

# Cloud Supplemental Terms For Asset Performance Suite (“APS”)

These APS Supplemental Terms (“APS Terms”) amend the Cloud Service Agreement (“Agreement”) between Customer and SISW and apply solely with regard to the Cloud Services identified in the Order as APS (“APS Services”). In the event of a conflict between the Agreement and these APS Terms, these APS Terms prevail. In the event of a conflict between an Order and the APS Terms or the Agreement, the Order prevails with respect to the Cloud Services ordered thereunder.

**1. DEFINITIONS. Capitalized terms used herein have the meaning as defined in the Agreement. The following additional definitions apply to these APS Terms:**

- (a) “Acceptable Use Policy” means the document located at the following URL, which is incorporated by reference into this Agreement as if fully set forth herein: <https://www.plm.automation.siemens.com/global/de/legal/online-terms/cloud/>.
- (b) “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, or vehicle navigation or communication systems, air traffic control, weapons systems, nuclear facilities, power plants, medical systems and facilities, and transportation facilities.
- (c) “Tag” means a piece of data identifying a physical object in an Industrial Plant that Customer determines to be relevant for the operations of the Industrial Plant. Tags can include measurement points, set points and control points of a plant (for example a pump, valve, instrument, pipeline, but usually not an elbow, gasket, bolt or nut).
- (d) “Industrial Plant” means an industrial facility at the same location and postal address which is owned, planned, operated or managed in whole or in part by Customer for a specific industrial business purpose. An Industrial Plant may consist of several buildings.
- (e) “Software” means any downloadable tools, software development kits, or other such computer software made available by SISW for use as part of or in connection with the APS Services, including updates thereto.
- (f) “Historian Tag” means an elemental variable of analog, discrete, string, or complex type that is typically stored in a plant historian database. In real terms, a Historian Tag typically refers to an instrument or device in a plant. It may also refer to system variables, such as the system time. Historian Tags can include all measurement points and set points of a plant as well as non-electrical items which are not automated but require continuous manual observations.
- (g) “Data Source” means any external back-end data system directly or indirectly connected to the APS Services.
- (h) “Data Source Type” is a specific grouping of related Data Sources into one of the following distinct categories: process historians, batch systems, relational databases, API/web services, Enterprise Resource Planning systems, Document Management Systems, Engineering Systems, Analytic Systems, or proprietary/other.

**2. ENTITLEMENT AND RIGHT TO ACCESS APS SERVICES.**

Customer is entitled to use APS Services and Software during a limited term and according to the parameters of the APS Services specified in the Order. For certain use cases related to APS Services, Customer may require a license for other software offered by SISW, including COMOS, XHQ, or Bentley software.

- 2.1 Usage Parameters.** SISW offers different packages of APS Services that may be limited by usage parameters stated in the Order, such as concurrent Authorized Users, number of assignable Tags, Historian Tags, Data Sources, Data Source Types or number of Industrial Plants. If Customer’s usage or expected usage of APS Services exceeds the usage limitations of the applicable APS Services, Customer must notify SISW promptly about such excess use.
- 2.2 APS Service Levels.** The Asset Performance Suite SLA attached hereto as Appendix 1 shall replace the Service Level Agreement and Support Annex referenced in the Agreement in their entirety.
- 2.3 Restrictions on Use of the APS Services.** When using APS Services, Customer must comply with the terms of the Acceptable Use Policy.
- 2.4 Limited Reliance.** Customer acknowledges and agrees that (i) APS Services and Software 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 APS Services and Software and (ii) the outcome from any processing of data through the use of the APS Services and Software is beyond SISW’s control. Customer is responsible for the use and interpretation of the outcome from such processing and any reliance on such outcome. Customer will indemnify SISW, its Affiliates and Providers, and each of their respective employees, officers, directors, and representatives from and against, and, at SISW’s option defend SISW against, any claims, damages, liabilities, losses, costs, or

expenses (including reasonable attorney's fees) arising from or in connection with use of APS Services or Software for the operation of or within a High Risk System, if the functioning of a High Risk System depends on the proper functioning of a APS Service or Software or a APS Service or Software caused a High Risk System to fail.

### **3. OTHER PROVISIONS.**

- 3.1 Changes to APS Terms.** Any change to these APS Terms will only apply from the beginning of a renewed term of a subscription, unless a change during a current term is required as a result of a change of laws or permitted in by the terms of the Order. Should a change during a term for a specific Order have a material adverse effect on Customer's rights, obligations, or use of the APS Services, Customer may terminate its use of the affected APS Services by providing written notice to SISW within 30 days following SISW's notice of such change. In case of such termination, SISW will refund any prepaid amounts for the relevant APS Service on a pro-rata basis for the remaining term.
- 3.2 Provision of Software.** SISW may make Software available to Customer for use in connection with the APS Services. SISW retains all intellectual property rights in the Software and grants to Customer a non-exclusive, non-sublicensable, non-transferable (except as expressly permitted by the Agreement), limited license for Authorized Users to use the Software during the applicable term of the Order, solely in connection with the APS Services and for Customers internal business purposes. Please see the Documentation for details about included Software.
- 3.3 Intellectual Property Infringement Indemnity for Software.**
- a) Infringement Claim Indemnity. In the event a claim is made against Customer that its use of Software infringes any copyright, trade secret, patent, or other intellectual property right of a third party, subject to prompt written notice from Customer of such claim, SISW may, at its sole option and expense: (a) procure the right for Customer to continue using the Software; (b) modify the Software to make it non-infringing, provided such modification does not materially reduce its functionality; or, (c) replace the Software with a non-infringing, functionally equivalent alternative. If SISW in its sole discretion determines that none of these remedies are commercially reasonable, SISW may terminate the Order for the impacted Service and Software and provide a refund for the remaining term.
- (b) Exclusions. Notwithstanding anything to the contrary herein, SISW will not have any liability or indemnification obligation to Customer to the extent that an infringement claim arises out of: (i) use of a version of the Software to the extent that a current version is non-infringing, (ii) failure to use a correction, patch, or new version of the Software offered by SISW that performs substantially the same functions, (iii) use of the APS Services and Software in combination with software, equipment, or products not provided by SISW, (iv) use of Services or Software provided at no charge, (v) any change to the Software not made by SISW, (vi) compliance with specifications provided by Customer, or (vii) open source software.
- (c) Sole and Exclusive Remedy. This Section 3.3 represents the sole and exclusive liability of SISW to Customer for infringement of third-party intellectual property rights by the Software.
- 3.4 Third-Party and Open Source Software.** APS Services and the software made available as part of APS Services or for use together with APS Services may contain third-party technology, including open source software ("Third-Party Technology"), to which additional third-party license terms ("Third-Party Terms") may apply. Please see the Documentation (including license files, "read me" files, header files, or source code) for details of those Third-Party Terms. If Third-Party Terms require SISW to furnish Third-Party Technology in source code form, SISW will provide it upon written request and payment of any shipping charges. In the event of a conflict between these APS Terms and the Third-Party Terms, the Third-Party Terms will control solely with respect to the Third-Party Technology.
- 3.5 Term and Termination.** For Orders of APS Services, the term of an Order will automatically renew for successive renewal periods each equal in length to the initial term of the Order, unless Customer or SISW give written notice of termination for such Order at least 100 days prior to the end of the term. In the event Customer materially breaches these APS Terms, SISW is entitled to terminate Customer's Orders hereunder if Customer has not cured the breach within 30 days after SISW has notified Customer in writing about such breach. If SISW is unable to meet the Availability Commitment 3 times in a calendar year, Customer may terminate the relevant Order without penalty and without any further remedies by providing at least 100 days' written notice.

# Appendix 1 – Asset Performance Suite SLA

## 1. DEFINITIONS

- (a) “End-to-end Supportability” means support for incidents that occur in integrated business scenarios, where Customer’s environment includes both APS Services and other SISW products under a valid support agreement.
- (b) “Local Time” means the time zone for the location of the SISW support center serving the zone where Customer is located. Information about APS hotline support hours for regional SISW support hubs is provided in the SISW Support Portal (all times listed are GMT (Greenwich Mean Time) / UTC) (under “COMOS”).
- (c) “Release Update Information” means generally available documented summaries, webinars and videos provided by SISW to inform and instruct Customers on new product release changes.
- (d) “SISW Support Portal” means the SISW support portal containing information about APS hotline support hours for regional SISW support hubs and related information provided at the following link: [www.siemens.com/gtac](http://www.siemens.com/gtac) under “COMOS”.

## 2. DATA CENTER LOCATIONS AND SUB-PROCESSORS

The current data centers for APS Services are located in Western Europe. In case of changes to data center locations, SISW will notify Customer in due course.

For Orders of APS Services, Customer hereby approves the engagement of the following Sub-Processors in addition to those listed in clause 7.1 and Attachment 3 of the Data Processing Agreement:

Subprocessor-Name	Sub-Processor Address	Service provided by Sub-Processor	Transfer Safeguards implemented by Sub-Processor
Siemens AG	Siemensallee 84, 76187 Karlsruhe, Germany	Cloud service	Not applicable, no Transfer to Non EEA Recipients
Evosoft Hungary	evosoft Hungary, Szamitastechnikai Kft., ARE 552E, Hungary	Cloud service	Not applicable, no Transfer to Non EEA Recipients
Siemens Technology and Services Private Limited	Plot No. 3, Sector 29, 122001 Gurugram, India	Cloud service	EU Model Contract
Siemens Industry, Inc.	100 Technology Drive, 30005-3900 Alpharetta, GA,USA	Cloud service	EU Model Contract
Amazon Web Services, Inc.	2021 7th Avenue; Seattle, Washington 98121, USA	Cloud service	Not applicable, no Transfer to Non EEA Recipients
Subcontractor of Amazon Web Services Inc.: A100 ROW GmbH	Marcel-Breuer-Strasse 12, 80807 Muenchen, Germany	Cloud service	Not applicable, no Transfer to Non EEA Recipients
Evosoft GmbH	Marienbergstrasse 76-82, 90411 Nuernberg, Germany	Cloud service	Not applicable, no Transfer to Non EEA Recipients
Microsoft Corporation and its Subprocessors for the Microsoft Azure Core Services as indicated in the Microsoft Trust Center ( <a href="https://www.microsoft.com/en-us/trust-center/privacy/data-access">https://www.microsoft.com/en-us/trust-center/privacy/data-access</a> )	One Microsoft Way Redmond WA, USA 98052	Cloud service	EU Model Contract
Auth0	10800 NE 8th Street Suite 600, Bellevue, WA 98004, USA	Cloud service	EU Model Contract

### 3. CUSTOMER SUPPORT FOR APS SERVICES

#### 3.1 Availability Commitment.

SISW will make the APS Services available with an uptime of at least 95% measured per calendar month on the following basis (“Availability Commitment”):

$$\text{Availability Commitment \%} = \frac{\text{Available Minutes} - \text{Unscheduled Downtime Minutes}}{\text{Available Minutes}}$$

The Availability Commitment excludes downtime due to scheduled maintenance. SISW will use scheduled maintenance to apply required patches to the IT infrastructure to ensure the continued security, availability and performance of the APS Services. Scheduled Maintenance shall generally occur only once per month, and APS Services shall not be unavailable for more than 12 consecutive hours. Scheduled maintenance shall (in general) be outside of regular business hours for Central European and lower 48 states North American time zones.

Unscheduled Downtime is calculated from the minute it is clearly reported by Customer to SISW until SISW reports the issue as fixed or mitigated. SISW may subtract from the calculated downtime any periods spent waiting for a response from Customer.

Only “Critical” incidents, as described below, are considered “Unscheduled Downtime Minutes” in the above Availability Commitment % calculation.

#### 3.2 Limitations.

The Availability Commitment set forth above shall not apply (i.e., will not be taken into account as “downtime” when calculating availability) with respect to any performance or availability issues that:

- are the result of scheduled maintenance;
- are caused by factors outside of SISW’s reasonable control (e.g., natural disaster, war, acts of terrorism, riots, government action, or a network or device failure external to SISW’s data centers, including at Customer’s site or between Customer’s site and SISW’s data center);
- result from the use of services or faulty or incompatible hardware or software provided by Customer, including, but not limited to, issues resulting from inadequate bandwidth or related to third-party hardware, software, or services;
- are caused by Customer’s use of a APS Services after instruction from SISW to modify use of such APS Service;
- occur during or relate to preview, pre-release, beta or trial versions of a feature;
- result from Customer’s unauthorized action or failure to act when required or from Customer’s employees, agents, contractors, vendors, or any other party gaining access to SISW’s network by means of Customer’s passwords or equipment, or which otherwise result from Customer’s failure to follow appropriate security practices;
- result from faulty input or instructions (e.g., requests to access files that do not exist);
- result from use of sandbox, proof-of-concept, development, quality analysis, or other non-production systems unless
- explicitly included or authorized by SISW.

#### 3.3 Remedies, Claims.

The sole and exclusive remedies for any failure by SISW to meet its obligations under this APS SLA shall be those set forth in these APS Terms and SLA. Claims under this SLA must be made in good faith and may only be made by submitting a support case within 30 days after the end of the relevant month in which SISW did not meet the Availability Commitment. Any claims not submitted by Customer within such time period may be denied by SISW, and SISW will have no further obligation to Customer with respect to such claims.

### 4. SCOPE OF CUSTOMER SUPPORT FOR APS SERVICES.

SISW will provide technical support for the APS Services according to the following provisions:

#### 4.1 Severity Levels.

The Severity Levels for incidents relating to the Availability of the APS Services are defined in the table hereunder. SISW will classify each reported, verifiable, and reproducible incident accordingly.

<b>SEVERITY LEVEL</b>	<b>DESCRIPTION</b>
<b><u>Severity 1 - Critical</u></b>	All APS Services are down. All users affected.

<b><u>Severity 2 - High</u></b>	Operation of the APS Services is severely degraded or major components of the APS Services are not available. Significant user impact.
<b><u>Severity 3 - Medium</u></b>	Some non-essential features of the APS Services are impaired or subject to interruptions while the most vital components of the APS Services remain functional. Minimal user impact.
<b><u>Severity 4 - Low</u></b>	Minor errors occur with little or no impact on the normal operation of the APS Services. No or minimal user impact.

#### 4.2 **Cloud Support.**

SISW will provide support for APS Services as follows

<b>Cloud Support</b>	
<b>Description</b>	Basic level of Cloud Support included in the subscriptions of standard APS Services.
<b>Support Availability</b>	7 am to 3 pm (Local Time) Monday to Friday, excluding local holidays
<b>Web Support</b>	✓
<b>End-to-end Supportability</b>	✓
<b>Release Update Information</b>	✓
<b>Solution Center</b>	✓
<b>Support via web and platform for social business collaboration</b>	✓

#### 4.3 **Support Languages.**

SISW will provide first-tier support in English or German in the designated countries on business days from 7 am to 3 pm Local Time. Outside of this support window, SISW may provide first-tier support in a country or region in English only.

#### 4.4 **APS Services Support Centers.**

The list of SISW's local support centers for APS Support Services can be found at: [www.siemens.com/gtac](http://www.siemens.com/gtac)

### 5. CUSTOMER RESPONSIBILITIES

#### 5.1 **Designated Administrator.**

Customer shall designate two support contacts ("Designated Administrators"). Customer shall keep SISW updated with valid contact information for the Designated Administrators. Customer's Designated Administrators shall control and administer Customer's account, including modifying and terminating Authorized User's access. The administration of Customer's account is done via opening a support request in SISW's support center. SISW will provide notifications regarding upgrades or scheduled downtime only to Customer's Designated Administrators. Designated Administrators are responsible to relay such notifications in a timely manner to all of Customer's Authorized Users.

#### 5.2 **Cooperation.**

Customer shall reasonably cooperate with SISW to resolve incidents or problems reported by Customer.

#### 5.3 **Technical Information.**

Customer shall maintain adequate technical expertise and knowledge of their system environment and configuration of the APS Services. SISW may require such information in detail or involvement of Customer's information technology staff in order to assist in incident or problem resolution.