

General Conditions for Licensing Access to Software as a Web Based Offering

The terms and conditions of this Addendum *General Conditions for Licensing Access to Software as a Web Based Offering* ("Web Based Offering General Conditions") are applicable only to the Web Based Offering identified in the Proposal and supplements the Standard Terms and Conditions as follows:

BY CLICKING THE "ACCEPT" BUTTON OR OTHERWISE USING THE WEB BASED OFFERING, YOU ARE AGREEING THAT YOU HAVE READ, AND AGREE TO COMPLY WITH AND BE BOUND BY, THIS WEB BASED OFFERING GENERAL CONDITIONS IN ITS ENTIRETY WITHOUT LIMITATION OR QUALIFICATION AS WELL AS ALL APPLICABLE LAWS AND REGULATIONS. IF YOU DO NOT AGREE TO BE BOUND BY THIS WEB BASED OFFERING GENERAL CONDITIONS AND TO FOLLOW ALL APPLICABLE LAWS AND REGULATIONS, DO NOT CLICK THE "ACCEPT" BUTTON IF PRESENTED TO YOU OR ACCESS OR USE THE WEB BASED OFFERING.

1. General Provisions

This Web Based Offering General Conditions is a legal agreement between you, either individually or on behalf of your corporation, sole proprietor or other business entity ("**you**" or "**your**") and Siemens and each of its respective successors and assigns ("**Siemens**"), governing (i) your use of Siemens' online service application(s) hosted on a remote server system by Siemens or Siemens' service providers or suppliers and accessible via a web site portal address or IP address designated by Siemens, (ii) the Material contained therein as defined in Section 2.2.1., and (iii) any offline components provided by Siemens or its licensors for use in connection therewith, if any, (collectively, "**Web Based Offering**").

Your standard terms and conditions referenced to or included in purchase orders, order confirmations or in any other communication, if any, shall not apply to this Web Based Offering General Conditions even if not objected to by Siemens.

2. License Grant and Restrictions, Third Party License Terms, Place of Performance

- 2.1. Subject to the terms and conditions of this Web Based Offering General Conditions, as may be incorporated in a separate agreement between you and Siemens, Siemens grants you a limited, non-exclusive, non-transferable, non-sublicenseable, license to access and use the Web Based Offering solely for your own internal business purposes. All rights not expressly granted to you are reserved by Siemens and its licensors. The license granted herein is conditioned on your continued compliance with the terms and conditions of this Web Based Offering General Conditions.
- 2.2. Your use of the Web Based Offering is limited to the scope of the license granted in this Web Based Offering General Conditions, unless otherwise agreed by Siemens in writing. In particular you shall not, or permit other individuals or entities to,
 - 2.2.1. copy, reproduce, translate, alter, display, modify, decompile, reverse engineer, disassemble, attempt to discover the source code or algorithms of, manipulate or create derivative work based on, the Web Based Offering, or any information, documents, software, products and services or any other material (including text, graphics, logos, button icons, images, audio clips, data, photographs, graphs, videos, typefaces, and sounds) contained or made available to you in the course of using the Web Based Offering, or any part thereof, ("**Material**") or use the Web Based offering to run or as part of a service bureau, outsourced or managed services arranged, or access the Web Based Offering, unless and to the extent permitted by mandatory law;
 - 2.2.2. disable or circumvent any access control or related device, process or procedure established with respect to the Web Based Offering or any part thereof. Such prohibited conduct includes, without limitation, any efforts to gain unauthorized access to the Web Based Offering, other user accounts, computer systems or networks connected to the Web Based Offering, through hacking, password mining or any other means, log into an account with a password not assigned to the respective user, access identifiable information not intended for the respective user, test the security measures on the Web Based Offering and/or attempt to identify system vulnerabilities, or to attempt to disable the Web Based Offering; and
 - 2.2.3. link, distribute, transfer, sell and resell, (sub-)license, rent, lease, lend, assign or otherwise transfer any rights to, or commercially exploit or otherwise make available the Web Based Offering in whole or in part to any third party in any way.
- 2.3. The Web Based Offering may contain third party content, including commercial and open source software. Such third party content may be subject to additional or differing terms and conditions that always prevail over this Web Based Offering General Conditions; you will find such additional or differing terms and conditions as a link at the bottom of the web site platform where the Web Based Offering is hosted, or any other place as designated by Siemens, and you accept those terms and conditions by using the Web Based Offering.
- 2.4. Siemens provides access to and use of the Web Based Offering at the Wide Area Network (WAN) exit which may be located outside your country. By using the Web Based Offering, you consent to the storage, collection, use and disclosure of your data outside of your country. Siemens will not assume any obligation or responsibility to effect any data connection to such WAN exit. Such data connection and the use of and access to the Web Based Offering requires an Internet connection and suitable soft- and hardware as may be described in a separate agreement, including the ordering, proper installation, operation and

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maintenance of suitable hardware and/or software for the Internet connection and transfer of data by you or by Users, as defined in Section 5.1.

3. Remuneration

For consideration of the license to access and use the Web Based Offering, you agree to pay the agreed fees and charges. Fees do not include any taxes, excises, duties, permits or other government charges (collectively, "**Taxes**"). You are responsible for the payment of such Taxes or reimburse Siemens for any Taxes Siemens pays. If you claim a tax exemption or direct payment permit, you shall provide Siemens with a valid exemption certificate or permit and indemnify Siemens from any Taxes, costs and penalties arising out of the same. Invoices shall be payable without cash discounts and without any other deduction within 30 days of receipt of the invoice. The setting-off of such claims against counter-claims shall be excluded. If you fail to meet the agreed payment deadlines, you shall be in default without further notice and Siemens is entitled to suspend the Web Based Offering. Siemens reserves the right to terminate this Web Based Offering General Conditions for cause if the default is not cured within 30 days.

4. Customer Communication, Disclosure, Data Storage

From time-to-time Siemens may ask whether or not you wish to receive marketing and other non-critical Web Based Offering-related communications. You may elect not to receive such communications at that time or opt-out of receiving such communications at any subsequent time by notifying Siemens. Because the Web Based Offering is a hosted, online application, Siemens may need to notify you and/or your Users, as defined in Section 5.1 (whether or not they have opted out as described above), about important announcements regarding the operation of the Web Based Offering. Siemens reserves the right to disclose that you are a User of the Web Based Offering. You also grant Siemens the right to copy and maintain Your Data (as defined in Article 6) during the term of your agreement with Siemens. You agree that all data and information required for the business relationships or resulting from said relationships, especially contractual documents and papers as well as data and information necessary for the performance of the Web Based Offering of and about you and your auxiliary persons, if any, may also be stored outside your country. Furthermore, all such data and information may be disclosed to other Siemens companies for corresponding processing, especially for providing services, fulfillment of legal requirements or for Siemens-internal audit and/or supervisory requirements; this always in compliance with respectively applicable data protection laws.

5. Account Access; Your Obligations; Cyber Security

5.1. Where use of the Web Based Offering is contingent on accessing an account and/or inserting a "user-identification" and/or "password", you agree that you will be solely responsible for all activity occurring when the Web Based Offering is accessed through the use of your user-identification and/or password including any actions that occur without your authorization. You and your Users shall keep any correspondence you receive relating to or through the use of the Web Based Offering (including, but not limited to, your user-identification, passwords, and other registration or sign-in information) confidential and in a safe place and not disclose it to any third party. "**User**" or "**Users**" means any individual(s) accessing the Web Based Offering on your behalf or otherwise using the Web Based Offering under your account. It is your responsibility to take appropriate actions immediately if any password has been stolen, leaked, compromised or otherwise used without proper consent. You shall: (i) notify Siemens immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Siemens immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by you; (iii) notify Siemens when you no longer require access to the Web Based Offering; and (v) keep all of your profile information current.

5.2. Siemens provides a portfolio with industrial security functions that support the secure operation of plants, systems, machines and networks. In order to protect plants, systems, machines and networks against cyber threats, it is necessary to implement – and continuously maintain – a holistic, state-of-the-art security concept. Siemens' portfolio only forms one element of such a concept. You are responsible for preventing unauthorized access to your plants, systems, machines and networks which should only be connected to an enterprise network or the internet if and to the extent such a connection is necessary and only when appropriate security measures (e.g. firewalls and/or network segmentation) are in place. Additionally, Siemens' guidance on appropriate security measures should be taken into account. For additional information, please contact your Siemens sales representative or visit <http://www.siemens.com/industrialsecurity>.

Siemens' portfolio undergoes continuous development to make it more secure. Siemens strongly recommends that updates are applied as soon as they are available and that the latest versions are used. Use of versions that are no longer supported, and failure to apply the latest updates may increase your exposure to cyber threats. Siemens strongly recommends to comply with security advisories on the latest security threats, patches and other related measures, published, among others, under <http://www.siemens.com/cert/en/cert-security-advisories.htm>.

6. Use of Data

In connection with the use of the Web Based Offering, Siemens (or Siemens' service providers or suppliers) may obtain, receive or collect data or information, including system-specific data or information or other content, from you or other parties using or having used the Web Based Offering ("**Your Data**").

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Except for files uploaded and stored manually by you, you hereby grant Siemens (and Siemens' service providers or suppliers when acting on Siemens' behalf) a non-exclusive, transferable, sublicenseable, worldwide, royalty-free, perpetual, non-revocable license under applicable copyrights and other intellectual property rights, if any, in all Your Data to provide the Web Based Offering to you and to create derivative works and aggregated data derived from Your Data, Siemens customers and other sources, including without limitation, comparative data sets, statistical analyses, reports and related services (collectively, "**Siemens Data**"). Siemens utilizes Siemens Data as it sees fit for any purpose.

The Parties shall ensure that they and/or their Users adhere to the then current terms of use, data protection notification, privacy policy, and cookie policy as linked at the bottom of the website platform where the Web Based Offering is hosted, or any other place as designated by Siemens.

You represent and warrant that you have obtained all rights, permissions and consents necessary to the aforesaid use of Your Data as part of the Web Based Offering, and permit Siemens to exercise all of its rights under this Web Based Offering General Conditions. You, not Siemens nor Siemens' service providers or suppliers, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness, of all of Your Data. Neither Siemens nor Siemens's service providers or suppliers shall be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any of Your Data.

In the event this Web Based Offering General Conditions is terminated (other than by reason of your breach), Siemens will make available to you a file containing Your Data within 30 days of termination if you so request in writing at the time of termination. Siemens reserves the right to withhold, remove and/or discard Your Data and Siemens Data, to the extent legally feasible, without notice for any breach, including, without limitation, non-payment. Upon termination for cause, your right to access or use Siemens Data immediately ceases, and Siemens shall have no obligation to maintain or forward any Siemens Data to you.

7. Intellectual Property Ownership

All right, title and interest in the Web Based Offering, including technology and trade secrets embodied therein and any custom developments created or provided in connection with or related to this Web Based Offering General Conditions, including all copyrights, patents, trade secrets, trade dress, and other proprietary rights, and any derivative works thereof, shall belong solely and exclusively to Siemens and/or its licensors, service providers and suppliers, and you shall have no rights whatsoever in any of the foregoing. You acknowledge that the Web Based Offering constitutes a valuable trade secret and/or is the confidential information of Siemens or its licensors, service providers and suppliers. Nothing in this Web Based Offering General Conditions or otherwise will be deemed to grant to you an ownership interest in the Web Based Offering, in whole or in part. All Material is the property of Siemens or its licensors, suppliers and service providers and is protected by applicable law and all rights thereunder are valid and protected in all forms, media and technologies existing now or hereinafter developed. You shall not (and shall ensure that third parties do not) perform any activities as set forth in Section 2.2, and any use other than as contemplated herein is strictly prohibited.

8. Trademarks

Siemens' name, logo, other related names, design marks, product names, feature names and related logos are trademarks of Siemens and may not be used, copied or imitated, in whole or in part, without the express prior written permission of Siemens. In addition, the look and feel of the Web Based Offering (including all page headers, custom graphics, button icons, and scripts) constitutes the service mark, trademark and/or trade dress of Siemens or its licensors, and may not be copied imitated or used, in whole or in part, without the express prior written permission of Siemens.

9. Term; Termination; Suspension of the Web Based Offering

- 9.1. The term of this Web Based Offering General Conditions commences latest with your first use of the Web Based Offering and continues through any subsequent use of the Web Based Offering thereafter. Your and User's use of the Web Based Offering may be terminated by either party in writing following three (3) months' prior notice.
- 9.2. Each party shall be entitled to give written notice of termination of this Web Based Offering General Conditions for cause, which shall apply in particular for: (i) unauthorized use of the Web Based Offering; (ii) a material breach of this Web Based Offering General Conditions by the other party which is not remedied within a reasonable period of time despite written notice specifying any such breach (iii) the other party becoming insolvent, bankrupt or insolvency or probate proceedings being applied for or initiated against it or being rejected due to a lack of funds; (vi) serious damage to the remote server system and/or the internet connection or its unusability as a result of any acts or omissions beyond Siemens' responsibility.
- 9.3. In each of the aforesaid cases or as otherwise stated in this Web Based Offering General Conditions, Siemens, in its sole discretion, may suspend or terminate your password, account or use of the Web Based Offering and may delete any Data without an obligation for a recovery. You agree and acknowledge that Siemens has no obligation to retain Your Data, and may delete such Data, if you have materially breached this Web Based Offering General Conditions, including but not limited to failure to pay any payments due to Siemens under any agreement, and such breach has not been cured within 15 days of notice of such breach.

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10. Warranty; Disclaimer

- 10.1. Each party warrants that it has the legal power and authority to enter into this Web Based Offering General Conditions. You warrant and covenant that you do not and have not falsely identified yourself nor will provide or have provided any false information to gain access to the Web Based Offering. If you are entering into this Web Based Offering General Conditions on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions. If you do not have such authority, you must immediately stop using the Web Based Offering.
- 10.2. Unless Siemens agrees in a separate writing to provide an exception to this warranty disclaimer with respect to the Web Based Offering, Siemens shall be only liable for defects and any violation of property rights as set forth in Articles 12 and 13 and as follows:
 - 10.2.1. Siemens shall render the Web Based Offering consistent with degree of care and skill ordinarily exercised by reputable companies performing same or substantially similar services under similar conditions and circumstances. The Web Based Offering substantially meets and complies with the functional specifications agreed with you separately in writing.
 - 10.2.2. SIEMENS INCLUDING SIEMENS' SERVICE PROVIDERS AND SUPPLIERS DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW ALL FURTHER OR OTHER WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE WEB BASED OFFERING, OR OTHERWISE RELATING TO THIS WEB BASED OFFERING GENERAL CONDITIONS, SUCH AS OBTAINED, GENERATED OR OTHERWISE RECEIVED INFORMATION, REPORTS, RESULTS OR OTHER DATA, INCLUDING WARRANTIES AND CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, MERCHANTABILITY QUALITY, NON-INFRINGEMENT AND ACCURACY AND NON-INTERFERENCE. SIEMENS SPECIFICALLY DOES NOT WARRANT THAT THE WEB BASED OFFERING IS OR WILL BE SECURE, ACCURATE, RELIABLE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS, OR OTHER PROGRAM LIMITATIONS, AND THAT THE WEB BASED OFFERING WILL MEET YOUR REQUIREMENTS.
 - 10.2.3. The exclusive remedy of you and Siemens' sole obligation in the event of a reproducible defect of Web Based Offering shall be for Siemens to resolve such defect within a reasonable time.
- 10.3. Any other rights or remedies because of defects in the Web Based Offering, including without limitation those for damages, are excluded to the extent permitted by law.

11. Indemnification

You shall indemnify and hold Siemens, its service providers, suppliers and licensors, and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of Your Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you of this Web Based Offering General Conditions or a violation of any law or regulation, provided in any such case that Siemens (a) gives written notice of the claim promptly to you; and (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Siemens of all liability and such settlement does not affect Siemens business or the Web Based Offering).

12. Infringement of third party's intellectual property rights

Unless otherwise agreed, e. g. as set forth in Section 2.3, Siemens shall provide the Web Based Offering free from third parties' intellectual property rights only with respect to the country where such rights are registered or, if not registered, created. . If a third party asserts a justified claim against you based on an infringement of an intellectual property right by the Web Based Offering rendered by Siemens and used by you in conformity with the Web Based Offering General Conditions, Siemens shall be liable to you within the period for liability as follows: (a) Siemens shall choose whether to acquire, at its own expense, the right to use the intellectual property rights with respect to Web Based Offering concerned or whether to replace or modify the Web Based Offering in a way that it no longer infringes. If this is not reasonably possible then Siemens may terminate the Web Based Offering General Conditions; (b) Siemens' liability to pay damages is governed by Article 13, (c) aforesaid obligations of Siemens shall apply only if you (i) immediately notify Siemens of any such claim asserted by the third party in writing, (ii) do not acknowledge an infringement of intellectual property rights and (iii) leave any protective measures and settlement negotiations to Siemens' discretion. If you stop using the Web Based Offering in order to mitigate damages or for other good reason, you shall inform the third party explicitly that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued. Your claims shall be excluded if you are responsible for the infringement of an intellectual property right. Your claims are also excluded if the intellectual property right infringement is caused by Your Data, specifications or instructions made by you, by a use not foreseeable by Siemens or contractually prohibited, or by the Web Based Offering being modified by you or being used together with products/services not provided by Siemens.

13. Liability

- 13.1. UNLESS OTHERWISE AGREED IN A SEPARATE WRITING BETWEEN THE PARTIES, IN NO EVENT SHALL SIEMENS BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR OF DATA, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL,

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EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER THIS WEB BASED OFFERING GENERAL CONDITIONS OR OTHERWISE, EVEN IF SIEMENS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM AGAINST YOU BY ANY OTHER PARTY. IN NO CASE WILL SIEMENS AND/OR ANY OF THE SIEMENS PARTIES BE LIABLE FOR ANY REPRESENTATION OR WARRANTY MADE TO YOU BY ANY THIRD PARTY. EXCEPT FOR CLAIMS THAT THE WEB BASED OFFERING CAUSED BODILY INJURY (INCLUDING DEATH) DUE TO SIEMENS' NEGLIGENCE OR WILLFUL MISCONDUCT,

- 13.2. SIEMENS CUMULATIVE LIABILITY TO YOU FOR ALL CLAIMS OF DAMAGES ARISING OUT OF OR RELATED TO THIS WEB BASED OFFERING GENERAL CONDITIONS AND REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, STRICT LIABILITY, NEGLIGENCE OR TORT, SHALL NOT EXCEED THE AMOUNT OF THE PAYMENTS MADE TO SIEMENS FOR THE WEB BASED OFFERING GIVING RISE TO SUCH CLAIM IN THE SIX (6) MONTHS PRIOR TO SUCH CLAIM.
- 13.3. YOU ACKNOWLEDGE (a) THAT THESE LIMITATIONS APPLY EVEN IF THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE; AND, (b) THAT, WITHOUT THESE LIMITATIONS, YOU WOULD NOT HAVE USE OF THE WEB BASED OFFERING PROVIDED HEREUNDER.
- 13.4 Certain states, provinces and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

14. Interruption of the Web Based Offering

- 14.1. You agree that the operation and availability of the systems used for accessing and interacting with the Web Based Offering, including, the public telephone, computer networks and the internet or to transmit information, whether or not supplied by you or Siemens, can be unpredictable and may, from time to time, interfere with or prevent the access to and/or the use or operation of the Web Based Offering. Neither Siemens nor any company of the Siemens Group shall be liable for any interference with or prevention of your access to and/or use of the Web Based Offering.
- 14.2. It may be necessary for Siemens and/or its suppliers, service providers and licensors to perform scheduled or unscheduled repairs, maintenance, or upgrades, and such activities may temporarily degrade the quality of the Web Based Offering or result in a partial or complete outage of the Web Based Offering. Siemens provides no assurance that you will receive advance notification of such activities or that the Web Based Offering will be uninterrupted or error-free. Any degradation or interruption in the Web Based Offering shall not give rise to a refund or credit of any fees paid by you.

15. Export Control; Local Law

You acknowledge that the Web Based Offering, which may include technology and software, are subject to the customs and export control laws and regulations of Switzerland, the Federal Republic of Germany, the European Union and the United States of America and may also be subject to the customs and export laws and regulations of the country in which the Web Based Offering is rendered and/or received. From any location where data is being accessed by you, you are solely responsible for establishing all prerequisites for lawful access to Web Based Offering, including any data and information stored, up to the WAN exit point at the data center used by Siemens. You agree to abide by those laws and regulations. You are solely responsible for obtaining any specific licenses relating to the export of software if a license is needed. Siemens' agreement to provide the Web Based Offering is contingent upon any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions. Siemens is not liable for delays or failure to deliver Web Based Offering or a product resulting from your failure to obtain such license or to provide such certification.

16. Notices

Siemens may give notice by means of a general notice on the Web Based Offering, electronic mail to your e-mail address on record in Siemens account information, or by written communication to your address, e. g. by pre-paid first class mail, on record in Siemens account information.

17. Modification of this Web Based Offering General Conditions

Siemens reserves the right to modify the terms and conditions of this Web Based Offering General Conditions or its policies relating to the Web Based Offering at any time, effective upon posting of an updated version of this Web Based Offering General Conditions on the Web Based Offering. You are responsible for regularly reviewing this Web Based Offering General Conditions. Continued use of the Web Based Offering after any such changes shall constitute your consent to such changes. In case you disagree to the modifications you shall notify Siemens about your objection. In such cases, Siemens reserves the right to terminate the Web Based Offering General Conditions effective within a 30 days period after receipt of any such notification.

18. License Usage Audit

You shall allow Siemens to conduct audits of the contractual use on Siemens' written request. This shall include in particular access to all relevant systems and documentation. Siemens may carry out the audit itself or by way of any third party auditor acceptable to you and subject to a duty of confidentiality. Siemens shall give you at least ten (10) working days prior written notice of such an audit. Such an audit may take place at your premises during the regular hours of business. If, as a result of an audit, any use not in conformity with this Web Based Offering General Conditions is detected, you shall pay to Siemens, as liquidated

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damages and not as a penalty, the amount of the license fee set out in the current price list applicable to the item for which non-conforming use is detected. In addition, you shall bear the reasonable costs of the audit. Siemens reserves the right to claim further damages and to be able to implement any other remedy available to Siemens identified herein.

19. Assignment; Change of Control

Subject to any terms to the contrary existing in the Standard Terms and Conditions, this Web Based Offering General Conditions and the License granted hereunder may not be assigned by you without the prior written approval of Siemens but may be assigned or transferred without your consent by Siemens to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this Article shall be void. Any actual or proposed change in control of you that results or would result in a Competitor of Siemens directly or indirectly owning or controlling 50% or more of you shall entitle Siemens to terminate this Web Based Offering General Conditions and the License granted hereunder for cause immediately upon written notice. A "**Competitor**" of Siemens means an individual or entity that is involved in the sale or service of (i) building automation systems or equipment; (ii) fire safety systems or equipment; (iii) energy management and control systems, (iv) remote monitoring of energy management systems, (v) demand response services, (vi) equipment monitoring services, (vii) energy information services, or (viii) design or manufacture of software or hardware for any of the foregoing.

20. Miscellaneous; Applicable law

- 20.1. No joint venture, partnership, employment, or agency relationship exists between you and Siemens as a result of this Web Based Offering General Conditions or use of the Web Based Offering. The failure of Siemens to enforce any right or provision in this Web Based Offering General Conditions shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Siemens in writing.
- 20.2. If any provision of this Web Based Offering General Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, then such provisions shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provisions, with all other provisions remaining in full force and effect.
- 20.3. Subject to Article 17, no modification, amendment or waiver of any provision of this Web Based Offering General Conditions shall be binding, unless made in writing and duly signed by the parties; for avoidance of doubt, electronic communication shall not qualify as written notice or document. Any waiver of this requirement for the written form shall likewise be in writing.
- 20.4. Any cause of action you may have with respect to your use of the Web Based Offering must be commenced within one (1) year after the claim or cause of action arises
- 20.5. This Web Based Offering General Conditions is governed by and construed in accordance with the laws of the Province of Ontario, Canada without regard to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. BOTH SIEMENS AND YOU KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO WEB BASED OFFERING GENERAL CONDITIONS. Each party agrees that claims and disputes arising out of this Web Based Offering General Conditions must be decided exclusively in a federal or provincial court of competent jurisdiction located in a province in which either you or Siemens maintains its principal place of business. Each party submits to the personal jurisdiction of such courts for the purpose of litigating any claims or disputes.

21. Provisions for Value Added Partners, Solutions Partners and OEM

In case that you are entitled to sublicense access and use of the Web Based Offering, as agreed with Siemens in a separate written agreement, these Web Based Offering General Conditions apply with the following deviations:

- 21.1. Section 2.1 shall be deleted and replaced with the following Section:
*"2.1 Siemens grants you a limited, non-exclusive, non-transferable license to (i) access and use the Web Based Offering solely for the purpose of providing commercial services to third parties ("**Your Customers**") and any of your affiliates; (ii) to sublicense the right to use such commercial services to Your Customers as end-users for their internal purposes under your Account. All rights not expressly granted to you are reserved by Siemens and its licensors. The license granted herein is conditioned on your, Your Customer's and your affiliate's continued compliance with the terms and conditions of this Web Based Offering General Conditions."*
- 21.2. You are solely allowed to sublicense the Web Based Offering by way of a written sublicense agreement. You shall ensure in such a way that Siemens is a third party beneficiary that Your Customers and your affiliates comply with the Web Based Offering General Conditions and grant Siemens the rights set forth in Article 6.
- 21.3. You are responsible for any access to and use of the Web Based Offering by Your Customers and your affiliates as if it were your own access and use and you shall be liable and indemnify and hold Siemens harmless from any requests, claims and disadvantages related or out of your sublicense.