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Specific Terms for MindAccess IoT Value Plan

October 2018

1. Scope

1.1. **Scope.** These terms are part of the MindSphere Agreement. These terms only apply when you use *MindAccess IoT Value Plan* and related Services to provide Third Parties with access to certain Services as part of their receipt of Platform-based services from you (such services referred to as, "**OEM Services**"). You may permit Users to access Services as part of your OEM Services only where expressly permitted in a Transaction Document. A Third Party that receives an OEM Service from you is referred to as an "**OEM Customer**".

1.2. **Definitions.** Capitalized terms shall have the meaning ascribed to them in this document or elsewhere in the MindSphere Agreement.

2. Provision of OEM Services

2.1. **Use Rights.** Subject to the limitations set out in these terms, we grant you the non-transferable, non-sublicensable, time-limited, and revocable right to permit OEM Customers and their Users to access and use OEM Services under a subtenant that you establish in your Account for each OEM Customer (each, an "**OEM Sub-account**"). OEM Customers' Users who access OEM Services are also your Users. You may offer OEM Services free of charge or for a fee. Our consent is required prior to allowing an OEM Customer to access a Service that we provide to you for testing and evaluation, or as "pre-release", "beta", or as "preview".

2.2. **Account Set-up and Management.** You are responsible to set up, manage, and configure OEM Sub-accounts as required for the provision of access for OEM Customers and their Users to the OEM Services. You shall set up and maintain a separate OEM Sub-account for each OEM Customer. You shall provide OEM Customers and their Users access only to their designated OEM Sub-account. You shall make available such OEM Sub-account solely for the provision of OEM Services to such OEM Customers and their Users.

2.3. **OEM Customers' Content.** You shall inform the OEM Customers of, and if legally required obtain their consent for, any collection, storage, processing, modification, disclosure, or other use of information or data in connection with the use of OEM Services ("**OEM Customer Data**"). OEM Customer Data that is entered, uploaded to, or stored on the Platform is part of Your Content. To the extent that we offer Services that enable the transitioning of certain parts of Your Content to an alternate technology or to an Account held by a Third Party, you will also allow your OEM Customer to receive such transitioning services upon their request with respect to their OEM Customer Data.

2.4. **Support.** You are solely responsible for providing support to your OEM Customers and their Users. You may not enable OEM Customers or their Users to use any support we provide you for the Services.

2.5. **Marketing.** In connection with your marketing and advertising activities, you shall ensure that you, and not Siemens, are identified as the provider of OEM Services, provided, however, that you may identify that the OEM Services utilize the Platform and the Services.

3. Your Relationship to OEM Customers

3.1. **Your Role.** You acknowledge and agree that: (i) any contractual relationship regarding access to and use of OEM Services is solely between you and the OEM Customer; and (ii) Siemens will provide Services only to you and will not assume any obligations or responsibilities towards OEM Customers and/or their Users with regard to their access to or use of OEM Services. You are not authorized to represent Siemens in legal transactions or otherwise bind Siemens in any way. In connection with the provision of OEM Services, you are an independent entrepreneur and bear all economic opportunities and risks related to the marketing and provisioning of OEM Services. You shall set prices you charge for providing OEM Services at your sole discretion and be solely responsible for all billing and collection functions in relation to OEM Customers.

3.2. **OEM Contracts.** Your provision of OEM Services to OEM Customers other than your Affiliates requires a written contract with your OEM Customers ("**OEM Contract**"). You will ensure that the OEM Contracts are consistent with and not less protective of Siemens than the MindSphere Agreement. Your OEM Contracts shall contain, at a minimum, the full substance of the terms as set out in the Annex ("**Minimum Terms**"). You shall remain responsible for the enforceability and enforcement of the OEM Contracts and their compliance with Laws. You shall ensure that OEM Customers and their Users comply with the Minimum Terms. You will immediately notify us of any non-compliance by an OEM Customer or its Users with the Minimum Terms, as well as any related enforcement action you take against an OEM Customer or their Users.

3.3. **Data** Where required by Laws, you shall enter into appropriate agreements with your OEM Customers to process and protect their data (including personal data). Such agreements between you and OEM Customers shall allow Siemens and its subcontractors to process any data (including personal data) of you, OEM Customers, and their Users as described therein.

3.4. **Changes to OEM Contracts.** If a change to the MindSphere Agreement necessitates a change to the OEM Contract in order to maintain consistency, you shall implement such change in the OEM Contract.

4. Records and Audit

4.1. **Records.** You will maintain records specifically identifying the number and identity of OEM Customers and their Users, along with all OEM Contracts.

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4.2. **Audit.** We may, during regular business hours and upon reasonable advance notice, have an auditor conduct an audit to determine your compliance with your contractual obligations as a provider of OEM Services. The auditor will be bound to secrecy towards Siemens and Third Parties and may only provide us with information about your compliance with the applicable obligations. You will (i) make available to the auditor all relevant documentation reasonably necessary to conduct such audit, (ii) permit the auditor to access your facilities and otherwise cooperate with the auditor in any such investigation, and (iii) take all commercially reasonable actions to assist the auditor in the audit. We will bear the costs of such audit unless a material non-compliance is revealed, in which case the costs of such audit shall be borne by you.

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Annex – Minimum Terms

1. **Subject Matter, Scope**

1.1. **Parties.** These terms are agreed between [insert your company name and address] ("**we**", "**us**", or "**our**") and you or the entity on whose behalf you accept these terms ("**you**" or "**your**").

1.2. **Subject Matter.** We utilize the Siemens' proprietary cloud-based open IoT operating system MindSphere "**Platform**"). These terms govern your access to and use of the Platform and Platform-based services to the extent that we use it as part of the services which we render to you (together "**Services**").

1.3. **Contractual Relationship.** Any contractual relationship regarding the access to and use of Services is solely between you and us. We are responsible for rendering the Services and any related support. These terms do not constitute any obligations of Siemens to you. Any questions, complaints, or claims with respect to the Services shall be addressed to [insert your company name and address, telephone number and e-mail address].

1.4. **Third Party Beneficiary.** Siemens shall be a third party beneficiary to these terms and shall be entitled to enforce terms against you on our and on Siemens own behalf and for the benefit of Siemens. Further, all limitations of representations, warranties, indemnity, and liability to you shall also apply for the benefit of Siemens.

1.5. **Definitions.** Certain capitalized terms used in this document are defined in Section 8. Other capitalized terms shall have the meaning given to them in this document.

2. **Service Offerings**

2.1. **Access and Use of Services.** We grant you the non-transferable, non-sublicensable, time-limited, and revocable right to access and use the Services via your account.

2.2. **Your Account.** We will enable you to access and use the Services through an account, using the access credentials provided by us to you. Such access credentials are valid only for Users designated by you and associated with their valid email addresses. Access credentials are only valid for and may be used only by one User.

2.3. **Access Credentials.** You are responsible that you and all Users: (i) carefully store any access credentials and protect them from unauthorized access; (ii) not gain access to the Services by any means other than your account or other means permitted by us; (iii) not circumvent or disclose the authentication or security of your account, the Platform, or any host, network, or account related to the Platform; (iv) not use a false identity or access credentials of another person to gain access to your account, the Platform, or the Services; and (v) that any credentials are used only by the individual who was granted the credentials.

3. **Your Obligations**

3.1. **Use of the Services.** You shall comply at all times with the Laws and the Acceptable Use Policy attached hereto or available for download at [insert your weblink].

3.2. **Updates.** You shall always keep up to date any software that we or Siemens provide to you as part of the Services by installing updates and patches as they become available. You shall remain responsible for the security of your systems and of on-premises hardware and software.

3.3. **Monitoring of Usage**. You acknowledge that Siemens or a third party on Siemens' behalf may monitor your usage of Services on the Platform (e.g., the number of Users and the storage capacity) for Siemens' internal business purposes. Siemens may also use such information, but only on an aggregated basis to improve Siemens' and Siemens' subcontractors' products and services. Siemens and we may further disclose Your Content to third parties in order to report to them potential violations of Laws in connection with your use of the Services.

3.4. **High Risk System.** You acknowledge and agree that the Services 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 a Service.

4. **Change of Terms**

We may change these terms by providing you at least [30] days' notice prior to the date specified in the notice on which the new version of these terms shall take effect.

5. **Data Privacy**

Both parties shall comply with the Laws governing the protection of personal data.

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6. **Proprietary Rights**

6.1. **Proprietary Rights in the Platform and Siemens' services.** All rights, title, interest, and know-how in and to the Platform and any services provided by Siemens which we utilize as part of the Services, as well as any part and improvement thereof and all intellectual property rights in or to the foregoing shall remain wholly vested in Siemens or its third party business partners and/or licensors.

6.2. **Rights in Your Content.** You grant us and our business partners (including Siemens) a worldwide, non-exclusive, transferable, sub-licensable, royalty-free right to use, host, store, transmit, display, modify, and reproduce Your Content for the purpose of providing the Services to you.

7. **Export Control and Sanctions Compliance**

7.1. **Export and Sanctions Laws.** You agree to comply with all applicable sanctions (including embargoes) and (re-)export control laws and regulations including, (to the extent applicable) those of the Federal Republic of Germany, the European Union, and the United States of America (collectively "**Export and Sanctions Laws**").

7.2. **Your Obligations.** You are obliged: (i) to deny and prevent access to Services from any location prohibited by or subject to sanctions or license requirements according to Export and Sanctions Laws; (ii) to continuously check any Users against applicable sanctioned party lists; (iii) not to grant access to the Services or the Platform to any individual or entity, including any Users designated on any of these lists; and (iv) to ensure that Your Content is not controlled or technical data, e.g. in the EU or German (AL = N) or in the U.S. (ECCN = N or EAR99).

7.3. **Information Requirements.** If required to enable authorities or us to conduct export control or sanctions compliance checks, you, upon our request, shall promptly provide us with all information pertaining to the particular destination, end user, and particular intended use of Services provided by us, including information on you and Users.

7.4. **Right to Withhold Performance.** We shall not be obligated to perform under these terms if such performance is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions. You further acknowledge that we may be obliged under Export and Sanctions Laws applicable to us to limit or suspend access by you and Users of the Services.

8. **Definitions**

8.1. **"High Risk System**" means 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. Without limitation, High Risk Systems may be required in critical infrastructure, direct health support devices, aircraft, train, boat, vehicle navigation, or communication systems, air traffic control, weapons systems, nuclear facilities, power plants, medical systems and facilities, and transportation facilities.

8.2. "**Laws**" means any law, rule, regulation, norm, and directive including, without limitation, industry or company specific regulations, co-determination rights of the works council, data privacy, telecommunication, energy law, IT security law, export control, sanctions and regulation pertaining to the protection of classified information.

8.3. "**Siemens**" means Siemens AG (Germany) and all corporations and other legal entities that are directly or indirectly owned or controlled by, or owning or controlling or under common control by Siemens AG, where "control" shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation or other entity.

8.4. "**User**" means an individual whom you permit to access or use the Services under your account.

8.5. "**Your Content**" means any information, program, software, application, code in any form, script, library, or data that is entered, uploaded to, or stored on the Platform in connection with your or any User's use of Services under your account.

Acceptable Use Policy

January 2018

This Acceptable Use Policy ("**Policy**") sets out terms with which you must comply when using our Services.

1. **Definitions**

Capitalized terms shall have the meaning given to them in the terms governing the Services.

2. **No Illegal, Harmful, or Offensive Use of Your Content**

You shall not use, or 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.

3. **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.

4. **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.

5. **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).

6. **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.