

## EcoStruxure IT Advisor CFD

### **CLOUD-BASED SERVICES TERMS AND CONDITIONS**

**PLEASE READ CAREFULLY THESE TERMS AND CONDITIONS OF USE INCLUDING SUCH OTHER LEGAL DOCUMENTS INCORPORATED HEREIN BY REFERENCE ("THESE TERMS & CONDITIONS") BEFORE USING THE ECOSTRUXURE IT ADVISOR CFD CLOUD-BASED SERVICES, AS THESE ARE TERMS OF A LEGAL AGREEMENT BETWEEN YOU AND SCHNEIDER ELECTRIC WHICH DEFINES AND GOVERNS THE CONDITIONS AND RIGHTS TO ACCESS AND USE SAID CLOUD-BASED SERVICES AND THE DATA COLLECTED AND PROCESSED THROUGH THE USE THEREOF (THE "SERVICES").**

**THESE TERMS & CONDITIONS SHALL ONLY APPLY IF THE INTENDED PURPOSE FOR WHICH THE SERVICES ARE MADE, IS THAT SERVICES ARE USED ONLY BY PROFESSIONALS IN THEIR ORDINARY COURSE OF BUSINESS. IF YOU ARE NOT A PROFESSIONAL USING THE SERVICES IN THE ORDINARY COURSE OF BUSINESS THEN YOU HAVE NO RIGHT NOR LICENSE TO USE THE SERVICES.**

**IF YOU ARE AN INDIVIDUAL PERSON ACCESSING -OR USING THE SERVICES ON BEHALF OF A CORPORATION, COMPANY OR ANY OTHER LEGAL ENTITY, YOU ARE AGREEING TO THESE TERMS & CONDITIONS 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 & CONDITIONS IN WHICH EVENT, "CUSTOMER", "YOU" AND "YOUR" WILL BE DEEMED TO REFER TO THAT CORPORATION, COMPANY OR OTHER LEGAL ENTITY.**

**IF YOU AGREE WITH THESE TERMS & CONDITIONS AND AGREE TO BE BOUND BY THEM, PLEASE CONFIRM YOUR AGREEMENT BY CHECKING THE CORRESPONDING TICK BOX ON THE REGISTRATION PAGE THAT IS MADE AVAILABLE TO YOU FOR THE PURPOSE OF CREATING AN ACCOUNT ON THE WEB-BASED OR CLOUD PLATFORM HOSTING THE SERVICES. IF YOU DO NOT AGREE WITH THESE TERMS & CONDITIONS AND NOR AGREE TO BE BOUND BY THEM, PLEASE CLICK THE CONVERSE APPROPRIATE BUTTON OR THE CANCEL BUTTON AND EXIT SAID REGISTRATION PAGE.**

**BY USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREED WITH THESE TERMS & CONDITIONS AND TO BE BOUND BY THEM.**

**THESE TERMS & CONDITIONS WILL ALSO APPLY TO YOU AND SHALL REMAIN ENFORCEABLE BETWEEN SCHNEIDER ELECTRIC AND YOU EVEN IF YOU HAVE ORDERED OR OTHERWISE SUBSCRIBED TO THE SERVICES THROUGH AN AUTHORIZED SCHNEIDER ELECTRIC DISTRIBUTOR OR RESELLER OR A CERTIFIED SCHNEIDER ELECTRIC PARTNER.**

#### **1. Definitions**

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

**"Affiliates":** means, with respect to each of Schneider Electric and the Customer, any corporation, company or other legal entity that is directly or indirectly (i) controlling Schneider Electric or the Customer, or (ii) controlled by Schneider Electric or the Customer,

or (iii) under common control with Schneider Electric or the Customer, 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 provisions of Affiliates, AVEVA Group Plc. and all its subsidiaries shall not be deemed as Affiliates of Schneider Electric.

**“Application”**: means the EcoStruxure IT Advisor CFD web-based software program that provides the functions and is intended to achieve the purposes defined in the Services Description, and that is made available by Schneider Electric to the Customer having access to the Platform. The Application includes any update thereto if any is provided as part of the Services.

**“Authorized User”**: means any employee or contractor acting under the authority or control and on behalf of the Customer when accessing the Platform and making use of the Services.

**“Customer” or “You”**: means each corporation, company or other legal entity carrying out a professional activity on behalf of which any Authorized User creates an account on the Platform to use the Services.

**“Customer’s Clients”**: means any third-party to whom Customer provides its own services through its use of all or part of the Services including the Application.

**“Customer Data”** means all information, content and data proprietary to Customer, such as but not limited to text, sound or files, to the exception of Personal Information, that Customer or the Application itself uploads, collects, stores and/or processes on the Platform or in the Application (including but not limited to Customer’s usage of the Application), and/or creates and/or modifies, through Customer’s use of all or part of the Services.

**“Customer’s Clients Data”**: means all information, content, and data, proprietary to Customer’s Clients, such as but not limited to text, sound or files to the exception of Personal Information, that Customer or the Application itself uploads, collects, stores and/or processes on the Platform or in the Application, and/or creates and/or modifies, through Customer’s use of all or part of the Services in connection with Customer’s provision of its own services to Customer’s Clients.

**“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 neighboring 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 right 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.

**“Order”**: means any purchase order or subscription for the Services issued in writing or electronically by Customer to Schneider Electric.

**“Order(s) Confirmation(s)”**: means the confirmation of Customer’s Order, issued in writing or electronically by Schneider Electric, which, among other things, may identify (i) the particular Services ordered or subscribed to by Customer in its Order, (ii) the corresponding Service Period and, if applicable, (iii) the corresponding Service Fees payable by Customer for the Services, in accordance with Schedule A to these Terms & Conditions.

**"Platform"**: means the web or cloud-based platform hosting the Application the access to and the use of which is made available by Schneider Electric as part of the Services in accordance with these Terms & Conditions.

**"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 IT Corporation with a principal place of business located at 70 Mechanic Street, Foxboro, Massachusetts 02035 USA which has the right to provide Customer with access to this Application as part of the Services in accordance with these Terms & Conditions.

**"Services"**: means those cloud-based services which are described in the Services Description and which comprise the provision by Schneider Electric to the Customer of the access to the Platform with the right to use the Application hosted therein subject to and in accordance with these Terms & Conditions.

**"Services Description"** means the functional description of the applicable Services as set forth in Schedule A attached hereto and on the landing page of the Platform giving access to the Services as such page and description may be updated from time to time by Schneider Electric. In case of any conflict between the description of the Services in Schedule A to these Terms & Conditions and the landing page of the Platform giving access to the Services, the latter shall prevail.

**"Services Period"** means the timeframe during which Customer may access and use the Services as set forth in Schedule A attached hereto and on the landing page of the Platform giving access to the Services as such page and description may be updated from time to time by Schneider Electric. In case of any conflict between description of the Services in Schedule A to these Terms & Conditions and the landing page of the Platform giving access to the Services, the latter shall prevail.

## **2. Access to and termination of the Services**

**2.1** You need to create a user account on the Platform in order to use the Services and the Application comprised therein. To create Your user account, You shall complete the online registration form made available by Schneider Electric on the Platform with such information required thereon and thereby provide Schneider Electric with at least the name and email address of one individual person You authorize to use the Services and the Application comprised therein, it being understood that, depending upon the jurisdiction, such information You provided to create Your user account may be considered as Personal Information and shall in such case be treated as such by each of You and Schneider Electric in compliance with these Terms & Conditions and any applicable laws and regulations.

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

**2.3.** You may authorize one user to access Your user account and make use of the Services and the Application comprised therein for Your benefit and only for the purposes described in these Terms & Conditions. You shall be responsible to ensure these Terms & Conditions are made available in a legible manner to Your Authorized User before such Authorized User can log on to the Platform and make use of the Services and the Application comprised therein. You shall be fully responsible for the acts and omissions of Your Authorized User, including for all activities that are made through the use of Your user account, and such Authorized User's compliance with these Terms & Conditions. 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 User, any third-party, the Platform, the Services, the Application and/or Schneider Electric. Schneider Electric will have the right to rely upon any information received from any legal or individual person accessing and/or using Your user account and Schneider Electric will incur no liability arising out of such reliance.

**2.4.** Unless earlier termination by Schneider Electric of Your access to the Platform and thereby Your right to use the Services in accordance with these Terms & Conditions, Your user account shall remain active and Services shall be provided to You as long as the last applicable Services Period specified in the Order Confirmation is not expired and You pay the sums payable to Schneider Electric for the Services in accordance with these Terms & Conditions and the Order Confirmation. Your user account shall be automatically and immediately disabled upon expiration of the last applicable Service Period specified in the Order Confirmation, with the effect that You shall automatically and immediately have the obligation to cease any access to and use of the Services.

**2.5.** While not obligated to perform investigations, Schneider Electric may investigate violations of these Terms & Conditions or misuse of the Services 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 the Platform and/or Your use of the Services.

### **3. Right to use the Application**

Schneider Electric grants to the Customer a license right to use the Application as part of the Services subject to and in accordance with these Terms & Conditions.

Subject to Your continued compliance with all of the terms and conditions contained herein and Your full payment on the due date of the fees to acquire the right to access and use the Application as part of the Services when applicable under these Terms & Conditions, Schneider Electric grants to You a non-exclusive, non-transferable and limited license right to use the Application as part of the Services and for the time period during which the Services are available to You according to these Terms & Conditions, unless this license is earlier terminated in accordance with Section 13 below.

Any right to receive the Application under any tangible media or to download and install the Application on any device, is expressly excluded.

The Application may only be used as part of the Services for purposes of Your ordinary business by the particular one Authorized User, in the particular location(s), on the particular device(s) and/or on the particular system(s) for which You have acquired the right to access and use the Services in accordance with these Terms & Conditions, as such Authorized User, location(s), device(s) and/or system(s) are identified in these Terms & Conditions and, as the case may be, Schneider Electric's Order Confirmation.

The Application made available as part of the Services will be made available to You in object code (machine-readable) form only and under no circumstances is Schneider Electric obligated to disclose or make available the source code of the Application to You.

These Terms & Conditions describe and govern Your right to use the Application as part of the Services. It is expressly agreed that these Terms & Conditions and any Schneider Electric Order Confirmation will prevail over and supersede the terms and conditions contained in any purchase order or other document You may issue or submit in connection with Your use of the Application by You and such other terms and conditions are expressly rejected by Schneider Electric to the extent such other terms and conditions conflict with these Terms & Conditions.

#### **4. Restrictions on use of the Services**

**4.1.** Your use of the Services may be subject to certain restrictions set forth in these Terms & Conditions and other legal documents incorporated herein, which may include without limitation certain limitations on the scope of use, capacity, types and quantities of system resources, and/or duration of the Services. Your use of the Services in a manner inconsistent with such restrictions may adversely impact the performance of the Services, may result in additional charges to You and/or may result in suspension of the Services or termination of Your user account under the terms of these Terms & Conditions. You agree that You will comply with such restrictions or technical limitations of the Services.

You acknowledge that You shall solely bear the cost of any toll charges applicable to Your access to the Services through the use of internet or telephone.

If technological measures are designed to prevent unlicensed or illegal use of the Services, You agree that Schneider Electric may use those measures and You agree to comply with any requirements regarding such technological measures and that You will not nor will You permit others to circumvent such measures. Such measures do not constitute a defect in the Services nor do they entitle You to any warranty rights.

**4.2.** In using the Services, you agree:

- (i) not to reverse engineer, decompile, disassemble, modify, adapt or translate any part of the Services such as but not limited to the Application, or create derivative works based on any part of the Services such as but not limited to the Application; further, in case of errors, bugs or defects in any part of the Services such as but not limited to the Application, only Schneider Electric – to the exclusion of the Customer or any third-party not authorized by Schneider Electric shall have the right to provide Customer with any correction or work-around thereof;
- (ii) not to perform or disclose any benchmark or performance tests of the Services without Schneider Electric's prior express written consent;
- (iii) not to perform or disclose any security testing of the Services or associated infrastructure without Schneider Electric's prior express written consent, such as but not limited to network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing;
- (iv) not to transfer, license, sublicense, rent, lease, sell, lend, distribute, host, outsource, disclose, permit timesharing or service bureau use, assign, or otherwise commercially exploit or make available the Services or any part thereof including without limitation any materials or programs pertaining to or otherwise consisting in the Services, to any third-party without Schneider Electric's prior express written consent and such consent may be withheld in the sole discretion of Schneider Electric;
- (v) not to disrupt or interfere with the security of, or otherwise abuse, the Platform and/or the web site(s) and/or any online portals or associated infrastructure

proprietary to or authorized by Schneider Electric through which you are given access to the Services by Schneider Electric;

- (vi) not to disrupt or interfere with the access to the Platform and/or the provision by Schneider Electric of the Services to any other customer or user thereof;
- (vii) not to upload, post, or otherwise transmit any virus or other harmful, disruptive or destructive files onto the Platform and/or the web site(s) and/or any online portals or associated infrastructure proprietary to or authorized by Schneider Electric through which you are given access to the Services by Schneider Electric;
- (viii) not to use or attempt to use the data of any other user of the Services, or create or use a false identity on any of the Platform and/or the web site(s) and/or any online portals or associated infrastructure proprietary to or authorized by Schneider Electric through which You are given access to the Services by Schneider Electric;
- (ix) not to transmit through or onto the Platform and/or the web site(s) and/or any online portals or associated infrastructure proprietary to or authorized by Schneider Electric through which you are given access to the Services by Schneider Electric, any spam mail, chain letters, junk mail or any other type of unsolicited mass e-mail to people or entities who have not agreed to be part of such mailings;
- (x) not advertise or offer to sell any goods or services onto the Platform and/or the web site(s) and/or any online portals or associated infrastructure proprietary to or authorized by Schneider Electric through which you are given access to the Services by Schneider Electric;
- (xi) not to use the Platform and/or the web site(s) and/or any online portals or associated infrastructure proprietary to or authorized by Schneider Electric through which you are given access to the Services by Schneider Electric, to defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy or Intellectual Property Rights where applicable) of Schneider Electric or any third-party;
- (xii) not to use the Platform and/or the web site(s) and/or any online portals or associated infrastructure proprietary to or authorized by Schneider Electric through which you are given access to the Services by Schneider Electric, to publish, post, distribute or disseminate any information or material which is obscene, defamatory, indecent or unlawful; and
- (xiii) not to use the Platform and/or the web site(s) and/or any online portals or associated infrastructure proprietary to or authorized by Schneider Electric through which you are given access to the Services by Schneider Electric, to take any action which would cause Schneider Electric to be in violation of any law or regulation.

**4.3.** Schneider Electric may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) during the Services Period, including to reflect changes in technology, industry practices, and patterns of system use. Furthermore, Schneider Electric reserves the right to change, update, add or remove functionalities or features of the Services, and/or add or create new limits to the Services, from time to time. The Services Description is also subject to change in Schneider Electric's sole discretion. Where reasonably possible, Schneider Electric will give You reasonable notice prior to implementing such change, update, addition, removal or withdrawal.

## **5. Price and payment for the Services**

The Services shall be provided by Schneider Electric against payment by Customer of the fee amount(s) set forth on the landing page of the Platform giving access to the Services as such page and description may be updated from time to time by Schneider Electric. In case of any conflict between the description of the Services in Schedule A to these Terms & Conditions and the landing page of the Platform giving access to the Services, the latter shall prevail.

Any revision of said fee amount(s) shall be applied to Services provided to Customer under any Order of Services placed by Customer after the date of validity of such revision.

All fee amount(s) for the Services are exclusive of, and Customer shall be responsible for, the collection, remittance and payment of, all sales, value-added or other similar taxes, charges, levies, assessments and other fees of any kind imposed by tax, governmental or other authority in respect of the purchase, importation, receipt or use of the Services, except for taxes based on the income of Schneider Electric that shall remain respectively Schneider Electric's responsibility.

Payment shall be deemed to have been made when received in cleared funds by Schneider Electric on the bank account which details shall be provided on Schneider Electric's invoice to Customer. If any sum payable by Customer under any Order of Services is not received on the due date, Schneider Electric reserves the right to (i) terminate and/or suspend the provision of the Services in accordance with the Terms & Conditions of Use of the Services and/or (ii) charge interest to Customer on the unpaid amount at the highest legal interest rate then in force in Customer's jurisdiction until Schneider Electric receives full payment of the due sum.

Once placed, Customer's Order is non-cancellable and the sums paid are non-refundable, except as provided in these Terms & Conditions or otherwise expressly agreed in writing between Schneider Electric and the Customer.

If you have ordered or otherwise subscribed to the Services through an authorized Schneider Electric distributor or reseller or a certified Schneider Electric partner, then price and payment terms shall be in accordance with Your agreement with such Schneider Electric distributor or reseller or certified Schneider Electric partner.

## **6. Customer Data**

**6.1.** Customer retains all right, title, and interest in the Customer Data. Customer grants Schneider Electric a non-exclusive, perpetual, irrevocable, worldwide, free of charge, paid-up, royalty-free, transferable and sub-licensable license right to use, host, store, upload, import, collect, create, translate, copy, modify, distribute modifications of, perform, create and distribute derivative works of, and display Customer Data for the purpose of and in conjunction only with providing the Services to Customer and improving, modifying or testing the Services. The license granted in this Section 6.1. includes the right of Schneider Electric to sublicense to its Affiliates and any third-party subcontractors providing all or part of the Services on behalf of Schneider Electric, to perform any of the foregoing actions.

In case Customer's Clients Data are uploaded, collected, stored, created and/or modified on the Platform or in the Application by Customer acting as service provider to any Customer's Client, Customer shall be solely and fully responsible to obtain from such Customer's Client the necessary consents and authorizations to do so. Schneider Electric acknowledges that, unless otherwise agreed between Customer and Customer's Clients under their own responsibility, Customer's Clients Data are owned by the Customer's Client to which such Customer's Clients Data relates.

Customer represents that Customer has and will keep in effect during its use of the Services, all licenses and approvals necessary to grant the foregoing license rights, at no charge, to Schneider Electric, its Affiliates and subcontractors. Customer represents that Customer is not exceeding any specified entitlement or permitted use or violating applicable license agreements or applicable laws to grant the foregoing license rights. Customer agrees to indemnify and hold harmless Schneider Electric from any third-party claims and any costs and other amounts that Schneider Electric may incur or otherwise be subject to because of Customer's breach of this Section 6.1.

**6.2.** Customer is responsible for any Personal Information that is included in the Customer Data and Customer's Clients Data uploaded, created and/or modified by Customer's use of the Services.

The laws and regulations of some jurisdictions may require the consent of the individuals to which the Personal Information pertain prior to including their Personal Information in the Customer Data and Customer's Clients Data uploaded, created and/or modified by Customer, and require that such Personal Information be treated in compliance with such laws and regulations.

Customer 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 Customer Data and Customer's Clients Data uploaded, created and/or modified by Customer and before using such Personal Information in connection with the Services, including those consents and disclosures related to the collection, use, processing, transfer and disclosure of any Personal Information.

**6.3.** Customer acknowledges that Customer has reviewed the security features of the Services and has determined that they meet Customer's security needs including any specific requirement of security applicable in the field of activity of Customer or Customer's Clients for which Customer is acting as service provider. Customer is solely responsible for determining the requirements regarding security of Customer Data and Customer's Clients Data. If the security features, procedures and/or controls offered by Schneider Electric with respect to the Services do not meet the requirements determined by Customer regarding security of Customer Data and Customer's Clients Data, Customer should not use the Services. 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 Customer or Customer's Clients to access and use the Services, including without limitation security breaches resulting from hackers, unlawful entry or unauthorized access. Customer is solely responsible to ensure at its own costs any maintenance, testing, backup and support of Customer's Data and Customer's Clients Data that Customer may determine to be appropriate.

**6.4.** Customer may at any time during any Services Period extract from the Services all or part of its Customer Data and Customer's Clients Data; Customer shall perform extraction of its Customer Data and Customer's Clients Data under its own responsibility and costs but at no further charge from Schneider Electric to Customer. Extraction of its Customer Data and Customer's Clients Data by Customer shall not cause its user account to the Services to be deleted unless Section 6.5 applies. Customer's user account shall remain active and the Services shall be continued only with respect to the Customer Data and Customer's Clients Data that Customer shall not have extracted from the Services until the Service Period expires or is earlier terminated. Schneider Electric shall not bear any obligation to ensure that the extracted Customer Data and Customer's Clients Data are available to Customer under any specific format.

**6.5.** Customer may at any time during any Services Period make an express written request to Schneider Electric to disable Customer's user account to the Services which Schneider Electric shall do within thirty (30) calendar days from receipt of Customer's



request and at no charge to Customer. It shall be Customer's responsibility during the aforesaid thirty (30) calendar day period to perform extraction of its Customer Data and Customer's Clients Data under its own costs but at no further charge from Schneider Electric to Customer, and Schneider Electric shall not bear any obligation to ensure that the extracted Customer Data and Customer's Clients Data are available to Customer under any specific format. Upon expiration of the aforesaid thirty (30) calendar day period, Customer's user account shall be automatically and immediately disabled and the Services shall automatically and immediately be terminated. In consequence of the aforesaid Customer's express request, Schneider Electric shall not have any obligation to archive or return to Customer any Customer Data and Customer's Clients Data contained in the Services and shall not have any liability whatsoever for deleting Customer Data and Customer's Clients Data that would remain contained in the Services.

**6.6.** Schneider Electric shall not disclose Customer Data and Customer's Clients Data to any third-party without Customer's prior express consent, unless disclosure of Customer Data and Customer's Clients Data is the sole reasonably available manner for Schneider Electric to comply with any legal obligation applicable to Schneider Electric or any valid order by a court or other competent jurisdiction or governmental agency, to prevent fraud, abuse or security threat of the Services or enforce or defend Schneider Electric's rights under these Terms & Conditions.

## **7. Personal Information protection**

**7.1** Customer's Personal Information will be processed as described in privacy notices and policies, including Schneider Electric's Data Privacy & Cookie Policy on [www.schneider-electric.com](http://www.schneider-electric.com), made available to User by Schneider Electric.

**7.2.** Customer is responsible for any third-party Personal Information that Customer uploads, stores, creates, uses, shares, modifies, deletes or otherwise processes with the Application and/or the Services. Customer must comply with all applicable laws and regulations, obtain all required consents and make all required notifications in this respect.

## **8. Information from Your use of the Services**

When You make use of the Platform, the Services and/or the Application, usage-related data (such as but not limited to data on the number of logs to the Platform; the average duration during which You use the Services each time You log; the operating system You use on your device; device information on Schneider Electric's products, services and solutions with which You communicate or otherwise interact through Your use of the Services) may be automatically collected and/or generated by technical means. You acknowledge and agree that, without prejudice to confidentiality on Your Customer Data, applicable regulations and the provisions in these Terms & Conditions on Personal Information, Schneider Electric may collect from Your use of the Platform, the Services and/or the Application and process any such information related to Your use thereof for Schneider Electric's internal business purposes including without limitation ensuring security and operations management of the Platform, the Services and/or the Application, assessing the attractiveness of the Platform and the Services and creating statistical analyses of Your usage thereof so as to improve their performance and content 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 Services.

## **9. Intellectual Property Rights**

All right, title and interest in and to the Platform, the Services, the Application comprised therein, any and all hardware, software and other items used by Schneider Electric to provide the Services as well as any technology or know-how embodied or otherwise implemented in the Platform, the Services, the Application and/or such other items, and all Intellectual Property Rights pertaining thereto, are and shall remain the full and sole property of Schneider Electric and/or its licensors. No title to or ownership of any Intellectual Property Rights related to the Platform, the Application or the Services is transferred or shall be deemed to be conveyed to You or any third-party pursuant to these Terms & Conditions or under any business transaction performed between Schneider Electric and You in pursuance of Your Order of Services and Order Confirmation by Schneider Electric. All rights not explicitly granted to You under these Terms & Conditions regarding the Platform, the Services and the Application are reserved by Schneider Electric.

All trademarks on the Platform, the Services, the Application comprised therein and any and all hardware, software and other items used by Schneider Electric to provide the Services, are registered trademarks of Schneider Electric and/or its Affiliates or its licensors, or are otherwise protected under any applicable Intellectual Property Rights, and may not be copied, imitated, or used, in whole or in part, without Schneider Electric's prior written permission. The same shall apply to all page headers, custom graphics, button icons and scripts displayed or otherwise available on the Platform, the Services, the Application comprised therein and/or any and all hardware, software and other items used by Schneider Electric to provide the Services. No transfer or grant of rights under any such trademark, page headers, custom graphics, button icons and scripts or any related Intellectual Property Rights is made or implied by any provision of these Terms & Conditions, Your access to the Platform or Your use of the Services or the Application.

## **10. Warranties and Disclaimers of warranties**

**10.1.** SCHNEIDER ELECTRIC AGREES TO PROVIDE THE SERVICES TO THE CUSTOMER USING A COMMERCIALY REASONABLE LEVEL OF SKILL AND CARE, AND IN ACCORDANCE WITH THE THEN-CURRENT APPLICABLE SERVICES DESCRIPTION AND SCHNEIDER ELECTRIC ORDER CONFIRMATION.

**10.2.** THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SCHNEIDER ELECTRIC'S ENTIRE LIABILITY FOR A BREACH OF THIS WARRANTY SHALL BE FOR SCHNEIDER ELECTRIC TO USE COMMERCIALY REASONABLE EFFORTS TO MODIFY THE SERVICES TO SUBSTANTIALLY ACHIEVE THE FUNCTIONALITY DESCRIBED IN THE THEN-CURRENT APPLICABLE SERVICES DESCRIPTION, INCLUDING, AS RELEVANT, BY PROVIDING A FIX OR WORK AROUND TO DEFECTS OR NON-COMPLIANCE OF THE APPLICATION, AND IF SCHNEIDER ELECTRIC IS UNABLE TO RESTORE SUCH FUNCTIONALITY, THE CUSTOMER SHALL BE ENTITLED TO CANCEL ITS APPLICABLE ORDER(S) OF SERVICES AND RECEIVE A PRO-RATED REFUND OF THE AMOUNTS, IF ANY, PAID IN ADVANCE BY THE CUSTOMER TO SCHNEIDER ELECTRIC IN ACCORDANCE WITH AND UNDER SAID APPLICABLE ORDER(S) FOR THE CORRESPONDING UNUSED PORTION OF THE SERVICES PERIOD.

NOTWITHSTANDING THE FOREGOING, SCHNEIDER ELECTRIC DOES NOT WARRANT OR PROMISE THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS, OR THAT ALL FAILURES OR DEFECTS OF THE SERVICES WILL BE CORRECTED.

THE CUSTOMER UNDERSTANDS THAT THE SERVICES MAY BE INTERRUPTED OR COMPLETELY UNAVAILABLE FOR PERIODS OF TIME DUE TO CERTAIN CAUSES WHICH MAY INCLUDE, WITHOUT LIMITATION, SCHEDULED OR UNSCHEDULED MAINTENANCE WORK. ONLY SCHEDULED MAINTENANCE WORKS WILL GIVE RISE TO PRIOR NOTIFICATION BY SCHNEIDER ELECTRIC.

ALTHOUGH SCHNEIDER ELECTRIC SHALL MAKE EVERY REASONABLE EFFORT TO KEEP THE PLATFORM AND THE SERVICES FREE FROM VIRUSES OR OTHER CONTAMINATION FEATURES, DUE TO THE INHERENT RISKS OF TELECOMMUNICATION NETWORKS AND THE INTERNET, SCHNEIDER ELECTRIC CANNOT WARRANT THAT THE PLATFORM AND THE SERVICES SHALL BE FREE FROM VIRUSES OR OTHER CONTAMINATION FEATURES OR PROTECTED AGAINST ALL POSSIBLE SECURITY THREATS. SCHNEIDER ELECTRIC SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGES OR LOSSES RESULTING FROM VIRUSES, MALICIOUS CODES OR CORRUPTION OF DATA THROUGH ACCESS TO THE PLATFORM AND/OR USE OF THE SERVICES.

THE CUSTOMER ACKNOWLEDGES THAT ACCESS TO THE PLATFORM AND/OR USE OF THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS AND POTENTIAL FAILURE DUE TO THE INHERENT RISKS OF TELECOMMUNICATION NETWORKS AND THE INTERNET. SCHNEIDER ELECTRIC SHALL NOT BE RESPONSIBLE FOR ANY DELAY OR FAILURE IN THE SERVICES OR ANY LOSS OR DAMAGE RESULTING FROM THE AFORESAID LIMITATIONS, DELAYS AND POTENTIAL FAILURES.

**10.3.** WITHOUT PREJUDICE TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED AND TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW OR OTHERWISE, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS AND FITNESS OR ACCURACY FOR A PARTICULAR PURPOSE, ARE EXCLUDED REGARDING THE SERVICES.

## **11. Limitations of liability**

**11.1.** IN NO EVENT SHALL SCHNEIDER ELECTRIC BE LIABLE TO THE CUSTOMER 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 CUSTOMER'S ACCESS TO OR INABILITY TO ACCESS THE PLATFORM OR THE CUSTOMER'S USE OR INABILITY TO USE THE SERVICES OR ANY MATERIAL, DOCUMENT OR INFORMATION MADE AVAILABLE OR OTHERWISE PROVIDED TO YOU FROM THE CUSTOMER'S USE OF THE SERVICES, WHETHER BASED ON CONTRACT, TORT, WARRANTY OR OTHER LEGAL GROUND AND EVEN IF SCHNEIDER ELECTRIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11.2.** EXCEPT IN CASE OF (i) SCHNEIDER ELECTRIC'S FRAUD OR FRAUDULENT MISREPRESENTATION, (ii) SCHNEIDER ELECTRIC'S WILFUL MISCONDUCT OR GROSS NEGLIGENCE, OR (iii) DEATH OR BODILY INJURY TO AN INDIVIDUAL PERSON WHERE NO LIMITATION OF LIABILITY SHALL APPLY, SCHNEIDER ELECTRIC'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, THE PLATFORM, THE SERVICES OR ANY COMPONENT THEREOF, SHALL BE LIMITED TO AND SHALL IN NO EVENT EXCEED (I) THE TOTAL AMOUNT PAID BY THE CUSTOMER FOR THE SERVICES UNDER ANY APPLICABLE ORDER OF SERVICES WITH RESPECT TO WHICH LIABILITY IS CLAIMED OR (II) TWENTY FIVE DOLLARS (\$25.00 USD) IN THE CASE WHERE THE SERVICES ARE MADE AVAILABLE TO YOU FREE OF CHARGE.

**11.3.** SCHNEIDER ELECTRIC SHALL NOT BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY DAMAGE, LOSS, PENALTY, SURCHARGES, INTEREST OR MONETARY LIABILITIES ARISING OUT OF OR IN CONNECTION WITH THE CUSTOMER'S ACCESS TO OR INABILITY TO ACCESS THE PLATFORM OR THE CUSTOMER'S USE OR INABILITY TO USE THE SERVICES OR ANY MATERIAL, DOCUMENT OR INFORMATION MADE AVAILABLE OR OTHERWISE PROVIDED TO THE CUSTOMER FROM ITS USE OF THE SERVICES, THAT IS DUE TO (i) THE SUPPLY BY THE CUSTOMER OR ANY THIRD PARTY NOT BEING UNDER CONTROL OF SCHNEIDER ELECTRIC OF INCORRECT OR INCOMPLETE INFORMATION, (ii) THE FAILURE BY THE CUSTOMER OR ANY THIRD PARTY NOT BEING UNDER CONTROL OF SCHNEIDER ELECTRIC TO SUPPLY ANY REQUISITE INFORMATION REQUESTED BY SCHNEIDER ELECTRIC, (iii) ANY ACT, OMISSION, NON-PERFORMANCE OR DELAY ATTRIBUTABLE TO OR CAUSED BY THE CUSTOMER, ITS SUBCONTRACTORS, EMPLOYEES OR ANY OTHER THIRD PARTY BEING UNDER THE CUSTOMER'S CONTROL, OR (v) ANY MATTER OUTSIDE CONTROL OF SCHNEIDER ELECTRIC.

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

**11.5** SCHNEIDER ELECTRIC SHALL NOT BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR THE USE BY THE CUSTOMER OR ANY THIRD PARTY OF ANY CUSTOMER DATA UPLOADED TO OR DOWNLOADED FROM THE PLATFORM OR THE APPLICATION OR CREATED OR MODIFIED IN CONNECTION WITH THE CUSTOMER'S USE OF THE SERVICES, NOR FOR THE CONSEQUENCES OF ANY DECISION, ACT OR OMISSION, SUCH AS BUT NOT LIMITED TO ANY ELECTRICAL ASSEMBLY, INSTALLATION OR MAINTENANCE, THAT THE CUSTOMER OR ANY THIRD PARTY MAY MAKE ON BASIS OF ANY CUSTOMER DATA.

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

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

## **12. Indemnification**

**12.1** You shall defend, indemnify, and hold harmless Schneider Electric, its Affiliates and each of their respective officers, directors, employees, licensors, contractors, successors and assigns from and against any and all claims, actions, suits, demands, proceedings, judgments, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorneys' fees and court costs) arising from or related to (i) any Customer Data or Customer's Clients Data; (ii) any breach by You of any of Your obligations under these Terms & Conditions such as but not limited to any unauthorized access to the Platform and/or any unauthorized use of the Services; (iii) any misuse by You of the Platform and/or the Services such as but not limited to Your use of the Platform and/or the Services in a manner contrary to the Services Description or any other instruction given to You by Schneider Electric, (iv) any failure by You to comply with any applicable law and/or regulation including without limitation any failure of You to obtain all legally required consents to upload and/or otherwise use Customer Data or Customer's Clients Data in

connection with Your use of the Services, (v) any use of the Services in combination with any equipment, software or solution not supplied, not specified or otherwise not approved by Schneider Electric; (vi) any modification or alteration of the Platform and/or the Services by anyone other than Schneider Electric without the written approval of Schneider Electric; and/or (vii) any claim that any information (including but not limited to Customer Data or Customer's Clients Data), designs, specifications, instructions, software, service, data, hardware or material furnished by Customer or otherwise used or uploaded by Customer in connection with the Services infringes or misappropriates the Intellectual Property Rights of any third-party.

**12.2** Subject to the limitations set forth in Section 10, Schneider Electric will defend and indemnify You against a third-party claim that the Platform and/or the Services infringe any Intellectual Property Right 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") hereinafter the "IP Claim", provided that (i) You notify Schneider Electric of the IP Claim in writing immediately upon Your awareness of such IP Claim; (ii) You give Schneider Electric sole authority and control of the defense of such IP Claim and all related settlement negotiations; and (iii) You provide the assistance, information and authority necessary in order for Schneider Electric to handle the defense and settlement of such IP Claim and perform its obligations under this Section 12.2. If the the Platform and/or the Services is held or believed by Schneider Electric to constitute an infringement or misappropriation as per this Section 12.2, then Schneider Electric will have the option, at its expense, to: (i) obtain for You the right to continue using the Platform and/or as applicable, the Services; (ii) replace or modify the Platform and/or, as applicable, the Services to make it non-infringing; or (iii) if in Schneider Electric's sole discretion, it is not economically or commercially reasonable to perform either (i) or (ii) above then Schneider Electric may terminate Your right to access the Platform and to use the Services and refund to You any amount for the Services You would have pre-paid to Schneider Electric on a pro-rated basis for the corresponding unused portion of the Services Period. This Section 12.2. states Your sole and exclusive remedy against Schneider Electric and Schneider Electric's sole liability for any IP Claim under this Section 12.2.

**12.3.** To the extent permitted by law, Schneider Electric will have no liability to the Customer under Section 12.2. of these Terms & Conditions for any IP Claim that arises out of: (i) any Customer Data or Customer's Clients Data; (ii) any breach by You of any of Your obligations under these Terms & Conditions such as but not limited to any unauthorized access to the Platform and/or any unauthorized use of the Services; (iii) any misuse by You of the Platform and/or the Services such as but not limited to Your use of the Platform and/or the Services in a manner contrary to the Services Description or any other instruction given to You by Schneider Electric; (iv) any failure by You to comply with any applicable law and/or regulation including without limitation any failure of You to obtain all legally required consents to upload and/or otherwise use the Customer Data or Customer's Clients Data in connection with Your use of the Services; (v) any use of the Services in combination with any equipment, software or solution not supplied, specified or otherwise approved by Schneider Electric; (vi) any modification or alteration of the Platform and/or the Services by anyone other than Schneider Electric without the written approval of Schneider Electric; (vii) the access to the Platform and/or the use of the Services by the Customer after notice by Schneider Electric or any appropriate authority to the Customer of the alleged or actual infringement or misappropriation of any third-party's Intellectual Property Right by the Platform and/or the Services, or (viii) Your failure to use corrections or enhancements made available by Schneider Electric.

### **13. Third-party websites and contents**

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

### **14. Term, suspension and termination**

**14.1.** The legal agreement formed with Schneider Electric by Customer's acceptance of these Terms & Conditions is valid for the duration of the applicable Services Period specified in the Order of Services as accepted by Schneider Electric Order Confirmation, including any renewals thereof, and shall expire upon expiration date of the Services Period.

**14.2.** Without prejudice to any other rights and remedies it may have under these Terms & Conditions, at law or otherwise, Schneider Electric reserves the right to suspend the Services (in whole or in part) at any time with immediate effect by written notice to the Customer if:

- (i) in Schneider Electric's reasonable judgment, the Services or any component thereof are about to suffer a threat to security or functionality; or
- (ii) Schneider Electric has requested but has not received from the Customer any information required to enable Schneider Electric to perform the Services; or
- (iii) if any sum payable by Customer to Schneider Electric under any Order of Services is in arrears for more than thirty (30) calendar days after the due date; or
- (iv) the Customer violates the terms of these Terms & Conditions and/or any documents expressly incorporated herein; or
- (v) the Customer has otherwise breached or failed to comply with any of its obligations under any Order of Services and has not cured such breach or failure within a period of thirty (30) calendar days from the date of receipt of a written notice from Schneider Electric specifying the breach or failure and requiring its remedy.

In any such event of suspension of the Services, the Customer shall remain liable to pay the sums payable to Schneider Electric under the suspended Services and any resumption of the suspended Services shall be conditional upon the cause giving rise to the suspension of the Services being remedied and the Customer complying with such requirements as Schneider Electric may reasonably specify in its suspension notice to Customer.

Further, if the Customer shall fail to cure the cause giving rise to the suspension or to effect the remedial action required by Schneider Electric within such period of time as Schneider Electric shall specify in its suspension notice, Schneider Electric may, in addition to any other rights and remedies that Schneider Electric may have, terminate the Services permanently without liability or refund to Customer of any kind; termination of the Services by Schneider Electric shall be achieved by disabling Customer's user account or any other technical means Schneider Electric shall reasonable determine to disable Customer's access to the Platform.

**14.3.** At any time before the effective date of expiration or termination of Services in accordance with Sections 14.1 and 14.2, it shall be Customer's responsibility to perform extraction of its Customer Data and Customer's Clients Data under its own costs but at no

further charge from Schneider Electric to Customer, and Schneider Electric shall not bear any obligation to ensure that the extracted Customer Data and Customer's Clients Data are available to Customer under any specific format or to archive or return to Customer any Customer Data and Customer's Clients Data contained in the Services. Customer agrees that, upon the effective date of expiration or termination of Services, Schneider Electric shall be fully and automatically entitled to delete any Customer Data and Customer's Clients Data which would then remain in the Services without any additional obligation on Schneider Electric to continue to hold, archive, extract or return any such remaining Customer Data and Customer's Clients Data and without any liability whatsoever for deletion of the same pursuant to these Terms & Conditions.

**14.4.** Expiration of the Service Period or termination of the Services shall automatically and immediately cause (i) termination of Customer's right to access and use the Services, and (ii) termination of the legal agreement which was formed with Schneider Electric by Customer's acceptance of these Terms & Conditions. Without prejudice to the foregoing, expiration or termination of the Services shall not affect any rights or remedies which may have accrued to Customer or Schneider Electric under these Terms & Conditions, at law or, if applicable, in equity, with respect to the Services provided before said expiration termination.

**14.5.** Without prejudice to Sections 14.3 and 14.4, Schneider Electric may retain one archival copy of whole or part of Customer Data and Customer's Clients Data upon the effective date of expiration or termination of Services, in the case such retention of Customer Data and Customer's Clients Data is the sole reasonably available manner for Schneider Electric either (i) to comply with any legal obligation applicable to Schneider Electric or any valid order by a court or other competent jurisdiction or governmental agency, (ii) to prevent fraud, abuse or security threat of the Services or (iii) to enforce or defend Schneider Electric's rights under these Terms & Conditions.

**14.6.** Provisions that survive expiration of the Service Period or termination of the Services are those relating to limitation of liability, disclaimers, indemnity, payment and others which by their nature are intended to survive.

## **15. International usage of the Services**

**15.1.** You agree that You will comply with all applicable local (on both federal and state level, 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 access to the Platform and Your use of the Services and/or any material, document or information made available or otherwise provided to You from Your use of the Services.

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 Services or any service based or otherwise implementing Your right to access and use the Services and for performing any declaration or obtaining any required authorization in relation therewith. You agree not to export the Services or any service based or otherwise implementing Your right to access and use the Services 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 to the export of the Services or any service based or otherwise implementing Your right to access and use the Services, You shall indemnify and hold 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) against Schneider Electric as the result of any such violation by You or Your representative(s).

**15.2.** Although Schneider Electric makes every reasonable effort to enable worldwide access to its website(s) and the Platform and Services, Schneider Electric shall bear no liability and makes no representation, nor warranties that all features of the Platform and the Services will be accessible, available or appropriate for all current or potential customers (including You) in all geographic locations in the world.

**15.3.** Should you access to the Platform and use the Services by your connection to the website of any Schneider Electric Affiliate in any country, Schneider Electric makes no representation, nor provides any warranty nor shall bear any liability, that all features of the Platform and the Services are accessible, available or appropriate to all current or potential customers (including You) in any other country.

## **16. Miscellaneous**

**16.1.** Your rights or obligations under these Terms & Conditions 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 rights granted to You under these Terms & Conditions are granted on an *intuitu personae* basis meaning in consideration of Your person.

**16.2.** Schneider Electric is an independent contractor. Each of Schneider Electric and the Customer agrees that no partnership, joint venture, or agency relationship exists or is created by these Terms & Conditions between Schneider Electric and the Customer. Neither Schneider Electric nor the Customer 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.

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

**16.4.** These Terms & Conditions constitute the entire agreement between Schneider Electric and the Customer in relation to the Customer's right to access to and use the Services and the Application made available as part of the Services, and replaces and supersedes any previous agreement or understanding, whether oral, electronic or written, in relation with the same subject matter. The Customer agrees to waive to apply any of its own terms of purchase of services or equivalent documents to the subject matter of these Terms & Conditions.

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

**16.6.** All notices sent pursuant to these Terms & Conditions shall be in writing. Notices of a general purpose related to the Platform and/or the Services by Schneider Electric to all Customers shall be given by means of a general information posted on the Platform. 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 provided by You to create Your user account 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



You 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 and shall include the words: "Attention Schneider Electric Legal Department."

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

**16.8.** Headings in these Terms & Conditions are just for ease of reference and will not affect its interpretation.

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

**16.10.** Sub-sections 2.4 and 2.5 of Section 2 "Access to and termination of the Services", Section 9 « Intellectual Property Rights », Section 10 « Warranties and disclaimers of warranties », Section 11 « Limitation of liability », Section 12 "Indemnification", Section 13 « Third-party websites and contents », Section 15 "International usage of the Services" and Section 17 "Applicable law and attribution of jurisdiction" of these Terms & Conditions shall survive termination of these Terms & Conditions or expiration of Your right to use the Services granted to You hereunder. Furthermore, provisions that by their nature are intended to survive termination or expiration of these Terms & Conditions shall survive.

**16.11.** Schneider Electric reserves the right, at its sole discretion, to amend, add or remove any provision to or from these Terms & Conditions at any time. Any such amendment, addition or removal to these Terms & Conditions will be posted by Schneider Electric on the Platform. It is the Customer's responsibility to check these Terms & Conditions prior to each use of the Services. The Customer's continued use of the Services after any amendment, addition or removal to these Terms & Conditions is posted on the Platform by Schneider Electric, shall be deemed as the Customer's acceptance and agreement to the changed Terms & Conditions. Changes to these Terms & Conditions shall not apply with retroactive effect.

**16.12.** 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 & Conditions. 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 Application, the Platform and the Services complies with these Terms & Conditions.

Schneider Electric may (upon reasonable written notice) inspect Your use of the Platform and the Services during Your normal business hours to ensure Your compliance with these Terms & Conditions. If the results of any such review or inspection indicate Your unlicensed or non-compliant use of the Application, the Platform or the Services 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 Application, the Platform and/or as applicable the Services or such amounts of fees remaining due to Schneider Electric and (ii) reimburse Schneider Electric for the cost of such review or inspection.

## **17. Applicable law and attribution of jurisdiction**

**17.1** These Terms & Conditions shall be governed by the laws of the state of Massachusetts (USA), 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 & Conditions.

**17.2** All disputes arising out of or relating to these Terms & Conditions or Your access or use of the Application or Services shall be submitted to the American Arbitration Association and shall be finally settled in accordance with its Commercial Arbitration Rules by one arbitrator appointed in accordance with said Rules. The arbitration shall be conducted in the English language in the city of Boston in the state of Massachusetts (USA). Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS & CONDITIONS OR THE COMMERCIAL ARBITRATION RULES, 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 THESE TERMS & CONDITIONS, 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 17.1 AND FOLLOW THE TERMS OF THESE TERMS & CONDITIONS. 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.

**17.3** YOU AND SCHNEIDER ELECTRIC AGREE THAT ALL CLAIMS AGAINST EACH OTHER ARISING OUT OF OR RELATING TO THESE TERMS & CONDITIONS OR YOUR ACCESS OR USE OF THE APPLICATION OR SERVICES WILL BE ON AN INDIVIDUAL BASIS. TO THAT END, YOU AND SCHNEIDER ELECTRIC HEREBY WAIVE THE RIGHT TO COMMENCE, TO BECOME A PARTY TO, OR TO REMAIN A PARTICIPANT IN, ANY GROUP, REPRESENTATIVE, CLASS, COLLECTIVE, OR HYBRID CLASS/COLLECTIVE ACTION IN ANY COURT, ARBITRATION PROCEEDING, OR ANY OTHER FORUM, AGAINST THE OTHER. THE PARTIES AGREE THAT ANY CLAIM BY OR AGAINST YOU OR SCHNEIDER ELECTRIC SHALL BE HEARD IN ARBITRATION WITHOUT JOINDER OF PARTIES OR CONSOLIDATION OF SUCH CLAIM WITH ANY OTHER PERSON OR ENTITY'S CLAIM, EXCEPT AS OTHERWISE AGREED TO IN WRITING BY YOU AND SCHNEIDER ELECTRIC.

**17.4** The Customer acknowledges and accepts that Schneider Electric will be irreparably damaged (and damages at law may be an inadequate remedy) if Customer breaches any provision of these Terms & Conditions and such provision is not specifically enforced. Therefore, in the event of a breach or threatened breach by the Customer of these Terms & Conditions, 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, and/or (b) a decree for specific performance of the applicable provision of these Terms & Conditions, to the extent permitted by applicable law where Schneider Electric has its registered office or principal place of business and/or, as relevant in the context, where Customer will use the Services, on either federal or state level when applicable. © 2021 Schneider Electric. All rights reserved.

# SCHEDULE A

## EcoStruxure IT Advisor CFD

THIS SCHEDULE A IS INCORPORATED IN AND SUBJECT TO THE TERMS AND CONDITIONS TO WHICH IT IS APPENDED. ALL CONDITIONS AND RESTRICTIONS CONTAINED IN THIS SCHEDULE A ARE IN ADDITION TO AND NOT IN LIEU OF THE PROVISIONS SET FORTH IN THE TERMS AND CONDITIONS.

UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE TERMS AND CONDITIONS.

### 1. Services Description and Service Level

EcoStruxure IT Advisor CFD is a web-accessed tool for data-center design. It uses Computational Fluid Dynamics technology to predict airflow patterns and thermal performance inside a data center or IT space.

The Services comprise:

- the access to the web-based Platform;
- the access to the Application; and,
- the on-demand services as defined below.

Any constraints or requirements concerning the type of environment or applications within or for which the Platform can be accessed or the Services can be used, such as for instance the type of internet browser, are defined on the landing page of the Platform giving access to the Services.

The Services have no facilities for the long-term storage of customer data. Any such data must be downloaded/uploaded to the Services by the customer for use. Long-term storage of data is the responsibility of the customer. However, Schneider Electric reserves the right to store customer data for short periods of time associated with active use of the Services in order to provide fast and reliable Services.

<b>ON-DEMAND SERVICES</b>	<b>DESCRIPTION</b>
EcoStruxure IT Advisor CFD	Single-user browser-based access to EcoStruxure IT Advisor CFD

## SERVICE LEVEL

If Schneider Electric does not meet the Service Level Uptime Commitment then, subject to Customer's compliance with Section III below, Customer will receive a credit towards the cost of future Services as set forth below (the "Service Credit").

### **I. Additional Definitions**

- a. "Available Minutes" means the total number of minutes during a calendar month.
- b. "Downtime" means the total number of minutes during a calendar month that the Services are unavailable to Customer when such unavailability is solely caused by Services errors or other factors within Schneider Electric's reasonable control. Downtime does not include Scheduled Downtime (defined below), Emergency Downtime (defined below), network outages, infrastructure outages, unavailability caused by third party or Customer's hardware or software or unavailability caused by the acts or omissions of Customer or its employees, subcontractors or agents (collectively, "General Unavailability"). For purposes of calculating Downtime, any and all General Unavailability will not be counted.
- c. "Emergency Downtime" means those times when Schneider Electric or a third party becomes aware of a security or other vulnerability that Schneider Electric deems to require immediate remediation and, as a result, the Services are temporarily made unavailable in order for Schneider Electric to remediate the security or other vulnerability.
- d. "Scheduled Downtime" means the period of time when the Services are unavailable because of network, hardware or Services maintenance or upgrades. Schneider Electric typically gives customers advanced notice of Scheduled Downtime at the website located at:

<https://community.exchange.se.com/t5/EcoStruxure-IT-Advisor-CFD/bd-p/ecostruxure-it-advisor-cfdforum-board>

- e. "Services" means the EcoStruxure IT Advisor CFD on-demand services.
- f. "Uptime" means the time period during a calendar month in which the Services are available for Customer's use. In order to determine if Schneider Electric met the Service Level Uptime Commitment for a calendar month, the Uptime percentage will be calculated as follows:

$(\text{Available Minutes} - \text{Downtime}) / \text{Available Minutes} * 100$

### **II. Service Credit**

The following Service Credits are Customer's sole and exclusive remedy if Schneider Electric fails to meet the Service Level Uptime Commitment:

If the calendar month Uptime percentage is less than 99.5% then, subject to Customer's compliance with Section 3 below, Customer will receive a one-time credit

of 50% off of a future Customer monthly bill. 50% is the maximum available Service Credit for the failure to meet the Service Level Uptime Commitment for any given calendar month.

### **III. Customer Obligations**

In order to receive a Service Credit, Customer must notify Schneider Electric via email at the following email address within thirty (30) days of the end of the calendar month in which Schneider Electric failed to meet the Service Level Uptime Commitment. The notification must describe such failure in sufficient detail and include dates and times of Downtime in order for Schneider Electric to confirm such failure. If Customer does not send timely and proper notice as set forth above then Customer waives its right to receive the Service Credit for the calendar month in which Schneider Electric failed to meet the Service Level Uptime Commitment.

Schneider Electric email address for notification: [CFD\\_support@se.com](mailto:CFD_support@se.com)

Customer is authorized by Schneider Electric to use the Services for the purpose of performing its own services for its customers.

**Exclusions:** the following are excluded from the Services and shall remain the sole responsibility of the Customer:

- any product and/or equipment installed on the Customer's site(s); and,
- any infrastructure and/or communication devices used by the Customer to access and use the Services.

## **2. Services Period**

The Services shall be provided by Schneider Electric to Customer during the period defined in the applicable Order of Services placed by Customer and accepted by Schneider Electric Order Confirmation, or if no such timeframe is specified in said Order, the Services Period shall be a twelve (12) months period running from the date of Schneider Electric Order Confirmation of said Order of Services.

Upon expiry of its Services Period, the Services shall automatically renew for successive Service Periods of twelve (12) months each, unless Customer explicitly cancels Services.

If you have ordered or otherwise subscribed to the Services through an authorized Schneider Electric distributor or reseller or a certified Schneider Electric partner, then the Services Period shall be in accordance with Your agreement with such Schneider Electric distributor or reseller or certified Schneider Electric partner.

**3. Service Fees**

<b>Services</b>	<b>Type of Service Fee: subscription fee / one-shot fee / Other remuneration</b>	<b>Amount of Service Fee</b>
EcoStruxure IT Advisor CFD	Annual subscription with monthly billing.	As indicated on Schneider Electric Exchange portal.
	If you have ordered or otherwise subscribed to the Services through an authorized Schneider Electric distributor or reseller or a certified Schneider Electric partner, then the Service Fee shall be in accordance with your agreement with such Schneider Electric distributor or reseller or certified Schneider Electric partner.	