

# SiPass Software License Agreement

## for Value Added Partners

Version 1.0  
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### Definitions

Wherever used in this Agreement, unless otherwise indicated expressly in the context of this Agreement, the following terms shall have the following meanings ascribed to them:

- a. "Agreement" shall mean this SiPass Software License Agreement and any matters specifically incorporated herein by reference and made a part hereof.
- b. "End-User" shall mean a company, who sub-licenses Licensed Software from Value Added Partner, and who operates and uses the Licensed Software for its company internal purposes.
- c. "Hardware" shall mean server hardware or personal workstations where Licensed Software is/will be installed.
- d. "License Key" shall mean a program or a token or other means unlocking the Licensed Software.
- e. "Licensed Software" shall mean the software program, including any parts and elements thereof, presently known as "SiPass integrated" in Object Code, as finally and conclusively described in the SiPass integrated Software Documentation provided by

Siemens AG and sub-licensed from Vanderbilt to Value Added Partner under this Agreement. For the avoidance of doubt, the term "Licensed Software" shall include also any software files, programs or parts thereof, e. g. if software is supplied electronically (such as the License Key), as well as any legally generated copies. The Licensed Software is owned by Siemens AG and is licensed to Vanderbilt for distribution under this License Agreement.

- f. "Software Documentation" shall mean the user manuals and all other information related to the Licensed Software, including any parts and elements thereof in either printed or machine readable form as generally made available by Siemens AG or Vanderbilt respectively.
- g. "Object Code" shall mean code for the Licensed Software resulting from translation of Source Code into machine readable format appropriate for execution by hardware.
- h. "Source Code" shall mean the program listing for the Licensed Software in paper form and/or magnetic media written in the syntax of a well-known programming language.
- i. "Subsidiary" shall mean a corporation, company or other entity more than fifty percent (50%) of whose outstanding shares or securities representing the right to vote for the election of the board of directors or a similar managing authority or a supervisory board are, or which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, but more than fifty percent (50%) of the ownership interest representing the right to make decisions for such entity is now or hereafter, owned or controlled directly or indirectly, by Vanderbilt or Value Added Partner, respectively, but such corporation, company or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists.
- j. "Value Added Partner" shall mean licensees who acquire both Hardware and Licensed Software to run on this Hardware as a bundle or subsequently within a reasonable time frame, and redistribute both, Hardware and Licensed Software in its ordinary course of business directly to End-Users, either as a bundle or subsequently within a reasonable time frame; for the avoidance of doubt, a party solely licensing or redistributing Licensed Software or solely purchasing Hardware from Vanderbilt shall not be eligible to a license under this Agreement.
- k. "Vanderbilt" shall mean Vanderbilt International (SWE) AB, Englundavägen 7, SE-17124 Solna.
- l. Vanderbilt and Value Added Partner shall hereinafter be referred to individually as "Party" or collectively as "Parties".

Other capitalized terms used in this Agreement shall have the meaning explicitly assigned to them elsewhere in this Agreement. Words indicating the singular also include the plural and vice versa, as the context requires.

## **Article 1 - Scope**

**1.1** This Agreement shall apply to the distribution and licensing of the Siemens "SiPass integrated" software by Vanderbilt to Value Added Partners. Vanderbilt hereby rejects any terms or

conditions of Value Added Partner, and the Parties agree that such terms or conditions shall be void and of no force or effect, even if not rejected by Vanderbilt after receipt of a specific order, as the case may be.

- 1.2 This Agreement shall apply to any and all current and future orders of the Licensed Software by Value Added Partner at Vanderbilt.

## **Article 2 - Eligibility, License grant, Restrictions**

- 2.1 The distribution and licensing under this Agreement shall be eligible to Value Added Partners as defined above only.
- 2.2 Subject to the terms of this Agreement, Vanderbilt grants to Value Added Partner a non-exclusive, non-transferable, license to (re-)distribute and to sublicense the Licensed Software and the Software Documentation running on End-Users' Hardware to End-Users. Value Added Partner and End-User do not acquire an own license, but only a sublicense, derived from the Vanderbilt's license according to this Agreement. The license shall be valid worldwide with exception of those countries (e.g. USA) and customers (e. g. US authorities operating a building under US law in foreign countries) which require the Law of the United States of America, or one of its states in its contracts.
- 2.3 The license grant is limited to the scope of the license set forth herein, including, not limited to, also to limitations specified in the Software Documentation, unless otherwise agreed by Vanderbilt in writing or as specifically allowed under applicable mandatory law. Value Added Partner shall particularly not, without limitation, (i) copy and / or reproduce unless otherwise stated in Article 4, translate, alter, display, modify, decompile, reverse engineer, disassemble, attempt to obtain, discover or create the source code or algorithms of, manipulate or create derivative work based on, or any information, contained or made available to Value Added Partner under this Agreement or the Licensed Software, to run or as part of a service bureau, outsourced or managed services arranged, unless and to the extent permitted by mandatory law, (ii) disable or circumvent any access control or related device, process or procedure established with respect to the Licensed Software; such prohibited conduct includes, without limitation, any efforts to gain unauthorized access to the Licensed Software, through hacking, password mining or any other means, test security measures on the Licensed Software and/or attempt to identify vulnerabilities; and (iii) link, distribute, transfer, sell and resell, (sub-)license, rent, lease, lend, assign or otherwise transfer any rights to, or commercially exploit (e. g. as software as a service) or otherwise make available the Licensed Software to any third party in any other way than described in Section 2.2.
- 2.4 In case the Value Added Partner supplies Licensed Software to End-Users, it shall cease fully to use the Licensed Software and shall remove all installed copies of the Licensed Software from its equipment and its instances and erase any copies located on other data medium, or, at the request of Vanderbilt, shall provide such to Vanderbilt insofar as the Value Added Partner is not required to retain such for a longer period in accordance with the law. The use of any such retained copy is prohibited.
- 2.5 Each (sub-)licensing of Licensed Software shall be subject to legally binding license agreements the terms and conditions of which shall be not less onerous than Articles 2, 3, 9, 11 and 13.2 of this Agreement. Apart from this, the end-user license agreement ("EULA") as part of the Licensed

Software shall remain unaffected and in full force.

- 2.6** Value Added Partner's sublicense shall provide that each End-User shall be entitled to produce one (1) back-up copy of each item of the Licensed Software, whereby the use of such back-up copy shall be limited to replace the original Licensed Software, if the original Licensed Software is inoperable. End-Users shall keep records about the storage of such back-up copies and present such records to Value Added Partner and Vanderbilt on demand.
- 2.7** The Licensed Software may contain freeware, shareware, software from third parties under license or open source software. No license fee is charged to Value Added Partner for the use of such portions. Value Added Partner acknowledges and agrees that Vanderbilt provides no warranties and shall have no liability whatsoever in respect of Value Added Partner's possession and/or use of such portions. Regarding such portions of Licensed Software, Value Added Partner hereby accepts the specific license conditions being part of the Licensed Software and/or Software Documentation ("Open Source Conditions"). Upon request of Value Added Partner, Vanderbilt is prepared to provide a copy of the source code of the open source software, if required by the Open Source Conditions. To the extent there is a conflict between this Agreement and the Open Source Conditions, the terms of the Open Source Conditions shall prevail over the terms and conditions of this Agreement with regard to the open source software.
- 2.8** Certain programs of the Licensed Software and/or the Software Documentation may be proprietary to third party licensors of Siemens who may be direct and intended third party beneficiaries of certain terms and conditions herein relating to the protection of such third party proprietary parts of Licensed Software and/or Software Documentation. Value Added Partner agrees that those third party beneficiaries may enforce these terms and conditions directly against Value Added Partner.
- 2.9** Value Added Partner's rights under this Agreement are conditioned upon Value Added Partner not performing and legally binding End-Users not to perform the following actions in a manner that would require the Licensed Software or any derivative work thereof to be licensed under Open License Terms:
- combining the Licensed Software or a derivative work thereof with Open Source Software, by means of incorporation; or
  - linking or otherwise distributing the Licensed Software or a derivative work thereof with Open Source Software; or
  - using Open Source Software to create a derivative work of the Licensed Software.

As used in this Article, the term "Open Source Software" means any software that is licensed under Open License Terms and the term "Open License Terms" means terms in any license for software which require, as a condition of use, modification and/or distribution of such software or other software incorporated into, derived from or distributed with such software (hereinafter referred to as "Work"), any of the following:

- the making available of source code or design information regarding the Work;
- the granting of permission for creating derivative works regarding the Work; or
- the granting of a royalty-free license to any party under intellectual property rights regarding the Work.

By means of example and without limitation Open License Terms include the following licenses

or distribution models: the GNU General Public License (GPL), the GNU Lesser or Library GPL (LGPL), or any similar open source, free software or community licenses.

- 2.10** Under no circumstances shall Value Added Partner combine the Licensed Software with any Open Source Software in any way or license the Licensed Software under Open License Terms.

### **Article 3 - Copyright, Trademarks, Title**

- 3.1** All rights, title and interest in and to the Licensed Software and the Software Documentation, other than those expressly granted herein, shall remain wholly vested in Siemens AG or its third party licensors. Value Added Partner acknowledges that it has no rights whatsoever in respect of the Licensed Software and Software Documentation save for those expressly granted to it by this Agreement.

- 3.2** Nothing in this Agreement entitles Value Added Partner and End-Users to use any trademark of Siemens, its third party licensors, including "Siemens Aktiengesellschaft", "Siemens Schweiz AG" etc., as well as the registered trademark "SiPass integrated", or any other mark confusingly similar thereto, without the express written consent of Siemens and deviating from Siemens' directives, if any. Siemens' consent is subject to recall at any time.

For the avoidance of doubt, any use of trademarks by Value Added Partner and End-Users solely comprises the Licensed Software and the Software Documentation, and any further use, particular in connection with any of Value Added Partner's or third party's software or products, is excluded, unless Siemens, in its discretion, approved the use in writing.

- 3.3** Value Added Partner shall maintain and contractually cause End-Users to maintain all notices and legends received from Siemens with the Licensed Software and the Software Documentation.

### **Article 4 - Delivery of Licensed Software and Software Documentation**

- 4.1** If Value Added Partner does not receive a data medium with the Licensed Software and Software Documentation, but an electronic supply of Licensed Software and Software Documentation via download. Value Added Partner shall be authorized to copy the Licensed Software and Software Documentation to the extent necessary to exercise the license rights set forth in this Agreement.

- 4.2** Vanderbilt shall use commercially reasonable efforts to generate the License Key and to deliver the License Key to Value Added Partner by way of e-mail within fifteen (15) business days (Monday-Friday, local holidays excluded) beginning with the day following order confirmation by Vanderbilt. Transfer of risk shall take place at the exit of Vanderbilt Order Management's wide area network (WAN) system. Further details of the ordering, without amending this Agreement, may be agreed by the Parties separately.

- 4.4** If ordered, or if it is apparent e. g. through additional identification in the product name of the Licensed Software, the rights of use granted to an earlier release or type of the Licensed Software shall cease on use of such newer release or type. In case Value Added Partner does not agree to order a new release or type, Vanderbilt shall deliver to and permit Value Added

Partner to use the previous release or type as long as Siemens continues to support those.

## **Article 5 - Delay**

- 5.1** If delay in delivery is caused by an act or omission on the part of the Value Added Partner, the time for delivery shall be extended by a period which Vanderbilt deems reasonable. The aforementioned shall apply regardless of whether the reason for the delay occurs before or after the agreed time for delivery.
- 5.2** If the Licensed Software is not delivered at the time for delivery, the Value Added Partner is entitled to liquidated damages from the date on which delivery should have taken place. The liquidated damages due to a delay in delivery shall be payable at a rate of 0.3 per cent of the purchase price for each completed week of delay. The liquidated damages shall not exceed three (3) per cent of the purchase price.
- 5.3** The liquidated damages become due at the Value Added Partner's demand in writing but not before delivery has been completed. The Value Added Partner shall forfeit its right to liquidated damages if the Value Added Partner has not lodged a claim in writing for such damages within three (3) months after the time when delivery should have taken place.
- 5.4** Liquidated damages are the sole and exclusive remedy for delay in delivery. All other claims against Vanderbilt based on such delay shall be excluded.

## **Article 6 - Warranty**

- 6.1** Although the Parties understand that software cannot be developed error free, the Licensed Software as originally delivered by Vanderbilt to Value Added Partner shall be free from substantial non-conformities in design, material and workmanship, e. g. as particularly described in the Software Documentation, at the date of delivery.
- 6.2** With the exception of the Software Documentation, Vanderbilt disclaims any liability for public statements or any other information with regard to the Licensed Software, whether originating with Vanderbilt or any third party, such as is contained in brochures, advertisements, catalogues or as is otherwise brought to Value Added Partner's attention by any current or future media, including any marks or labels attached to the Licensed Software. Value Added Partner shall not refuse to accept the Licensed Software because of insignificant nonconformities.
- 6.3** Value Added Partner is aware that Siemens as manufacturer uses commercially reasonable physical, logical and technical security measures designed to protect the use of the Licensed Software ("Industry Security Measures"). However, attacks on and security incidents in connection with the Licensed Software, including unauthorized access to and/or use, cannot be excluded and neither Siemens nor Vanderbilt will assume any obligation with respect to or responsibility for any such attacks or security incidents beyond Siemens' or Vanderbilt's reasonable control. The Industry Security Measures support the secure operation of the use of Licensed Software when integrating with plants, systems, machines and networks. In order to protect plants, systems, machines and networks against cyber threats, it is necessary for the End-User to implement – and continuously maintain – a holistic, state-of-the-art industrial security concept. Siemens' Industry Security Measures form only one element of such a concept. Value Added Partners and/or End-Users are responsible to prevent unauthorized access to plants, systems, machines and networks. Systems, machines and components

should only be connected to an enterprise network or the Internet if and to the extent necessary and with appropriate security measures (e.g. use of firewalls and network segmentation) in place. Additionally, Siemens' or Vanderbilt's guidance on appropriate security measures should be taken into account. For more information about industrial security, Value Added Partners and/or End-Users shall visit <https://www.siemens.com/global/de/home/unternehmen/themenfelder/zukunft-der-industrie/industrial-security.html> to stay informed, Vanderbilt strongly recommends subscribing to the Siemens Industrial Security RSS Feed under aforesaid website, and to deploy recommendations published currently under <http://www.siemens.com/cert/de/cert-security-advisories.htm>.

- 6.4** Should Value Added Partner find the Licensed Software to be non-conforming in accordance with this Article, Value Added Partner shall promptly notify Vanderbilt thereof in writing and provide Vanderbilt with evidence and documentation which allow Vanderbilt to reproduce the claimed non-conformity on the reference environment.
- 6.5** If Vanderbilt determines that there is a non-conformity, Vanderbilt shall use reasonable efforts, at its sole option, to provide Value Added Partner either (i) corrected, (ii) an acceptable work around or other error-correcting solution or (iii) provide again free of charge (all cases in the following referred to as "Replacement"). The Replacement obligation is also complied with if Vanderbilt, at its sole option, provides Value Added Partner with release or type of the Licensed Software eliminating such non-conformity which is or becomes available to Vanderbilt.
- 6.6** In the event that Value Added Partner does not exercise its rights with respect to the Licensed Software but decides to exercise such rights with respect to a non-current release or type of the Licensed Software shall only be liable for defects of the non-current release or type of the Licensed Software to the extent to which such also occur in the most current Licensed Software. To the extent that Vanderbilt is not able to complete Replacement successfully within a reasonable timeframe, Vanderbilt will inform Value Added Partner about the cessation of the error correction measures without further liability of Vanderbilt.
- 6.7** Value Added Partner shall not be entitled to make warranty claims for Replacements after one year from delivery of the License Key for the respective Licensed Software and such claims shall be considered time-barred after such date. The warranty period for Replacements shall end with the expiry of the respective warranty period for the Licensed Software that has become subject of the Replacement.
- 6.8** Warranty claims are, among others, excluded:
- (i) in case of insignificant deviations from the agreed characteristics;
  - (ii) if the non-conformity is in Vanderbilt' reasonable judgement not reproducible on a reference environment;
  - (iii) for errors or restrictions of use originating after the transfer of risk to Value Added Partner in particular resulting from improper operation, usage or handling, disregard of the operation manual or other documentation or from the deficient performance of services for which Value Added Partner or any other third party is responsible;
  - (iv) for errors or restrictions of use resulting from improper interconnection with and/or

integration into third party equipment, unless such interconnection and/or integration was performed by Vanderbilt; and

- (v) for errors or restrictions of use resulting from exposure to conditions other than the conditions set forth in this Agreement or circumstances otherwise not assumed to exist.

**6.9** Siemens AG, its Subsidiaries and its licensors make no warranties related to the Licensed Software or Software Documentation either, express, statutory, or implied including but not limited to the implied warranties of merchantability and fitness for a particular purpose and any implied warranties arising from course of dealing or usage of trade to Value Added Partner and/or End-Users or to any other third party. Siemens and its licensors do not warrant that the operation of the Licensed Software will be uninterrupted or error-free. Value Added Partner may not transfer or assign any of the warranties nor shall Value Added Partner make any express or implied warranty or representation on behalf of Siemens AG, its Subsidiaries or its licensors to any third party. In the sublicense Value Added Partner shall disclaim on behalf of Siemens AG, its Subsidiaries and its licensors any and all warranties, express, implied and statutory.

**6.10** Vanderbilt's further liability is defined in Article 7 and Article 10.

**6.11** The remedies in this Article shall be to the exclusion of any other remedies of Value Added Partner in respect of a non-conformity of the Licensed Software.

#### **Article 7 - Intellectual Property Rights of third parties**

**7.1** Except as set forth in this Article 7, and subject to the conditions and limitations stated below in this Article, Vanderbilt shall be liable as described in this Article 7 for any claim, suit, action or proceeding brought against Value Added Partners or End-Users by a third party (including recourse claims of End-Users against Value Added Partner) to the extent it is based on any infringement of patents and copyrights (but excluding those rights known or unknown to Vanderbilt that relate to a Standard, as defined below in this Article) owned by such third party by any Licensed Software licensed by Value Added Partner or sub-licensed by End-Users from Vanderbilt under this Agreement ("Claims"). "Standard" means any technical specification that is distributed, published, or otherwise made available by any consortium, standards organization, special interest group, or like entity, for the purpose of widespread industry adoption.

**7.2** Vanderbilt shall, among others, not be liable with respect to any Claims arising out of or relating to either

- (iv) the use or incorporation in any Licensed Software of any design, technique, modification or specification originating with, furnished or requested by Value Added Partner;
- (ii) the combination with or incorporation into the Licensed Software or parts thereof with any other Licensed Software, product, software, or subassembly if the infringement would not have occurred without such combination or incorporation;
- (iii) the infringement of any method or process in which the Licensed Software may be used but not covering the Licensed Software when used alone;
- (iv) the modification of Licensed Software by Value Added Partner or any person or entity

other than Vanderbilt, if the infringement would not have occurred without such modification;

- (v) the use of Licensed Software other than as permitted under this Agreement; or
- (vi) the use or distribution of other than the most current Licensed Software (if such infringement or claim would have been prevented by the use of such most current Licensed Software).

On request of Vanderbilt, Value Added Partner shall defend, indemnify and hold Vanderbilt harmless against any and all claims for infringement of any third party (including End-Users) rights arising out of or relating to Value Added Partner's designs, techniques, modifications, specifications, combinations of Licensed Software with other software, product, software and/or subassembly.

**7.3** If, as a result of a Claim, Value Added Partner becomes enjoined or it is likely, in Vanderbilt's opinion, that Value Added Partner will become enjoined from using the Licensed Software, Vanderbilt shall at its discretion and its costs – except as set forth below in this Article, and subject to the conditions and limitations stated below in this Article: (i) procure for Value Added Partner the right to use the Licensed Software; (ii) provide Value Added Partner with a non-infringing replacement product or modify the Licensed Software so that it becomes non-infringing, provided that the replacement product/modified Licensed Software meets substantially the same functional specifications as the Licensed Software; or (iii) upon return of the infringing Licensed Software at Vanderbilt's request, refund to Value Added Partner the purchase price actually paid. Vanderbilt shall not be obligated to deliver any Licensed Software if Vanderbilt has chosen option (iii) above.

**7.4** The remedies in this Article 7 and Article 10 state the entire liability of Vanderbilt and shall be to the exclusion of any other remedies of Value Added Partner with respect to infringement of any intellectual property rights either statutory or express or implied, including but not limited to any patent rights, copyrights, trade names, know-how and any other similar rights recognized under any laws or international conventions and in any country or jurisdiction in the world.

**7.5** Any liability shall become time-barred one year after the delivery of the respective Licensed Software and Software Documentation to Value Added Partner.

## **Article 8 - Price, Payment and Tax**

**8.1** Vanderbilt may issue invoices from time to time for fees and other amounts due hereunder for Licensed Software ordered by Value Added Partner pursuant to this Agreement which are due 30 Days after the invoice date, without discounts or other deductions. All invoiced amounts shall be expressed in Euro. Value Added Partner shall make all payments hereunder in Euro.

**8.2** Any payments to be made by Value Added Partner to Vanderbilt under or in connection with this Agreement shall be made by Value Added Partner to Vanderbilt's bank account. Failure of Value Added Partner to pay in due time (other than payments legally correct disputed by Value Added Partner) may, at Vanderbilt's discretion, be deemed a material breach of this Agreement by Value Added Partner for which Vanderbilt may, in addition to any other remedies Vanderbilt

has, extraordinarily terminate this Agreement.

- 8.3** Any and all taxes, charges or other duties imposed on Vanderbilt with respect to any payments to be made by Value Added Partner to Vanderbilt under or in connection with this Agreement shall be borne and paid by Value Added Partner.
- 8.4** All payments made under this Agreement shall be made free and clear and without any deduction or withholding (whether in respect of set-off, counter-claim, duties, taxes, charges or otherwise).

#### **Article 9 - Auditing Right**

Value Added Partner shall keep records of all licenses and sublicenses granted and shall allow Vanderbilt to conduct audits of the contractual use of the Licensed Software and Software Documentation if Vanderbilt requests such. This shall include in particular access to all relevant systems and documentation. Vanderbilt may carry out the audit itself or by way of any third party auditor acceptable to Value Added Partner. Vanderbilt shall give prior written notice of such an audit of at least ten (10) business days (Monday-Friday, local holidays excluded). Such an audit may take place at the premises of Value Added Partner during the regular hours of business. If, as a result of an audit, any use of the Licensed Software and Software Documentation not in conformity with this Agreement is detected, Vanderbilt is entitled to charge Value Added Partner for liquidated damages to the amount of the license fees. In addition, Value Added Partner shall bear the reasonable costs of such an audit. Vanderbilt reserves the right to claim further damages subject to the provision of evidence of such.

#### **Article 10 - Limitation of Liability**

- 10.1** Value Added Partner and Vanderbilt agree that the license fees for Licensed Software and Software Documentation negotiated in this Agreement would not adequately compensate Vanderbilt for unilaterally assuming all risks associated with its performance, breach or non-performance, and that to avoid having to increase its license fees to adequately protect against such unlimited risk, Value Added Partner and Vanderbilt will be bound by this limitation on Vanderbilt's liability.
- 10.2** Vanderbilt shall only be liable for direct damages of Value Added Partner up to an amount of a maximum lump sum of 100.000 EUR (in words: one hundred thousand euros) per calendar year, as well as for personal damages in product liability cases and for claims under mandatory law, in each case caused within the scope of the license grant, in accordance with the statutory provisions.
- 10.3** Any further liability shall be excluded to the extent legally feasible. Particularly, and to the extent legally feasible, Vanderbilt shall in no event be liable for any loss of profits, loss of business, loss of use, loss of data, work stoppage, computer failure or malfunction, interruption of business, or for any other indirect, incidental, or consequential damages of any kind whether under this Agreement or otherwise, even if Vanderbilt has been advised of the possibility of such damages. In no case will Vanderbilt be liable for any declaration made to Value Added Partner by any third party.
- 10.4** Any rights explicitly contained in this Agreement are exclusive, not cumulative, and the Parties accept these remedies in lieu of all other rights and remedies available at law or otherwise, for any and all claims of any nature arising under this Agreement or any performance or breach

arising out of this Agreement.

- 10.5** Any cause of action shall be commenced by Value Added Partner within a limitation period of one year after the claim or cause of action arises, unless longer periods are foreseen by mandatory law.
- 10.6** The limitations of liability set forth in this Agreement shall also apply to the personal liability of any officers or employees of Vanderbilt and in favor of Vanderbilt's Subsidiaries and their officers or employees.

#### **Article 11 - Confidentiality**

- 11.1** Each Party acknowledges and agrees that it will have access to information, including, but not limited to, intellectual property, trade secrets, business, commercial or technical information, ideas, expressions and the terms of this Agreement, which are proprietary to the other Party, irrespective of the medium in which such information or data is embedded which shall - when disclosed in tangible form- be marked "Confidential" by the disclosing Party or which shall - when disclosed orally or visually - be identified as such prior to disclosure and summarized in writing by the disclosing Party and said summary (which shall be marked "Confidential") is given to the receiving Party within thirty (30) days after such disclosure. In case of disagreement, the receiving Party must present its objections to the summary in writing within thirty (30) days of receipt (hereinafter referred to as "Confidential Information"). Confidential Information shall include any copies or abstracts made thereof as well as any apparatus, modules, samples, prototypes or parts thereof.
- 11.2** Regardless of whether so marked, however, any non-public information regarding the Licensed Software shall be deemed to be Confidential Information of Vanderbilt, and the terms and conditions of this Agreement shall be deemed to be Confidential Information.
- 11.3** All Confidential Information exchanged between the Parties shall
- be used by the receiving Party exclusively for the implementation of this Agreement, unless otherwise expressly agreed to in writing by the disclosing Party;
  - not be distributed or disclosed in any way or form by the receiving Party to anyone except its employees or those of a Subsidiary or consulting firm who reasonably need to know such Confidential Information for the implementation of this Agreement and who are bound to confidentiality either by their employment agreement or otherwise to an extent not less stringent than the obligations under this Agreement. Prior to any disclosure to its Subsidiaries or to its consulting firms, the receiving Party must have an appropriate agreement with any such Subsidiary or any such consulting firm sufficient to require the Subsidiary or the consulting firm to treat Confidential Information in accordance with this Agreement. Any unauthorized disclosure of Confidential Information by Subsidiaries or by Subsidiaries' employees or by any Party's consultants shall constitute a breach of this Agreement;
  - be treated by the receiving Party with the same degree of care as is used with respect to the receiving Party's own equally important confidential information to avoid disclosure to any third party, but at least with reasonable care; and
  - remain the property of the disclosing Party.

- 11.4** The obligations as per Section 11.3 above shall, however, not apply to any information which:
- was in the receiving Party's possession without confidentiality obligation prior to receipt from the disclosing Party;
  - is at the time of disclosure already in the public domain or becomes available to the public through no breach by the receiving Party;
  - is lawfully obtained by the receiving Party from a third party without an obligation of confidentiality, provided such third party is not, to the receiving Party's knowledge, in breach of any confidentiality obligation relating to such information;
  - is developed by the receiving Party or its Subsidiaries independently from Confidential Information;
  - is required to be disclosed by law or the rules of any competent governmental organization provided that written advance notice of such judicial action was timely given to the disclosing Party; or
  - was approved for release by written agreement with the disclosing Party.

The Party seeking the benefit of such exception shall bear the burden of proving its existence.

**11.5** The receiving Party will derive no rights of any kind, in particular no rights of prior use, from the fact that they as a result of the Confidential Information may possibly obtain knowledge of patentable inventions for which the disclosing Party may possibly apply for intellectual property rights.

**11.6** Upon any termination of the business relationship between the Parties, unless otherwise instructed in writing by the disclosing Party, the receiving Party shall cease using any Confidential Information of the disclosing Party and all Confidential Information on record-bearing media exchanged between the Parties, as well as any copies thereof. Upon request of the disclosing Party, made in writing to the receiving Party, the receiving Party shall as per the notice either return the Confidential Information to the disclosing Party or destroy it. This shall not apply to routinely made back-up copies of electronically-exchanged data. In case of destruction, the receiving Party shall confirm in writing such destruction to the disclosing Party within fourteen (14) days after receipt of the respective request.

## **Article 12 - Force Majeure**

Neither Party shall be liable to the other for failure or delay in the performance of any of its obligations under this Agreement for the time and to the extent such failure or delay is caused by events or circumstances beyond the Party's reasonable control such as, but not limited to, riots, civil commotions, wars and hostilities, strikes, lock-outs, governmental laws, orders or regulations, actions by the government or any agency thereof, storms, fires, sabotages, explosions or any other contingencies beyond the reasonable control of the respective Party and of its sub-contractors ("Force Majeure"). In such events, the affected Party shall immediately inform the other Party of such circumstances together with documents of proof and the performance of obligations hereunder shall be suspended during, but not longer than, the period of existence of such cause and the period reasonably required to perform the obligations in such cases. Unavailability of funds shall not be deemed Force Majeure.

## **Article 13 - Compliance with Export Control Regulations, Data Protection**

**13.1** Vanderbilt's obligation to fulfill this Agreement is subject to the provision that the fulfillment is not prevented by any impediments arising out of national or international foreign trade or

customs requirements or any embargos or other sanctions.

- 13.2** In sublicensing the Licensed Software to End-Users Value Added Partner shall comply with all applicable national and international (re-) export control regulations, particularly of Sweden, of Switzerland, of Germany, of the European Union and of the United States of America.
- 13.3** Prior to sub-licensing, goods, works and services provided by Vanderbilt, if any, to a third party Value Added Partner shall in particular check and guarantee by appropriate measures that (i) there will be no infringement of an embargo imposed by Sweden, Switzerland, of Germany, of the European Union, by the United States of America and/or by the United Nations by such sub-licensing, by brokering of contracts or by provision of other economic resources in connection with those licenses, goods, works and services, also considering the limitations of domestic business and prohibitions of by-passing those embargos; (ii) such licenses, goods, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided; and (iii) the regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.
- 13.4** If required to enable authorities or Vanderbilt to conduct export control checks, Value Added Partner, upon request by Vanderbilt, shall promptly provide Vanderbilt with all information pertaining to the particular End-User, the particular destination and the particular intended use of licenses, goods, works and services provided by Vanderbilt, as well as any export control restrictions existing.
- 13.5** Value Added Partner shall indemnify and hold harmless Vanderbilt from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by Value Added Partner, and Value Added Partner shall compensate Vanderbilt for all losses and expenses resulting thereof.
- 13.6** Value Added Partner acknowledges that Vanderbilt and Siemens AG use a software based solution for administration of data and license information. Value Added Partner agrees, after having the approval from affected the End-Users, that Vanderbilt and Siemens AG store and use all data and information required for the business relationship between Value Added Partner, End-Users and Vanderbilt or resulting from said relationships. This includes contractual documents and papers as well as data and information of and about Value Added Partner, Value Added Partner's auxiliary persons and End-User necessary for the performance of the Agreement. Furthermore, all this data and information may be disclosed to Siemens AG as well as Siemens AG's and Vanderbilt's Subsidiaries for corresponding processing, especially for providing services, fulfillment of legal requirements or for Vanderbilt internal audit and/or supervisory requirements; this always in compliance with respectively applicable data protection laws.

#### **Article 14 - Applicable law, disputes**

- 14.1** The contractual relationship under this Agreement and any Order shall be governed by Swiss law, without regard to its conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 14.2** Any dispute, controversy or claim arising out of or in connection with the contract, or the breach,

termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The seat of arbitration shall be Stockholm. The arbitral tribunal shall be composed of three arbitrators. The language to be used in the arbitral proceedings shall be English.

**14.3** The parties undertake, indefinitely, not to disclose the existence or contents of any judgment or decision related to or in connection with the contract or any information regarding negotiations, arbitral proceedings or mediation in connection therewith. This confidentiality undertaking shall not apply in relation to information which a party is required to disclose by law, pursuant to an order of a governmental authority, pursuant to applicable stock exchange rules, or which may be required for the enforcement of a judgment or an award.

**14.4** Notwithstanding the above, Vanderbilt shall be entitled to turn to the district court of Stockholm as first instance as regards claims for due payment.

#### **Article 15 - Miscellaneous**

**15.1** Unless otherwise explicitly set forth in this Agreement neither the benefits nor the obligations of this Agreement nor the entire Agreement may be assigned or transferred in any manner, except (i) with the prior written consent of the other Party, (ii) by a Party to any of its Subsidiaries, or (iii) as part of a transfer of all or of a substantial part of a Party's activities to which the subject matter of this Agreement pertains whether by sale, merger or consolidation. In case of any such a transfer the respective Party will ensure that the transferee, assignee or successor will comply with this Agreement.

**15.2** If provisions of this Agreement are, or should become entirely or partially invalid or unenforceable, this shall not affect the validity of the remaining provisions. The fore-going shall also apply if this Agreement contains any regulatory gap. Instead of the invalid or unfeasible provision, or in order to close the gap, a ruling shall be used, which, in so far as it is legally permissible, as closely as possible reflects the intentions of the Parties concluding this Agreement or, considering the meaning and purpose of this Agreement, the potential intentions of the Parties had they considered the point at the time of concluding this Agreement.

#### **Article 16 - Siemens third party beneficiary**

**16.1** Siemens Switzerland Ltd, Smart Infrastructure, Global Headquarters, Theilerstrasse 1A, CH-6301 Zug, Switzerland, shall be a third-party beneficiary with respect to the terms and conditions set forth for the licensing and protection of the Licensed Software and Software Documentation of this Agreement, in particular in Articles 2, 3, 9, 11 and 13.2 of this Agreement.

**16.2** The Value Added Partner shall conclude the license agreements with End-Users in such a way that Siemens becomes a third-party beneficiary as mentioned above.