

MARKETPLACE SELLER AGREEMENT



Siemens Digital Industries Software

This marketplace seller agreement (the “**Agreement**”) is entered into between Siemens Industry Software Inc., 5800 Granite Parkway, Suite 600, Plano, TX 75024, USA (“**SISW**”) and the legal entity that accepted this Agreement (“**Seller**”). This Agreement may be accepted by manual signature or electronic signature, or through an electronic system specified by SISW. In the electronic system, Seller will be prompted to accept these terms by clicking a button. Clicking the button or using any Marketplace Service indicates that Seller has read, understood and accepted this Agreement. If Seller does not accept this Agreement, Seller must not use any Marketplace Service.

1. DEFINITIONS

“**AUP**” means SISW’s Acceptable Use Policy available at www.siemens.com/sw-terms/aup. The term “Cloud Services” used in the AUP includes Marketplace Services for purposes of this Agreement.

“**Buyers**” means designated entities interested in or obtaining a right to access and use a Seller Product through the Marketplace.

“**Industrial Edge Hub**” means the website where Buyers can, among other actions, download subscribed Industrial Edge applications.

“**Marketing Material**” means any documents, information, and other content provided by or on behalf of Seller for or in connection with the marketing and/or provision of the Seller Product. Marketing Material includes trademarks, designations and logos in the form provided by Seller to SISW (with any modifications to optimize their viewing). Marketing Material is part of the Seller Product.

“**Marketplace**” means an online marketplace operated by or on behalf of SISW allowing Seller to Promote and/or Transact Seller Products, e.g. available at www.dex.siemens.com.

“**Marketplace Seller Guide**” means the guide made available to Seller, as it may be updated by SISW from time to time.

“**Marketplace Services**” means the services provided by SISW to enable Seller to engage in the Promotion or Transaction of Seller Products as well as the ancillary services described in Section 4.5 set forth in an Order.

“**Order**” means an order form or similar ordering document that (i) incorporates the terms of this Agreement and sets forth the Marketplace Services ordered by Seller and any associated fees and (ii) has been agreed by Seller by manual or electronic signatures or agreed through an electronic system specified by SISW and accepted by SISW.

“**Party**” means Seller and/or SISW, depending on the context.

“**Promote**” or “**Promotion**” means listing the Seller Products on the Marketplace and linking to the Seller where buyers can obtain or purchase the Seller Products directly from Seller.

“**Seller Product**” means any software (including edge applications) that Seller Promotes or Transacts to Buyers through the Marketplace, any related technical support Seller provides and content description information and any related Marketing Material.

“**Subscription Term**” means the time period specified in the Order for which a Marketplace Service is made available to Seller. Any renewal constitutes a new Subscription Term.

“**Transact**” or “**Transaction**” means any sale, or license of, or granting of access to the Seller Product through the Marketplace, including renewals.

“**Transaction Proceeds**” means the gross sales proceeds received from any Transaction.

2. ORDERS; FEES; TAXES

2.1. **Ordering.** The Parties may enter into one or more Orders under this Agreement. Each Order is binding on the Parties and is governed by the terms of this Agreement.

2.2. **Payment; Electronic Invoices.** Unless otherwise agreed by the Parties, Seller will pay any fixed fees set forth in the applicable Order within 30 days of the invoice date and any Transaction-based fees in accordance with Section 4.4.5. Unless specified otherwise in the applicable Order, fixed fees related to Marketplace Services are invoiced in advance and Transaction-based fees are invoiced monthly in arrears. If Seller’s usage of any Marketplace Service exceeds the agreed authorization, Seller will pay fees for excess use at the then-current price for such Marketplace Service within 30 days of the invoice date. Seller hereby consents to receiving invoices from SISW in electronic form.

2.3. **Taxes.** All fees are exclusive of any taxes and any other charges. Seller agrees to pay or reimburse SISW for the payment of any applicable taxes or duties including, but not limited to, sales taxes, value added taxes, goods and services taxes, consumption taxes, or any other charge that is imposed by any government authority on Seller’s use of any Marketplace Service. If Seller is exempt from value-added or sales tax, then it must provide a valid, timely, and executed exemption certificate, direct pay permit, or other such government-approved documentation to SISW. If Seller is required by law to make any income tax deduction or to withhold income tax, after the application of reductions available under international treaties, from any sum payable directly to SISW hereunder, Seller will promptly effect payment thereof to the applicable tax authorities, and will also promptly provide SISW with official tax receipts or other evidence issued by the applicable tax authorities to support a claim for tax credit relief.

3. PROVISION OF MARKETPLACE SERVICES; RIGHTS AND RESPONSIBILITIES

3.1. **Eligibility.** Seller needs to meet the following eligibility requirements in order to Promote or Transact the Seller Product through the Marketplace. Seller needs to: (i) have a valid Seller Account; and (ii) meet any other eligibility requirements specified in the Marketplace Seller Guide.

3.2. **Submission.** Seller is responsible for (i) the evaluation and testing of the Seller Product as to its technology, functionality, performance, security, and user interface; (ii) compliance of the Seller Product with the Marketplace Seller Guide and any other requirements set out in this Agreement; and (iii) Seller’s successful completion of any technical self-certification process made available by SISW.

3.3. **Review.** SISW reserves the right to review each Seller Product itself or through a subcontractor, and SISW may accept or reject it for any reason. SISW shall not be obliged to conduct any such review. Neither any review nor the lack thereof shall constitute or be communicated by Seller to

be an endorsement of the Seller Product by SISW. Additional terms regarding SISW's review standards and processes may be set out in the Marketplace Seller Guide. Seller agrees to cooperate with SISW in the review process and provide information and materials reasonably requested by SISW, including information on the operation of Seller's business. SISW may adopt and change its review standards and processes at any time and as SISW deems appropriate. Any of Seller's non-public information to which SISW obtains access in the course of the review will be considered Seller's Confidential Information.

- 3.4. **Placement; No Guarantee.** The type of placement, category or order in which the listing of a Seller Product will be made available on the Marketplace is subject to SISW's sole discretion. SISW does not guarantee that any Seller Product listed on the Marketplace will sell, that Seller will make any particular amount of money in promoting or selling Seller Products on the Marketplace, or that any Buyers will complete any Transaction with Seller or be able to pay for the Seller Products.
- 3.5. **Responsibility for the Seller Product.** Seller is responsible for the Seller Product(s) and any related Marketing Material. Seller in particular represents and warrants the following: (i) Seller owns all rights necessary to distribute each Seller Product listed on the Marketplace as contemplated by this Agreement; (ii) each Seller Product conforms in all material respects to the description and documentation made available by Seller on the Marketplace and otherwise; (iii) no Seller Product infringes any third party's intellectual property rights; (iv) each Seller Product (including information about applicable fees) and all Marketing Material are, at all times, accurate, complete, not misleading, and in compliance with applicable law and the terms of the Agreement, and in particular comply with privacy and data protection laws and meet any security or other standards of the industries for which they are intended or useful; and (v) each Seller Product can be legally distributed in the countries where the Marketplace is available in accordance with the Export Laws applicable to such distribution.
- 3.6. **Maintenance and Removal.** Seller will ensure that each Seller Product is kept up-to-date with current bug fixes and patches. SISW reserves the right to remove the listing of a Seller Product if it does not meet the requirements set out in this Agreement or the Marketplace Seller Guide. SISW may also request Seller to update a Seller Product within a time period determined by SISW to ensure that it complies with such requirements. Seller may remove the listing of a Seller Product from the Marketplace at any time in accordance with the Marketplace Seller Guide. Any removal by Seller of the listing of a Seller Product from the Marketplace will apply to prospective Buyers only and Seller will continue to enable Buyers with a running subscription to the Seller Product to use the Seller Product (including related support) after removal of the listing until all then-current subscriptions terminate.
- 3.7. **Insurance.** On SISW's request, Seller will provide SISW with information about insurance policies that Seller may have in place for the Seller Product(s). SISW may require Seller to obtain and maintain, at Seller's own cost and expense, certain levels of insurance for certain types of Seller Products.
- 3.8. **Seller of Record; Contracts.** Seller will be the licensor and seller of record for the Seller Product(s). Seller will establish the pricing, license rights and other terms governing Buyers' use of a Seller Product. Seller shall include express provisions in the contract with Buyers which state: (i) Seller's company name and address and the contact information (telephone number, e-mail address) to which any questions, complaints, or claims with respect to the Seller Product should be directed; (ii) that the contract is only between Seller and Buyer and not between SISW and Buyer. Seller shall remain fully responsible for the enforceability and enforcement of the contract and its compliance with laws.
- 3.9. **Support; User Documentation.** Seller is solely responsible for providing technical support (if any) for the Seller Product(s). If SISW receives support queries relating to a Seller Product, SISW will forward such queries to Seller. Seller will provide Buyers with user documentation that accurately reflects the functionalities of the Seller Product, including security safeguards.
- 3.10. **Ratings and Feedback.** SISW may implement mechanisms that rate, or allow Buyers to rate, and provide feedback about a Seller Product, Seller's performance in connection with a Seller Product and the Marketplace. SISW may make these ratings and feedback publicly available.
- 3.11. **Buyer's Data.** Seller shall inform Buyers of and, where legally required, obtain their consent for any collection, storage, processing, modification, disclosure, or other use of Buyers' data in connection with the Seller Product. Where required, Seller shall conclude adequate data protection terms with Buyers.
- 3.12. **Rights in the Marketplace and Marketplace Services.** All rights, title, and interest in and to the Marketplace and the Marketplace Services, including any know-how and any part and improvement thereof, and all intellectual property rights in or to the foregoing shall remain wholly vested in SISW, its affiliates, its business partners, and/or licensors.
- 3.13. **Rights in the Seller Product.** During the term of this Agreement and for as long as Buyers are permitted to use the Seller Product(s) Promoted or Transacted on the Marketplace, Seller grants SISW and its business partners a worldwide, nonexclusive, transferable, sub-licensable, royalty-free right to: (i) list, promote, distribute and otherwise digitally make available the Seller Product(s) on the Marketplace; (ii) use Seller's Marketing Material as authorized by Seller; and (iii) access, display, promote, and otherwise use the Seller Product(s) in connection with demonstrating it to potential Buyers.
- 3.14. **No-Charge-Services; Previews.** Any (i) Marketplace Service provided at no charge to Seller ("**No-Charge-Service**"), and (ii) features or services offered as part of Marketplace Services prior to their general release that are labeled or otherwise communicated to Seller as 'preview', 'pre-release', 'early access', or 'non-general release' ("**Previews**"), are provided "AS IS", without warranty, support, availability or other commitments. SISW may change, limit, suspend, or terminate any No-Charge-Service or Preview at any time. If the Order identifies a Marketplace Service as being 'demo', 'test', 'evaluation', 'beta' or similar, SISW may impose additional limitations (such as, but not limited to, limiting the amount of Transactions or eligible Buyers).
- 3.15. **Records; Information Obligations and Audit.** Seller will maintain records specifically identifying the number and identity of Buyers, along with all contracts. Seller will provide information or other materials that SISW reasonably requests to verify Seller's compliance with this Agreement and its contractual obligations as a provider of Seller Products. SISW may, during regular business hours and upon reasonable advance notice, conduct an audit of Seller's compliance with this Agreement. Seller will permit SISW or its authorized agents to access facilities, workstations, and servers and take all commercially reasonable actions to assist SISW in determining compliance with this Agreement. SISW and its agents will comply with reasonable security procedures communicated to SISW while on Seller's premises.
- 3.16. **General Use Restrictions.** Unless otherwise provided in this Agreement, Seller will not cause or permit the resale, transfer, sublicensing, or publication of any Marketplace Service, or use it for the benefit of any third party without the prior written consent of SISW. Seller will comply

with the AUP. Seller will not use Marketplace Services for the purpose of developing or enhancing any product that is competitive with the Marketplace or any Marketplace Service. The restrictions set out in this Section do not apply to the extent they conflict with mandatory applicable law.

3.17. **Support; Availability.** SISW provides general support for the Marketplace via the following e-mail address: store_operations.plm@siemens.com. Seller can email issues to SISW in English language. SISW reserves the right to interrupt the availability of the Marketplace and/or Marketplace Services to conduct maintenance or perform updates or other changes, whether scheduled or unscheduled, in SISW's sole discretion.

3.18. **Changes.** As the Marketplace evolves over time, SISW reserves the right to change this Agreement or any Marketplace Service provided hereunder from time to time. SISW will notify Seller of any material changes at least 90 days prior to the change effective date specified in the notice. If the change has a material adverse impact on Seller and Seller does not agree to the change, Seller may terminate the affected Order(s) 30 days prior to the change effective date.

4. SELLER ACCOUNT; ADDITIONAL TERMS FOR TRANSACTIONS; ANCILLARY MARKETPLACE SERVICES

4.1. **Creation of Seller Account.** In order to use and benefit from the Marketplace Services, Seller must create an account through the Marketplace ("Seller Account"). Seller agrees to promptly update the Seller Account to keep it accurate, current, and complete.

4.2. **Confidentiality and security of Seller Account.** Seller is solely responsible for maintaining the confidentiality of the Seller Account (including access credentials provided thereto) and the information in the Seller Account, and, except as otherwise required by applicable law, Seller is solely responsible for all use of the Seller Account, whether or not authorized by Seller. Seller agrees to immediately notify SISW of any unauthorized use of the Seller Account or any other breach of security related to Seller's use of the Marketplace Services.

4.3. **Seller information; Verification.** When registering a Seller Account, Seller must provide true, accurate, current, and complete data about Seller and its activities. Such data may include a verified bank account, Seller's VAT number (where applicable) or other financial, business, tax or personal information, as well as further Know Your Customer (KYC) data as requested by the payment processing services provider Adyen N.V. ("Payment Processor") which SISW uses to provide payment processing services for Transactions to Seller. SISW may make, directly or through third parties, any inquiries SISW considers necessary to validate information that Seller provides to SISW, including checking commercial databases. Seller authorizes SISW to obtain one or more of Seller's credit reports to establish, update, or renew the Seller Account with SISW or in the event of a dispute relating to this Agreement and activity under the Seller Account.

4.4. Additional Terms for Transactions.

4.4.1. **Credit card payments; Direct agreement with Payment Processor.** Seller acknowledges that: (i) in the course of creating the Seller Account Seller will be prompted to enter into a direct agreement with Payment Processor on Payment Processor's terms and conditions available at <https://www.adyen.com/legal/terms-and-conditions-adyen-for-platforms>; (ii) Seller may not list and Transact any Seller Product via the Marketplace where it is illegal to offer or provide these to or from the relevant country and/or which are stated on Payment Processor's 'Prohibited and Restricted Products and Services List' available at <https://www.adyen.com/legal/list-restricted-prohibited>, as it may be updated by Payment Processor from time to time in accordance with Payment Processor's terms and conditions; and (iii) Payment Processor may reject Seller if it fails Payment Processor's internal due diligence procedures.

4.4.2. **Mandate to represent Seller.** Seller hereby grants SISW the right to represent Seller towards Payment Processor with respect to Seller's use of the payment services provided by Payment Processor. This includes, but is not limited to, the following: (i) Seller authorizes SISW to (1) connect Seller to Payment Processor's payment platform (including Payment Processor's payment interface which will be used to submit payment requests for a Transaction), and (2) access and use Seller's data processed on Payment Processor's payment platform (including individual Transaction level data to provide support to Seller); (ii) SISW may technically manage user settings of Seller with respect to Payment Processor's payment services on Seller's behalf (e.g. 3D Secure, fraud control settings); (iii) SISW may (1) submit to Payment Processor an authorization request of a Buyer for a payment to Seller for a Transaction and (2) request Payment Processor to settle Transaction Proceeds in accordance with Section 4.4.5; (iv) SISW may automatically reject payment requests for Transactions based on threshold values set by SISW as instructed by Seller via the fraud control tool made available by Payment Processor; (v) Seller authorizes SISW to instruct Payment Processor to establish and maintain a Deposit (as defined and in accordance with Section 4.4.3); (vi) SISW may submit to Payment Processor the Seller information collected as per Section 4.3 as well as any updated Seller information; and (vii) Seller grants to SISW any further authorizations as necessary to represent Seller in accordance with Payment Processor's terms and conditions. For the avoidance of doubt, any authorization or right to represent Seller or to otherwise give instructions towards Payment Processor granted to SISW by Seller under Section 4 only means that SISW forwards respective instructions and payment-related data to Payment Processor on behalf of Seller. SISW does not have any power of disposal over Seller's account held with Payment Processor.

4.4.3. **Deposit.** Seller authorizes SISW to instruct Payment Processor to establish and maintain (by itself or by financial institution partners) a reserve amount to cover any amount that may become due from Seller to SISW or Payment Processor, including any expenses, losses or fines, which may result from existing or expected Transaction cancellations, chargebacks, Buyer complaints and Seller's use of the Marketplace Services ("Deposit"). The Deposit is a fixed percentage deducted from the Transaction Proceeds for each Transaction and will be held for a specified period of time. The amount of the fixed percentage ("Deposit Level") and the period of time for which the Deposit will be held will be separately agreed between the Parties. The initial Deposit Level will be set on the basis of the information provided by Seller regarding itself and its activities, its anticipated initial use of the Marketplace Services, and its potential indebtedness for fees, fines, chargebacks and other liabilities when entering into the Agreement. SISW has the right to adjust the Deposit Level in its discretion from time to time to bring it in line with its then current estimates. The Deposit will be released on a rolling basis after the corresponding agreed period expires to the extent it has not been used to cover amounts that became due from Seller to SISW or Payment Processor.

4.4.4. **Risk of fraud or loss.** Seller will bear the risk of fraud or loss, including the risk of chargebacks or credit card fraud associated with a Transaction. In case of a chargeback or if SISW determines a payment related to a Transaction was a result of fraud, Seller will promptly reimburse SISW for any costs, claims, as well as all credit card association, bank or other payment processing, re-presentment and/or penalty fees associated with the original Transaction.

- 4.4.5. **Settlement of Transaction Proceeds.** Transaction Proceeds from Buyers charged for validly processed Transactions which are acquired from Payment Processor will be settled to the account(s) held by Payment Processor. Seller hereby authorizes SISW to instruct Payment Processor to subsequently settle all received and previously unpaid Transaction Proceeds directly to Seller at the end of each month, withholding (i) the agreed percentage from the Transaction Proceeds to keep the Deposit at the agreed Deposit Level, (ii) the applicable Transaction-based fees for the Marketplace Services which Payment Processor shall settle to SISW, and (iii) any taxes which SISW is required to remit on Seller's behalf by the tax laws of either Seller's or Buyer's country of residence.
- 4.4.6. **Binding offer.** By listing a Seller Product for a Transaction, Seller is making a binding offer to Transact the Seller Product to a Buyer at the price defined by Seller. If a Buyer accepts the offer by ordering the Seller Product on the Marketplace, Seller is bound to deliver the Seller Product to the Buyer within the agreed upon timeframe (provided that such delivery is not prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions including, but not limited to, embargoes or other sanctions imposed by the United Nations, the European Union, or the United States). SISW will provide a mechanism on the Marketplace that informs Buyers of the legal entity Transacting the Seller Products and that requires Buyers to click to accept the terms under which the Seller Products are made available. It is Seller's responsibility to provide the terms and conditions that Seller wishes to use for this purpose to SISW in the manner requested by SISW. SISW makes no warranty that the mechanism described in this Section creates a binding agreement between Seller and Buyers. SISW will not make any inquiries into the identity of Buyer or the person acting on its behalf.
- 4.5. **Ancillary Marketplace Services.**
- 4.5.1. **Tax Calculation Service.** In case of Transactions, Seller commissions SISW to calculate all sales, use, and value-added taxes assessed, incurred or required to be collected or paid for any reason in connection with the Transaction. Otherwise SISW is not obliged to determine whether any taxes apply to any Transaction, and SISW is not responsible for remitting taxes to any tax authority with respect to any Transaction, or for reporting any information (including the payment of taxes) with respect to any Transaction. Notwithstanding the foregoing, when SISW is legally obligated by tax law, SISW will collect taxes, and will provide Buyers with a compliant tax invoice. SISW will report any such Seller information to tax authorities that SISW is required to report to tax authorities by law.
- 4.5.2. **Reporting Service.** SISW will provide Seller at the end of each month with a report showing the total amount of Transactions and the total amount of Transaction Proceeds accrued in the given month.
- 4.5.3. **Subscription Service.** If the Seller Product is an application that is managed by a provisioning system that is separate from the Marketplace (such as the Industrial Edge Hub) and a Buyer purchases the Seller Product, SISW will notify the provisioning system operator accordingly. The provisioning system operator will then make available the Seller Product to the Buyer in the provisioning system, and enable the Buyer to download the Seller Product.

5. **DISCLAIMER; LIMITATION OF LIABILITY; INDEMNIFICATION**

- 5.1. **Disclaimer.** Except as otherwise expressly set forth in this Agreement, the Marketplace Services are provided "AS IS" and SISW disclaims all warranties including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. SISW does not warrant or otherwise guarantee that (a) reported errors will be corrected or support requests will be resolved to meet Seller's needs, (b) Marketplace or Marketplace Services will be uninterrupted, error free, fail-safe, fault-tolerant or free of harmful components. Representations about Marketplace or Marketplace Services or features or functionality in any communication with Seller constitute technical information, not a warranty or guarantee.
- 5.2. **Limitation of Liability.**
- 5.2.1. **The entire, aggregate liability of SISW related in any way to this Agreement will be limited to the fees paid to SISW for the Marketplace Service that gave rise to the liability during the 12 month period before the first event giving rise to the claim occurred.**
- 5.2.2. **In no event will SISW be liable for (i) any indirect, incidental, consequential, special, exemplary or punitive damages, loss of production or data, interruption of operations, or lost revenue or profits, even if such damages were foreseeable, or (ii) any No-Charge-Services or Previews.**
- 5.2.3. **SISW will not be liable for any claim in connection with this Agreement if such claim is brought more than two years after the first event giving rise to such claim is or should have been discovered by Seller.**
- 5.2.4. **The foregoing limitations and exclusions apply (i) to the benefit of SISW and its affiliates, and their respective officers, directors and licensors, subcontractors, and representatives, and (ii) regardless of the form of action, whether based in contract, statute, tort (including negligence) or otherwise.**
- 5.2.5. **The foregoing limitations and exclusions will not apply to the extent that liability cannot be limited or excluded according to applicable law.**
- 5.3. **Indemnification.**
- 5.3.1. **General.** Seller will indemnify, defend and hold harmless SISW and its suppliers and contractors and each of their respective employees, officers, directors, and representatives from and against any claims, damages, liabilities, losses, costs and expenses (including reasonable attorney's fees) arising from or in connection with: (i) the Seller Product and/or its promotion or sale on the Marketplace; (ii) any violation of laws or rights of others by Seller's use of the Marketplace Services; (iii) any breach by Seller of this Agreement; (iv) any breach of Seller's representations or warranties set forth in this Agreement; (v) the use of Seller's trademarks, designations and logos as authorized by Seller; and (vi) any claim or demand for (1) payment of any taxes imposed in connection with any Transaction, (2) any fines, penalties, or similar charges imposed as a result of Seller's failure to collect, remit or report any taxes in connection with any Transaction, or (3) any fines, penalties, or similar charges imposed as a result of Transaction cancellations, chargebacks, Buyer complaints or Seller's breach of its obligations under its agreement with Payment Processor.
- 5.3.2. **Process.** SISW will promptly notify Seller of any claim subject to Section 5.3.1, but SISW's failure to promptly notify Seller will only affect Seller's obligations under Section 5.3.1 to the extent that SISW's failure prejudices Seller's ability to defend the claim. Seller may: (i) use counsel of Seller's own choosing (subject to SISW's written consent) to defend against any claim; and (ii) settle the claim as Seller deems appropriate, provided that Seller obtains SISW's prior written consent before entering into any settlement. SISW may also assume control of the defense and settlement of the claim at any time and charge all reasonable costs for such defense from Seller.

6. RENEWAL; TERMINATION; SUSPENSION

- 6.1. **Subscription and Renewals.** If indicated on the Order or as otherwise agreed by the Parties in writing or in an electronic system made available by SISW, the Subscription Term for the applicable paid Marketplace Service will automatically renew for successive Subscription Terms unless either Party notifies the other Party at least 60 days prior to the end of the then-current Subscription Term that it has elected not to renew. Any renewed Subscription Term will be the same length as the preceding term or 12 months, whichever is greater. The then-current Marketplace Seller Agreement (or successor terms) at www.siemens.com/sw-terms/marketplace will apply for the following Subscription Term in lieu of this Agreement. The fees during any renewed Subscription Term will be the same as those charged during the preceding Subscription Term, unless (i) SISW notifies Seller about different future fees at least 90 days prior to the end of the then-current Subscription Term or (ii) fees for the renewed Subscription Term(s) are specified on the Order.
- 6.2. **Termination.** SISW may terminate an Order or this Agreement for convenience at any time. Either Party may terminate an Order for a particular Marketplace Service with immediate effect in the event of the other Party's material breach of this Agreement which remains uncured for a period of 30 days from receipt of notice specifying the breach by the other Party; provided that such termination will only be effective with respect to the Marketplace Service affected by the material breach. SISW may immediately terminate any or all Orders or this Agreement upon notice to Seller (i) for reasonable cause, including, without limitation, Seller's non-compliance with the Marketplace Seller Guide, Seller's filing for bankruptcy or having bankruptcy proceedings filed against it, Seller ceasing to do business, termination of the agreement between Seller and Payment Processor, or any breach by Seller of Sections 2.2, 3, 7, or 8, or (ii) in order to comply with applicable law or the requests of government authorities.
- 6.3. **Effect of Termination.** Upon expiration of the applicable Subscription Term (if not seamlessly renewed) or termination of any Order for one or more Marketplace Services or this Agreement for any reason, all of Seller's rights to access, use or receive the affected Marketplace Service(s) automatically terminate. Seller will immediately cease using the affected Marketplace Service(s), and remove and destroy all copies of SISW's Confidential Information, and certify such removal and destruction in writing to SISW. After termination, SISW will remove the listing of the Seller Products from the Marketplace, unless otherwise agreed in writing. Termination of this Agreement or any Order for one or more Marketplace Services will not relieve Seller of its obligation to pay the total fees set forth in any Order, which fees will become due and payable immediately upon termination. No refund or credit will be given as a result of any termination under Section 6, except that in case of Seller's termination for SISW's material breach or SISW's termination for convenience in accordance with Section 6.2, SISW will refund a reasonable portion of any prepaid fees on a pro-rata basis for the remainder of the Subscription Term for the affected Marketplace Service(s). Sections 2.2, 2.3, 3.5, 5, 6.3, 7, 8 and 9 survive termination of this Agreement.
- 6.4. **Suspension.** SISW may suspend or limit Seller's access to and use of the Marketplace or Marketplace Services, in whole or in part, immediately (i) if SISW reasonably determines that the use of the Marketplace or Marketplace Services poses a security risk to the Marketplace, the Marketplace Services, to SISW or to any third party, or subjects SISW or any third party to liability, (ii) if Seller materially breaches this Agreement, or (iii) upon the occurrence of any of the circumstances that give SISW the right to immediate termination under Section 6.2. The suspension or limitation may be made in addition to any other rights available to SISW under this Agreement, will not relieve Seller of its obligation to pay any fees, and will be lifted when the reason for such suspension or limitation no longer exists.

7. EXPORT CONTROL AND SANCTIONS COMPLIANCE

- 7.1. **Export.** SISW's obligations under this Agreement are conditioned upon Seller's compliance with, and Seller agrees to comply with, all applicable export and re-export controls, embargoes, and economic and trade sanctions laws and regulations, including in any event, those of the United States and the European Union ("**Export Laws**"). Seller represents that the Seller Products are non-controlled (e.g. classification is "N" in the E.U., and "N" for ECCN or "EAR99" in the U.S.) and that any Seller Product sold via the Marketplace or Marketplace Service provided hereunder, and any derivatives thereof will not be (i) downloaded or accessed by a Sanctioned Person, (ii) exported, re-exported (including any 'deemed exports'), shipped, distributed, delivered, sold, resold, supplied, or otherwise transferred, directly or indirectly, to any Sanctioned Person or otherwise in a manner contrary to the Export Laws, (iii) used for any purpose prohibited by the Export Laws, or (iv) used for non-civilian purposes (e.g. armaments, nuclear technology, weapons, any other usage in the field of defense and military), unless permitted by the Export Laws or respective governmental licenses or approvals. Without limiting the foregoing, Seller represents and warrants that (i) it is not a Sanctioned Person; and (ii) it will not access or otherwise use, or facilitate a third party's access or use of, any Marketplace Service from a location in a Sanctioned Country. Seller will, at least once per year, review and update its list of users who have access to any Marketplace Services or the Seller Products and confirm that no such user is a Sanctioned Person and that all such Users may continue to access the Marketplace Services or the Seller Products in compliance with Export Laws. SISW may conduct the necessary Export Laws checks and, upon request, Seller will promptly provide SISW with any necessary information. "**Sanctioned Country**" means a country or territory that is itself the subject or target of any comprehensive trade or economic sanctions (currently Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine). "**Sanctioned Person**" means any person (i) listed in the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Department of Treasury's Office of Foreign Assets Control or in any Export-Control-Related list of designated persons maintained by the U.S. Department of Commerce, the U.S. Department of State, the United Nations Security Council, the European Union, any Member State of the European Union, or the United Kingdom; (ii) operating, organized, or resident in a Sanctioned Country; (iii) the government of, or acting for or on behalf of the government of, Venezuela or a Sanctioned Country; or (iv) owned or controlled by one or more such persons.
- 7.2. **Information Disclosure.** If Seller discloses to SISW any information that is (i) Covered Defense Information or Controlled Unclassified Information as defined in U.S. Government regulations, or (ii) subject to Export Laws that require controlled data handling, Seller will notify SISW personnel in advance of each instance of disclosure and will use the notification tools and methods specified by SISW.
- 7.3. **Remedies, Indemnification.** In the event that Seller fails to comply with any provision of Section 7 or violates any Export Laws in connection with any Marketplace Service or Seller Product, SISW will have the right to take action in accordance with the terms of this Agreement and as required by U.S. law or the applicable law. Further, Seller will indemnify and hold harmless SISW, its affiliates and their representatives against any claims, damages, fines, and costs (including attorney's fees and expenses) relating in any way to Seller's noncompliance with Section 7, including Seller's violation or alleged violation of any Export Laws.

- 7.4. **Right to Withhold Performance.** SISW shall not be obligated to perform under this Agreement 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 including, but not limited to, embargoes or other sanctions imposed by the United Nations, the European Union, or the United States.
8. **CONFIDENTIALITY**
- 8.1. **Confidentiality Obligations. "Confidential Information"** means all information disclosed by one Party or any of its affiliates or subcontractors to the other Party under this Agreement that is marked as confidential or the confidential nature of which is evident to a reasonable person. SISW's Confidential Information includes the terms of this Agreement and any Order, the Marketplace Services, the Marketplace, SISW's intellectual property rights, and any information Seller derives from benchmarking the Marketplace Services. The receiving Party will (i) not disclose Confidential Information, except (1) on a need-to-know basis to its and its affiliates' employees, consultants, contractors, and financial, tax and legal advisors that are bound by confidentiality obligations and use restrictions at least as restrictive as those in this Agreement, or (2) as otherwise authorized by the disclosing Party or this Agreement, (ii) use Confidential Information only as required to exercise or enforce rights or perform obligations under this Agreement, and (iii) use reasonable care to protect against unauthorized use and disclosure of the disclosing Party's Confidential Information. The receiving Party will be liable for compliance with Section 8 by each of its recipients. SISW and its affiliates may name Seller as a customer on their websites and in customer lists and other marketing materials.
- 8.2. **Exclusions.** The foregoing confidentiality obligations will not apply to any Confidential Information that (i) is or becomes generally available to the public other than as a result of disclosure by the receiving Party in violation of this Agreement; (ii) becomes available to the receiving Party from a source other than the disclosing Party, provided that the receiving Party has no reason to believe that such source is itself bound by a legal, contractual, or fiduciary obligation of confidentiality; (iii) was in the receiving Party's possession without an obligation of confidentiality prior to receipt from the disclosing Party; (iv) is independently developed by the receiving Party without the use of, or reference to, the disclosing Party's Confidential Information; or (v) is required to be disclosed by a governmental authority or law, so long as the receiving Party promptly provides the disclosing Party with written notice of the required disclosure, to the extent such notice is permitted by law, and cooperates with the disclosing Party to limit the scope of such disclosure.
9. **GENERAL PROVISIONS**
- 9.1. **SISW Affiliates and Subcontractors.** Subject to compliance with applicable laws, SISW's ultimate parent company or companies directly or indirectly owned or controlled by SISW's ultimate parent company may exercise SISW's rights and fulfill SISW's obligations under this Agreement. SISW may use resources in various countries to provide the Marketplace Services, including unaffiliated subcontractors. SISW remains responsible for its obligations under this Agreement.
- 9.2. **Assignment.** This Agreement will extend to and be binding upon the successors, legal representatives, and permitted assignees of the Parties. However, this Agreement and the rights granted under this Agreement may not be assigned, sublicensed, or otherwise transferred (by operation of law or otherwise) by Seller without the prior written consent of SISW. Any attempted assignment in violation of this Section will be void.
- 9.3. **Feedback.** If Seller provides any ideas or feedback regarding the Marketplace or any Marketplace Service, including suggestions for changes or enhancements, support requests and error corrections (collectively "**Feedback**"), Feedback may be used by SISW without condition or restriction.
- 9.4. **Force Majeure.** Neither Party will be liable for delay or failure to perform any obligations under this Agreement (except with respect to any payment obligations) due to any cause beyond its reasonable control. The delayed Party will promptly notify the other Party of any such event.
- 9.5. **Notices.** SISW may notify Seller under this Agreement by: (i) posting a notice on the Seller Account or (ii) sending an email or other text message to the address or contact number provided by Seller for business contact or then-associated with the Seller Account. It is Seller's responsibility to regularly visit the Seller Account and to always keep SISW with current email addresses of Seller representatives. If Seller does not comply with such obligation or if Seller's receipt of a notice fails because of technical issues related to equipment or services which are under Seller's or Seller's subcontractors' control, notices will be deemed to have been provided to Seller three days following the date of such notice. Notices to SISW shall be sent to store_operations.plm@siemens.com. Notwithstanding the foregoing, notices of claims or notices regarding disputes shall always be sent to the Party's address as specified in the applicable Order. A Party may change its address for receipt of notice by delivery of written notice to the other Party.
- 9.6. **Governing Law and Jurisdiction.** This Agreement shall be subject to the applicable laws of the State of Delaware, United States. Any dispute arising out of or in connection with this Agreement shall be subject to the jurisdiction of the courts of the State of Delaware, United States. Each Party hereby irrevocably submits itself to the personal jurisdiction of the relevant court of the State of Delaware for any such disputes. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Nothing in this Section shall restrict the right of the Parties to seek interim relief intended to preserve the status quo or interim measures in any court of competent jurisdiction. Notwithstanding the foregoing, to the extent permissible under applicable laws and to the extent it would not result in the invalidity or inapplicability of this Section, the Parties agree that SISW, at its sole discretion, may bring an action in the courts of the jurisdiction(s) where the Marketplace Services are being used or Seller has its place of business, (i) to enforce its intellectual property rights; or (ii) for the payment of the fees related to a Marketplace Service.
- 9.7. **No Waiver; Validity and Enforceability.** The failure to enforce any provision of this Agreement will not be construed as a waiver of such provision. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions will not be affected, and such provision will be deemed to be restated to reflect the original intentions of the Parties as nearly as possible in accordance with applicable law. The Parties agree that electronic signatures or acceptance of this Agreement via an electronic system specified by SISW will have the same force and effect as manual signatures.
- 9.8. **Publicity.** Except as may be required by applicable law, neither Party shall issue a press release in connection with the subject matter hereof without the prior written consent of the other Party, which shall not be unreasonably withheld.
- 9.9. **Entire Agreement and Order of Precedence.** This Agreement constitutes the full and complete agreement between the Parties with respect to the subject matter thereof and supersedes any previous or contemporaneous agreements or communications, whether written or verbal, relating to such subject matter. The reference to a document that refers to another document shall be deemed to also include such other document,

unless otherwise stated therein. Subject to Section 3.18, the Agreement may not be varied other than in writing executed by manual signatures or electronic signatures of authorized representatives of both Parties or via an online mechanism, if so provided explicitly for such purpose by SISW. No other terms and conditions shall apply. In the event of a conflict between this Agreement and the Marketplace Seller Guide, this Agreement prevails. In the event of a conflict between this Agreement and an Order, the Order prevails with respect to any Marketplace Service ordered thereunder. The terms of any purchase order or similar Seller document are excluded and such terms will not apply to any Order, and will not supplement or modify this Agreement irrespective of any language to the contrary in such document.

- 9.10. **Independent Contractors.** For all purposes, the Parties will be deemed to be independent contractors, and nothing contained in this Agreement will be deemed to constitute a joint venture, partnership, employer-employee relationship, or other agency relationship. Unless otherwise stated herein, neither Party is, nor will either Party hold itself out to be, vested with any power or right to contractually bind or act on behalf of the other Party.