers.siemens@googlemail.com), +49 911 895 7222

## 9. 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, nonexistence 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.

This does not apply if liability is based on (i) the German Product Liability Act ("Produkthaftungsgesetz"); (ii) intent; (iii) gross negligence on the part of the owners, legal representatives or executives; (iv) fraud; (v) failure to comply with a guarantee granted; (vi) negligent injury to life, limb or health; or (vii) negligent breach of a fundamental condition of contract ("wesentliche Vertragspflichten").

However, claims for damages arising from a breach of fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above cases applies.

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

## 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 (hereinafter referred to as "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 risk passed.
- 1.2 Descriptions of quality or types of use of the Commercial Apps shall not – even in case that they are referred to as guarantees – be regarded as guarantees with the meaning of Sec. 443, 444, 639 German Civil Code unless they are explicitly referred to as such guarantees in writing with reference to the statutory regulations.
- 1.3 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.
- 1.4 Notifications of a Defect by You shall be given in written form without undue delay.
- 1.5 Siemens shall be given the opportunity to repair or to replace the defective Commercial Apps within a reasonable period of time.
- 1.6 If repair or replacement is unsuccessfully You are entitled to rescind the Agreement of reduce the remuneration; any claims for damages You may have according to section 1.8 shall be unaffected.
- 1.7 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.

- 1.8 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.
- 1.9 Any other or additional claims of You exceeding the claims provided for this section C.1, based on a Defect are excluded.

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

2.1 Unless otherwise agreed, Siemens shall provide the Commercial Apps free from third parties' industrial property rights and copyrights (hereinafter referred to as "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.1.3 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;

- 2.2 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 exceeding the claims provided for in this section C.7, 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**

- 4.1 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.
- 4.2 This does not apply if liability is based on (i) the German Product Liability Act ("Produkthaftungsgesetz"); (ii) intent; (iii) gross negligence on the part of the owners, legal representatives or executives; (iv) fraud; (v) failure to comply with a guarantee granted; (vi) negligent injury to life, limb or

health; or (vii) negligent breach of a fundamental condition of Agreement ("wesentliche Vertragspflichten").

- 4.3 However, claims for damages arising from a breach of a fundamental condition of Agreement shall be limited to the foreseeable damage which is intrinsic to the Agreement, provided that no other of the above cases applies.
- 4.4 The above provision does not imply a change in the burden of proof to the detriment of You.