

# ECOMMISSION SMARTX CONTROLLERS DOWNLOADABLE MOBILE APPLICATION

## TERMS OF USE

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SEE SECTIONS 9-11 FOR INFORMATION ON USER DATA AND PERSONAL INFORMATION PROTECTION.

### 1. ACCEPTANCE OF TERMS

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BY USING THE MOBILE APPLICATION, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREED TO THESE TERMS OF USE AND THAT YOU AGREE TO BE BOUND BY THEM.

THESE TERMS OF USE FORM A LEGAL AGREEMENT BETWEEN THE CORPORATION, COMPANY OR OTHER LEGAL ENTITY, TO WHICH THE MOBILE APPLICATION HAS BEEN MADE AVAILABLE FOR DOWNLOAD, (HEREINAFTER "YOU"), AND SCHNEIDER ELECTRIC (AS DEFINED HEREUNDER). IT IS YOUR RESPONSIBILITY TO ASCERTAIN THAT ANY PERSON COMPLETING THE DOWNLOAD AND/OR THE INSTALLATION OF THE MOBILE APPLICATION HAS THE MANDATE OR LEGAL AUTHORITY TO BIND YOU AND CONFIRM YOUR ACCEPTANCE OF THESE TERMS OF USE.

### 2. DEFINITIONS

For the purposes of these Terms of Use, the capitalized terms below shall have the meaning defined herein below:

**"Affiliates"**: means, with respect to each of Schneider Electric and the User, any corporation, company or other legal entity that is directly or indirectly (i) controlling Schneider Electric or the User, or (ii) controlled by Schneider Electric or the User, or (iii) under common control with, respectively, Schneider Electric or the User, and the term "control" shall, for the purpose of this definition, mean the direct or indirect control of at least 50% of the stock capital and/or of the voting rights. Notwithstanding the aforesaid definition of Affiliates, AVEVA Group Plc. and all its subsidiaries shall not be deemed as Affiliates of Schneider Electric.

**"Authorized Users"**: means any employee or contractor acting under the authority or control and on behalf of the User when accessing and making use of the Mobile Application.

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**“Documentation”**: means printed, online or electronic documentation, information, specifications, instructions or material related to the Mobile Application, as such can be retrieved via Schneider Electric’s corporate website <http://schneider-electric.com> or by contacting Schneider Electric’s local customer care center. You agree that the Documentation may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

**“Intellectual Property Rights”**: means any and all rights of any kind and any type arising under statute, regulation, ordinance, common law, treaty, convention or otherwise, and including, without limitation any patents, utility models, moral rights, copyright and neighbouring rights, trademarks and trade dress rights, mask work rights, service marks, right in domain names, designs rights, rights in computer software, database rights, rights in confidential information (including but not limited to all rights in know-how and trade secrets) and any other intellectual property rights, in each case whether registered or not, including but not limited to applications and renewals, and all rights and forms of protection having equivalent or similar effect, recognized under the laws of each and every jurisdiction throughout the world.

**“Mobile Application”**: means the eCommission SmartX Controllers mobile software application that provides the functions described or referred to in these Terms of Use, as published and made available by Schneider Electric or its Affiliates for download from Mobile Application stores proprietary to Schneider Electric or officially authorized third-party Mobile Application stores. A reference to the Mobile Application in these Terms of Use will be deemed to include a reference to the Contents, the software programs, the programming and navigation tools, the data bases, the Documentation and any other structural components of the Mobile Application, as well as any updates and upgrades thereto that may be provided by Schneider Electric in its sole discretion.

**“Personal Information”**: means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

**“Schneider Electric”**: means Schneider Electric Buildings, LLC, with registered address 839 N. Perryville Road, Rockford, IL,61009.

**“User Data”**: means all information, content and data, such as but not limited to text, sound or files, that the User uploads, collects, stores and/or processes in the Mobile Application, and/or creates and/or modifies, through the User’s use of the Mobile Application.

**“You” or “the User”**: means each corporation, company or other legal entity that downloads or makes use of the Mobile Application. If You are an individual person, You are agreeing to these Terms of Use on behalf of that corporation, company or other legal entity and declare to Schneider Electric that You have the authority to do so and thereby bind that corporation, company or other legal entity to these Terms of Use in which event, "You" and "Your" will be deemed to refer to that corporation, company or other legal entity.

### **3. DESCRIPTION OF THE MOBILE APPLICATION**

**3.1.** The eCommission SmartX Controllers mobile app allows you to use a mobile device to perform commissioning, flow balance, and checkout operations on MP Series controllers that are intended for HVAC control applications. It is designed for commissioning agents and technicians who need simple workflows that deliver a variety of commissioning and pre-commissioning functionality. The eCommission SmartX Controllers mobile app can connect to a network of MP Series controllers on the local network, using Wi-Fi. It is designed for use with Android, Apple (iOS), and Microsoft Windows 10 devices, and is available for download from Google Play, the Apple App Store, and the Microsoft

Marketplace. The application facilitates creation of reports to document commissioning, flow balance, and checkout operations.

Users of the eCommission SmartX Controllers mobile app are entitled by Schneider Electric to use the Mobile Application to create, perform and/or provide User's own services to its own customers.

Warning: please refer to and strictly follow the eCommission SmartX Controller user guide for proper use of the mobile application.

The Mobile Application comprises geolocalisation features as it will collect location information of user for review by Schneider Electric in a Google analytics dashboard.

The information on the type of mobile devices and operating systems on which the Mobile Application is compatible for use, is indicated on the Mobile Application stores' webpage(s) that make the Mobile Application available for download.

**3.2.** Schneider Electric reserves the right but is not obligated to, at any time, update or upgrade the then current version of the Mobile Application and its Documentation so as to enhance current functionalities, add or remove functionalities of the Mobile Application and/or to create temporary or permanent conditions or limitations to the use of the Mobile Application. Any such update or upgrade to the Mobile Application and its Documentation will be published online by Schneider Electric. Schneider Electric recommends that every User, including returning Users, carefully review Schneider Electric's corporate website <http://schneider-electric.com> or the Mobile Application stores' webpage(s) that make the Mobile Application available for download. It is the User's responsibility to visit such website or pages prior to each use of the Mobile Application. The User's continued use of the Mobile Application after any such update or upgrade to the Mobile Application is published by Schneider Electric, shall be deemed as the User's acceptance of such update or upgrade and the User's agreement to use the updated or upgraded Mobile Application in accordance with these Terms of Use (or any then-current, revised Terms of Use). If the User does not consent to such updates or upgrades, the User shall have the immediate obligation to cease any use of the Mobile Application and to delete or expunge the Mobile Application from all computers, hard disks, servers, tablets, smart phones or other mobile devices onto which the User downloaded the Mobile Application, with the effect that the legal agreement formed between the User and Schneider Electric by the User's acceptance of these Terms of Use shall be deemed immediately and automatically terminated.

#### **4. REGISTRATION REQUIREMENTS**

**4.1.** 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.

**4.2.** You may authorize Your Authorized Users to access to Your user account and make use of the Mobile Application for Your benefit and only for the purposes described in these Terms of Use. You shall be responsible to ensure these Terms of Use are made available in a legible manner to each of Your Authorized Users before any of them can log and make use of the Mobile Application. You shall be fully responsible for the acts and omissions of Your Authorized Users, including for all activities that are made through the use of Your user account, and their compliance with these Terms of Use. You shall bear responsibility for all activities that are made through the use of Your user account and for any resulting harm caused to You, Your Authorized Users or any other third-party, the Mobile Application and/or Schneider Electric. Schneider Electric will have the right to rely upon any information received from any legal or individual person accessing to and/or using Your user account and Schneider Electric will incur no liability arising out of such reliance.

**4.3.** 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 the access and/or the use of the Mobile Application.

**4.4.** Schneider Electric is entitled, at any time and without notice or liability to You, to deny You the right to access, or terminate Your access to, Your user account on the Mobile Application and thereby Your right to use the Mobile Application by blocking or disabling Your user account if You breach any of Your obligations under these Terms of Use or the other legal documents incorporated herein or if You violate any applicable laws or infringe the Intellectual Property Rights of Schneider Electric, its Affiliates or any third-party in Your access or use of the Mobile Application. Denial or termination by Schneider Electric of Your access and right 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 related to or arising from Your breach, violation or infringement as stated above. Without prejudice to the foregoing, termination by Schneider Electric of Your access and right 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. Denial or termination by Schneider Electric of Your access and right to use the Mobile Application does not affect any rights or remedies which may have accrued to You or Schneider Electric before said denial or termination under these Terms of Use, at law or, if applicable, in equity.

## **5. FINANCIAL CONDITIONS**

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Users acknowledge and agree that Users shall solely bear the cost and expense of any toll charges related to or arising from such Users' access and use of the Mobile Application through the use of internet or telephone services, including but not limited to any costs and expenses related to subscribing to any third-party service that allows access to mobile telecommunications and the internet and any cost and expense related to the upload or download of any data in or from the Mobile Application.

## **6. GRANT OF LICENSE**

**6.1.** Subject to Your compliance with all of the terms and conditions contained in these Terms of Use, Schneider Electric grants to You a non-exclusive, non-transferable, revocable, limited and non-assignable license right to use the Mobile Application in object code form (machine-readable) only, without the right to grant any sub-license thereof, for Your own ordinary business purposes, to the exclusion of any other purpose, and subject to the terms and conditions contained in these Terms of Use and the Documentation.

**6.2.** The license to use the Mobile Application is granted to Users for the duration and in the geographies which are made accessible or indicated on the Mobile Application stores' webpage(s) that make the Mobile Application available for download. In the absence of accessibility or other license duration or geographic restrictions set forth in these Terms of Use, the Documentation or on the Mobile Applications store's webpage(s), - the license right to use the Mobile Application is granted to Users on perpetual (but subject to revocation as set forth herein) and worldwide basis.

**6.3.** The Mobile Application is available to the Users in object code (machine-readable) form only and under no circumstances is Schneider Electric obligated to disclose or make available to Users the source code of the Mobile Application unless required by mandatory provisions of applicable law.

**6.4.** You may download and use the Mobile Application on more than one single mobile device if the Mobile Application is used on each of said devices under the same user account under which the Mobile Application is first downloaded.

**6.5.** These Terms of Use only give you some rights to use the Mobile Application 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 these Terms of Use. You agree that You will use the Mobile Application only as expressly permitted in these Terms of Use and in accordance with its Documentation. You agree that You will comply with any and all technical limitations in the Mobile Application that only allow You to use the Mobile Application in certain ways and that You will not nor will You permit others to circumvent such limitations.

**6.6.** If technological measures are designed to prevent unlicensed or illegal use of the Mobile Application, You agree that Schneider Electric may use those measures to prevent unlicensed or illegal use of for any other legal business purpose and You agree to comply with any requirements regarding such technological measures. Such measures do not constitute a defect in the Mobile Application nor do they entitle You to any warranty rights.

**6.7.** These Terms of Use describe and govern Your right to download, install and use the Mobile Application. It is expressly agreed that these Terms of Use will prevail over and supersede any other terms and conditions contained in any purchase order or other document issued or submitted by You in connection with Your download, installation or use of the Mobile Application and such other terms and conditions are expressly rejected by Schneider Electric.

**6.8.** These Terms of Use will also apply to You and shall remain fully enforceable between Schneider Electric and You even if You obtained the right to access and use the Mobile Application from an authorized Schneider Electric distributor or reseller or a certified Schneider Electric partner.

## **7. TITLE AND TRADEMARKS**

**7.1.** The Mobile Application, as well as all rights, title, interest, technology and know-how, whether patented or not, embodied in the Mobile Application, as well as all Intellectual Property Rights contained in, associated with or attached to the Mobile Application, including but not limited to copyrights, shall remain the sole property of Schneider Electric, to the exclusion of any third-party software embedded in or bundled with the Mobile Application or otherwise provided to You with the Mobile Application.

**7.2.** Nothing in these Terms of Use shall be deemed to convey to You any of Schneider Electric's proprietary rights in the Mobile Application; all rights not specifically granted in these Terms of Use are reserved by Schneider Electric. Schneider Electric does not sell the Mobile Application to You but only grants You the license rights expressly set forth in these Terms of Use.

**7.3.** All Intellectual Property Rights pertaining to any third-party software embedded in the Mobile Application or otherwise provided to You with the Mobile Application 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 Schneider Electric's proprietary rights in the Mobile Application, You shall immediately inform Schneider Electric of such infringement and provide all relevant information and reasonable cooperation requested by Schneider Electric to defend its interests.

**7.5.** Schneider Electric and other trademarks contained in the Mobile Application are registered trademarks of the Schneider Electric group. Except as otherwise expressly prescribed by mandatory provisions of 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 Mobile Application. These Terms of Use do not authorise You to use any names or trademarks of Schneider Electric or any names or trademarks of Schneider Electric's third-party licensors or authorised resellers.

## **8. RESTRICTIONS ON USE**

**8.1.** You may only download, install, access, use and display the Mobile Application on the type of mobile devices and operating systems on which the Mobile Application is compatible for use as referred to in these Terms of Use or the Documentation, strictly in accordance with these Terms of Use and the Documentation and only for the specific purposes stated in these Terms of Use and the Documentation.

**8.2.** Furthermore, unless otherwise expressly required or authorized by statute, You will not nor will You permit others to:

(i) copy the Mobile Application except for backup purposes only in support of Your permitted use of the Mobile Application. Any such copy must include all copyright notices and any other proprietary legends present on the original Mobile Application. You may not sell, lease, license, rent or in other ways transfer any copy of the Mobile Application. If this Mobile Application 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 Mobile Application. If this Mobile Application contains Documentation that is provided in printed form, You may make one copy of such printed Documentation for each license acquired for the Mobile Application;

(ii) modify, adapt, translate, reverse engineer, decompile, disassemble or otherwise seek to reconstitute the source code of the Mobile Application, nor create derivative works from the Mobile Application. Further, in case of errors, bugs or defects of the Mobile Application, Schneider Electric expressly reserves the right to correct such errors, bugs or defects to the extent permitted by law but is not obligated to make such correction;

(iii) sub-license, lease, outsource or rent the Mobile Application, or permit a third-party to use the Mobile Application for its or anyone else's benefit;

(iv) other than as expressly permitted in these Terms of Use, distribute in whole or part, modify, or create derivatives of, the Mobile Application or distribute applications created with the Mobile Application; or

(v) directly or indirectly, export, re-export, download, or ship the Mobile Application in violation of the laws and regulations of the U.S.A. or the applicable jurisdiction in which You use or are downloading the Mobile Application.

**8.3.** Should You not fully comply with the above provisions, You shall bear any and all consequences, including any damages whatsoever (including but not limited to damages incurred by Schneider Electric and its Affiliates), resulting therefrom.

**8.4.** The use of the Mobile Application is intended only for use with contents owned by You, public domain contents or properly licensed content. You may need a patent, copyright, or other license from a third-party to create, copy, download, record or save content files for use with the Mobile Application or to serve or distribute such files to be used with the Mobile Application; in such case, it is Your sole responsibility to obtain such license and you shall solely bear the cost and expense of obtaining such license.

**8.5.** 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.

**8.6.** You agree that You shall only use the Mobile Application in a manner that complies with all applicable laws in the jurisdictions in which You use or are downloading the Mobile Application, including, but not limited to, applicable restrictions concerning copyright and other Intellectual Property Rights.

## **9. USER DATA**

**9.1.** By accepting these Terms of Use, User grants Schneider Electric a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, paid-up, transferable and sub-licensable

license right to collect, store, use, import, distribute, modify and distribute modifications of, perform, create and distribute derivative works of, translate, copy and display User Data for the purpose of and in conjunction only with the use of the Mobile Application by User in accordance with these Terms of Use. User represents that User has and will keep in effect all licenses and approvals necessary to grant the foregoing license rights, at no charge or expense, to Schneider Electric. User represents that User is not exceeding any specified entitlement or permitted use or violating applicable license agreements or applicable laws to grant the foregoing license rights. User agrees to indemnify and hold harmless Schneider Electric from any third-party claims and any costs, expenses and other amounts that Schneider Electric may incur or otherwise be subject to because of User's breach of this Section 9.1.

**9.2.** User is responsible for any Personal Information that is included in the User Data uploaded, created and/or modified by User's use of the Mobile Application. The laws and regulations of some jurisdictions may require the consent of the individuals to which the Personal Information pertains prior to including their Personal Information in the User Data uploaded, created and/or modified by User, and require that such Personal Information be treated in compliance with such laws and regulations. User agrees and undertakes to comply with all applicable laws and regulations, to obtain all necessary consents and make all necessary disclosures before including Personal Information in the User Data uploaded, created and/or modified by User within the Mobile Application and before using such Personal Information in connection with its use of the Mobile Application, including those consents and disclosures related to the collection, use, processing, transfer and disclosure of any Personal Information.

**9.3.** User acknowledges that User has reviewed the security features of the Mobile Application and has determined that they meet User's security needs including any specific requirement of security applicable in the field of activity of User. User is solely responsible for determining the requirements regarding security of User Data. If the security features, procedures and/or controls offered by Schneider Electric with respect to the Mobile Application do not meet the requirements determined by User regarding security of User Data, User should not use the Mobile Application. Schneider Electric accepts no liability for any corruption, loss or theft of data caused by security breaches resulting from internet connectivity and/or the environment or systems used by User to access and use the Mobile Application, including without limitation security breaches resulting from hackers, unlawful entry or unauthorized access. User is solely responsible to ensure at its own cost and expense any maintenance, testing, backup and support of User Data that User may determine to be appropriate.

**9.4.** In case the Mobile Application enables the User to upload, create and/or modify User Data within the Mobile Application, User Data shall be stored within the Mobile Application only as long as its user account shall be active in accordance with these Terms of Use and Schneider Electric shall have no obligation or liability to return User Data to User at any time.

**9.5.** Schneider Electric shall not disclose User Data to any third party without User's prior express consent, unless disclosure of User Data is required in order for (i) Schneider Electric or its Affiliates to comply with any legal obligation applicable to Schneider Electric or its Affiliates, (ii) Schneider Electric or its Affiliates to comply with any applicable order by a court of competent jurisdiction or any applicable order of a governmental agency or (iii) Schneider Electric or its Affiliates to defend or prosecute their rights under these Terms of Use or in litigation.

## **10. PERSONAL INFORMATION PROTECTION**

By accepting these Terms of Use, You understand and agree that Schneider Electric will collect and process Your Personal Information such as Your name and email address and that you will actively provide to Schneider Electric such information (i) through your

registration and user account creation process and/or Your use of the Mobile Application and (ii) when using contact forms, if any, provided within the Mobile Application, as well as any Personal Information such as the IP (internet protocol) address of your mobile device which may be directly or indirectly collected through Your download and/or Your use of the Mobile Application.

With respect to the fact that Your use of the Mobile Application may directly or indirectly provide Schneider Electric with location data of the User, such data shall be treated by Schneider Electric as Personal Information related to You.

If the Mobile Application includes geolocation features, Your express consent must be given during the Mobile Application set up on Your mobile device for geolocation to work. For the Mobile Application to use geolocation data, the User must activate the geolocation features of the mobile device on which the User uses the Mobile Application. You acknowledge that by disabling or otherwise deactivating the geolocation settings of the mobile device on which the User uses the Mobile Application, those services of the Mobile Application relying on geolocation will be automatically disabled.

Your Personal Information collected and processed by Schneider Electric through Your download and/or Your use of the Mobile Application in accordance with these Terms of Use shall be collected and processed by Schneider Electric for the one or more of the following purposes (i) to provide You the access and the possibility to use the Mobile Application in accordance with these Terms of Use, (ii) to improve the Mobile Application and, as the case may apply, the related support and other services You may have subscribed to (e.g. including without limitation, content synchronization, device tracking, troubleshooting, etc.), (iii) to create statistical analyses of Your usage of the Mobile Application so as to improve Your digital experience of Schneider Electric's products, services and solutions offers, (iv) to ensure or improve security for all Users (including other Users) when downloading and/or using the Mobile Application, and (v) for any other lawful purposes related to Your Use of the Mobile Application or Schneider Electric products, services and solutions for which You will have given Your express consent to Schneider Electric.

With respect to Your Personal Information collected, stored and processed by Schneider Electric in relation to Your access and/or use of the Mobile Application, Schneider Electric shall also comply with Schneider Electric Data Protection and Privacy Policy available at <https://www.schneider-electric.com/en/about-us/legal/data-privacy.jsp>, that is incorporated herein by reference. The aforesaid policy and its address on Schneider Electric's corporate and/or local websites is subject to change by Schneider Electric for any lawful purpose including but not limited to in order to comply with changes to applicable data protection laws.

## **11. INFORMATION FROM YOUR USE OF THE MOBILE APPLICATION**

When You make use of the Mobile Application, usage-related data (including but not limited to data on the number of logs to the Mobile Application; the average duration during which You use the Mobile Application each time You log on; the operating system You use on your mobile device; or device information on Schneider Electric's products, services and solutions with which You communicate or otherwise interact with through Your use of the Mobile Application) may be automatically collected and/or generated by technical means.

You acknowledge and agree that, without prejudice to the confidentiality of Your User Data, applicable regulations or the provisions in these Terms of Use related to Personal Information, Schneider Electric may collect from Your use of the Mobile Application and process any such information related to Your use of the Mobile Application for Schneider Electric's internal business purposes including without limitation ensuring security and operations management of the Mobile Application, assessing the attractiveness of the Mobile Application and creating statistical analyses of Your usage of the Mobile Application so as to improve the performance and content of the Mobile Application as well as customers' digital experience of Schneider Electric's products, services and solutions offers, and proposing to

You additional services in relation with Schneider Electric products, services and solutions with which You communicate or otherwise interact through Your use of the Mobile Application.

## **12. WARRANTIES AND DISCLAIMERS OF WARRANTIES**

**12.1** SCHNEIDER ELECTRIC WARRANTS THAT IT IS ENTITLED TO LICENSE AND OTHERWISE MAKE AVAILABLE THE MOBILE APPLICATION TO YOU IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET OUT IN THESE TERMS OF USE.

**12.2** IF THE MOBILE APPLICATION WAS DOWNLOADED BY YOU OR PROVIDED TO YOU FOR FREE WITH NO LICENSE OR OTHER FEE PAYABLE TO SCHNEIDER ELECTRIC THEN SUCH MOBILE APPLICATION IS PROVIDED TO YOU ON "AS-IS" BASIS WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND AND SCHNEIDER ELECTRIC EXPRESSLY DISCLAIMS ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MOBILE APPLICATION, ITS DOCUMENTATION, THEIR UPDATES AND UPGRADES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES, CONDITIONS AND REPRESENTATIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS AND FITNESS FOR A PARTICULAR PURPOSE.

**12.3** IF THE MOBILE APPLICATION WAS DOWNLOADED BY YOU OR PROVIDED TO YOU FOR A LICENSE OR OTHER FEE PAYABLE TO SCHNEIDER ELECTRIC THEN THE FOLLOWING WARRANTY APPLIES TO YOU: FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE WHEN YOU FIRST DOWNLOAD, ACCESS OR USE THE MOBILE APPLICATION (WHICHEVER OCCURS FIRST), SCHNEIDER ELECTRIC WARRANTS THAT THE MOBILE APPLICATION WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH ITS SPECIFICATIONS AS DESCRIBED IN THE DOCUMENTATION.

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 OR PROVIDE A WORK-AROUND TO, THE DEFECT OR NON-COMPLIANCE OF THE MOBILE APPLICATION WITHOUT CHARGE TO YOU, PROVIDED THAT (A) YOU GIVE NOTICE OF THE DEFECT TO SCHNEIDER ELECTRIC WITHIN THE ABOVEMENTIONED WARRANTY PERIOD, AND (B) THE DEFECT DOES NOT FALL UNDER THE EXCLUSIONS SET FORTH IN SECTION 12.4 BELOW.

**12.4** SCHNEIDER ELECTRIC'S WARRANTY SHALL BE EXCLUDED AND SCHNEIDER ELECTRIC SHALL HAVE NO WARRANTY OBLIGATIONS TO THE EXTENT THE MOBILE APPLICATION HAS BEEN ALTERED OR FAILS TO PERFORM IN ANY WAY AS THE RESULT OF YOUR NEGLIGENT OR UNAUTHORIZED USE, CONFIGURATION OR INSTALLATION OF THE MOBILE APPLICATION INCLUDING BUT NOT LIMITED TO THE USE OF THE MOBILE APPLICATION WITH ANY HARDWARE, SOFTWARE, FIRMWARE, OPERATING SYSTEM OR SOLUTION NOT SUPPLIED, NOT SPECIFIED OR NOT APPROVED BY SCHNEIDER ELECTRIC TO BE USED WITH THE MOBILE APPLICATION, OR THE UNAUTHORIZED MAINTENANCE OF THE MOBILE APPLICATION.

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**12.6** TO THE FULLEST EXTENT PERMITTED BY LAW (ON BOTH FEDERAL AND STATE LEVELS, WHEN APPLICABLE) IN ANY COUNTRY WHERE YOU WILL DOWNLOAD, INSTALL OR

USE THE MOBILE APPLICATION, SCHNEIDER ELECTRIC MAKES NO OTHER WARRANTY THAN THOSE CONTAINED IN THIS SECTION 12 AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MOBILE APPLICATION, ITS DOCUMENTATION, THEIR UPDATES AND UPGRADES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES, CONDITIONS AND REPRESENTATIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS AND FITNESS FOR A PARTICULAR PURPOSE. FURTHER, WHILE SCHNEIDER ELECTRIC HAS TAKEN REASONABLE STEPS TO ENSURE THE ACCURACY OF THE INFORMATION CONTAINED IN OR SHOWN BY THE MOBILE APPLICATION AND ITS DOCUMENTATION, SCHNEIDER ELECTRIC MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AS TO WHETHER THE MOBILE APPLICATION OR ANY INFORMATION CONTAINED IN OR SHOWN BY THE MOBILE APPLICATION AND ITS DOCUMENTATION WILL MEET YOUR REQUIREMENTS, EXPECTATIONS OR PURPOSES OR THAT THE OPERATION OF THE MOBILE APPLICATION WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE MOBILE APPLICATION WILL BE PROTECTED AGAINST ALL POSSIBLE SECURITY THREATS, INTERNET THREATS OR OTHER THREATS OR INTERRUPTIONS.

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### **13. LIABILITIES**

**13.1** IN NO EVENT SHALL SCHNEIDER ELECTRIC (BY REASON OF ITS OWN ACTS OR OMISSIONS OR THOSE OF ANY THIRD-PARTY INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE MOBILE APPLICATION, INCLUDING BUT NOT LIMITED TO SCHNEIDER ELECTRIC'S LICENSORS) BE LIABLE TO YOU OR ANY THIRD-PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, SUCH AS BUT NOT LIMITED TO LOSS OF REVENUE, LOSS OF BUSINESS, LOSS OF PROFITS OR CONTRACTS, LOSS OF ANTICIPATED SAVINGS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF REPUTATION OR WASTE OF MANAGEMENT OR OFFICE TIME, ARISING OUT OF OR IN CONNECTION WITH THE USE, INABILITY TO USE OR MISUSE OF THE MOBILE APPLICATION, WHETHER BASED ON CONTRACT, TORT, WARRANTY OR OTHER LEGAL GROUND AND EVEN IF SCHNEIDER ELECTRIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**13.2** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS OF USE, SCHNEIDER ELECTRIC'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OF USE, THE MOBILE APPLICATION OR ITS DOCUMENTATION, SHALL BE LIMITED TO AND SHALL IN NO EVENT EXCEED (I) THE TOTAL AMOUNT WITHOUT TAX YOU PAID TO ACQUIRE THE RIGHT TO USE THE MOBILE APPLICATION WITH RESPECT TO WHICH LIABILITY IS CLAIMED OR (II) TWENTY-FIVE DOLLARS (\$25.00 USD) IN THE CASE WHERE THE MOBILE APPLICATION IS MADE AVAILABLE TO YOU FOR FREE WITH NO LICENSE OR OTHER FEE PAYABLE TO SCHNEIDER ELECTRIC.

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**13.4** 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.

**13.5** 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.

**13.6** 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.

## **14. INDEMNIFICATION**

**14.1** 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.

**14.2** Subject to the limitations set forth in Section 13, 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 14.2. If the Mobile Application is held or believed by Schneider Electric to constitute an infringement or misappropriation as per this Section 14.2, 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 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 14.2 states Your sole and exclusive remedy and Schneider Electric's sole liability for any claim under this Section 14.2.

**14.3** To the extent permitted by law, Schneider Electric will have no liability to You under Section 14.2. 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.

## **15. 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.

## **16. 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).

## **17. 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 on a personal basis. 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.

## **18. TERMINATION**

**18.1** 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.

**18.2** 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 You violate any laws 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.

**18.3** 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 18.3.

**18.4** Termination by Schneider Electric of the license right granted to You hereunder and these Terms of Use 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.

## **19. MISCELLANEOUS**

**19.1** 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.

**19.2** No third-party beneficiary relationship is created by these Terms of Use. These Terms of Use shall not be construed to confer any rights or remedies to any third-party.

**19.3** 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.

**19.4** 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.

**19.5** 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 Mobile Application stores' webpage(s) 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.

**19.6** Schneider Electric's failure to insist on or enforce strict performance of these Terms of Use shall not be construed as a waiver by Schneider Electric of any right to enforce these Terms of Use, nor shall any course of conduct between Schneider Electric and You or any third-party be deemed to modify any provision of these Terms of Use.

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

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

**19.9** Section 7 "Title and trademarks", Section 9 "User Data", Section 12 "Warranties and disclaimers of warranties", Section 13 "Liabilities", Section 14 "Indemnification", Section 16 "Export Control", Section 18 "Termination", Section 19 "Miscellaneous" and Section 20 "Applicable Law and Disputes" 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.

**19.10** 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://schneider-electric.com>, the Mobile Application stores' webpage(s) availing the Mobile Application for download and/or through the Mobile Application itself. Schneider Electric recommends that every User carefully review the then-current Terms of Use posted on Schneider Electric's corporate website or the Mobile Application stores' webpage(s). 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.

**19.11** 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.

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

**20.1** These Terms of Use shall be exclusively governed by the laws of the State of Illinois, United States to the exclusion of its 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.

**20.2** The venue for any legal proceeding arising out of or connected with these Terms of Use shall be exclusively held in the State of Illinois and You hereby waive the right to challenge venue based upon forum non-conveniens or otherwise. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THESE TERMS OF USE.

**20.3** 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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