

**General Terms and Conditions for Schaeffler Digital Services-Canada**

Schaeffler's (also referred to as "Company") performance of digital services in form of condition monitoring, analysis services and prediction services (hereinafter "Performance") in relation to any company, commercial entity, legal person of public law with VAT identification number as well as in relation to any special funds under public law acting in their capacity as entrepreneur for Value Added Tax purposes (hereinafter collectively called the "Customer") shall be provided solely on the basis of the following conditions (hereinafter "GTC"). Any conflicting general terms and conditions of the Customer shall not apply. Digital services means Company's providing Customer access to and the right to use the software, the data, the documentation, any services, including the base Services and any optional additional services Customer purchases via the Digital Customer Portal, and all results and reports Company or the services provide to Customer ("Services"). Data means all data and information that the OPTIME system collects through the wireless sensors and the gateway at Customer's location(s) and stores in the Schaeffler Cloud, all data and information Customer inputs into the technical interface in the Services, and all data input into the OPTIME system and transmitted to the Schaeffler Cloud

The Hardware products, which are offered by Schaeffler in context with the digital services, e.g. sensors or gateways, can be ordered by the Customer separately via the Schaeffler order processes. The Parties agree that the regulations relating to the use and application of the Hardware products and their components as set forth in the GTC shall apply also related to these orders. Any amendments or supplements hereto including the waiver of this provision shall be only valid if such are agreed by both parties in writing.

**1 Service Contract formation**

- 1.1 The contract about the Performance on the basis of these GTC ("Service Contract") as well as any amendments, supplementary agreements or other agreements shall become effective after confirming the acceptance by indicating on the Schaeffler website made available for the subscription for the Services on the Schaeffler website (hereinafter "Digital Customer Portal") by clicking on a specific check box that the Customer has read, understood and agreed to the GTC. The subscription to the Service shall be confirmed by Schaeffler through a confirmation e-mail sent to the Customer's e-mail address given at the registration process for the Customer. Upon the receipt of Schaeffler's confirmation /or the acceptance of the Performance ordered the Customer shall be deemed to have accepted the GTC; or
- 1.2 Depending on the Services and the product solution offered by Schaeffler and accepted by Customer, the Customer is allowed to use the Services for the internal use. Company grants Customer a limited, non-exclusive, non-sublicensable, and non-transferable license during the term (i) to access and use the Services for Customer's internal business purposes only and (ii) to access, use, and make a reasonable number of copies of the Documentation only in connection with Customer's use of the Services. Company reserves all rights in the Services not expressly granted to Customer in this Agreement. Documentation means Company's guides relating to the Services that Company provides or makes available to Customer and which describe the functionality, components, features, and requirements of the software and other components of the Services.

- 1.3 Schaeffler shall not be subject to any conflicting general terms and conditions of the Customer. Any such terms and conditions are hereby expressly rejected. Such terms shall not become part of the GTCs by way of the acceptance of an order or by way of any other circumstances implying acceptance. The scope of Performance to be provided shall be determined exclusively by the scope the Customer has selected on the Digital Customer Portal.
- 1.4 If the Services are sold together with Hardware products to be supplied by Schaeffler, the delivery of these products is solely executed (i) on the basis of the Schaeffler General Conditions of Sales and Delivery which are indicated on the Digital Customer Portal unless a separate Framework Agreement exists, (ii) on the basis of the Schaeffler General Conditions of Sales and Delivery which are part of the Agreement or (iii) on the basis of the stipulations as set forth in the Agreement. The provisions of the GTC relating to the use and application of the products and their components shall always apply, regardless of whether the products are ordered by the Customer before, without, simultaneously with or after the acceptance of these GTCs.

## 2 Types of Schaeffler Digital Services

The Customer can choose between several types of Services and various subscription models. Detailed descriptions of the relevant scope of Services and applicable price and payment terms are indicated on the Digital Customer Portal or in the quotations provided by Schaeffler.

Schaeffler may at any time amend, update or extend the content of the Services unilaterally at our sole discretion. In case of functional updates with an impact on the features of the service that requires customization on the side of the Customer, the Customer shall be notified by an e-mail informing on such amendment within 60 (sixty) days before the entry into force of the said amendment. Reference is made to Customer's termination right under these GTCs. Such termination right shall be the only remedy of the Customer regarding the amendment, change or extension of the content. In particular, the Customer shall have no right of refund for any paid fees.

## 3 Obligations for Customer

- 3.1 For the Performance the Customer shall make available data specified by Schaeffler in the Services description on the Digital Customer Portal. The Customer shall transmit these data to Schaeffler via the technical interface as indicated in the Services description. These data are analyzed by Schaeffler. Without adequate provision of data, Schaeffler is not obliged to provide any Performance.
- 3.2 The Customer shall cooperate at its expense in the provision of the contract Performance as necessary, in particular in providing technical support to the necessary extent.
- 3.3 Customer is further obliged to:
  - 3.3.1 Always provide accurate, complete, current and correct information, in particular all data needed by Schaeffler in order to set up the Customer in Schaeffler's IT systems and all data needed for using Schaeffler's Digital Service solutions;
  - 3.3.2 Grant Schaeffler access to the Data starting with the duration of the Service contract;
  - 3.3.3 Designate an Admin-User who is responsible to set up, if necessary, log-in details for Customer's employees as additional users of the Services and oblige its employees to keep their individual log-in data confidential.

- 3.4 Customers shall not:
  - 3.4.1 Breach the applicable law or commit any illegal conduct through using Schaeffler's Performance in any way;
  - 3.4.2 Make available to Schaeffler any information that contain material protected by intellectual property laws, including copyright or trademark laws, or is protected by confidentiality agreements unless the Customer is permitted to do so;
  - 3.4.3 Make available to Schaeffler any data of third parties without having the right to grant Schaeffler access to such data;
  - 3.4.4 Resell the Services to third parties on behalf of Schaeffler; for the avoidance of doubt, the Customer shall not act as Schaeffler's representative in connection with Customer's business relationship with its own customer or to conclude any contracts on behalf of Schaeffler;
  - 3.4.5 Disclose or license the results of the Performance to third parties, unless (i) the third party is Customer's customer and Customer is acting as independent service provider in this business relationship, or (ii) unless explicitly approved by Schaeffler in writing beforehand;
  - 3.4.6 Make available to the Schaeffler IT infrastructure any viruses, trojan horses, worms, malware, ransomware or any similar harmful code, software or programs that may damage the Schaeffler IT infrastructure or its affiliated companies' IT infrastructure or computers or property of third parties;
  - 3.4.7 Violate the rights of Schaeffler or of other customers or of third parties by way of defamation, abuse, harassment or any other conduct that is illegal under applicable laws;
  - 3.4.8 Otherwise collect information about Schaeffler, its affiliated companies or other customers using the Digital Services without permission.
  - 3.4.9 copy, modify, or create derivative works of the Services or any portion of the Services.
  - 3.4.10 reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any of the source code of the software.
  - 3.4.11 remove any proprietary notices from any of the Services.
  - 3.4.12 use the Services as a service bureau, for outsourcing purposes, for time sharing purposes, or otherwise make the Services available to any other person or entity for use in such person's or entity's business operations.
  - 3.4.13 disclose to any person or entity the Data, the results of any access or use of the Services, or any benchmarking results based on the Services without the prior written consent of Company in each instance.
- 3.5 Use of the Services requires the use of a device to measure vibrations in the equipment of Customer (each a "Device" and collectively, the "Hardware"). If a SIM-card is provided pre-installed in hardware provided by Schaeffler, only Schaeffler shall have the right to use the SIM-card for the provision of the Services to Customers for their internal use of the results of the Performance only. If a SIM-card is provided pre-installed in the Hardware, only the Company shall have the right to use the SIM-card. Customers acting as service providers must purchase SIM-cards, if needed, on their own responsibility and in their own name and on their own account and shall reflect and comply with the applicable telecommunication laws in all respects.
- 3.6 Schaeffler reserves the right to claim reasonable compensation resulting from any failure of the Customer to cooperate or if the Customer violates its obligations. Any additional rights shall not

be affected thereby. The Customer shall in particular be liable for the correctness of any data, documentation or other information supplied to Schaeffler, and also in terms of any third-party rights related thereto.

## **4 Prices**

- 4.1 The prices for the Services and various subscription models, in particular subscription and usage fees, shall be fixed and are indicated on the Digital Customer Portal or in the separate quotations provided by Schaeffler.
- 4.2 In the event of any value added or similar sales tax being due, such shall be detailed expressly in the invoice at the applicable rate at the time of Performance and shall be paid by the Customer in addition to the net price.

## **5 Data; Intellectual Property; Feedback**

- 5.1 Company shall at all times own all right, title, and interest in and to the Services, the results and output of the Services, and all related patent, trademark, trade secret, and other intellectual property rights. Customer shall not obtain any right, title, or interest in any of the foregoing.
- 5.2 The Services are performed on the basis of Data made available to Schaeffler by the Customer, as specified and agreed in these GTC. The Parties agree that the Data shall be available for Schaeffler for the maintenance, the improvement or the further development of Schaeffler Digital Services, also including the use of artificial intelligence. Schaeffler is in this context expressly allowed to freely use and utilize or have used and have utilized any Data on a worldwide, perpetual, irrevocable, non-exclusive, royalty-free, transferable, sublicensable and assignable basis. Schaeffler is permitted to store and use all Data to maintain and improve the Services and in any other manner it determines in its sole discretion; provided that Company shall not identify to any third party, other than affiliates of Company and subcontractors with a need to know, specific Data as Data provided by Customer.
- 5.3 The Customer warrants that he is entitled to provide Data to Schaeffler and grant the rights as described in this section 5, in particular if the Data is provided to the Customer by third parties. The Customer shall indemnify Schaeffler and hold us harmless for any claim, damage or loss that any authorities or third parties may demand to Schaeffler due to a violation of their rights or any laws or regulations by the provision of Data, the granting of rights or the use of the Data.
- 5.4 In case the Customer or Schaeffler terminates the Service Contract, Schaeffler shall be able to retain the Data stored by Schaeffler or by Schaeffler's service providers in its current form. Schaeffler or Schaeffler's affiliated companies shall be entitled to freely continue to utilize the Data for the purposes as set forth in section 5.1.
- 5.5 The Parties shall use appropriate technical and organizational safety measures, which shall satisfy the latest state of technology, to protect such Data.
- 5.6 Section 5.1, 5.2 and 5.3 shall not apply in cases Data are personal data. Personal data shall be Data that are considered as personal data pursuant to the applicable law of the seat of Schaeffler, in individual cases Customer's place of residence or at the place of operation of Customer's appliances and that are therefore under specific legal protection. In so far as the Data are personal

data, both Parties shall comply with the law in effect regarding data protection and shall mutually agree on further steps to ensure compliance to the legally required data protection.

- 5.7 If Customer or any of its employees or contractors sends or transmits any communications, materials, comments, questions, suggestions, or the like to Company by mail, email, telephone, or otherwise, suggesting or recommending changes to the Services, including new features or functionality, (collectively, "Feedback"), Company shall be the owner of such Feedback and shall be free to use and disclose such Feedback without restriction or attribution. Customer hereby assigns to Company on Customer's behalf, and on behalf of its employees, contractors and agents, all right, title, and interest in and to all Feedback and all patent, trade secret, and other intellectual property rights in and to all Feedback.

## 6 Performance and Performance Times

- 6.1 Performance shall be provided in terms of Schaeffler's existing technical and operational capabilities and as specified in the Services description available on the Digital Customer Portal or as set forth in the Agreement. Service levels shall be binding only if explicitly specified and confirmed by Schaeffler in the Services description on the Digital Customer Portal or if explicitly agreed upon in the Agreement

Performance shall only be provided for correct Data as specified in these GTC and in the Services description.

During the term, Company shall maintain the software in good operating condition in compliance with the descriptions in the Documentation. Customer may not be able to access and use the Services during certain maintenance periods.

- 6.2 Schaeffler's Performance is a provision of Services.

Schaeffler does not accept any responsibility for the achieving of particular results or for a specific type of success in relation to the provision of any Performance.

The Services are not intended to be accessed and used for time critical information or the control of any devices, equipment, or systems. The Services are not intended to be available or reliable 100% of the time. The Services may be unavailable from time to time as a result of interruption in internet and cellular telecommunications and other reasons outside of Company's control. Customer acknowledges these limitations and agree that Company is not liable for any damages allegedly caused by the failure or delay of the Services.

Further Schaeffler does not accept any responsibility for results and is not obliged to Performance both in relation to Data which do not comply with the agreed Schaeffler specifications and/or which are not correct, accurate and complete.

The Services are not certified for emergency response, are not a third-party monitored emergency notification system, and are not designed to protect persons in emergency situations. Company does not make any representations or warranties that Customer's use of the Services will increase the level of safety in Customer's operations or at the Location(s) or avoid injury to persons or damage to any devices, equipment, or systems.

The Services are provided on the basis of the Data and other information provided by the Customer at a specific point of time. The Customer is solely responsible for any decision that it takes on the basis or in context with our Performance and the Service results.

Schaeffler is entitled to arrange for Performance by way of subcontract (subcontractors, suppliers). Company shall be responsible for the performance of its subcontractors under this Agreement.

The Services contain technology measures designed to prevent the unauthorized or illegal use of the Services. Company may (i) use these and other lawful measures to verify Customer's compliance with the terms of this Agreement and to enforce Company's intellectual property and other rights in and to the Services, (ii) deny any person access to or the right to use the Services if Company, at its sole discretion, believes that person's use would constitute a breach of this Agreement or a violation of applicable law, regardless of whether Customer designates that person as an Authorized User, and (iii) collect, maintain, process, and use diagnostic, technical, use, and other information, including information about Customer's equipment, systems, and Data that Company may gather periodically to improve the performance of the Services. Customer shall be responsible for controlling the security and integrity of all passwords used or obtained by Authorized Users and for all access to and use of the Services by all Authorized Users.

- 6.3 Any deadline for the completion of Performance shall only be binding if such a binding nature is expressly agreed with the Customer or explicitly confirmed by Schaeffler. In any case, deadlines shall be subject to mutual clarification of all matters related to the Performance as well as a requirement of prompt cooperation as well as technical support of the Customer.
- 6.4 In case of any unforeseen or unavoidable events in the provision of the Performance as well as in the event of any hindrances, such as force majeure, labor disputes or any other disruptions in Schaeffler own operations or in the operations of Schaeffler's suppliers or subcontractors as well as in case of any delayed delivery or delayed Performance by Schaeffler's suppliers or subcontractors, Schaeffler is entitled to extend any Performance deadline by a period corresponding with such hindrance. The Customer shall be notified as soon as possible as to the commencement and end of such circumstances.
- 6.5 The Customer is entitled to claim compensation for delay insofar as Schaeffler is in default and damage has resulted to the Customer from such delay. A delay is present if the Digital Service system is not available as agreed by Service Levels explicitly specified and confirmed by Schaeffler or if the results of Performance are not provided to the Customer within the "reaction time" as agreed with the Customer. The compensation shall be 0.5 % of the value of the respective Service (agreed price for the Service) for each day of delay but totaling no more than 5 % of the value of the respective Service which as a result of delay could not be used in time or in accordance with the Service Contract. Any further claims related to default delay shall be determined exclusively in accordance with section 11. The Customer may rescind from the Service Contract in accordance with the provisions of law only if such delay in Performance is Schaeffler's responsibility. The respective Service in the sense of this section does not include the value of supplied hardware which may be sold together with the Services (as a "bundle" etc.).
- 6.6 Compliance with any deadlines for the Performance are subject to all documents, Data and other information to be supplied by the Customer being received in good time, the due provision of cooperation required, as well as compliance with the agreed payment conditions and other obligations. If such prerequisites are not satisfied in good time, Performance deadlines shall be extended accordingly to a reasonable extent.

- 6.7 Any rights resulting from delayed Performance may be exercised by the Customer only after the Customer has issued a notification of delay with a reasonable deadline for compliance and such deadline has expired.
- 6.8 Any partial Performance shall be permitted to a reasonable extent and may be invoiced as such.
- 6.9 All rights in the results of the Performance shall belong to Schaeffler. The Customer shall have a non-exclusive, non-transferable, non-sublicensable right to use such results for its own business purposes. The disclosure or licensing of the results to other third parties is not permitted. The Customer shall have no title or ownership in these results

## **7 Force Majeure**

- 7.1 In case any force majeure event causes substantial difficulties in the Performance of the Service Contract or temporarily prevents or renders impossible the due Performance of the Service Contract Schaeffler shall not be liable. Force majeure shall mean all events not foreseen by Schaeffler or the Customer which are beyond Schaeffler's influence and occur after the formation of the contract including, but not limited to, operational disruptions of any type, fire, natural catastrophes, epidemic or pandemic situations, weather, flooding, war and other military conflicts, uprisings, terrorism, transportation delays, strikes, legitimate lockouts, labour shortages, energy or raw material shortages, delays resulting from the granting of any necessary official permits or resulting measures of any authority/sovereign, embargos or restrictions or sanctions due to Export Control Regulations or the unforeseen increase of risk, that the fulfilment of any obligations under this Service Contract or an Agreement are leading to or could lead to the enforcement of sanctions (e.g. secondary sanctions).
- 7.2 Insofar as Schaeffler is prevented from providing the contractual Performance by reasons of force majeure, such shall not be deemed to be a breach of contract and any contractual deadlines shall be extended accordingly for a reasonable period. The same shall apply insofar as any Performance by a third party is delayed in relation to Schaeffler due to a force majeure event.

## **8 Payment**

- 8.1 Payment shall be made without any deductions to one of our bank accounts per mutually agreed upon terms or terms published with Schaeffler quotation.
- 8.2 The Customer shall be deemed to be in default in relation to any payment as soon as the Customer is in delay in relation to any payment date unless payment has been delayed as a result of circumstances for which the Customer is not responsible. The payment shall be made in full without any deductions except the Customer is required by law to deduct withholding tax (income tax) from the sum payable to Schaeffler. The Customer shall cooperate with Schaeffler to ensure that the amount of withholding tax required by the law or with regard to agreements for avoidance of double taxation are kept to a minimum and that Schaeffler will obtain a tax credit in respect of the amount withheld. If required by the relevant mandatory law, the Customer shall withhold the relevant taxes and pay them to the competent taxation authorities duly in accordance with the applicable law. In this case, the Customer shall immediately provide to Schaeffler the originals of the relevant tax payment certificates.



- 8.3 All fees and other amounts payable by Customer under this Agreement are exclusive of all sales, excise, and other taxes and assessments. Customer is responsible for paying all sales, use, excise, and other taxes, assessments, duties, and charges imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer under this Agreement, excluding any taxes Company owes based on its net income.

The Customer shall not be entitled to exercise any right of set-off or retention in relation to any counter-claim except unless such a claim has been confirmed by way of a final binding court judgment or unless such a claim is undisputed.

## **9 Warranty for Performance**

- 9.1 COMPANY DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL BE FAIL SAFE, UNINTERRUPTED, OR ERROR FREE. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, COMPANY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES, THIS AGREEMENT, OR OTHERWISE. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, COMPANY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR ARISING BY CUSTOM OR TRADE USAGE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.
- 9.2 No details in Company's website, catalogues, printed materials, type lists, data sheets, advertising materials, specifications, specification sheets, technical delivery conditions, other forms of documentation, or statements concerning reliability shall constitute a representation, warranty, or guarantee. Without limiting the generality of the foregoing, statements by Company or as part of the Services concerning reliability are statistically calculated median values and may not accurately reflect the operating condition or status of a particular piece of equipment.
- 9.3 Company shall not be responsible for or have any warranty or other obligations with respect to any claim, malfunction, or damages that arise from: (i) use of the Services in any manner not expressly authorized by this Agreement; (ii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Company or not expressly authorized by Company in writing; (iii) modifications to the Services not made by Company; (iv) use of any version of the Services that is not the most current version Company offers; (v) Third-Party Software; (vi) Customer's misuse of the Services or use of the Services in violation of applicable law; or (vii) malfunctions in Customer's equipment or systems.

## **10 Confidentiality**

- 10.1 Confidential Information. In connection with this Agreement, each Party (the "Disclosing Party") may disclose or make available Confidential Information to the other Party (the "Receiving Party"). Subject to Section 5(b), "Confidential Information" means information in any form or medium (whether oral, written, electronic, or other) that at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary," (ii) is otherwise reasonably identifiable as the confidential or proprietary information, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information, including all types of proprietary business or technical information, including data, know-how, formulas, algorithms, processes, designs, drawings, schematics, plans, strategies, specifications, requirements, standards, reports, pricing, customer lists, market, marketing or demographic information, trade secrets, research, analyses,



inventions, ideas, and other types of nonpublic information. All of the Services shall be Company's Confidential Information.

- 10.2 Exclusions. Confidential Information does not include information that is: (i) in the public domain other than as a result of a breach by the Receiving Party or any other person or entity of a contractual commitment or other duty to the Disclosing Party; (ii) known to the Receiving Party before its receipt from the Disclosing Party or obtained by the Receiving Party outside the scope of this Agreement from a third party that has no obligation of confidentiality to the Disclosing Party, in each case without breaching this Agreement; (iii) independently developed by the Receiving Party without use of or reference to the Confidential Information of the Disclosing Party, provided that such independent development is contemporaneously documented in writing; or (iv) disclosed by Receiving Party with the Disclosing Party's prior written approval.
- 10.3 Protection of Confidential Information. The Receiving Party shall: (i) not access or use any Confidential Information of the other party other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (ii) except as may be permitted under Section 5(d), not disclose or permit access to Confidential Information other than to its affiliates, employees, and contractors who: (A) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under this Agreement and (B) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 5; (iii) hold in strict confidence all Confidential Information of the Disclosing Party using the same safeguards as it uses to protect its own Confidential Information of comparable value or sensitivity, but in any event safeguards that meet or exceed a commercially reasonable degree of care; (iv) not transfer, display or otherwise disclose or make available the Disclosing Party's Confidential Information to any third party other than the contractors described above; (v) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps and use its best efforts to cooperate with Disclosing Party to prevent further unauthorized use or disclosure; and (vi) ensure its employees and contractors compliance with the terms of this Section 5. Notwithstanding any other provision of this Agreement, the Receiving Party's obligations under this Section 5 with respect to any Confidential Information that constitutes a trade secret under any applicable law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under applicable law other than as a result of any act or omission of the Receiving Party or any of its representatives.
- 10.4 Compelled Disclosures. The Receiving Party may disclose the Disclosing Party's Confidential Information in response to a valid court order, law, rule, regulation (including any securities exchange regulation), or other governmental action, provided that, to the extent permitted by law, (i) the Disclosing Party is notified in writing reasonably in advance of the disclosure of the information, and (ii) the Receiving Party assists the Disclosing Party, at the Disclosing Party's expense, in any lawful attempt by the Disclosing Party to limit or prevent the disclosure of the Disclosing Party's Confidential Information.
- 10.5 Nothing herein shall limit Schaeffler's right to use and utilize any Data as described in these GTC or use and utilize any results obtained by Schaeffler's use of such Data for the purposes set forth in section 5.1.

**11 Term and Termination**

- 11.1 The contract generated according to section 1 has the term or the minimum term (i) as set forth in the subscription term details as fixed for the subscription model on the Digital Customer Portal. During the minimum term, the termination of the Service Contract shall be excluded; the Service Contract shall automatically be prolonged by further periods as indicated in the subscription term details on the Digital Customer Portal until terminated by three (3) months prior notice to the end of the minimum term or to the end of an extension period.
- 11.2 Schaeffler shall be entitled to cancel the Service Contract immediately and without liability towards the Customer if, in its unilateral discretion, Schaeffler determines that Export Control Regulations or internal export control regulations of Schaeffler, based on such Export Control Regulations, or any changes in such Export Control Regulations (i) render the delivery of Services impossible and delivery seems reasonably impossible for the foreseeable future, or (ii) create a risk as determined by Schaeffler in its unilateral discretion, that sanctions could be imposed on it for the delivery of Services or fulfilling other obligations under this Service Contract.
- 11.3 Schaeffler shall be entitled to immediately terminate the Service Contract in case the Customer breaches any provisions of the Service Contract. Schaeffler is in particular entitled to immediately terminate the Service Contract if the Customer passes on hardware provided by Schaeffler with installed SIM-cards to third parties.
- 11.4 Additionally, Company may suspend the Services and/or terminate the Services by giving Customer written notice if Customer: (i) fails to pay any amount as and when due under this Agreement and such failure continues more than 10 days after Company gives Customer written notice of the failure; or (ii) Customer breaches any of its obligations under the Agreement and fails to cure the breach within 10 days after Company gives Customer written notice of the breach. If Company elects to suspend the Services, it may subsequently terminate this Agreement
- 11.5 Any termination shall be in writing (an e-mail is sufficient to the e-mail address as communicated by the Customer at the registration process or provided by Schaeffler on the Digital Customer Portal).
- 11.6 In case the provisions of these GTC have been breached and Schaeffler has terminated the Service Contract, the Customer shall not have any rights in regard to any refunds. Schaeffler shall not be liable for any damages the Customer may suffer due to the termination of the Service Contract in such cases.
- 11.7 Upon expiration or earlier termination of the Services for any reason, the license and rights granted to Customer under this Agreement shall terminate automatically. Customer shall cease using the Services and shall delete, destroy, or return to Company all copies of all Company Confidential Information and all Documentation and other records evidencing the Services and shall certify to Company in a writing signed by an officer of Customer that Customer has done so. No expiration or termination will affect Customer's obligation to pay all Fees that are due or entitle Customer to any refund.

**12 Liability**

- 12.1 Unless otherwise agreed, Schaeffler's liability, regardless of the legal basis therefore and notwithstanding any statutory requirements for a claim, shall be subject to the following

limitations, disclaimers and exclusions and such shall also apply to Schaeffler's personnel, agents and contractors, and other third parties with which Schaeffler work in relation to the contract Performance.

- 12.2 The Customer shall not be entitled to rescind or terminate in relation to any breach of an obligation unless such breach of an obligation is the result of willful conduct on Schaeffler's part. Any other rights to terminate on the part of the Customer due to any breach are hereby excluded.
- 12.3 THE AGGREGATE LIABILITY OF COMPANY ARISING OUT OF OR RELATING TO THE SERVICES, THIS AGREEMENT, OR A BREACH OF THIS AGREEMENT, REGARDLESS OF THE THEORY OF RECOVERY AND WHETHER IN CONTRACT, NEGLIGENCE, TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNTS CUSTOMER PAID COMPANY IN THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM FIRST AROSE.
- 12.4 The Digital Services are provided on the basis of network services and/or components of third-party operators or suppliers. While Schaeffler will use reasonable efforts to maintain availability of connectivity as required for the Performance of Digital Services, Schaeffler assumes no liability for failures or malfunctions related to the provision of the Digital Service resulting from outages or other malfunctions in the public telecommunications networks or defective products and components provided by suppliers, used to convey the required M2M-communications. For the avoidance of doubt Schaeffler assumes in no event any liability for Data which are not correct, complete or accurate or which are not complying with the requirements on the Data as set forth in the Services description.
- 12.5 NONE OF COMPANY OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, OR AGENTS SHALL BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THE SERVICES, THIS AGREEMENT, OR A BREACH OF THIS AGREEMENT, REGARDLESS OF THE THEORY OF RECOVERY AND WHETHER IN CONTRACT, NEGLIGENCE, TORT, OR OTHERWISE, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. Company's liability arising from damage of any material term is limited to the amount of the price of the agreed Services.
- 12.6 The above limitations of liability shall not apply insofar as Schaeffler has fraudulently concealed any defect, in the event that a guarantee has been provided in relation to the quality of the Services, in relation to any claims by the Customer under the applicable Product Liability Act, or if any personal injury or damage to health is caused.

## **13 Guarantee and Impossibility**

- 13.1 The details contained in Schaeffler's catalogs, printed materials, type lists, data sheets and other advertising materials or in specifications, specification sheet or other technical delivery conditions, in certificates (e.g. certificate of compliance) or other forms or documentation, or on the Subscription page for Schaeffler Digital Services on the Schaeffler websites shall not constitute in any event a guarantee beyond the normal scope of a warranty. Any statements concerning reliability (life period, long-time stability etc.) are statistically calculated medium values. These are calculated to the best of our knowledge and subject to deviations in individual cases.
- 13.2 Performance shall be provided in terms of our existing technical and operational capabilities.

**14 Indemnification**

The Customer agrees to defend, indemnify, and hold Schaeffler and its directors, officers, employees, affiliates and agents harmless and will keep them indemnified from any and all actions, causes of action, claims, demands, costs, liabilities, expenses and damages of third parties ("Claims") relating to or arising from (i) any violation by the Customer of these GTC; or (ii) the Customer's violation of any another party's rights or applicable law. If any claim subject to indemnification under this Section is brought against Schaeffler, Schaeffler will promptly notify the Customer in writing; provided, however, that failure to give prompt notice will not relieve the Customer of its obligations under this section except to the extent that the Customer was actually and materially prejudiced by that failure. The Customer may not settle any Claim without the prior written consent of Schaeffler.

**15 Limitation Period**

The general limitation period for any and all claims of the Customer shall be, particularly in relation to claims arising from defects or defects of title in relation to the performance, 12 months from the time of the provision of performance. Insofar as any acceptance procedures are agreed, the limitation period shall begin to run from the time of acceptance.

**16 Export Control**

16.1 In regard to business with Schaeffler products, technology, software, services or any other goods (hereinafter "Schaeffler Items"), the Customer strictly complies with all applicable European Union (hereafter "EU"), United States of America (hereafter "US") and other export control and sanction laws and regulations (hereafter "Export Control Regulations").

The Customer shall notify Schaeffler beforehand and disclose any information (incl. end-use) necessary for Schaeffler to comply with Export Control Regulations in case Schaeffler Items are specifically ordered for use in connection with

- a. any country, territory, person or entity that is subject to any restrictions or prohibitions under the EU, US or any other applicable export control and sanction regulations or
- b. design, development, production or use of military or nuclear goods, chemical or biological weapons, rocket, space or air vehicle applications and means of transportation.

16.2 Schaeffler informs the Customer

- c. that – for the purpose of the US Department of the Treasury's Office of Foreign Assets Control (OFAC) regulations on Iran ("ITSR") and Cuba ("CACR") – Schaeffler must be treated as a US Person, and therefore
- d. that Schaeffler Items shall not– without required prior authorization by the competent US governmental authorities – be used, supplied, exported, re-exported, sold or otherwise transferred, directly or indirectly, to any country or territory that is subject to any restrictions or sanctions of the US government or any person or entity on any sanction list maintained by the U.S. government.

- 16.3 The fulfillment of the contractual obligations by Schaeffler is subject to the proviso that the applicable Export Control Regulations do not contravene. In such a case, Schaeffler is in particular entitled to refuse or withhold the contractual fulfillment without any liability towards the Customer.

## **17 Miscellaneous**

- 17.1 Any differences or disputes arising from these GTC shall be settled by an amicable effort on the part of the Parties. An attempt to arrive at a settlement shall be deemed to have failed as soon as one of the parties notifies the other party in writing accordingly.
- 17.2 Any claim arising out of or relating to this Agreement, or the breach thereof, and/or any purchase of Products from Schaeffler, including without limitation any claims relating to the price of any Products purchased from Schaeffler, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The place of arbitration shall be Charlotte, North Carolina.

There shall be three (3) arbitrators. Each party shall appoint one arbitrator, and those two arbitrators shall together appoint the third arbitrator, who shall be the chairperson. The arbitrators shall have the power to render awards on points of law that partially or fully dispose of the claims or narrow the issues in dispute at any stage of the proceedings, including prior to the exchange of evidence. Any award of the arbitrators shall be reasoned. The arbitrators shall have no authority to award punitive, multiple, or other damages not measured by the prevailing Party's actual damages, except as may be required by statute. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All claims shall be arbitrated on an individual basis, and no Party shall have any right or authority to assert or pursue any claims subject to this arbitration agreement as a class action or other collective proceeding of any sort.

This Agreement to Arbitrate will survive the termination of the distribution relationship with Schaeffler.

- 17.3 All provisions of this Agreement are in all respects to be exclusively governed by the laws (excluding all conflicts of laws rules) of the Province of Ontario, as from time to time amended and in effect.
- 17.4 Any omission or part omission or failure to claim any right arising under these GTCs shall not constitute a waiver of such right or any other right.
- 17.5 If a specific provision of these GTC is or becomes ineffective, the remaining terms and conditions shall not be affected thereby. In such case the parties shall replace any ineffective provision with a provision which most closely reflects the commercial purpose of the original ineffective provision. The same shall apply accordingly in case of any omission.
- 17.6 Company processes personal data in according with the requirements of law in the course of commercial transactions.
- 17.7 Independent Contractor. The relationship between Company and Customer shall be that of independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship. Notwithstanding anything else in this Agreement, neither party shall have the right to bind the other party.

- 17.8 Notices. All notices under this Agreement must be in writing and addressed to the applicable party at its addresses set forth on the first page of this Agreement (or to such other addresses that such party may designate from time to time in accordance with this Section 13.b). All Notices must be delivered by personal delivery, FedEx or other nationally recognized overnight courier (with all fees pre-paid), or certified or registered U.S. mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a notice shall be effective only if the party giving the notice has complied with the requirements of this Section 13.b and upon receipt by the receiving Party.
- 17.9 Severability. If any provisions of this Agreement is determined to be invalid, illegal, or unenforceable by a court of competent jurisdiction under any applicable law, such provision shall be severed from this Agreement and the remaining provisions shall remain in full force and effect.
- 17.10 Assignment. Customer shall not assign any of its rights or obligations under this Agreement without the prior written consent of Company. Company shall not be obligated to provide its consent to an assignment to a competitor of Company. A prohibited assignment shall include a merger of Customer into another company, a transfer or sale of all or substantially all of Customer's assets, or a change in control of Customer that involves the sale or transfer of 20% or more of the outstanding voting stock or other securities of Customer. Any purported assignment in contravention of this Section 13.e shall be void. This Agreement shall be binding on, and shall inure to the benefit of, the parties and their successors and permitted assigns.