

MindSphere – Specific Terms for Professional Services

March 2019

1. Scope; Definitions

1.1. **Scope.** These Specific Terms for Professional Services are part of the MindSphere Agreement and set out additional terms and conditions for the provision of professional services, which may include training, consulting, installation, configuration, or development services (“**Professional Services**”). Certain Professional Services may be further governed by a written statement of work (“**SOW**”) agreed by the Parties and referenced in the Order Form, or, in the absence of a separate Order Form, may serve as the Order Form itself. An SOW referenced in an Order Form or otherwise referencing these Specific Terms constitutes a “Transaction Document” and Professional Services constitute “Services” within the meaning of the MMA.

1.2. **Order of Precedence; Definitions.** In the event of conflict between an SOW and these Specific Terms or another Transaction Document (e.g. Product Sheet), the SOW shall always prevail. Capitalized terms used in these Specific Terms shall have the meaning ascribed to them in this document or elsewhere in the MindSphere Agreement.

2. General Provisions

2.1 **Service Standards.** We will provide Professional Services in a professional and workmanlike manner.

2.2 **Your Responsibilities.** You will perform your obligations set forth in the applicable Transaction Document and, in a timely manner, provide us with all other documentation, information, and assistance we reasonably require to perform the Professional Services. Further, you will make available to us all facility access, office space, office furnishings, utilities, telecommunication services, internet, office supplies, copiers, and any other access or items described in the applicable Transaction Document, to the extent we reasonably require it in order to perform the Professional Services at your facilities. You will be responsible for the reliability, performance, or interoperability of Third Party materials (including software, hardware, platform or system access) you provide to us or request to be disclosed, used, or accessed by us for performance of Professional Services and will obtain all necessary consents and licenses at your expense. We will not be responsible for any non-performance, non-compliance, or delay caused by our use of materials you provide or your failure to fulfill your obligations under this Section.

2.3 **Date of Delivery.** We will use reasonable efforts to meet delivery or other critical dates identified in the Transaction Documents, and will minimize any deviation from the agreed schedule, unless otherwise specifically provided in the Transaction Documents. In the event that you are responsible for a delay, we shall have the right to adjust the delivery date or any other critical dates impacted by such delay. You will be responsible for any additional costs that we incur due to such delay.

2.4 **Invoicing.** Unless otherwise specified (including but not limited to quotations, Order Forms, Transaction Document), we will invoice you upon completion of the Professional Services. Payments to us are due 30 days from date of invoice.

2.5 **Expenses.** Unless otherwise expressly set forth in a Transaction Document, fees for Professional Services do not include expenses we incur for Professional Services we provide at your facilities or facilities designated by you and you will reimburse us for all reasonable related expenses incurred by us, including travel costs (including time), food, and accommodation. If the Professional Services are provided at our facilities, you are responsible for any expenses incurred by your employees or contractors.

2.6 **Our Personnel.** We reserve sole discretion in the allocation of Siemens personnel and subcontractors for the performance of the Professional Services. Any Siemens personnel performing the Professional Services shall remain employees of Siemens.

2.7 **Change Management.** Any change to the scope or specifications for Professional Services, including functional specifications, will be processed through a formal change request (“**CR**”) to the applicable Transaction Document. The CR will document the change in scope or specification as well as any corresponding change to the project schedule or fees. CRs may be requested by either Party, but must be mutually agreed and signed by both Parties to be effective.

2.8 **Acceptance and Termination of Works.** Unless otherwise expressly agreed in a Transaction Document, if the Transaction Document includes specific acceptance criteria for the results of the Professional Service or constitutes an agreement to produce a specific work deliverable under Applicable Law (such Professional Services jointly referred to as, “**Works**”), formal written acceptance of the Deliverables is not required, and you are deemed to have accepted the Deliverable one week after delivery.

2.8.1 If the Transaction Document requires formal written acceptance, you shall confirm acceptance within one week of our delivery of the Deliverable. Notwithstanding the foregoing, a Deliverable (and all portions thereof) shall be deemed accepted on the date on which you put it into production use or if agreed acceptance tests have not been carried out within one week of delivery due to reasons not attributable to us.

In any event, you shall be entitled to refuse acceptance only in case of defects which materially affect the use of the Deliverable (i.e. defects that prevent you from the production use of the Deliverable). Those items shall be detailed in a written notice of rejection and shall be remedied by us within a reasonable period of time or as otherwise agreed in writing by the parties.

2.8.2 Prior to acceptance, you may terminate Works at any time for convenience. In such case you shall pay to us the full contracted fees for the Professional Services. Where legally required under Applicable Law, we will reduce such fees in our reasonable

discretion to the extent that we save any costs as a result of the termination.

2.9 Warranty. We warrant that the Professional Services will be provided as set forth in Section 2.1. In the event of any non-compliance with the warranty hereunder our sole obligation and your exclusive remedy will be either (i) re-performance of the Professional Services in compliance with this warranty; or (ii) if re-performance is not commercially reasonable, to terminate the Professional Services and refund any pre-paid amounts for the portion of the Professional Services terminated. THIS SECTION 2.9 SETS OUT THE EXCLUSIVE WARRANTY FROM US AND IT REPLACES ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, OR ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, OR USAGE OF TRADE. THIS SECTION 2.9 DOES NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

3. Intellectual Property

3.1 Pre-Existing and Third Party IP. All rights, including all intellectual property rights, title, and interest in and to any software, ideas, concepts, methodologies, processes, know-how, and other proprietary material or information ("**Intellectual Property**") that a Party owned or developed prior to the inception of the Professional Services, or that a Party acquired or developed thereafter without reference to or use of the other Party's Intellectual Property, including any modifications or enhancements thereto, shall remain the property of such Party ("**Pre-Existing IP**"). All Intellectual Property that is owned by a third party remains the property of such third-party ("**Third Party IP**"). Except as expressly granted in the MindSphere Agreement, no licenses will be deemed to have been granted by either Party to any of its Pre-Existing IP.

3.2 Results. The Professional Services provided hereunder shall not constitute "works made for hire" under any applicable copyright laws. Unless otherwise expressly set forth in a Transaction Document and subject to Section 3.1, we will own all Intellectual Property developed or created in the course of performing the Professional Services, provided that we do not use or make reference to your Pre-Existing IP.

3.3 License Grant to Pre-Existing and Third Party IP Provided by You. You grant us, at no cost, a non-exclusive and non-transferable license to use the Pre-Existing IP or Third Party IP you provide to us related to the Professional Services, solely as reasonably necessary for us and our subcontractors to perform the Professional Services and any agreed additional Services resulting from the Professional Services. You shall indemnify and defend us from and against any claims, damages, liabilities, losses, costs, and expenses arising from or in connection with any claims by Third Parties for our use of any Third Party IP that you provide. We will give you written notice of such claim, and allow you to control the defense and settlement, and reasonably cooperate with you in this regard.

3.4 License Grant to Deliverables.

3.4.1 Subject to payment of the agreed fees, we hereby grant you a non-exclusive, non-transferable, perpetual license to use Material expressly identified as a Deliverable in a Transaction Document, for

your internal use as an end user. "**Deliverable**" means tangible or intangible items that we provide to you as a result of Professional Services performed hereunder.

3.4.2 If a Deliverable is software, it will be in object code format and the license granted is revocable and sub-licensable for your internal purposes as an end-user. Any additional or differing usage rights, including any license rights or restrictions applicable to Deliverables provided in any format besides object code form, will be specified in a separate agreed Transaction Document between the Parties. We will not provide any software maintenance unless expressly agreed otherwise in the applicable Transaction Document.

4. Your Participation in Class-Setting Professional Services

This Section 4 applies to your attendance or participation in Professional Services class-settings (such as live or online training, workshops, or similar events).

4.1 Safety Regulations. Participants shall observe the safety and accident prevention regulations and any site rules in effect on Siemens premises or other training locations. Data storage media brought onsite by participants shall not be used on training center computers.

4.2 Unused Trainings. If you purchase a set number of trainings in advance to be thereafter consumed as needed, all such trainings must be used within 12 months following the date of purchase. There is no right to refund of fees paid for unused trainings that were purchased more than 12 months prior.

4.3 Cancellation by Us. We may cancel Professional Services if, at our sole discretion, conducting the Professional Services is not commercially reasonable or is not feasible, for example due to trainer illness. Prior to cancellation, we will make reasonable attempts to remedy the issue necessitating cancellation or to reschedule. We will immediately inform you of any cancellation. If we cancel, any fees paid in advance for the cancelled Professional Services will be refunded to you. Any other claims by you resulting from our cancellation are hereby expressly disclaimed.

4.4 Cancellation, No-show, or Discontinuation by You. You may cancel a Professional Services event in writing, at any time. If we receive your cancellation at least 21 days prior to the first day of the scheduled performance, you will not be charged the agreed total fees for the respective event. If we receive your cancellation less than 21 days prior to the first day of the scheduled performance, we will charge you 80 % of the agreed total fees for the respective event. A participant's failure to appear for or complete the entire duration of an event, or any reduction in the number of participants at any time, will not affect the total fees and you will be charged the full fees.

4.5 Use of Material. You shall not make any recordings, translations, or copies, in whole or in part, physical or electronic, of any Material used or made available to you. Material provided to participants is limited to the copies received by each participant. For the avoidance of doubt, Material is made available to you for your use during the course of the Professional Services and you are to return or, if instructed by us, destroy or delete all Materials related to the Professional Services upon completion of the event. However,



when instructed by us, participants may retain Material for their internal use as end-users.

5. **Country/Region Specific Provisions**

5.1 **PRC.** These country specific provisions apply if both Parties are located in the People's Republic of China ("**PRC**"). In such case

Section 2.4 of this document shall be replaced as follows:

Invoicing. Unless otherwise specified (including but not limited to quotations, Order Forms, Transaction Document), we or a person or legal entity authorized by us will invoice you upon completion of the Professional Services. Payments to us or to a person or legal entity authorized by us are due on placing of the Order Form.