

## LICENSING END USER LICENSE AGREEMENT

(the “EULA”)

(version 5.0, 20.04.2018)

### IMPORTANT—READ CAREFULLY:

PLEASE CAREFULLY READ THIS EULA AS IT GOVERNS YOUR USE OF THE ACCOMPANYING SOFTWARE PRODUCT WHETHER YOU OBTAINED THE SOFTWARE PRODUCT ELECTRONICALLY, VIA DOWNLOAD OR ON CD, DISC OR OTHER MEDIA. ADDITIONALLY, THIS EULA GOVERNS YOUR USE OF THE SOFTWARE PRODUCT WHETHER YOU WERE GRANTED A TRIAL, EVALUATION, DEMONSTRATION, STANDARD OR ANY OTHER TYPE OF LICENSE TO USE THE SOFTWARE PRODUCT.

TO CONFIRM YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS EULA AND YOUR AGREEMENT TO BE BOUND BY THIS EULA, CLICK THE APPROPRIATE BUTTON APPEARING ON YOUR SCREEN DURING THE INSTALLATION PROCESS. IF YOU DO NOT WISH TO BECOME A PARTY TO THIS EULA AND DO NOT AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS, CLICK THE CONVERSE APPROPRIATE BUTTON OR THE CANCEL BUTTON: THIS WILL AUTOMATICALLY ABORT THE INSTALLATION PROCESS: IN SUCH LATTER CASE, IF THE SOFTWARE PRODUCT HAS ALREADY BEEN PROVIDED TO YOU AS A PHYSICAL COPY, YOU MUST RETURN THE SOFTWARE PRODUCT WITHIN THIRTY (30) DAYS OF RECEIPT THEREOF (INCLUDING ALL ACCOMPANYING PRINTED MATERIALS, ALONG WITH THEIR CONTAINERS) TO THE PLACE FROM WHICH YOU OBTAINED IT. IF THE SOFTWARE PRODUCT HAS BEEN PROVIDED TO YOU AS A DOWNLOAD, YOU MUST IMMEDIATELY DELETE OR EXPUNGE THE SOFTWARE INCLUSIVE ALL RELATED FILES AND ANY OTHER ELECTRONIC MATERIAL- FROM YOUR COMPUTERS, HARD DISKS, SERVERS, TABLETS, SMART PHONES OR OTHER DEVICES CONTAINING THE SOFTWARE PRODUCT.

This EULA is a legal agreement between your corporation, company or other legal entity, to which the Software Product has been provided, (hereinafter “**You**”), and Schneider Electric (as defined hereunder). It is Your responsibility to ascertain that any person completing the installation of the Software Product has the mandate or legal authority to bind You and confirm Your acceptance of the terms and conditions of this EULA. If a system integrator, contractor, consultant or any other party installs or uses the Software Product on Your behalf prior to Your use of the Software Product, such party will be deemed to be Your agent or representative acting on Your behalf, and You will be deemed to have accepted all of the terms and conditions contained in this EULA as if You had installed or used the Software Product Yourself. If You are a third party (e.g. a system integrator, contractor, consultant or any other third party) installing or using the Software Product on behalf of or prior to an end user- or licensee of the Software Product (hereinafter “**End User**”), it is Your responsibility to ascertain that You have obtained the mandate or legal authority to bind the End User to this EULA.

UNLESS OTHERWISE AGREED IN WRITING BY SCHNEIDER ELECTRIC, SOFTWARE MAINTENANCE AND SUPPORT SERVICES ARE NOT INCLUDED.

The terms of this EULA shall apply to the Software Product that accompanies this EULA or to which this EULA relates, including any associated media containing any device that activates the program(s) contained in said software product, any printed, online or electronic documentation, information, specifications, instructions or material (hereinafter “**Documentation**”) related to said software product (hereinafter “**Software Product**”). The Documentation can be retrieved via Schneider Electric’s website <http://schneider-electric.com> or by contacting Schneider Electric’s local support centre. You agree that such Documentation and other content may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation. The Software Product also includes any software updates, add-on components, web services and/or supplements that Schneider Electric may provide to You or make available to You after the date You obtain Your initial copy of the Software Product and after Your acceptance of this EULA, to the extent that such items are not accompanied by a separate license agreement or terms of use, in which case such separate license agreement shall prevail.

As used in this EULA, “**Schneider Electric**” shall mean that company of the Schneider Electric Group which has accepted and confirmed in the written or text form Your license purchase for the Software Product and then issued, in hard or electronic copy, a confirmation of Your purchase order (hereinafter “**Order Confirmation**”), which, among other things, may identify (i) the particular Software Product(s) ordered by or for You, (ii) the location of the designated devices or named users, (iii) the duration or

term of the Software Product license granted to You, (iv) the license fees and any applicable Software Product maintenance and support fees owed by You and/or (v) the payment schedule. Schneider Electric Group companies are listed under the drop-list of countries <<Select your country>> on the corporate web site of Schneider Electric Group.

The terms and conditions of this EULA will also apply to You and shall remain fully enforceable between Schneider Electric and You even if the Software Product will be delivered to You as a mobile application through any mobile applications platform or store proprietary to Schneider Electric or to any third party officially appointed or recognised by Schneider Electric to commercialize the Software Product as a mobile application. Additionally, the terms and conditions of this EULA will apply to You even if You obtained the Software Product from an authorized Schneider Electric distributor or reseller. This EULA only gives you limited rights to use the Software Product and Schneider Electric and its licensors reserve all other rights. You do not acquire any rights, express or implied, other than those expressly granted in this EULA. You agree that You will use the Software Product only as expressly permitted in this EULA and You will comply with any technical limitations in the Software Product that only allow You to use the Software Product in certain ways.

## **1. GRANT OF LICENSE**

- 1.1 In consideration of full payment of the Software Product license fee when due and subject to Your compliance with all of the terms and conditions contained in this EULA, Schneider Electric grants to You a non-exclusive non-transferable, limited, world-wide unless geographically restricted, license right to use the Software Product described in the Order Confirmation, in the Documentation or in the About Box, related to said Software Product for the term identified therein and in accordance with the license model identified therein. The Software Product may only be used for purposes of Your ordinary business by the particular named user(s), in the particular location(s), on the particular device(s) and/or on the particular system(s) for which You have been licensed such Software Product, as those named user(s), location(s), device(s) and/or system(s) are identified in the Order Confirmation, in the Documentation or in the About Box. If the Order Confirmation, the Documentation, or - the About Box fail to state a duration/term of the license granted hereunder then such duration/term shall be deemed to be one (1) year from the date the Software Product is delivered to You (unless a trial license, in which case the duration/term shall be deemed to be thirty (30) days). The Software Product will be provided to You in object code (machine-readable) form only and under no circumstances is Schneider Electric obligated to disclose the source code of the Software Product to You, unless such obligation is required in accordance with Section 11. The Software Product (including the related Documentation) is licensed to You and not sold to You.
- 1.2 This EULA describes and governs Your right to install and use the Software Product. It is expressly agreed that the terms and conditions of this EULA and any Order Confirmation issued by Schneider Electric will prevail over and supersede the terms and conditions contained in any purchase order or purchasing document issued or submitted by You; and the terms and conditions of any purchase order or purchasing document issued by You are expressly rejected by Schneider Electric to the extent inconsistent with the terms and conditions of this EULA.
- 1.3 Upon expiry of the trial period or, in case of a non-perpetual license upon expiry of the limited period of time for which the license was granted to You, Your license to the Software Product will automatically and immediately terminate, unless a further license is obtained from Schneider Electric. Consequently, the Software Product might automatically be de-installed and/or rendered unusable (with or without prior warning).
- 1.4 You acknowledge that if You need to activate the Software Product through the use of internet or telephone, toll charges may apply.
- 1.5 If technological measures are designed/incorporated to prevent unlicensed or illegal use of the Software Product, You agree that Schneider Electric may use those measures and You agree to comply with any requirements regarding such technological measures. Such measures do not constitute a defect in the Software Product nor do they entitle You to any warranty rights.
- 1.6 Unless You have acquired a Corporate License as expressly defined in this EULA, floating, concurrent or shared use of the Software Product is not permitted and the use of the Software Product shall be licensed under this EULA as a Single User License or a Multiple User License.

- 1.7 The Single User License applies when a label affixed on the Software Product's media itself, in its About Box, the Order Confirmation or Documentation or elsewhere state: "**Single User License**". A Single User License can only be installed and used on a single personal computer, tablet, smartphone or similar device (hereinafter "**Device**"), at any given time and is prohibited from being installed and used on a network or any other multi-station computer system that allows simultaneous use by several users.
- 1.8 Notwithstanding the above Section, You may download and use the Software Product on more than one single Device if: (i) the Software Product is a mobile application (app) and (ii) if said Devices are all used by You under the same user account under which the application was initially downloaded.
- 1.9 The Multiple User License applies when a label affixed on the Software Product's media itself, in its About Box, the Order Confirmation or Documentation or elsewhere state: "**Multiple User License**". A Multiple User License allows concurrent and unrestricted number of installations of the corresponding Software Product on several personal computers or similar Devices, on a network or any other multi-station computer system, unless a Multiple User License restricts the number of users to the number defined for the corresponding purchased and registered Software Product. Where You would use a Multiple User License via a network or any other multi-station computer system, it shall be Your responsibility to put in place such means as necessary to guarantee that all restrictions set forth in this EULA are followed.

## 2. RESTRICTIONS

- 2.1 You may only install, use, access and display the Software Product on a computer or other Device, strictly in accordance with the accompanying Documentation, and only for the specific purposes stated in this Documentation or in this EULA.
- 2.2 Furthermore, unless otherwise expressly required or authorized by statute or unless otherwise expressly permitted under the terms of a valid Corporate License, You will not nor will You permit others to:
  - (i) copy the Software Product except for backup purposes only in support of Your permitted use of the Software Product. Any such copy must include all copyright notices and any other proprietary legends present on the original Software Product. You may not sell, lease, license, rent or in other ways transfer any copy of the Software Product. If this Software Product contains Documentation that is provided only in electronic form or online, You may print one copy of such electronic Documentation for each license acquired to the Software Product. If this Software Product contains Documentation that is provided in printed form, You may make one copy of such printed Documentation for each license acquired to the Software Product;
  - (ii) modify, adapt, translate, reverse engineer, decompile, disassemble or otherwise seek to reconstitute the source code of the Software Product, nor create derivative works from the Software Product. Further, in case of errors, bugs or defects of the Software Product, Schneider Electric expressly reserves the right to correct such errors, bugs or defects to the extent permitted by law;
  - (iii) sub-license, lease, outsource or rent the Software Product, or permit a third party to use the Software Product for its or anyone else's benefit. Nor may You use the Software Product as part of a facility management, timesharing, service provider or service bureau arrangement;
  - (iv) other than as expressly permitted under this Agreement, including but not limited to Section 3, distribute in whole or part, modify, or create derivatives of, the Software Product or distribute applications created with the Software Product; or
  - (v) directly or indirectly, export, re-export, download, or ship the Software Product in violation of the laws and regulations of the U.S.A. or the applicable jurisdiction in which You use or are downloading the Software Product.
- 2.3 Should You not fully comply with the above provisions, You shall bear any and all consequences, including any damages whatsoever, resulting therefrom.
- 2.4 The use of the Software Product is intended only for use with content owned by You, public domain content or properly licensed content. You may require a patent, copyright, or other license

from a third party to create, copy, download, record or save content files for use with the Software Product or to serve or distribute such files to be used with the Software Product.

- 2.5 You agree that You shall only use the Software Product in a manner that complies with all applicable laws in the jurisdictions in which You use or are downloading the Software Product, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights. You may not use the Software Product 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 laws of any jurisdiction.

### 3. DESCRIPTION OF OTHER RIGHTS

- 3.1 **Demonstration, test and similar licences.** Should the Software Product be licensed to You under a demonstration license or under a free of charge license for test or evaluation purposes, You shall not be entitled to use the Software Product for any purpose other than the one for which such license is granted to You, and without prejudice to the other sections of this EULA.
- 3.2 **Authorized Applications.** For the purpose of this EULA, '**Authorized Applications**' shall mean those applications that You create, develop or generate by using the Software Product (including its programming tool if any) or by loading in such applications, with or without modification, a library of the Software Product, provided that You have validly licensed said Software Product from Schneider Electric or its authorized resellers. Authorized Applications include, without this being limitative, applicable runtime engines for the Software Product and applicable driver interface that You may provide to Your own customers as part of or together with Your Authorized Applications.

Notwithstanding the foregoing, any application created with the Software Product acquired under a Field-Test license (as defined in this EULA) or for demonstration, test or evaluation purposes, is not an Authorized Application.

As an express deviation to the rights granted to You under a Single User License or a Multiple User License under this EULA, You are authorized to download on a dongle key the Software Product You have previously activated in Your own premises for the purpose of going to and using the Software Product at Your own customers' premises provided You can evidence that no other means is reasonably available to You to perform the installation or commissioning of Your Authorized Application at the premises of Your own customers.

You may distribute or otherwise make available Authorized Applications provided You comply with each of the requirements set forth below:

- (i) You include Your own valid copyright notice on Your Authorized Applications; and
- (ii) You do not remove or obscure any notice of copyright, trademark, patent or other industrial or intellectual property rights that appear on the Software Product as delivered to You or as may appear concerning the Software Product in the Authorized Application's About Box and in any applicable printed Documentation distributed with each copy of Your Authorized Applications; and
- (iii) You do not use Schneider Electric's name, logo or trademarks to market or identify Your Authorized Applications unless You are party to a separate agreement with Schneider Electric giving You such rights or Schneider Electric has given You its express prior written consent to do so;
- (iv) You indemnify, hold harmless, and defend Schneider Electric from and against any claims whether based in contract, warranty, tort (including negligence), strict liability, statute or otherwise, including, without limitation, damages for loss of business, loss of profits, business interruption, lawsuits, including attorneys' fees, loss of data, or for any other pecuniary or non-pecuniary loss or damage that arise or result from the use or distribution of Your Authorized Applications, provided however that Your contractual obligation of indemnification shall not extend to the percentage of the claimant's damages or injuries or the settlement amount attributable to Schneider Electric's fault or to strict liability imposed upon Schneider Electric under applicable law (on either federal or state level, when applicable); the foregoing obligation of indemnification shall survive the expiry or termination of this EULA; and

- (v) You do not permit further redistribution of the Software Product (including Your modifications thereto) by third parties, except when and as part of Your Authorized Applications; and
- (vi) You provide Your customer with Your own license agreement to grant the right to use Your Authorised Applications, said license agreement being substantially similar to, but no less restrictive in any way, than this EULA; and
- (vii) You otherwise comply with the terms of this EULA.

**3.3 Embedding or integrating the Software Product.** You may embed or otherwise integrate the Software Product within Your own product or a third party product, provided that:

- (i) You have validly licensed the Software Product from Schneider Electric or its authorized resellers, and
- (ii) You perform such embedding or integration in a manner that complies with the Documentation and this EULA to the extent said Documentation contains any instructions or recommendations in relation therewith, and
- (iii) You comply - with respect to Your own products and said third party products - with each of the same requirements as set forth hereinabove concerning Authorized Applications; said foregoing requirements shall apply *mutatis mutandis* to any of Your own products or third party products within which You embed or otherwise integrate the Software Product, and any reference made to the term 'Authorized Application' in the foregoing provision shall be deemed for the purpose of this present Section to be a reference to Your own products or third party products embedding or otherwise integrating the Software Product.
- (iv) You provide Your customer with Your own license agreement to grant the right to use Your own products or the third party products within which You embed or otherwise integrate the Software Product, said license agreement being substantially similar to, but no less restrictive in any way, than this EULA.
- (v) You indemnify, hold harmless, and defend Schneider Electric from and against any claims whether based in contract, warranty, tort (including negligence), strict liability, statute or otherwise, including, without limitation, damages for loss of business, loss of profits, business interruption, lawsuits, including attorneys' fees, loss of data, or for any other pecuniary or non-pecuniary loss or damage that arise or result from You embedding the Software Product or otherwise integrate the Software Product within Your own product or a third party product, provided however that Your contractual obligation of indemnification shall not extend to the percentage of the claimant's damages or injuries or the settlement amount attributable to Schneider Electric's fault or to strict liability imposed upon Schneider Electric under applicable law (on either federal or state level, when applicable); the foregoing obligation of indemnification shall survive the expiry or termination of this EULA; and
- (vi) You otherwise comply with the terms of this EULA.

**4. INSTALLATION, MAINTENANCE AND SUPPORT SERVICES**

You shall be responsible for the proper installation of the Software Product as per the terms of its Documentation and You shall bear all expenses and costs in connection therewith. Except for warranties provided subject to Section 9, Schneider Electric provides no maintenance or support services in connection with the Software Product, other than those which may be defined by way of separate agreement.

**5. UPDATE POLICY**

- 5.1 If Schneider Electric creates updated or upgraded versions, or offers add-on components, of the Software Product, it will not be obligated to supply them to You, unless You have a valid maintenance agreement with Schneider Electric or its authorised reseller.
- 5.2 If You are entitled to receive updated or upgraded versions, or add-on components of the Software Product, such shall be subject to the terms of this EULA as such terms may have evolved at the time of supply of any update, upgrade or add-on.
- 5.3 Some Software Products covered by this EULA include a software utility (hereinafter "**Software Update Utility**"). Its functions are (i) to notify You of a download availability of an update, an

upgrade or a new version of the Software Product; (ii) to allow You to download them, provided that You pay associated fees, if any; and (iii) to improve Your experience in the Software Products whilst enabling Schneider Electric to collect and process relevant information related to Your use of the Software Products. These functions are active by default and may be disabled from the settings of the Software Update Utility. A reference to the Software Product in this EULA will be deemed to include a reference to the Software Update Utility.

- 5.4 If You are entitled to receive any updated, upgraded or new version, or add-on components of a Software Product, You are encouraged to implement them so as to take advantages of new features, enhancements or bug fixes contained in such updated, upgraded, or new version, or add-on.
- 5.5 A reference to the Software Product in this EULA will be deemed to include a reference to any updated, upgraded, new version or add-on of the Software Product provided to You by Schneider Electric or its authorised reseller.

## **6. LICENSE KEY**

- 6.1 You acknowledge that, if the Software Product is protected by a lock, the Software Product cannot be used except in conjunction with a valid software key code or a hardware key (hereinafter 'License Key') provided to You or to another person on Your behalf by or on behalf of Schneider Electric or its authorised reseller.
- 6.2 You agree that such License Key is to be used solely with the Software Product for which it is provided. While Schneider Electric may, in its sole discretion, provide You with the License Key prior to receipt from You of the applicable license fees (if any), You will remain obligated to pay such fees to Schneider Electric.
- 6.3 Any and all risk in the media on which the Software Product and License Key are provided passes to You upon delivery. In the event that the Software Product or License Key is lost, stolen or destroyed after delivery, Schneider Electric will not be required to replace the Software Product or License Key.
- 6.4 In the event of a lost, stolen or destroyed License Key, and if Schneider Electric agrees to replace the License Key, prior to Schneider Electric providing a replacement License Key to You, You must:
  - (i) provide a statutory declaration signed by You to Schneider Electric that confirms You have permanently lost or destroyed the Software Product or License Key that is to be replaced and that You have not retained the Software Product or License Key in any form nor included it with any other software or system owned, operated or controlled by You; and
  - (ii) comply with any other direction of Schneider Electric related to the replacement.
- 6.5 If the License Key is faulty, and provided that such fault is attributable to an act or omission by Schneider Electric, Schneider Electric will replace the License Key if the faulty License Key is returned within the warranty period specified by Schneider Electric. Subject to Section 9 "**Warranties**" below, if the faulty License Key is not returned within said warranty period, Schneider Electric will replace the License Key upon payment by You of an administration fee to be advised by Schneider Electric at the time.
- 6.6 When applicable as per Section 1 above, the License Key might be rendered unusable (with or without prior warning) upon expiry of the trial period or of the limited period of time for which the license was granted to You.

## **7. TITLE**

- 7.1 The Software Product, as well as all rights, title, interest, technology and know-how, whether patented or not, embodied in the Software Product, as well as all industrial and/or intellectual property rights attached to the Software Product, including but not limited to copyright, shall remain the sole property of Schneider Electric, to the exclusion of any third party software embedded in the Software Product or otherwise provided to You with the Software Product.
- 7.2 Nothing in this EULA shall be deemed to convey to You any of Schneider Electric's proprietary rights in the Software Product; all rights not specifically granted in this EULA are reserved by

Schneider Electric. Schneider Electric does not sell the Software Product to You but only grants You the license rights defined in this EULA.

- 7.3 All industrial and/or intellectual property rights pertaining to any third party software embedded in the Software Product or otherwise provided to You with the Software Product shall remain vested in the relevant third party and there will be no deemed or implied transfer of ownership to You of such third party proprietary rights.
- 7.4 Should You become aware of any infringement to the proprietary rights of Schneider Electric on the Software Product, You shall immediately inform Schneider Electric of such infringement and provide all relevant information required by Schneider Electric to defend its interests.

## **8. TRADEMARKS**

Schneider Electric and other trademarks contained in the Software Product are registered trademarks of the Schneider Electric group. Except as otherwise expressly prescribed by statute under applicable law, You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Software Product. This EULA does not authorise You to use any names or trademarks of Schneider Electric or its authorised resellers.

## **9. WARRANTIES**

- 9.1 Schneider Electric warrants that it is entitled to license and otherwise make available the Software Product and Documentation to You in accordance with the terms and conditions set out in the EULA. Notwithstanding the foregoing, no warranties shall apply to the license types referred to in Section 3.1.

- 9.2 The warranty period shall be of ninety (90) days from the date of delivery of the Software Product to You.

- 9.3 Within such warranty period Schneider Electric warrants that: (i) the Software Product will perform substantially in accordance with its specifications as described in the Documentation, and (ii) the medium on which the Software Product is provided to You (if provided under a tangible form) and the License Key (if any) will be free from defects in materials and workmanship.

Schneider Electric's sole obligation and Your sole remedy with respect to the foregoing limited warranty shall be, at Schneider Electric's option to fix the defect or non-compliance or to replace the defective Software Product, the medium or the License Key without charge to You, provided that (i) You give notice of the defect to Schneider Electric within the above mentioned warranty period, and (ii) the defect does not fall under the exclusions set under Section 9.4 below.

- 9.4 Schneider Electric's warranty shall be excluded to the extent the Software Product, its medium or License Key has been altered or fails to perform in any way, as the result of Your negligent or unauthorized use such as for instance but not limited to the use of the Software Product with third party products (hardware, software, firmware or operating system) which are not intended by Schneider Electric for use with the Software Product, or the utilization of an improper hardware or software key (if applicable) with the Software Product, or the unauthorized maintenance of the Software Product.

Any replacement Software Product, media or License Key supplied to You pursuant to Section 9.3 hereinabove will be warranted for the remainder of the original ninety (90) warranty period or thirty (30) days, whichever is longer. Laws of some countries (either on federal or state level) do not allow limitations on duration of an express or implied warranty, so the above or any other limitation provided herein may not apply to You. In such event, such warranties are limited to the minimum warranty period legally allowed in said countries.

- 9.5 Schneider Electric's warranty shall also be excluded in case of defect or malfunction of the Software Product, to the extent such defect or malfunction could have been prevented by implementing the Software Product update or upgrade made available by Schneider Electric pursuant to Section 5.4, which You were entitled and encouraged to do.
- 9.6 TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW (ON BOTH FEDERAL AND STATE LEVEL, WHEN APPLICABLE), SCHNEIDER ELECTRIC MAKES NO OTHER WARRANTY THAN THOSE CONTAINED IN THIS SECTION 9 AND EXPRESSLY DISCLAIMS ALL OTHER

WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, AS TO THE SOFTWARE PRODUCT, ITS UPDATES AND ITS DOCUMENTATION, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, TITLE OR SAMPLE. FURTHER, WHILE SCHNEIDER ELECTRIC HAS TAKEN REASONABLE STEPS TO ENSURE THE ACCURACY OF THE INFORMATION CONTAINED IN OR SHOWN BY THE SOFTWARE PRODUCT AND ITS DOCUMENTATION, SCHNEIDER ELECTRIC MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AS TO WHETHER THE SOFTWARE PRODUCT OR ANY INFORMATION CONTAINED IN OR SHOWN BY THE SOFTWARE PRODUCT AND ITS DOCUMENTATION WILL MEET YOUR REQUIREMENTS, EXPECTATIONS OR PURPOSES OR THE OPERATION OF THE SOFTWARE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SOFTWARE PRODUCT WILL BE PROTECTED AGAINST ALL POSSIBLE SECURITY THREATS, INTERNET THREATS OR OTHER THREATS OR INTERRUPTIONS.

- 9.7 No oral or written information, statement, opinion or advice allegedly given by Schneider Electric, its authorized resellers, agents or employees, or anyone else on its behalf, shall create any liability or in any way extend or vary the scope of the warranties expressed in this EULA.

## **10. LIABILITIES**

- 10.1 You expressly acknowledge and accept that Your use of the Software Product and the performance, fitness and/or accuracy of the Software Product for any application, environment or purpose within or for which You shall use the Software Product, is and shall remain Your sole and full responsibility, unless Schneider Electric has expressly agreed upon such application, environment or purpose and has provided You express warranties as to the use, performance, fitness and/or accuracy of the Software Product when used within such agreed environment and for such agreed application or purpose. To the maximum extent permitted by applicable law, the Software Product is provided **"as is"**, with all faults and without warranty of any kind not contained in Section 9.
- 10.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EULA OR IN THE ORDER CONFIRMATION, IN NO EVENT SHALL SCHNEIDER ELECTRIC NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE SOFTWARE PRODUCT, INCLUDING BUT NOT LIMITED TO SCHNEIDER ELECTRIC'S LICENSORS, BE LIABLE FOR ANY INDIRECT, INTANGIBLE, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS, EXPENSE OR CAUSE OF ACTION, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, BUSINESS GOODWILL, LOSS OF DATA OR FOR ANY OTHER PECUNIARY OR NON-PECUNIARY LOSS OR DAMAGE, ARISING OUT OF OR IN CONNECTION WITH THIS EULA, OR THE USE, INABILITY TO USE OR MISUSE OF THE SOFTWARE PRODUCT, EVEN IF SCHNEIDER ELECTRIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EULA OR IN THE ORDER CONFIRMATION, SCHNEIDER ELECTRIC'S AGGREGATE LIABILITY FOR DAMAGES AND EXPENSES ARISING OUT OF OR IN CONNECTION WITH THIS EULA OR THE USE, INABILITY TO USE OR MISUSE OF THE SOFTWARE PRODUCT, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE SHALL IN NO CASE EXCEED THE TOTAL AMOUNT PAID BY YOU TO LICENSE THE SOFTWARE PRODUCT WHICH CAUSED THE DAMAGES OR EXPENSES.
- 10.4 You shall indemnify and hold Schneider Electric harmless from any and all claims, damages, demands or proceedings (including attorney's fees) brought against Schneider Electric, including those brought by any third party arising out of or in connection with the use, inability to use or misuse of the Software Product by You, and whether based in contract, warranty, tort (including negligence), strict liability, statute or otherwise, unless and to the extent any such claim resulted from Schneider Electric's non-fulfillment of the warranty set out in Section 9.1.
- 10.5 The license granted under this EULA does not cover any modification, update, translation or adaptation, whether authorized or not, that might have been made to the Software Product by



- any person other than Schneider Electric where the Software Product is supplied along with a third party product. Such modifications shall be governed by the terms of license issued by such third party. Schneider Electric shall in no case be liable, whether in contract, warranty, tort (including negligence), strict liability, statute or otherwise, for damages or consequences arising out of or in connection with said modification, update, translation or adaptation and makes no representation or warranty in connection therewith.
- 10.6 Notwithstanding any other term of this EULA, Schneider Electric's liability arising out of this EULA 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.
- 10.7 In case the Software Product is intended as per its Documentation to be used for the purpose of collecting, storing and/or processing data such as but not limited to personal individual information, it is Your sole and full responsibility when making such use of the Software that You comply with any applicable data protection laws and regulations. In no event shall Schneider Electric be held liable for Your use of the data collected, stored or processed by the Software or Your non-compliance with any applicable data protection laws and regulations and You shall indemnify and hold Schneider Electric harmless from any and all claims, damages, demands or proceedings (including attorney's fees) brought against Schneider Electric, including those brought by any third party, arising out of or in connection with any breach by You of any such laws or regulations.
- 10.8 The limitations or exclusions of warranties and liability contained in this EULA shall apply only to the extent permitted by the law applicable to this EULA and, in particular, do not affect or prejudice the statutory rights which, as the case may be, will benefit You under any mandatory or public order laws or regulation applicable in any such country (on either federal or state level, when applicable).
- 10.9 In case the Software Product was furnished to You by any authorized reseller or other sales representative or another third party supplying the Software Product 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 third party and shall not assume or otherwise bear any liability thereunder, with the consequence that any and all claims You may have in relation to the Software Products shall be directed at such third party and shall be subject to the liability sections in any purchase order or other agreement between You and such third party. Schneider Electric shall assume no liability whatsoever under such sections or be bound by their wording.
- 10.10 Subject to the limitations of liability set forth in Sections 10.2 and 10.3 of this EULA, Schneider Electric will defend and indemnify You against a third party claim that the Software Products infringe 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"), provided that: (i) You notify Schneider Electric in writing within thirty (30) days of the claim; (ii) Schneider Electric has sole control of the defense and all related settlement negotiations; and (iii) You provide Schneider Electric with the assistance, information and authority necessary in order for Schneider Electric to perform its obligations under this Section.

Schneider Electric will have no obligation to You under this Section relating to claims which arise outside of the Included Jurisdiction, nor for any claims not expressly set out in Section 10.10 above.

If the Software Products are held, or are believed by Schneider Electric, to infringe, then Schneider Electric will have the option, at its expense, to: (i) modify the Software Products to be noninfringing; or (ii) obtain for You a license to continue using the Software Products. If, in Schneider Electric's sole discretion, it is not economically or commercially reasonable to perform either of the above options then Schneider Electric may terminate the license for the infringing Software Products and refund to You the license fee You paid to Schneider Electric for the infringing Software Products.

The foregoing Schneider Electric obligations do not apply when the claim of infringement results from or is related to: (i) Software Products provided pursuant to Your designs, drawings or specifications; (ii) Software Products stored, used or maintained other than in accordance with

Schneider Electric's instructions or recommendations or other than for Your internal business purposes; (iii) claims of infringement resulting from combining the Software Products provided hereunder with any other item not furnished by Schneider Electric; (iv) modifications to the Software Products without the prior written consent of Schneider Electric; (v) software or products supplied or designed by You or third parties; or (vi) Your failure to use corrections or enhancements made available by Schneider Electric.

This Section 10.10 states Schneider Electric's entire liability and Your sole and exclusive remedy for infringement.

## **11. THIRD PARTY SOFTWARE**

- 11.1 The Software Product may embed or be provided to You with third party software(s), in unmodified or modified form. In such case Schneider Electric shall make such information available to You.
- 11.2 By accepting this EULA, You are also accepting the terms and conditions of the software licenses from any third party (hereinafter "**Alternative Licenses**") owning the intellectual property rights in said third party software(s), and any use You will make of any such third party software(s) being part of the Software Product is subject to the terms of those Alternative Licenses. Further to the above, in relation to parts of the Software Product that are subject to Alternative Licenses, Schneider Electric's liability shall be further limited in accordance with the terms and conditions of such Alternative License and Schneider Electric will in no event be subject to a wider or more substantial liability than what is evident from such Alternative Licenses, unless and to the extent applicable mandatory law requires otherwise.
- 11.3 Further, the Software Product may contain code, including third party code, for which Schneider Electric is required to provide attribution. Some of this code may be released under Alternative License terms. Such code is not licensed under this EULA and shall be subject only to the Alternative License which shall constitute the sole license for such code and shall govern the relation between You and the alternative licensor. This EULA does not alter any rights or obligations You may have under these Alternative Licenses. Schneider Electric provides no warranty whatsoever in relation to code subject to such Alternative Licenses, unless and to the extent applicable mandatory law requires otherwise.
- 11.4 If you wish to use the Software Product in a specific combination with other software or devices as may be intended by You, You must, at Your own risk and expense, acquire and maintain any such other software or devices, including proper licenses from such third parties. If You do not acquire and maintain appropriate third party licenses and if this somehow results in a third party raising a claim against Schneider Electric, You shall indemnify Schneider Electric against any such third party claim. In case the Software Product includes access to a software development kit (hereinafter "**SDK**") which allows the development of any interface between third party software and the Software Product, Schneider Electric shall not be responsible for any development performed by You through the use of SDK, and Schneider Electric shall have no responsibility to provide You any support in relation thereto and shall not be liable for Your use of SDK or any damages it may cause to You or any third party.
- 11.5 If Your use of SDK somehow results in a third party raising a claim against Schneider Electric, You shall indemnify Schneider Electric against any such third party claim.

## **12. DATA PROTECTION/CONSENT TO USE DATA**

- 12.1 With respect to the processing of any personal data under or in relation to this EULA or the use of the Software Product, each party agrees to comply with its respective obligations under any local applicable data protection laws or regulations in the relevant jurisdiction.
- 12.2 In addition to the Software Update Utility (also known as “SESU”) described in Section 5.3, You acknowledge that some Software Products may include analytic and diagnostic features which enable Schneider Electric to gather technical and End User information from the Software Product. You agree that Schneider Electric may collect and use such technical and End User information for analytic and diagnostic purposes and to improve the user experience with the Software Product and/or with other products and services offered by Schneider Electric. If any of the information so collected contains personal information (such as email address, username and password or location) Schneider Electric will process such information in accordance with Schneider Electric's Data Privacy Policy which is available at <https://www.schneider-electric.com/en/about-us/legal/data-privacy.jsp>.

## **13. AUDIT**

- 13.1 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 the terms and conditions of this EULA. 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 Software Product complies with the terms and conditions of this EULA.
- 13.2 Schneider Electric may (upon reasonable written notice) inspect Your use of the Software Product during Your normal business hours to ensure Your compliance with this EULA. If the results of any such review or inspection indicate Your unlicensed or non-compliant use of the Software Product or the underpayment by You of applicable fees (if any) contractually due and payable to Schneider Electric, You shall: (i) immediately pay sufficient fees to cover Your actual use of the Software Product, or such amounts of fees remaining due to Schneider Electric and (ii) reimburse Schneider Electric for the cost of such review or inspection.

## **14. EXPORT CONTROL**

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 there under, and the European Union Regulation 428/2009 applicable to dual use and cryptographic products and technologies. You are solely responsible for determining the existence and application of any such law or regulation to any proposed export of the Software Product by You or Your representatives and for performing any declaration or obtaining any required authorisation in relation therewith. You agree not to export the Software Product 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 Software Product, You shall indemnify and hold Schneider Electric harmless from any claims, losses, costs or expenses and compensate the same against any damages which any third party (including but not limited to governmental and/or international authorities and/or organizations) will claim against Schneider Electric as the result of any such violation by You or Your representative(s).

## **15. ASSIGNMENT**

Your rights or obligations under this EULA 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. Schneider Electric may assign this license to any company within the Schneider Electric Group of companies or to any company it may acquire control of or merge with.

## **16. DURATION AND TERMINATION**

- 16.1 The license right granted to You under this EULA shall come into effect as of the date of Your acceptance of the terms hereof and shall remain effective unless such license right expires or terminates when (i) such license right was granted to You for a limited period of time in accordance with Section 2 and such limited time period expires, or (ii) such license right was granted to You under a trial period in accordance with Section 2 and You do not further activate it upon expiry of said trial period as per Section 2, (iii) this EULA is terminated by either Schneider Electric or You with immediate effect if, respectively, You or Schneider Electric fail to comply with any of its obligations under this EULA.
- 16.2 Upon expiration or termination of the license right granted to You hereunder, You undertake to immediately discontinue use of the Software Product and You must (i) if the Software Product has been provided to You as a physical copy, destroy and delete the Software Product and related copies and data, including without limitation those stored on Your computer hard disks or servers, including all accompanying printed materials along with their containers to the place from which You obtained the Software Product, and (ii) if the Software Product has been provided to You as a download, delete or expunge the Software Product, inclusive all related files and any other electronic material, from Your computer, hard disks, servers or other Device containing it. For both (i) and (ii) You shall upon the request from Schneider Electric provide Schneider Electric with a written certification that You have carried out the required actions set out in this Section 16.2.
- 16.3 Termination of the license granted to You hereunder does not affect any rights or remedies which may have accrued before said termination to the benefit of Schneider Electric under this EULA, at law or otherwise.

## **17. MISCELLANEOUS**

- 17.1 This EULA, including its Appendices, constitutes the entire agreement between You and Schneider Electric in relation to Your right to use the Software Product and replaces any previous agreement or understanding, whether oral, electronic or written, in relation with the same subject matter. Documentation forms an integral part of the license granted under this EULA. In case of a discrepancy between the terms of this EULA and the provisions of the Documentation, the terms of this EULA shall prevail. Should they differ, the terms of the printed version of this EULA, which may be supplied with the Software Product package, shall prevail over those that may be read on a computer screen.
- 17.2 Should any of the provisions of this EULA be held invalid, illegal or unenforceable by a competent jurisdiction, You and Schneider Electric shall take all reasonable steps in order to modify such provision to render it valid and enforceable, bearing in mind their original intentions, and such provision as modified shall be fully enforced by You and Schneider Electric; all other provisions shall remain valid and unaffected by such declared invalidity, illegality or non-enforceability.
- 17.3 No failure or delay on the part of either You or Schneider Electric in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.
- 17.4 Headings in this EULA are just for ease of reference and will not affect its interpretation.
- 17.5 Words expressed in the singular include the plural and vice versa.
- 17.6 Section 7, 8, 9, 10, 11, 12 and 14 of this EULA shall survive termination of this EULA or expiration of the license right granted to You under this EULA in accordance with Section 16.1. Furthermore, provisions that by their nature are intended to survive termination or expiration of this EULA and the license right granted to You hereunder, shall survive such termination or expiration. Additionally, all of Your indemnity obligations set forth in this EULA shall survive termination or expiration of this EULA.

## **18. APPLICABLE LAW & DISPUTES**

- 18.1 This EULA shall be exclusively governed by the laws of the country (on both federal and state level, when applicable) where Schneider Electric has its registered office or principal place of

business, 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 this EULA.

18.2 All disputes arising out of or in connection with this EULA shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with said Rules. The arbitration shall be conducted in the English language in the country where Schneider Electric has its registered office or principal place of business. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EULA OR THE RULES OF ARBITRATION, THE ARBITRATOR IS NOT EMPOWERED TO AWARD DAMAGES IN EXCESS OF THE COMPENSATORY DAMAGES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPERT WITNESS FEES) OR IN EXCESS OF THE LIMITATIONS OF LIABILITY AND DAMAGES SET FORTH IN THIS EULA, AND EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO RECOVER SUCH DAMAGES (INCLUDING, WITHOUT LIMITATION, PUNITIVE DAMAGES), IN ANY FORUM. THE ARBITRATOR WILL BE REQUIRED TO FOLLOW THE APPLICABLE LAW AS SET FORTH IN SECTION 18.1 AND FOLLOW THE TERMS OF THIS EULA. The arbitrator may award equitable relief in those circumstances where monetary damages would be inadequate. The successful or prevailing party will be entitled to recover its reasonable attorneys' fees, expert witness fees and other costs of arbitration, in addition to such other relief to which it may be entitled.

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 this EULA and such provision is not specifically enforced. Therefore, in the event of a breach or threatened breach by You of this EULA, Schneider Electric shall be entitled, in addition to all other rights or remedies, to (a) 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; or (b) a decree for specific performance of the applicable provision of this Agreement; or (c) both 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 install, copy, run or otherwise use the Software Product, on either federal or state level when applicable.

## **19. LEGAL EFFECT**

In specific jurisdictions, as stated in **Appendix 1** to this EULA, different regulations may impose different terms to apply between Schneider Electric and You in relation with Your use of the Software. All the terms of this EULA that are not amended by the terms defined in said jurisdictions as stated in **Appendix 1** shall apply between Schneider Electric and You in such jurisdictions.

\*\*\*\*\*

## APPENDIX 1 TO END-USER LICENSE AGREEMENT SPECIFIC REGULATIONS / TERMS IN VARIOUS JURISDICTIONS

### USA:

In complement to what is stated in Section 2 “**Restrictions**”, a) – e) above:

The Software Product is a “Commercial Item(s),” as that term is defined at 48 C.F.R. § 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.212 or 48 C.F.R. § 222.7202-1 through § 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are licensed to U.S. Government end users with only those rights as granted to all other end users, according to the terms and conditions contained in this EULA. Manufacturer is Schneider Electric.

### ARGENTINA:

Subsection 9.2 of Section 9 “**Warranties**”, shall be replaced as follows:

- 9.2 The warranty period shall be of one hundred and eighty (180) days from the date of delivery of the Software Product to You.

The language in which the arbitration mentioned in Subsection 18.2 of Section 18 “**Applicable Law & Disputes**” shall be conducted shall be Spanish.

### AUSTRALIA:

Subsection 9.6 of Section 9 “**Warranties**” shall be replaced as follows:

- 9.6 Certain legislation, including the Australian Consumer Law, may imply warranties or conditions or impose guarantees or obligations upon Schneider Electric which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. Subject to this section 9.6 Schneider Electric limits its warranty in respect of any claim under the provisions to, at Schneider Electric's option:
- (i) the replacement of Software Products or the supply of equivalent Software Products;
  - (ii) the repair of the Software Products;
  - (iii) the payment of the cost of replacing the Software Products or of acquiring equivalent Software Products; or
  - (iv) the payment of the cost of having the Software Products repaired.

### BRAZIL:

Subsection 2.2 (v) of Section 2 “**Restrictions**”, shall be replaced as follows:

- (v) directly or indirectly, export, re-export, download, or ship the Software Product in violation of the laws and regulations of the U.S.A. or the applicable jurisdiction in which You use or are downloading the Software Product, in specially in violation of the Law n. 9.609 dated February 19, 1998 and regulations of the Brazil.

Section 18 “**Applicable Law & Disputes**”: Applied the Rules of Arbitration of the Chamber of Commerce Brazil - Canadá located in São Paulo City, State of São Paulo, Brazil.

## **CANADA:**

The following Sections shall be added:

### **Application of Local Mandatory Laws**

The Parties do not intend that execution of this EULA to override or exclude the application of any mandatory local laws or legislation. The parties further agree to execute any necessary amendments to take into account any mandatory local laws or legislation applicable at the effective date.

### **Langue Français / French Language**

Les parties aux présentes ont demandé que les Conditions de vente soient rédigées en langue anglaise. You agree to this Eula be drawn up in the English language only.

## **GERMANY**

Section 9 **“Warranties”** shall be replaced as follows:

### **9. WARRANTIES**

- 9.1 Schneider Electric warrants that for a period of twelve (12) months from the date of its delivery to You by Schneider Electric or its authorised reseller (or any other warranty period depending upon the Software Product's reference and its related description available from Schneider Electric website), (i) the Software Product will perform substantially in accordance with its specifications as described in the Documentation, and (ii) the medium on which the Software Product is provided to You (if provided under a tangible form) and the License Key (if any) will be free from defects in materials and workmanship.

If the Software Product does not function as warranted during the warranty period Schneider Electric will, at Schneider Electric's option either fix the defect or non-compliance or replace the defective Software Product, the medium or the License Key without charge to You, provided that (i) You give notice of the defect to Schneider Electric or its authorised reseller within the above mentioned warranty period, and (ii) the defect does not fall under the exclusions set under Section 9.4 below. In the event Schneider Electric is not able to remedy a defect or non-compliance during the warranty period after having had reasonable opportunity to do so, You may either adequately reduce the fees paid or – unless the defect or non-compliance is non-material – rescind from the contract for the affected Software Product.

- 9.2 Schneider Electric's warranty shall be excluded to the extent the Software Product, its medium or License Key has been altered without prior written authorization by Schneider Electric or fails to perform in any way, as the result of Your negligent or unauthorized use such as, for instance but not limited to, the use of the Software Product with third party products (hardware, software, firmware or operating system) which are not intended by Schneider Electric for use with the Software Product, or the utilization of an improper hardware or software key (if applicable) with the Software Product, or the unauthorized maintenance of the Software Product.

Any replacement Software Product, media or License Key supplied to You pursuant to Section 9.1 hereinabove will be warranted for the remainder of the original warranty period or six (6) months, whichever is longer.

- 9.3 Schneider Electric's warranty shall also be excluded in case of defect or malfunction of the Software Product, to the extent such defect or malfunction could have been prevented by implementing the Software Product update or upgrade made available by Schneider Electric pursuant to Section 5.4, which You were entitled and encouraged to do.
- 9.4 The foregoing defines Schneider Electric's entire warranty obligations to You except as otherwise required by applicable statutory law.
- 9.5 No oral or written information, statement, opinion or advice allegedly given by Schneider Electric, its authorized resellers, agents or employees, or anyone else on its behalf, shall create any liability or in any way extend or vary the scope of the warranties expressed in this EULA.

Subsections 10.1 to 10.3 of Section 10 **“Liabilities”** shall be replaced as follows:

## 10. LIABILITIES

- 10.1 Unless stipulated otherwise in the EULA including the following provisions, Schneider Electric shall be liable for breaches of contractual and non-contractual duties pursuant to the applicable statutory provisions.
- 10.2 Schneider Electric can be held liable for damages - irrespective of their legal grounds - in cases of intent and gross negligence. In cases of slight negligence, Schneider Electric shall only be liable
- a) for damages resulting from injuries to life, body or health,
  - b) for damages resulting from an infringement of an essential contractual obligation (an obligation which must be fulfilled to enable a due performance of the contract and on whose fulfillment the contractual partner generally relies and may rely); however, in this case Schneider Electric's liability shall be limited to compensation for the foreseeable, typically occurring damage,
  - c) for damages resulting from a loss of data Schneider Electric's liability shall be limited to the typical recovery effort that a diligent user would incur using regularly and risk-adequate created backup copies.
- 10.3 The limitations of liability pursuant to Section 10.2 shall not apply where Schneider Electric fraudulently concealed a defect or guaranteed the quality of the Software Products. The same applies to claims of You pursuant to the German Product Liability Act (ProdHaftG). An exclusion or restriction of Schneider Electric's liability also applies with respect to Schneider Electric's statutory representatives and vicarious agents.

## PERU:

The third paragraph of the introduction IMPORTANT – READ CAREFULLY shall be replaced as follows:

This EULA is a legal agreement between your corporation, company or other legal entity, to which the Software Product has been provided, (hereinafter "You"), and Schneider Electric (as defined hereunder). You declare that any person acting on your behalf or in your interest and completing the installation of the Software Product has the mandate or legal authority to bind You and confirm Your acceptance of the terms and conditions of this EULA. If a system integrator, contractor, consultant or any other party installs or uses the Software Product on Your behalf, in your interest or prior to Your use of the Software Product, such party will be deemed to be Your agent or representative acting on Your behalf, and You will be deemed to have accepted all of the terms and conditions contained in this EULA as if You had installed or used the Software Product Yourself. If You are a third party (e.g. a system integrator, contractor, consultant or any other third party) installing or using the Software Product on behalf of, in the interest of or prior to an end user- or licensee- of the Software Product (hereinafter "End User"), it is Your responsibility to ascertain that You have obtained the mandate or legal authority to bind the End User to this EULA.

Subsection 3.2 (iv) of Section 3 "**Description of Other Rights**" shall be replaced as follows:

### 3.2 Authorized Applications.

(...)

- (vi) You indemnify, hold harmless, and defend Schneider Electric from and against any claims whether based in contract, warranty, tort (including negligence), strict liability, statute or otherwise, including, without limitation, damages for loss of business, loss of chance, loss of profits, business interruption, lawsuits, including attorneys' fees, loss of data, moral damage, or for any other pecuniary or non-pecuniary loss or damage, either directly or indirectly, either foreseeable or unforeseeable, that arise or result from the use or distribution of Your Authorized Applications, provided however that Your contractual obligation of indemnification shall not extend to the percentage of the claimant's damages or injuries or the settlement amount attributable to Schneider Electric's fault or to strict liability imposed upon Schneider Electric as a matter of law in any country (on either federal or state level, when applicable); the foregoing obligation of indemnification shall survive the expiry or termination of this EULA until any possibility for such claims to arise is completely extinguished; and

Subsection 3.3 (v) of Section 3 "**Description of Other Rights**" shall be replaced as follows:



3.3 **Embedding or integrating the Software Product.** You may embed or otherwise integrate the Software Product within Your own product or a third party product, provided that:

(...)

- (v) You indemnify, hold harmless, and defend Schneider Electric from and against any claims whether based in contract, warranty, tort (including negligence), strict liability, statute or otherwise, including, without limitation, damages for loss of business, loss of chance, loss of profits, business interruption, lawsuits, including attorneys' fees, loss of data, moral damage or for any other pecuniary or non-pecuniary loss or damage, either directly or indirectly, either foreseeable or unforeseeable, that arise or result from You embedding the Software Product or otherwise integrate the Software Product within Your own product or a third party product, provided however that Your contractual obligation of indemnification shall not extend to the percentage of the claimant's damages or injuries or the settlement amount attributable to Schneider Electric's fault or to strict liability imposed upon Schneider Electric as a matter of law in any country (on either federal or state level, when applicable); the foregoing obligation of indemnification shall survive the expiry or termination of this EULA until any possibility for such claims to arise is completely extinguished; and

Subsection 10.2 of Section 10 Liabilities shall be replaced as follows:

10.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EULA OR IN THE ORDER CONFIRMATION, IN NO EVENT SHALL SCHNEIDER ELECTRIC NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE SOFTWARE PRODUCT, INCLUDING BUT NOT LIMITED TO SCHNEIDER ELECTRIC'S LICENSORS, BE LIABLE FOR ANY INDIRECT, INTANGIBLE, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS, EXPENSE OR CAUSE OF ACTION, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF CHANCE, LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, BUSINESS GOODWILL, LOSS OF DATA, MORAL DAMAGE OR FOR ANY OTHER PECUNIARY OR NON-PECUNIARY LOSS OR DAMAGE, ARISING OUT OF OR IN CONNECTION WITH THE USE, INABILITY TO USE OR MISUSE OF THE SOFTWARE PRODUCT, EVEN IF SCHNEIDER ELECTRIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

The following sentence will be inserted at the end of Subsection 10.7 of Section 10 Liabilities:

You declare that Schneider electric does not perform any processing on data on your behalf or in your interest and, therefore, must not be considered as a *data processor*.

Subsection 18.1 of Section 18 **"Applicable Law & Disputes"** shall be replaced as follows:

18.1 This EULA shall be exclusively governed by the laws of the Republic of Peru, 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 this EULA.

#### **POLAND:**

Subsection 10.8 of Section 10 **"Liabilities"** shall be replaced as follows:

10.8 The limitations or exclusions of warranties and liability contained in this EULA shall apply only to the extent permitted by the law applicable to this EULA and, in particular, do not affect or prejudice the statutory rights which, as the case may be, will benefit You under any mandatory or public order laws or regulation applicable in any such country (on either federal or state level, when applicable). In particular Schneider Electric can be held liable for damages - irrespective of their legal grounds - in cases of intent and gross negligence or damages resulting from injuries to life, body or health.

Section 15 “**Assignment**” shall be replaced as follows:

Your rights or obligations under this EULA may be sold, sub-licensed, rented, assigned, delegated, transferred or otherwise conveyed by You or Your representatives only upon Schneider Electric’s prior express written consent otherwise being null and void. Schneider Electric may assign this license to any company within the Schneider Electric Group of companies or to any company it may acquire control of or merge with.

Subsection 18.2 of Section 18 “**Applicable Law & Disputes**” shall be replaced as follows:

18.2 Without prejudice the statutory rights which, as the case may be, will benefit You under any mandatory or public order laws or regulation applicable, all disputes arising out of or in connection with this EULA shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with said Rules. The arbitration shall be conducted in the English language in the country where Schneider Electric has its registered office or principal place of business. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EULA OR THE RULES OF ARBITRATION, THE COURT IS NOT EMPOWERED TO AWARD DAMAGES IN EXCESS OF THE COMPENSATORY DAMAGES (INCLUDING REASONABLE ATTORNEYS’ FEES AND EXPERT WITNESS FEES) OR IN EXCESS OF THE LIMITATIONS OF LIABILITY AND DAMAGES SET FORTH IN THIS EULA, AND EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO RECOVER SUCH DAMAGES (INCLUDING, WITHOUT LIMITATION, PUNITIVE DAMAGES), IN ANY FORUM. THE COURT WILL BE REQUIRED TO FOLLOW THE APPLICABLE LAW AS SET FORTH IN SECTION 18.1 AND FOLLOW THE TERMS OF THIS EULA. The court may award equitable relief in those circumstances where monetary damages would be inadequate. The successful or prevailing party will be entitled to recover its reasonable attorneys’ fees, expert witness fees and other costs of proceedings, in addition to such other relief to which it may be entitled.

#### **RUSSIA:**

Section 9 “**Warranties**” shall be replaced as follows:

- 9.1 All other warranties, whether express or implied, statutory or otherwise are excluded.
- 9.2 Although Schneider Electric has taken reasonable steps to scan the Software Product for virus, bugs and other anomalies using commercially available means, Schneider Electric does not represent nor warrant that the Software Product is error free nor, if such errors exist, that they can be fixed. The Software Product under the above license is provided to You on an “as is” basis.

In complement to what is stated in Section 14 “**Export Control**” above:

The Software Product under this EULA contain or may contain components and/or technologies from the United States of America (“US”), the European Union (“EU”) and/or other nations. You acknowledge and agree that the supply, assignment and/or usage of the Software Product and/or the embedded technologies under this EULA shall fully comply with related applicable US, EU and other national and international export control laws and/or regulations. Unless applicable export license/s has been obtained from the relevant authority and the Schneider Electric has approved, the Software Product shall not (i) be exported and/or re-exported to any destination and party (may include but not limited to an individual, group and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. You also agree that the Software Product will not be used either directly or indirectly in any rocket systems or unmanned air vehicles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons which may include but not limited to chemical, biological or nuclear weapons. If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit Schneider Electric from fulfilling any order, or would in Schneider Electric’s judgment otherwise expose Schneider Electric to a risk of liability

under the applicable export control laws and/or regulations if it fulfilled the order, Schneider Electric shall be excused from all obligations under such order and/or this EULA.

In complement to what is stated in Section 17 “**Miscellaneous**” above:

The parties of this EULA accept the performance of procedures for the prevention of corruption and monitor their compliance. The parties shall take all reasonable efforts to minimize the risk of business with counterparties, which may be involved in corrupt practices and provide mutual assistance in order to prevent corruption. With this the parties shall ensure the implementation of audit procedures in order to prevent risk of the parties’ involvement in corrupt practices.

Subsection 18.2 of Section 18 “**Applicable Law & Disputes**” shall be replaced as follows:

18.2 All disputes arising out of or in connection with this EULA shall be submitted to the Court on Intellectual Rights (Russia, Moscow).

## **UNITED KINGDOM AND IRELAND**

The Country shall be United Kingdom and/or Ireland as applicable and all references to country, jurisdiction and applicable statutes shall be construed accordingly.

Subsection 10.2, 10.3 and 10.5 of Section 10 “**Liabilities**” shall be replaced as follows:

- 10.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EULA OR IN THE ORDER CONFIRMATION, IN NO EVENT SHALL SCHNEIDER ELECTRIC NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE SOFTWARE PRODUCT, INCLUDING BUT NOT LIMITED TO SCHNEIDER ELECTRIC’S LICENSORS, BE LIABLE FOR ANY INDIRECT, INTANGIBLE, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS, EXPENSE OR CAUSE OF ACTION, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PURSUANT TO AN INDEMNITY, STATUTE OR OTHERWISE, INCLUDING OR FOR, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, BUSINESS GOODWILL, LOSS OF DATA OR FOR ANY OTHER PECUNIARY OR NON-PECUNIARY LOSS OR DAMAGE (WHETHER DIRECT OR INDIRECT), ARISING OUT OF OR IN CONNECTION WITH THIS EULA, OR THE USE, INABILITY TO USE OR MISUSE OF THE SOFTWARE PRODUCT, EVEN IF SCHNEIDER ELECTRIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.”
- 10.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EULA OR IN THE ORDER CONFIRMATION, SCHNEIDER ELECTRIC’S TOTAL AGGREGATE LIABILITY FOR DAMAGES AND EXPENSES ARISING OUT OF OR IN CONNECTION WITH THIS EULA OR THE USE, INABILITY TO USE OR MISUSE OF THE SOFTWARE PRODUCT, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE SHALL IN NO CASE EXCEED THE TOTAL AMOUNT PAID BY YOU TO LICENSE THE SOFTWARE PRODUCT WHICH CAUSED THE DAMAGES OR EXPENSES, PROVIDED THAT NOTHING SHALL LIMIT SCHNEIDER ELECTRIC’S LIABILITY FOR DEATH OR PERSONAL INJURY ARISING OUT OF SCHNEIDER ELECTRIC’S NEGLIGENCE OR FOR FRAUD OR FRAUDULENT MISREPRESENTATION
- 10.5 The license granted under this EULA does not cover any modification, update, translation or adaptation, whether authorized or not, that might have been made to the Software Product by any person other than Schneider Electric where the Software Product is supplied along with a third party product. Such modifications shall be governed by the terms of license issued by such third party. Schneider Electric shall in no case be liable, whether in contract, warranty, tort (including negligence), strict liability, pursuant to an indemnity, statute or otherwise, for damages or consequences arising out of or in connection with said modification, update, translation or adaptation and makes no representation or warranty in connection therewith.

A new subsection 17.7 to Section 17 “**Miscellaneous**” shall be inserted as follows:

- 17.7 "Schneider Electric will not be responsible or liable to You, or deemed in default or breach hereunder by reason of any failure or delay in the performance of our obligations hereunder where such failure or delay is due to strikes, labour disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning, or Your equipment, loss and destruction of property, or any other circumstances or causes beyond Schneider Electric's reasonable control.

\*\*\*\*\*

## APPENDIX 2 TO END-USER LICENSE AGREEMENT

### SPECIFIC TYPES OF LICENSE

Specific other use rights may be granted to You depending upon the type of license You have acquired.

**Educational license.** If You wish to acquire the Software Product for educational purpose only, please contact Schneider Electric's organization or its authorized reseller serving Your country. In case the Software Product is identified as academic or educational software, You must be a qualified educational user to be entitled to use said Software Product; if You are not a qualified educational user, You have no rights under this EULA with respect to said academic or educational software. To determine whether You are a qualified educational user, please contact Schneider Electric's organization or its authorized reseller serving Your country. Once licensed to use said academic or educational Software Product, You may not sell or transfer any such Software Product or sub-license Your license right to use the same to anyone except to another person who is qualified by Schneider Electric as a qualified educational user.

As used in this Section of EULA, the term '**person**' shall be broadly interpreted to include without limitation any individual, any corporation, company or other legal entity.

**License for Field-Test.** If You have acquired a license for field-test purposes, You acknowledge and agree that the Software Product licensed to You under a field-test license is a pre-release software only. As such, said Software Product may not be fully functional and You assume the entire risk as to the results and performance of the Software Product. You may install and use the Software Product licensed to You under a field-test license on computers in Your workplace only for the purpose of testing said Software Product before it is commercialized by Schneider Electric and potentially identifying any errors, bugs or defects in said Software Product. You also agree to use reasonable efforts to provide feedback to Schneider Electric regarding Your use of the Software Product, including a prompt report to Schneider Electric of errors, bugs or defects that You might find. Therefore, notwithstanding anything in this EULA to the contrary, You may not distribute or transfer any applications You create with the Software Product licensed to You under a field-test license. Schneider Electric will not update the Software Product licensed to You under a field-test license, nor provide support in relation thereto. The Software Product licensed to You under a field-test license may contain code that will, after a certain time period, deactivate the Software Product and render it unusable. Although said Software Product will attempt to warn You of the time frame in which it will be disabled, You acknowledge and agree that said Software Product may be deactivated or rendered unusable with or without warning. Upon such deactivation, this EULA will be considered terminated. Prior to deactivation of the Software Product, You may contact Schneider Electric to convert Your field-test license on the Software Product to a standard license governed by this EULA on the final release of said Software Product if and when available from Schneider Electric by paying to Schneider Electric the applicable license fee (if any) and obtaining from Schneider Electric the relevant activation code(s).

#### **Corporate license.**

You may not acquire a Corporate License unless You are a company or a corporation.

If You acquire a Corporate License from Schneider Electric, the media on which the Software Product is provided to You shall be configured so that it can only be used to operate the Software Product under a Corporate License; said media shall expressly mention the name of Your company, corporation or Group of Companies as being the licensee of a Corporate License on said Software Product.

The media containing the Software Product shall be provided to You separately from the license file necessary to activate said Software Product; said license file shall be configured so that it can only activate said Software Product under a Corporate License.

If and when acquiring a Corporate License, You acquire a concurrent use license under the following limits:

- You may install the Software Product for use by Authorized Users from and to the Sites only; - Any use of a Software Product licensed to You under a Corporate License is strictly prohibited by any person who or which is not an Authorized User, and from or to a location which does not qualify as a Site as defined hereunder.

If and when acquiring a Corporate License, it is agreed as an express deviation to Section 2.2 (i) of this EULA, that:

- You acquire the right to copy or reproduce the Software Product including the right to duplicate the media on which the Software Product is provided to You and the related license file; and
- You acquire the right to permit the use of the Software Product by any company or corporation which is part of Your Group of Companies (as defined hereunder),

in both cases, for the sole and restricted purpose of exercising the concurrent use license right granted to You under said Corporate License within the limits set forth hereinabove.

This Appendix forms an integral part of this EULA, and all terms and conditions of this EULA which are not expressly deviated under this Appendix, shall apply to You in accordance with the foregoing in addition to the terms and conditions set forth in this Appendix.

As used herein and for the purposes of Corporate Licenses only, the following terms shall have the following meaning:

- the term '**Group of Companies**' means any company or corporation:
  - a) in which You directly or indirectly own or control the voting rights attached to more than 50% of the issued ordinary share capital, or (ii) control directly or indirectly the appointment of a majority of directors (or equivalent) of its board of directors (or equivalent body); or
  - b) which directly or indirectly (i) owns or controls the voting rights attached to more than 50% of Your issued ordinary share capital, or (ii) controls the appointment of a majority of directors (or equivalent) of Your board of directors (or equivalent body); or
  - c) which is directly or indirectly owned or controlled by the same company or corporation as You in accordance with sub-case b) above.
- the term '**Authorized Users**' means any end-users at the Sites who use the Software Product;
- the term '**Sites**' means Your facility to which Schneider Electric initially supplied the Software Product as well as all of Your facilities and the facilities of Your Group of Companies, irrespective whether said facilities are located within the same country or several countries.