

# Mendix Terms of Use

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If an executed agreement exists between the legal entity on whose behalf you're accessing the Services (as defined below) and Mendix or a Mendix authorized distributor/reseller, at any time regarding the Services, the terms of that agreement shall supersede these Terms of Use in its entirety, except that Section 6 and the Mendix Privacy Policy shall continue to govern the use of data submitted by you during the registration process for the Services. Upon termination of that agreement you have the right to continue to use the Service under these Terms of Use.

By using the products and (online) services of Mendix (collectively the "Service"), You signify and agree to be bound by these Terms of Use, unless an executed agreement already exists as stated above. Conditions of purchase or other conditions of You and/or third parties or additions to or deviations from these Terms of Use shall only apply when explicitly agreed in writing between the Parties. These Terms of Use apply to all Services of Mendix and all Services included therein.

If You are entering into these Terms of Use on behalf of a company or other legal entity, You represent that You have the authority to bind such entity to these Terms of Use or any other terms and conditions, in which case the terms "You" or "Your" shall refer to such entity.

For reference, a Definitions section is included at the end of these Terms of Use.

## 1. License

Mendix hereby grants You a non-exclusive, non-transferable right to use the Service, solely for Your own internal business purposes, subject to these Terms of Use. All rights not expressly granted to You are reserved by Mendix and its licensors. You may not use the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes, or disclose the results of any such benchmark to any third party. You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit the Service in any way; (ii) modify or make derivative works based upon the Service; (iii) remove or modify any markings or notices of proprietary rights in the Service; (iv) reverse engineer the Service; (v) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (vi) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (vii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (viii) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (ix) attempt to gain unauthorized access to the Service or its related systems or networks. You consent to use the Service in accordance with any technical- and usage limitations, including but not limited to the number of users, number of applications, disk

storage, RAM, number and type of integrations, geography and traffic. During the term of the Agreement and for a period of three years following its termination, Mendix may, after 30 days advance written notice, inspect and audit Your records to verify compliance with the Agreement, these Terms of Use and other terms and conditions. You agree to cooperate with the audit, provide us with reasonable assistance and access to information. If required to enable authorities or Mendix to conduct export control checks, You, upon request by Mendix, shall promptly provide Mendix with all information pertaining to the particular end customer, the particular destination and the particular intended use of goods, works and services provided by Mendix, as well as any export control restrictions existing.

## **2. Your Responsibilities**

You are responsible for all activity occurring under Your accounts. You shall abide by all applicable laws, treaties and regulations in connection with Your use of the Service, including, without limitation, those related to export control, data privacy, international communications and the transmission of technical or personal data. You shall treat the account information, access and identification codes as confidential and with due care and shall not share any production, confidential or personal data. You shall: (i) notify Mendix immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Mendix immediately and use reasonable efforts to stop immediately any copying or distribution of (parts of) Services that is known or suspected by You (iii) not impersonate another Mendix User or provide false identity information to gain access to or use the Service.

## **3. Your Intellectual Property Rights**

As between Mendix and You, You own all rights, title and interest, including all related intellectual or industrial property rights, in and to any Customer Data & Customer Deliverables and Mendix hereby assigns and transfers to You any rights, title or interest Mendix may acquire in any Customer Deliverables upon receipt of payment in full from You. Subject to these Terms of Use, and during the term for which You have a right to use the Service, Mendix hereby grants You a limited, non-exclusive, non-transferable and terminable license to use any Content incorporated in the Customer Deliverables, solely in connection with Your authorized use of the Service.

## **4. Mendix's Intellectual Property Rights**

Mendix alone, and its licensors where applicable, shall own all right, title and interest, including all related intellectual or industrial property rights, in and to all Services of Mendix (including all its algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) and any Feedback. These Terms of Use are not a sale and does not convey to You any rights of ownership in or related to the Service or the intellectual property rights owned by Mendix. The Mendix name, the Mendix logo, and the product names associated with the Service are trademarks of Mendix or third parties, and no right or license is granted to

use them. Mendix may use Your logos and reference Your name and the nature of the Services provided hereunder in Mendix marketing efforts, including on the Mendix web site.

## 5. Export control

Mendix's obligations under these Terms of Use are conditioned upon Your compliance with, and for which You agree 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**") , also considering the limitations of domestic business and prohibitions of by-passing those embargos. You represent that Your content is non-controlled (e.g. in the E.U. or The Netherlands (AL = N) or in the U.S. (ECCN = N or EAR99) and that any Service made available hereunder and any derivatives thereof will not be (i) used 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) unless expressly authorized by MENDIX in writing, used for non-civilian purposes (e.g. armaments, nuclear technology, weapons, any other usage in the field of defense and military). Without limiting the foregoing, You represent and warrant that (i) it is not a Sanctioned Person, and (ii) it will not download or otherwise access, or facilitate a third party's download or access of, any offering delivered by Mendix or works and services (including all kinds of technical support) performed by Mendix from a Sanctioned Country. You will, at least once per year, review and update your list of Users who have access to an account and confirm that no such User is a Sanctioned Person and that all such Users may continue to access the Service in compliance with Export Laws. Mendix may conduct the necessary Export Laws checks and, upon request, You will promptly provide Mendix with any necessary information.

In the event You fail to comply with any provision of this Section or violate any Export Laws in connection with the Service Mendix will have the right to take action in accordance with these Terms of Use and as required by U.S. law or the applicable law.

**Information Disclosure.** If You disclose to Mendix 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, You will notify Mendix personnel in advance of each instance of disclosure and will use the notification tools and methods specified by Mendix.

**Right to Withhold Performance.** Mendix will not be obligated to perform under this Terms of Use 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

## 6. Privacy & Security

Mendix's privacy and security policies may be viewed at <https://www.mendix.com/privacy-policy>. Mendix reserves the right to modify its privacy and security policies in its discretion from time to time. By providing Mendix Your email address You consent to our using the email address to send You Service-related notices, including any notices required by law, changes to features of the Service and special offers. Mendix's implementation, development and operations teams shall have the right to access and use Your account information, and Customer Data for the purpose of delivery of the Service, respond to service or technical problems, on Your request, or to provide Professional Services. Mendix shall be entitled to change the account, access- and identification codes assigned.

## **7. Free Community Edition; Trial Period**

Mendix may offer a portion or specific editions of the Service (e.g. Sprintr Community Edition, Mendix Business Modeler, Mendix AppStore) free of use. It is under sole discretion of Mendix to specify the conditions for free use and Mendix deems the right to modify these conditions of free use at any time. For non-free portions or Editions of the service (e.g. Sprintr Premium Edition, Mendix Cloud Slots), the Service may be made available to You for an initial free trial period of up to thirty days from Your acceptance of these Terms of Use. If You do not purchase a paid subscription for the Service from Mendix prior to the conclusion of the free trial period, Your access to these non-free portions of the Service will be suspended and any Customer Data that is uploaded to these non-free portions of the Service may be deleted. If You wish to continue using the Service, You must contact Mendix and purchase a paid subscription for Your continued use of such Service.

## **8. Representations & Warranties**

Mendix shall implement commercially reasonable technical and organizational measures to secure availability, confidentiality and integrity with respect to the Services, the Customer Data and personal information. However, unless explicitly otherwise agreed in writing between Parties, the Services are provided on an "as is" and "as available" basis, without warranties of any kind and the Services are accessed or used by You at Your own risk and without any right to support, maintenance, updates or any other services. Mendix and its licensors make no representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the Service. Mendix and its licensors do not represent or warrant that (a) the use of the Service will be secure, timely, uninterrupted or error-free of operate in combination with any other hardware, software, system or data (b) the Service will meet Your requirements or expectations, (c) any stored data will be accurate or reliable, (d) the quality of any products, services, information, or other material purchased or obtained by You through the Service will meet Your Requirements or expectations, (e) errors or defects will be corrected, or (f) the Service or the server(s) that make the Service available are free of viruses or other harmful components. All conditions, representations and warranties, whether express, implied statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by Mendix and its licensors. The Service may be subject to limitations, delays, and other problems inherent in the

use of the internet and electronic communications. Mendix is not responsible for any delays, delivery failures, or other damage resulting from such problems.

Mendix shall not be responsible for any Customer Data. You, not Mendix, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Mendix shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. Mendix reserves the right to establish or modify its general practices and limits relating to storage of Customer Data. You represent and warrant that You have not falsely identified yourself nor provided any false information to gain access to the Service.

## **9. Limitation of Liability**

IN NO EVENT SHALL MENDIX'S LIABILITY FOR ANY CLAIM ARISING OUT OF OR RELATING TO THE SERVICE AND/OR THESE TERMS OF USE AND/OR ANY AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU TO MENDIX TO USE THE SERVICE DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE OF THE CLAIM. IN NO EVENT SHALL MENDIX AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OR COSTS OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, GOODWILL, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE AND/OR THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF MENDIX AND/OR ITS LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COULD HAVE REASONABLY FORESEEN THEM. THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS.

## **10. Indemnification**

You shall defend, indemnify and hold harmless Mendix, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents from and against any and all claims, proceedings, actions, fines, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) any noncompliance with export control regulations (ii) a (alleged) claim that You violate any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (iii) a claim arising from the breach by You or Your Users of the Agreement or these Terms of Use or any law, rule, regulation or treaty; (iv) third-party claims on account of product liability due to a deficiency in a Service delivered by You to a third party that consisted in part of hardware, software, websites, databases or other materials supplied by Mendix.

## **11. Notice**

Mendix may give notice by means of a general notice on the Service, electronic mail to Your e-mail address on record in Mendix's account information, or by written communication sent by first class mail or pre-paid post to Your address on record in Mendix's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Mendix (such notice shall be deemed given when received by Mendix) at any time by any of the following: letter sent by confirmed facsimile to Mendix at the following fax number: +31 10 2760435; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Mendix at the following address: Mendix Technology B.V., 5de verdieping, Wilhelminakade 197, 3072 AP Rotterdam, Netherlands, in either case, addressed to the attention of: Chief Executive Officer.

## **12. Assignment; Change in Control**

Neither Agreements nor (the rights delivered from) these Terms of Use may be transferred or assigned by You without the prior written approval of Mendix. The obligations arising from these Terms of Use and/or Agreements may be assigned by Mendix without notice to You and without Your consent. Any transfer or assignment in violation of this section shall be null and void. Any actual or proposed change in control of You that results or would result in a direct competitor of Mendix directly or indirectly owning or controlling 50% or more of You shall entitle Mendix to terminate the Agreement or (any rights delivered from) these Terms of Use for cause immediately upon written notice.

## **13. Force Majeur**

Mendix shall not be bound to fulfill any obligation if prevented from doing so by force majeure. Insofar as not already included, force majeure shall further mean instances of strikes, company sit-ins, blockades, embargoes, government measures, war, revolution and/or any similar state, power failures, faults in electronic communication lines, cable breaks, fires, explosions, water damage, lightning damage, natural disasters, flooding and/or earthquake, shortage of and/or sickness of personnel and non-fulfillment by suppliers of Mendix or force majeure on the part of suppliers of Mendix.

## **14. Termination**

You agree that Mendix may terminate the providing of any gratuitous Services at any time, for any reason and without prior notice. You agree that Mendix shall not be liable to You and/or any third party for any modification, suspension, or termination of the Service. The following

Sections shall survive the termination and/or expiration of this Agreement: Sections 3 (Your Intellectual Property Rights); 4 (Mendix 's Intellectual Property Rights); 8 (Representations & Warranties); 9 (Limitation of Liability); 10 (Indemnification); and 16 (Final Provisions).

## 15. Modification to Terms

Mendix reserves the right to modify these Terms of Use and its policies relating to the Service at any time and without notice, effective upon posting of an updated version of these Terms of Use on the Service. You are responsible for regularly reviewing these Terms of Use. Continued use of the Service after any such changes shall constitute Your consent to such changes.

## 16. Final Provisions

Dutch law shall govern Agreements and these Terms of Use. The application of the United Nations Convention on Contracts for the International Sale of Goods 1980 is excluded under all circumstances. Any disputes between Parties arising from or related to Agreements or or these Terms of Use shall be exclusively submitted to a court of law with jurisdiction in Rotterdam, The Netherlands. These Terms of Use, together with any other legal notices and Agreements shall constitute the entire Agreement between You and Mendix concerning the delivery of Services. If (parts of) provisions in these Terms of Use, Agreements or annexes are or become unlawful, invalid or unenforceable, the surviving provisions or the valid part of the invalid provision shall remain fully in force and enforceable, without any consequences for the other obligations of Parties. The unlawful, invalid or unenforceable provision shall be deemed replaced by a provision that as far as possible has the same legal and commercial purport.

## 17. Definitions

“Agreement”, “Contract”: the arrangements agreed in a form or a document or in some other way, under which Mendix will deliver the Services or any other products or services defined therein.

“Content”: the audio and visual information, documents, software, products, services, proprietary tools, source code samples, generic templates and reusable components, App Store content, libraries, know-how, techniques and expertise, (i) contained or made available to you in the course of using the Service, or (ii) used or developed by Mendix in the course of developing or delivering Customer Deliverables.

“Customer Data”: any data, information or material, including posts, comments, documents, project information, models, applications, templates, code, widgets, themes, application data, user information and account information, provided, submitted, created, saved, added, uploaded or made available by You to the Service in the course of using or accessing the Service, except Services (or parts thereof) and Feedback.

“Customer Deliverables”: means deliverables that are provided by Mendix as part of Professional Services that: (i) constitute Customer Data, or a modification, translation, abridgment or adaptation of Customer Data, or (ii) are expressly identified as being owned by You in the applicable Order Form or SOW, The term “Customer Deliverable(s)” does not include Content.

“Feedback”: any suggestions, ideas, enhancement (requests), recommendations or other feedback provided by You or any other party relating to the Services.

“Mendix”, “Us”, “Our”, “We”: any activity of “Siemens Industries Software Inc.” (a corporation under the law of the United States of America), including, but not limited to “Mendix Technology B.V.” (a private limited liability companies under Dutch law), or any affiliated or subsidiary company doing business as Mendix.

“Party”, “Parties”: You or Mendix individually (‘Party’) or together (‘Parties’).

“Professional Services”: fee based consulting, quality assurance or training services Mendix may perform pursuant to a statement of work (“SOW”) or Order Form issued pursuant to these Terms of Use. Each SOW or Order Form shall be deemed part of and subject to these Terms of Use.

“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

“Service”, “Services”: means all products, services of Mendix, including but not limited to Sprintr and our websites, Business Modeler, Business Server, Team Server, Cloud Portal, App Store, Marketplace, (mobile) Apps, Content (as defined above), applications, other software, Support Portal, Forum, Partner Portal, (cloud) hosting services, platform as a service, documentation and manuals, except Customer Data.

“Terms of Use”: these Terms of Use, together with the documents referred to in these Terms of Use.

“You”, “Your”, “User(s)”: anyone who entered into an Agreement with Mendix or uses or accesses a Service of Mendix, including Your employees, representatives, consultants, contractors or agents who are authorized to use or access the Service of Mendix or have been supplied user identifications and passwords by You (or by Mendix at Your request), even if no charge is due or registration is needed.



# 18. Questions or Additional Information

If You have questions regarding these Terms of Use or wish to obtain additional information, please contact us via <https://www.mendix.com/contact-us/>