

# ECOSTRUXURE POWER DEVICE DOWNLOADABLE MOBILE APPLICATION

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November 2018

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3.3 When creating Your user account, You agree (i) to create a unique password that You do not use with any other online product or service; (ii) to provide accurate, truthful, current and complete information; (iii) to promptly update upon any change the information provided to create Your user account; (iv) maintain the confidentiality and security of Your user account by protecting Your identification information and password and restricting access to Your user account; (v) promptly notify Schneider Electric if You discover or otherwise suspect any security breach related to Your user account or any misuse thereof; and (vi) take responsibility for all activities that occur under Your user account and accept all risks of any authorized or unauthorized access thereto.

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**7.5.** You may not use the Mobile Application in an attempt to, or in conjunction with any device, program or service designed to, circumvent technological measures employed to control access to, or the rights in, a content file or other work protected by the copyright or other laws of any jurisdiction.

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**11.3** SCHNEIDER ELECTRIC'S LIABILITY ARISING OUT OF THESE TERMS OF USE IS REDUCED PROPORTIONALLY TO THE EXTENT TO WHICH THE ACT OR OMISSION OF YOU OR ANY OTHER THIRD PERSON CONTRIBUTED TO THE LOSS OR DAMAGE INCURRED.

**11.4** SCHNEIDER ELECTRIC SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR THE USE BY YOU OR ANY THIRD PARTY OF ANY USER DATA UPLOADED TO OR DOWNLOADED FROM THE MOBILE APPLICATION OR CREATED OR MODIFIED IN CONNECTION WITH THE USE OF THE MOBILE APPLICATION, NOR FOR THE CONSEQUENCES OF ANY DECISION, ACT OR OMISSION, SUCH AS BUT NOT LIMITED TO ANY ELECTRICAL ASSEMBLY, INSTALLATION OR MAINTENANCE, THAT YOU OR ANY THIRD-PARTY MAY MAKE BASED ON OR IN RELIANCE ON ANY USER DATA.

**11.5** IN NO EVENT WILL SCHNEIDER ELECTRIC BE LIABLE TO YOU FOR (I) ANY DAMAGES CAUSED BY YOUR FAILURE TO PERFORM YOUR OBLIGATIONS UNDER THESE TERMS OF USE OR TO FOLLOW THE DOCUMENTATION; OR (II) ANY CLAIMS OR DEMANDS OF THIRD PARTIES EXCEPT AS EXPRESSLY STATED IN THESE TERMS OF USE.

**11.6** IN CASE THE RIGHT TO ACCESS AND USE THE MOBILE APPLICATION WAS FURNISHED TO YOU BY ANY AUTHORIZED SCHNEIDER ELECTRIC DISTRIBUTOR OR RESELLER OR ANY SCHNEIDER ELECTRIC CERTIFIED PARTNER, WITH OR WITHOUT A THIRD-PARTY PRODUCT, SCHNEIDER ELECTRIC SHALL IN NO EVENT BE A PARTY TO ANY PURCHASE ORDER OR OTHER AGREEMENT BETWEEN YOU AND SUCH DISTRIBUTOR, RESELLER OR PARTNER AND SHALL NOT ASSUME OR OTHERWISE BEAR ANY LIABILITY THEREUNDER.

**11.7** YOU ACKNOWLEDGE THAT THE USE OF THE MOBILE APPLICATION MAY BE SUBJECT TO LIMITATIONS, DELAYS AND POTENTIAL FAILURE DUE TO THE INHERENT RISKS OF TELECOMMUNICATIONS NETWORKS AND THE INTERNET. SCHNEIDER ELECTRIC SHALL NOT BE RESPONSIBLE FOR ANY DELAY OR FAILURE RESULTING FROM THE AFORESAID LIMITATIONS, DELAYS AND POTENTIAL FAILURES.

**11.8** THE EXCLUSIONS, LIMITATIONS AND DISCLAIMERS OF WARRANTY OR LIABILITY STATED IN THESE TERMS OF USE SHALL APPLY ONLY TO THE EXTENT PERMITTED BY THE LAW APPLICABLE TO THESE TERMS OF USE AND DO NOT AFFECT OR PREJUDICE STATUTORY RIGHTS WHICH, AS THE CASE MAY BE, BENEFIT YOU UNDER MANDATORY OR PUBLIC ORDER LAWS OR REGULATIONS APPLICABLE IN ANY COUNTRY WHERE YOU WILL DOWNLOAD, INSTALL OR USE THE MOBILE APPLICATION.

## **12. INDEMNIFICATION**

**12.1** You shall defend, indemnify, and hold harmless Schneider Electric, its Affiliates and each of their respective officers, directors, employees, licensors, contractors, successors and assigns from and against any and all claims, actions, suits, demands, proceedings, judgments, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorneys' fees and court costs) arising from or related to (i) any User Data; (ii) any breach by You of any of Your obligations under these Terms of Use such as but not limited to any unauthorized use of the Mobile Application; (iii) any misuse by You of the Mobile Application such as but not limited to Your use of the Mobile Application in a manner contrary to its Documentation, (iv) any failure by You to comply with any applicable law and/or regulation in connection with Your use of the Mobile Application, (v) any use of the Mobile Application with any hardware, software, firmware, operating system or solution not supplied, not specified or otherwise not approved by Schneider Electric to be used with the Mobile Application; and/or (vi) any modification, alteration or maintenance of the Mobile Application by anyone other than Schneider Electric without the written approval of Schneider Electric.

**12.2** Subject to the limitations set forth in Section 11, Schneider Electric will defend and indemnify You against a third-party claim that the Mobile Application infringes any copyright enforceable in the jurisdiction where Schneider Electric has its registered office or principal place of business, or misappropriates any trade secret protected under the laws of such jurisdiction (the "Included Jurisdiction"), provide that: (i) You notify Schneider Electric of the claim in writing immediately upon the Your awareness of such claim; (ii) Schneider Electric has sole authority and control of the defence of the claim and all related settlement negotiations; and (iii) You provide Schneider Electric with the assistance, information and authority necessary in order for Schneider Electric to handle the defence and settlement of such claim and perform its obligations under this Section 12.2. If the Mobile Application is held or believed by Schneider Electric to constitute an infringement or misappropriation as per this Section 12.2, then Schneider Electric will have the option, at its expense, to: (i) obtain for You a license to continue using the Mobile Application; (ii) replace or modify the Mobile Application to make it non-infringing; or (iii) if in Schneider Electric's sole discretion,

it is not economically or commercially reasonable to perform either (i) or (ii) above, then Schneider Electric may terminate the license for the infringing Mobile Application and refund to You the license or other fee (if any) You paid to Schneider Electric for the infringing Mobile Application. This Section 12.2 states Your sole and exclusive remedy and Schneider Electric's sole liability for any claim under this Section 12.2.

**12.3** To the extent permitted by law, Schneider Electric will have no liability to You under Section 12.2. of these Terms of Use for any claim that arises out of or relates to: (i) any User Data; (ii) any breach by You of any of Your obligations under these Terms of Use such as but not limited to any unauthorized use of the Mobile Application; (iii) any misuse by You of the Mobile Application such as but not limited to Your use of the Mobile Application in a manner contrary to its Documentation, (iv) any failure by You to comply with any applicable law and/or regulation in connection with Your use of the Mobile Application, (v) any use of the Mobile Application with any hardware, software, firmware, operating system or solution not supplied, not specified or otherwise not approved by Schneider Electric to be used with the Mobile Application; and/or (vi) any modification, alteration or maintenance of the Mobile Application by anyone other than Schneider Electric without the written approval of Schneider Electric; (vii) Your use of the Mobile Application after notice by Schneider Electric or any appropriate authority to You of the Mobile Application's alleged or actual infringement or misappropriation of any third-party's Intellectual Property Right; or (viii) Your failure to use corrections or enhancements made available by Schneider Electric.

### **13. THIRD-PARTY WEBSITES AND CONTENTS**

In case the Mobile Application enables the User to link to, transmit User Data to, indicate the web address of or otherwise access to, any third party's website or third-party's contents, products, services or information, the User shall bear all risks associated with the access and use of such third-parties' websites and /or contents, products, services and information. Schneider Electric does not control and is not responsible for such third-parties' websites or any such third-parties' contents, products, services and information accessible from or provided through such third-parties' websites. Any access to third-parties' websites or any use of third-parties' contents, products, services or information through Your access and/or Your use of the Mobile Application shall be subject to said third-parties' own terms of use or other legal document which shall govern the relationship between You and said third-parties with respect thereto.

### **14. EXPORT CONTROL**

You agree that You will comply with all applicable local (on both federal and state levels, when applicable) and international laws and regulations, including but not limited to export control laws and regulations of the United States of America or other jurisdictions, that relate to Your use of the Mobile Application.

The export of products, software, technology or information may be subject to control or restriction by applicable laws or regulations on the control of export, notably the United States Export Administration Act and the regulations thereunder, and the European Union Regulation applicable to dual use products and technologies. You are solely responsible for determining the existence and application of any such law or regulation to any proposed export by You or Your representatives of the Mobile Application or any service based or otherwise implementing Your right to access and use the Mobile Application and for performing any declaration or obtaining any required authorisation in relation therewith. You agree not to export the Mobile Application or any service based or otherwise implementing Your right to access and use the Mobile Application from any country in violation of any applicable legal or regulatory obligations or restrictions on that export.

In the event the aforementioned legal or regulatory obligations or restrictions are violated by You or any of Your representatives in relation with the export of the Mobile Application

or any service based or otherwise implementing Your right to access and use the Mobile Application, You shall indemnify and hold harmless Schneider Electric, its Affiliates and each of their respective officers, directors, employees, licensors, contractors, successors and assigns harmless from any claims and compensate the same against any damages claimed by any third-party (including but not limited to governmental and/or international authorities and/or organizations) as a result of any such violation by You or Your representative(s).

## **15. ASSIGNMENT**

Your rights and obligations under these Terms of Use may not be sold, sub-licensed, rented, assigned, delegated, transferred or otherwise conveyed by You or Your representatives without Schneider Electric's prior express written consent. The license granted to You under these Terms of Use is granted in consideration of Your person ("*intuitu personae*"). Schneider Electric may assign its rights and obligations under these Terms of Use to any Affiliate or to any company Schneider Electric may acquire control of or merge with. Subject to the foregoing, these Terms of Use shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

## **16. TERMINATION**

**16.1** While not obligated to perform investigations, Schneider Electric may investigate violations of these Terms of Use or misuse of the Mobile Application and cooperate with appropriate law enforcement authorities with respect to security threats, fraud, or other illegal, malicious, or inappropriate activity by You or any third-party through Your access to and/or Your use of the Mobile Application.

**16.2** Schneider Electric is entitled, at any time and without notice or liability to You, to terminate the license right granted to You to use the Mobile Application if You breach any of Your obligations under these Terms of Use or the other legal documents incorporated herein or You violate any applicable laws or regulations or otherwise infringe any Intellectual Property Rights in the access to or the use of the Mobile Application. Termination by Schneider Electric of the license right granted to You to use the Mobile Application shall not waive or affect any other right or remedies to which Schneider Electric may be entitled under these Terms of Use, at law or, if applicable, in equity.

Without prejudice to the foregoing, termination by Schneider Electric of the license right granted to You to use the Mobile Application shall automatically and immediately cause the termination of the legal agreement formed between You and Schneider Electric by Your acceptance of these Terms of Use.

**16.3** Upon expiration or termination of the license right granted to You hereunder, You undertake to immediately discontinue the use of the Mobile Application and You must delete or expunge the Mobile Application from all computers, hard disks, servers, tablets, smart phones or other mobile devices onto which You downloaded it. You shall upon Schneider Electric's request provide Schneider Electric with a written certification that You have carried out the required actions set out in this Section 16.3.

**16.4** Termination by Schneider Electric of the license right granted to You hereunder and thereby the Agreement shall not waive or affect any other right or remedies to which Schneider Electric may be entitled under these Terms of Use, at law or, if applicable, in equity in connection to or arising out of Your breach, violation or infringement as stated above. Termination by Schneider Electric of the license right granted to You hereunder and thereby the Agreement does not affect any rights or remedies which, before said termination, may have accrued to You or Schneider Electric under these Terms of Use, at law or, if applicable, in equity, in connection to or arising out of such license.

## **17. MISCELLANEOUS**

**17.1** Schneider Electric is an independent contractor. Each of You and Schneider Electric agree that no partnership, joint venture, or agency relationship exists or is created by these

Terms of Use between You and Schneider Electric. Neither You nor Schneider Electric is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of one another.

**17.2** No third-party beneficiary relationship is created by these Terms of Use. The Agreement is not intended to, and does not confer any rights, benefits or remedies upon any person other than You and Schneider Electric.

**17.3** These Terms of Use constitute the entire agreement between You and Schneider Electric in relation to Your right to use the Mobile Application and replaces any previous agreement or understanding, whether oral, electronic or written, in relation to the same subject matter. The Documentation forms an integral part of the license right granted under these Terms of Use. In case of a discrepancy between any provision of these Terms of Use and the provisions of the Documentation, the provisions of these Terms of Use shall prevail.

**17.4** Should any provision of these Terms of Use be declared invalid or unenforceable by any competent jurisdiction, such provision of these Terms of Use shall be amended by Schneider Electric to achieve as nearly as possible its inner intent, and all other provisions of these Terms of Use shall remain valid and in full force and effect.

**17.5** All notices sent in pursuance of these Terms of Use shall be in writing. Notices of a general purpose related to the Mobile Application shall be given by Schneider Electric by means of a general information posted on Schneider Electric's corporate website, the applications' stores that make the Mobile Application available for download and/or through the Mobile Application itself. Notices specifically addressed to You shall be given by Schneider Electric, at its election, by electronic mail to the electronic address on record in the information You provided to download the Mobile Application or, when applicable, to create Your user account within the Mobile Application, or by written communication sent by first class mail or pre-paid post to the address of Your registered office or principal place of business. Any notice by the User to Schneider Electric shall be in writing sent by first class mail or pre-paid post to the address of Schneider Electric's registered office or principal place of business.

**17.6** Schneider Electric's failure to exercise or enforce any right, power or remedy under the Agreement shall not operate or be construed as a waiver thereof.

**17.7** Headings in these Terms of Use are just for ease of reference and will not affect its interpretation.

**17.8** Words expressed in the singular include the plural and vice versa.

**17.9** Section 6 "Title and trademarks", Section 8 "User Data", Section 10 "Warranties and disclaimers of warranties", Section 11 "Liabilities", Section 12 "Indemnification", Section 14 "Export Control", Section 16 "Termination", Section 17 "Miscellaneous" and Section 18 "Applicable Law and Disputes Resolution" of these Terms of Use shall survive termination or expiration of these Terms of Use or the license right granted to You hereunder. Furthermore, provisions that by their nature are intended to survive termination or expiration of these Terms of Use or the license right granted to You hereunder, shall survive such termination or expiration.

**17.10** Schneider Electric reserves the right, at its sole discretion, to amend, add or remove any provision to or from these Terms of Use at any time. Any such amendment, addition or removal to these Terms of Use will be posted by Schneider Electric on its corporate website located at <http://www.schneider-electric.com>, the applications' stores availing the Mobile Application for download and/or through the Mobile Application itself. Schneider Electric recommends that every User, including returning Users, carefully review the then-current Terms of Use posted on Schneider Electric's corporate website or the applications' stores and/or through the Mobile Application. It is the User's responsibility to check the then-current Terms of Use prior to use of the Mobile Application or any updates or upgrades

thereto. The User's continued use of the Mobile Application after any amendment, addition or removal to these Terms of Use is published by Schneider Electric, shall be deemed as the User's acceptance and agreement to the changed Terms of Use.

**17.11** You agree to make all applicable records available for review by Schneider Electric during Your normal business hours so as to permit Schneider Electric (upon reasonable written notice to You) to verify Your compliance with these Terms of Use. Further, You agree that upon the request of Schneider Electric or Schneider Electric's authorized representative, You will promptly document and certify in writing to Schneider Electric that Your and Your employees' use of the Mobile Application complies with these Terms of Use.

Schneider Electric may (upon reasonable written notice) inspect Your use of the Mobile Application during Your normal business hours to ensure Your compliance with these Terms of Use. If the results of any such review or inspection indicate Your unlicensed or non-compliant use of the Mobile Application or the underpayment by You of applicable license or other fees (if any) contractually due and payable to Schneider Electric, You shall: (i) immediately pay sufficient fees to cover Your use of the Mobile Application, or such amounts of fees remaining due to Schneider Electric and (ii) reimburse Schneider Electric for the cost of such review or inspection.

## **18. APPLICABLE LAW AND DISPUTES RESOLUTION**

**18.1** These Terms of Use shall be exclusively governed by the laws of France, to the exclusion of said country's conflict of law rules. To the extent possible, Schneider Electric and You agree that the United Nations Convention on the International Sale of Goods shall not apply to these Terms of Use.

**18.2** Any dispute between You and Schneider Electric arising out of or in connection with these Terms of Use and/or the Mobile Application, whether based on contract, warranty, tort (including negligence), strict liability, statute or otherwise, which cannot be amicably settled, shall in all cases be finally settled according to the law governing these Terms of Use as defined above, by the competent courts of Paris, France, to the exclusion of any other jurisdiction, including in case of plurality of defendants, injunction-like or emergency proceedings and appeal in warranty.

**18.3** You acknowledge and accept that Schneider Electric will be irreparably damaged (and damages at law may be an inadequate remedy) if You breach any provision of these Terms of Use and such provision is not specifically enforced. Therefore, in the event of a breach or threatened breach by You of these Terms of Use, Schneider Electric shall be entitled, in addition to all other rights or remedies, to (i) an injunction or other injunctive relief restraining such breach, without being required to show any actual damage or to post an injunction or other bond; and/or (ii) a decree for specific performance of the applicable provision of these Terms of Use, to the extent permitted by applicable law in the country where Schneider Electric has its registered office or principal place of business and/or, as relevant in the context, where You will download, install or use the Mobile Application, on both federal and state levels when applicable.

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