

## TERMS AND CONDITIONS OF SERVICE

These Terms of Service (the "Terms") describe the terms and conditions under which (as applicable) the White-Rodgers or Residential Solutions divisions of Emerson Electric Co. or Verdant Environmental Technologies, Inc. or any of their respective affiliates, each individually not jointly, ("Emerson") will provide you ("you" or "your" or "Customer" or "Additional User"), use of Emerson's products and equipment, including Sensi smart thermostats, Sensi Predict and Sensi Manager (the "Product(s)"), and the related services, systems, and software, including mobile applications, web applications and web portals (collectively, the "Services") for the location in which the Product is installed (the "Premises"). "Additional User" shall mean any agent, employee, contractor, assignee, or user, that uses the Services to access, use, and/or control a Product. Whether or not specifically stated, "you" or "your" within these Terms shall at all times include you and your Additional Users. The terms and conditions in the "GENERAL TERMS AND CONDITIONS" section below are applicable to all Services unless otherwise indicated. Additional terms and conditions applicable to any physical equipment used in connection with the Services are included in these Terms in the "Maintenance And Ownership of Equipment" section. If purchasing goods and/or products, the current Verdant Terms & Conditions of Sale ("Terms of Sale"), which are incorporated by this reference, shall also apply, in the event of any conflict between these Terms and Conditions of Service and the Terms of Sale, these Terms and Conditions of Service shall control.

Use of Emerson's mobile application is governed by the applicable End User License Agreement ("EULA"), available at <https://sensi.emerson.com/en-us/legal>. For additional terms and conditions related to Sensi Comfort Monitoring, utility and smart energy programs, and any other additional paid or unpaid service offerings you may choose to sign up for (the "Service Subscriptions") additional terms may be found within the specific portal, agreement, or application of a Sensi Service Subscription, such as management of multiple devices through a portal.

**THESE TERMS CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. IT INCLUDES: VARIOUS LIMITATIONS ON AND EXCLUSIONS OF EMERSON'S LIABILITY TO YOU (SEE SECTIONS 7 AND 8); YOUR INDEMNITY OF EMERSON (SEE SECTION 9); AND BINDING DISPUTE RESOLUTION PROVISIONS THAT GOVERN HOW DISPUTES WILL BE RESOLVED VIA ARBITRATION AND WAIVE YOUR RIGHT TO CLASS ACTIONS (SEE SECTION 10)**

### GENERAL TERMS AND CONDITIONS

**1. ACCEPTANCE OF THESE TERMS:** By using the Products or Services, you are agreeing to and accepting all the terms and conditions herein, as well as the terms and conditions in the EULA for use of the mobile application and the Sensi Privacy Statement, available at <https://sensi.emerson.com/en-us/legal/sensi-privacy-policy>, each of which are incorporated in these Terms by this reference. **IF YOU ARE AGREEING TO THESE TERMS ON BEHALF OF AN ADDITIONAL USER, A COMPANY, OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE NECESSARY AUTHORITY TO BIND THAT ADDITIONAL USER, ENTITY, AND ITS AFFILIATES TO THESE TERMS IN WHICH CASE THE TERMS "YOU" OR "YOUR" OR "CUSTOMER" IN THESE TERMS WILL REFER TO THAT INDIVIDUAL, ENTITY, AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH ANY PART OF THESE TERMS, YOU MUST NOT ACCEPT THESE TERMS AND MAY NOT USE THE PRODUCTS OR SERVICES. THESE TERMS CONSTITUTE A BINDING AGREEMENT BETWEEN YOU AND EMERSON.**

**2. CHANGES TO SERVICES:** Basic Sensi Services are currently provided at no cost; however, a monthly service fee may apply for additional capabilities. Subject to applicable law, Emerson may change the Services, prices, fees, and/or the terms and conditions of these Terms in the future. Emerson also may rearrange, delete, add to or otherwise change features or offerings contained in the Services. Emerson may change these Terms without notice unless otherwise required by law. When required by law, Emerson will give you thirty (30) days prior notice of any material adverse impact to the Services under these Terms. If you find the change unacceptable, you have the right to cancel your Service(s) by providing Emerson with notice that you terminate your Services and disconnecting your Sensi Product. However, if you continue to access the Product or receive Service(s) after the changes take effect or the ends of the thirty (30) day notice period (the "Effective Date"), Emerson will consider that you have accepted the changes. Emerson may provide such notice, as described in section 15 of these Terms ("Notice Method"), using the email address you have provided, using the Sensi Portal, or other communication permitted under applicable law. You may not modify this Agreement by making any typed, handwritten, or any other changes to it for any purpose.

**3. PAYMENTS AND BILLING:** You will be billed or invoiced when you sign up for certain Services and on a thirty (30) day incremental basis thereafter or annual basis until the termination of the Services in accordance with these Terms. Any additional Services provided by Emerson you add during the term will be billed or invoiced at the next billing cycle.

**4. MAINTENANCE AND OWNERSHIP OF EQUIPMENT: EMERSON HAS NO RESPONSIBILITY FOR THE OPERATION, SUPPORT, MAINTENANCE, OR REPAIR OF ANY EQUIPMENT, SOFTWARE, OR SERVICES THAT YOU ELECT TO USE IN CONNECTION WITH THE PRODUCTS OR SERVICES (the "Customer Equipment"), EXCEPT AS PROVIDED IN THE SENSI MOBILE APPLICATION END USER LICENSE AGREEMENT WITH RESPECT TO EMERSON'S SENSI MOBILE APPLICATION.** To use the Services, you will need a compatible broadband gateway / router. You agree to keep the gateway connected, and your Internet connection active, at all times. Emerson has the unrestricted right, but not the obligation, to upgrade or change the firmware in the Product devices (whether they are owned by you or by Emerson) remotely at any time that Emerson determines necessary in order to continue to provide Services to you in accordance with the specifications and requirements.

**a. Non-Recommended Configurations:** Customer Equipment that does not meet Emerson's minimum technical configuration constitutes a "Non-Recommended Configuration." NEITHER EMERSON NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, OR CONTRACTORS WARRANT THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE YOU TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE SERVICES. YOU ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE COULD CAUSE THE PRODUCT TO FAIL TO OPERATE OR CAUSE DAMAGE TO THE PRODUCT, YOU, AND/OR YOUR PREMISES. NEITHER EMERSON NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, OR CONTRACTORS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE. Emerson reserves the right to deny you customer support for the Services and/or terminate Services if you use a Non-Recommended Configuration.

**b. No Unauthorized Devices or Tampering:** You agree not to attach any unauthorized device to the Services. If you make any unauthorized connection or modification to the Services, Emerson may terminate your Services and recover such damages as may result from your actions. Unless expressly authorized by Emerson, you agree not to install anything to intercept or receive any of the Services offered to you or to assist any person in intercepting or receiving any of the Services offered to you. You also agree that you will not attach anything to Customer Equipment, whether installed by you or by Emerson, which singly or together impairs the integrity of the Services.

**5. USE OF SERVICES:** You agree that the Services will be used only by you and/or your Additional Users. You agree and represent that you will not resell or permit another to resell the Services in whole or in part. You will not use or permit another to use the Services, directly or indirectly, for any unlawful purpose, including, but not limited to, in violation of any posted Emerson policy applicable to the Services. Use of the Services for transmission, communications, or storage of any information, data, or material in violation of any applicable regulation or law is prohibited.

You acknowledge that you are accepting these Terms on behalf of all persons who use the Services, including Additional Users, and that you shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions herein and any applicable Emerson policies including, but not limited to, acceptable use and privacy policies. You further acknowledge and agree that you shall be solely responsible for any transactions, including, without limitation, purchases made through or in connection with the Services. You agree to indemnify, defend, and hold harmless Emerson, its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) arising out of the misuse of the Services and/or the Product or the breach of these Terms or violation of any of the applicable Emerson policies or agreements by you or any Additional User.

**6. ASSIGNABILITY:** These Terms and the Services furnished hereunder may not be assigned by you, except if: (i) you notify Emerson immediately of any changes of ownership or occupancy of the Premises and (ii) the new occupant of the Premises establishes a new account and accepts the terms and conditions set forth in herein by accessing the Products or Services. Emerson may freely assign its rights and obligations under these Terms in its sole discretion, without notice to you.

### 7. TERMINATION OF THIS AGREEMENT

**a. Term:** These Terms will be effective from the time the Services are activated until (i) it is terminated as provided for herein or (ii) it is replaced by a revised version of these Terms.

**b. Termination by You:** You have the right to cancel your Services by properly disconnecting the Products and providing Emerson with notice that you terminate your Services and the Services for any Additional User linked to or accessing your Product(s).

**c. Suspension and Termination by Emerson:** Emerson reserves the right, subject to applicable law, to act immediately and without notice to terminate or suspend the Services at Emerson's sole discretion, with or without cause. After termination, data transfer may continue until you properly disconnect the Products, and the Services are able to be cancelled or terminated. Third party controllers, utility, and smart energy program partners, or Additional Users you have authorized to access or control your device may also continue to have access until you properly terminate and/or disconnect with them.

**d. Your Obligations upon Termination:** You agree that upon termination of this Agreement and/or Services you will immediately cease all use of the Services.

**e. Termination of Service Subscriptions:** If you fail to pay the full amount for any add-on paid Service Subscriptions due and payable to Emerson or a third party, then Emerson, at its sole discretion in accordance with applicable law, may suspend or disconnect any or all the Services you receive.

**8. NO WARRANTY: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE SERVICES SHOULD NOT BE USED AS AN ALARM OR ALERT TO (i) PROTECT AGAINST THE LOSS OF PERSONAL PROPERTY, (ii) BE USED FOR MEDICALLY RELATED PURPOSES OR APPLICATIONS, AND (iii) BE USED FOR PERSONS WITH HEIGHTENED SENSITIVITIES TO HEAT AND COLD. NEITHER EMERSON NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS OR CONTRACTORS WARRANT THAT THE SERVICES WILL DELIVER SPECIFIC RESULTS OR MEET YOUR REQUIREMENTS, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT ERROR. NEITHER EMERSON NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, OR CONTRACTORS WARRANT THAT ANY COMMUNICATIONS WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WILL WORK PROPERLY WHEN USED WITH A THIRD-PARTY CONTROL DEVICE. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF PERFORMANCE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ARE HEREBY DISCLAIMED AND EXCLUDED. YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.**

### 9. LIMITATION OF EMERSON'S LIABILITY:

**a. Application:** The limitations of liability set forth in this Section apply to any acts, omissions, and negligence of Emerson and its affiliates, suppliers, employees, agents, or contractor, including underlying third-party service providers (and their respective officers, employees, agents, or contractors) which, but for that provision, would give rise to a cause of action in contract, tort, or any other legal doctrine.

**b. Customer Equipment:** Customer equipment may be damaged or suffer service outages as a result of the installation, self-installation, use, inspection, maintenance, repair, and removal of the services. To the maximum extent permitted by applicable law, and except for gross negligence or willful misconduct by Emerson, neither Emerson nor any of its affiliates, suppliers, employees, agents, or contractors shall have any liability whatsoever for any damage, loss, or destruction to the customer equipment. In the event of gross negligence or willful misconduct by Emerson, its affiliates, suppliers, employees, agents, or contractors, Emerson shall pay at Emerson's sole discretion for the repair or replacement of the damaged customer equipment up to a maximum of the price of the replacement product hardware, determined in Emerson's sole discretion, not including any labor or installation. This shall be your sole and exclusive remedy relating to such activity. You understand that your computer or other devices may need to be accessed or used either by you or by Emerson or other third-parties, in connection with the installation or repair of the Emerson hardware or services. The opening, accessing, or use of your computer or other devices used in connection with your computer may void warranties provided by the computer or device manufacturer or other parties relating to the computer's or device's hardware or software. Neither Emerson nor its affiliates, suppliers, employees, agents, or contractors shall have any liability whatsoever as the result of the voiding of any such warranties.

**c. Other Services or Equipment: BY ACCEPTING THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU WAIVE ALL CLAIMS AGAINST EMERSON FOR INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY BETWEEN THE SERVICES AND ANY OTHER SERVICES, SYSTEMS, OR EQUIPMENT. IN THE EVENT OF SUCH INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY, YOUR SOLE REMEDY SHALL BE TO TERMINATE THE SERVICES IN ACCORDANCE WITH SECTION 7.**

**d. Software:** When you use certain features of the Services, such as online features (where available), you may require special software, applications, and/or access to the Internet. Emerson makes no representation or warranty that any software or application installed on Customer Equipment, downloaded from the Services, or available through the Internet does not contain a virus or other harmful feature. It is your sole responsibility to take appropriate precautions to protect any Customer Equipment from damage to its software, files, and data as a result of any such virus or other harmful feature. Emerson may, but is not required to, terminate all or any portion of the installation or operation of the Services if a virus or other harmful feature or software is found to be present on your Customer Equipment. Emerson is not required to provide you with any assistance in removal of viruses. If Emerson decides, in its sole discretion, to install or run virus check software on your Customer Equipment, Emerson makes no representation or warranty that the virus check software will detect or correct any or all viruses. You acknowledge that you may incur additional charges for any service call made or required on account of any problem related to a virus or other harmful feature detected on your Customer Equipment. Emerson may, but is not required to, provide automatic firmware and software updates from time to time. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER EMERSON NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, OR CONTRACTORS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM A VIRUS, ANY OTHER HARMFUL FEATURE, OR FROM ANY ATTEMPT TO REMOVE IT.** In addition, as part of the installation process for the software and other components of the Service, system files on your Customer Equipment may be modified. Emerson does not represent, warrant, or covenant that these modifications will not disrupt the normal operations of any Customer Equipment including without limitation your computer(s) or cause the loss of files. Emerson does not represent, warrant, or covenant that the installation of special software or applications or access to Emerson's Web portal(s) will not cause the loss of files or disrupt the normal operations of any Customer Equipment, including but not limited to your computer(s). **FOR THESE AND OTHER REASONS, YOU ACKNOWLEDGE AND UNDERSTAND THE IMPORTANCE OF BACKING UP ALL FILES TO ANOTHER STORAGE MECHANISM PRIOR TO SUCH ACTIVITIES. YOU UNDERSTAND AND ACCEPT THE RISKS IF YOU DECIDE NOT TO BACK UP FILES. NEITHER EMERSON NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, OR CONTRACTORS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE, FILES, OR DATA.**

**e. Disruption of Service:** The Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services could lead to injury to business, persons, property, or environment ("High Risk Activities"). You expressly assume the risks of any damages resulting from High Risk Activities. Emerson shall not be liable for any inconvenience, loss, liability, or damage resulting from any interruption of the Services, directly or indirectly caused by, or proximately resulting from, any circumstances beyond Emerson's control, including, but not limited to: causes attributable to you or your property; inability to obtain access to the Premises; failure of any internet connection; failure of utility facilities; strike; labor dispute; riot or insurrection; war; explosion; malicious mischief; pandemic, epidemic, or other national or global health crisis; fire, flood, lightning, earthquake, wind, ice, extreme weather conditions or other acts of God; failure or reduction of power; or any court order, law, act or order of government restricting or prohibiting the operation or delivery of the Services. If any credits are provided by Emerson, they are provided in Emerson's sole discretion and in no event shall constitute or be construed as a course of conduct by Emerson.

**f. Third Parties:** Notwithstanding anything to the contrary contained herein, you acknowledge and understand that Emerson may use third parties to provide components of the Services, including without limitation their services, equipment, infrastructure or content. Emerson is not responsible for the performance (or non-performance) of third-party services, equipment, infrastructure, or content, whether or not they constitute components of the Services. Emerson shall not be bound by any undertaking, representation, or warranty made by an agent or employee of Emerson or Emerson's underlying third-party providers and suppliers in connection with the installation, maintenance or provision of the Services, if that undertaking, representation, or warranty is inconsistent with the terms herein. In addition, you understand you will have access to the services and content of third parties through the Service(s), including without limitation that of content providers (whether or not accessible directly from the Service). Emerson is not responsible for any services, equipment, infrastructure, and content that are not provided by Emerson (even if they are components of the Service or recommended by Emerson), and Emerson shall have no liability with respect to such services, equipment, infrastructure, and content. You should address questions or concerns relating to such services, equipment, infrastructure, and content to the creators of such services, equipment, infrastructure, and content. While Emerson's Products may be compatible with third-party products, Emerson does not endorse or warrant any third-party products, services, or content that are distributed or advertised over the Services. You or your Additional Users connection to a third-party product authorizes Emerson to transfer information to that third-party to operate the service(s).

**g. Damages: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER EMERSON NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, OR CONTRACTORS SHALL UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO TORT OR CONTRACT) HAVE ANY LIABILITY TO THE CUSTOMER, ADDITIONAL USER, OR TO ANY OTHER PERSON OR ENTITY FOR THE FOLLOWING LOSSES, DAMAGES, OR COSTS: (I) INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, PERSONAL INJURIES OR DEATH) THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH (A) YOUR RELIANCE ON OR USE OF THE SERVICES OR (B) THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, OR REMOVAL OF THE SERVICES (INCLUDING BUT NOT LIMITED TO ANY MISTAKES, OMISSIONS, INTERRUPTIONS, COMPUTER OR OTHER HARDWARE OR SOFTWARE BREACH, FAILURES, OR MALFUNCTIONS, DELETION OR CORRUPTION OF**

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- FILES, WORK STOPPAGE, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION OR FAILURE OF PERFORMANCE OF THE SERVICE, THE CUSTOMER EQUIPMENT, OR ANY OTHER MISTAKES, OMISSIONS, LOSS OF INFORMATION OR DATA OR DAMAGE TO YOUR HVAC SYSTEM); OR (II) ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES, LEGAL FEES, OR OTHER COSTS THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH ANY ALLEGATION, CLAIM, SUIT, OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE SERVICES BY YOU OR ANY OTHER PERSON OR ENTITY INFRINGES UPON THE CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. To the maximum extent permitted by applicable law, in no event shall Emerson's (INCLUDING EMERSON'S AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS OR CONTRACTORS) total liability to you for all DIRECT DAMAGES (other than as may be required by applicable law in cases involving personal injury) exceed the total price paid for the Product. Certain jurisdictions do not allow the exclusion or limitation of certain damages. If these laws apply to you, some or all of the exclusions or limitations set out herein may not apply to you, and you may have additional rights.
- h. **Customer's Sole Remedies:** Your sole and exclusive remedies are as expressly set forth herein. If the above limitations, the exclusion or limitation of implied warranties, or the limitation or exclusion of incidental or consequential damages are not permitted by law, the liability of Emerson and its employee, affiliates, suppliers, agents, and contractors is limited to the maximum extent permitted by law.
- i. **Survival of Limitations:** All representations, warranties, indemnifications, and limitations of liability contained herein shall survive termination; any other obligations of the parties hereunder shall also survive, if they relate to the period before termination or if, by their terms, they would be expected to survive such termination.
- j. **Exclusion of Damages:** Certain jurisdictions do not allow the exclusion or limitation of certain damages. If these laws apply to you, some or all of the exclusions or limitations set out herein may not apply to you, and you may have additional rights.
- 10. INDEMNIFICATION AND LIABILITY OF CUSTOMER: YOU AGREE THAT YOU SHALL BE RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS EMERSON AND ITS EMPLOYEES, AFFILIATES, SUPPLIERS, AGENTS, AND CONTRACTORS AND SHALL REIMBURSE EMERSON FOR ANY DAMAGES, LOSSES, OR EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES AND COSTS) INCURRED BY EMERSON IN CONNECTION WITH ANY CLAIMS, SUITS, JUDGMENTS AND CAUSES OF ACTION ARISING OUT OF THE FOLLOWING BY YOU AND ANY OF YOUR ADDITIONAL USERS: (1) MISUSE OF THE SERVICE; (2) VIOLATION OR INFRINGEMENT OF CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS ARISING FROM MISUSE OF THE SERVICE OR ANY UNAUTHORIZED APPARATUS OR SYSTEM; (3) BREACH OF ANY PROVISION OF THESE TERMS; (4) ACCOUNT ACCESS OR ACTIVITY DUE TO FAILURE TO PROTECT LOG-ON CREDENTIALS; AND (5) ANY CAUSE OF ACTION BY ANY OF YOUR ADDITIONAL USERS, INCLUDING ANY AND ALL ALLEGATIONS, SUITS, CLAIMS, AND PROCEEDINGS (INCLUDING REASONABLE ATTORNEYS' AND PROFESSIONAL FEES) (COLLECTIVELY, "CLAIMS") AND ALL RELATED DAMAGES INCURRED BY YOU OR EMERSON AS A RESULT OF OR ARISING FROM YOUR ADDITIONAL USER'S BREACH OR ALLEGED BREACH. IT IS UNDERSTOOD AND AGREED THAT YOU ASSUME FULL LIABILITY FOR A BREACH BY ANY OF YOUR ADDITIONAL USERS OF THESE TERMS.**
- 11. SECURITY:** You are responsible for maintaining and protecting the confidentiality all applicable passwords in connection with the Services. You are further responsible for any and all activities that occur under your account whether by you or an Authorized User. You shall notify Emerson immediately of any unauthorized use of its account (including, if applicable, the passwords and accounts of each user accessing the Service by means of an account established by you) or any other security breach. Emerson will not be liable for any loss or damage arising from your failure to comply with these Terms. You shall not and shall not allow anyone working on your behalf to (1) perform any technical security integrity review, penetration test, load test, denial-of-service simulation or vulnerability scan without Emerson's prior written consent, or (2) attempt to access the data of another Emerson customer.
- 12. CONFIDENTIAL INFORMATION:** By reason of the relationship hereunder, each party will have access to certain information and materials concerning the other party's technology, business, plans, and customers that are confidential and of substantial value to such party, which value would be impaired if such information were disclosed to third-parties ("Confidential Information"). Confidential Information of Emerson shall include, without limitation, information specifically designated as confidential, the features and functions of the Services that are not available to the general public via the public internet (including screen shots of the same), future product plans, any documentation or specifications provided to you, the commercial terms (including pricing) of these Terms or any related agreement but not the mere existence of these Terms, any statements of work, schedules, addenda or amendments to these Terms, performance and security test results (whether conducted by Emerson or you), and any other proprietary, financial, or business information supplied to you by Emerson. Each party agrees that it will not and will ensure that its employees, agents, and contractors will not make use of (except in furtherance of these Terms), disseminate, or in any way disclose any Confidential Information of the other party to any person, firm, or business, except for any purpose the disclosing party may hereafter authorize in writing. Each party agrees that it will treat all Confidential Information with the same degree of care as it accords to its own Confidential Information, and each party represents that it exercises reasonable care to protect its own Confidential Information. Notwithstanding the foregoing, "Confidential Information" shall not include: (1) information previously known to the receiving party without reference to Confidential Information, (2) information which is or becomes publicly known through no act or omission of the receiving party, (3) information which has been independently developed by the receiving party without reference to the disclosing party's Confidential Information, (4) information received from a third party under no confidentiality obligation with respect to the Confidential Information, (5) information required to be disclosed pursuant to administrative or court order, government or regulatory requirement or arbitration or litigation arising out of these Terms or any related agreement thereto.
- 13. GENERAL:**
- a. **Entire Agreement:** These Terms and any other documents incorporated by reference constitute the entire agreement and understanding between the parties with respect to the subject matter of these Terms, and they replace any and all prior written or verbal agreements. If any portion of these Terms is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect. If Emerson fails to insist upon or enforce strict performance of any provision of these Terms, it shall not thereby waive any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of these Terms.
- b. **Additional Representations and Warranties:** In addition to representations and warranties you make elsewhere herein, you also represent and warrant that:
- i. **Age:** You are at least the age of majority in your jurisdiction of residence.
- ii. **Customer Information:** During the term, you have provided and will provide to Emerson information that is accurate, complete, and current, including without limitation your legal name, address, telephone number(s), email address and payment data (including without limitation information provided when authorizing recurring payments). You agree to notify Emerson promptly, in accordance with these Terms, if there is any change in the information that you have provided to Emerson. If you fail to provide and maintain accurate information, you will breach these Terms.
- c. **Privacy:** Service is subject to Emerson's Terms of Use and Privacy Notice as well as a product-specific Privacy Addendum, available at <https://sensi.emerson.com/en-us/legal>, for more information on the data Emerson collects from you and how Emerson uses and shares that data.
- d. **Information Provided to Third Parties:** Emerson is not responsible for any information provided by you or any Additional Users to third parties, including devices that provide third-party control such as utility and smart energy programs, Apple HomeKit, or Amazon Alexa. You assume all privacy, security, and other risks associated with providing personally identifiable information to third parties via the Services, whether provided by you or your Additional Users. For a description of the privacy protections associated with providing information to third parties, you should refer to the privacy policies, if any, provided by those third parties.
- e. **Revocable License:** The Products and Services are protected by trademark, copyright, patent, and/or other intellectual property laws and international treaty provisions. You are granted a revocable license to use the Products and the Services in accordance with these Terms. You acknowledge and understand that you are not granted any other license to use the firmware or software used to provide the Services. You shall not take any action nor allow anyone else to take any action that will reverse compile, disassemble, or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software. Emerson retains the non-revocable license to use or incorporate feedback.
- f. **Protection of Emerson's Information and Marks:** All Service information, documents, and materials on Emerson's websites are protected by trademark, copyright, and/or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "marks") of Emerson and its affiliates are and shall remain the exclusive property of Emerson. Nothing herein shall grant you the right or license to use any of the marks.
- g. **Export Laws:** You expressly agree to comply with all applicable export and re-export laws, including but not limited to the Export Administration Act, the Arms Export Control Act, and their implementing regulations. You further expressly agree not to use the Services in any way that violates any provision of these export and re-export laws or their implementing regulations.
- h. **Retention of Rights:** Nothing contained herein shall be construed to limit Emerson's rights and remedies available at law or in equity. Upon termination, for any reason, Emerson and its suppliers reserve the right to delete all your data, files, electronic messages, or other Customer Information that is stored on Emerson's or its suppliers' servers or systems. Emerson shall have no liability whatsoever as the result of the loss of any such data.
- i. **Dispute Resolution:** The terms of this section entitled "Dispute Resolution" will apply to all disputes that may arise out of, are connected with or relate to these Terms or the Services, subject only to the following two exceptions (1) if Emerson reasonably believes that you or any of your Additional Users have in any manner acted or failed to act in any manner that may cause harm to Emerson or any third party, Emerson may seek injunctive or other appropriate relief in any court of competent jurisdiction; or (2) any dispute may, at the option of the claiming party, be resolved in small claims court provided that all claims by all parties in the dispute fall within the jurisdiction of the small claims court but subject to the informal resolution below. The validity, interpretation and performance of these Terms shall be governed by and construed in accordance with the laws of Missouri. Furthermore, in no event will the terms of this section limit Emerson's ability to investigate complaints or reported violations of these Terms or to take any action Emerson deems necessary and appropriate to mitigate actions against Emerson, including reporting any suspected unlawful activity to law enforcement officials, regulators, or other third-parties.
- ii. **Informal Resolution:** If you have any dispute with Emerson or any related third-party, arising out of, relating to, or connected with the Product, Software or Services, you agree to contact Emerson at the address noted below; provide a brief, written description of the dispute and your contact information (including your username, if your dispute relates to an account); and give Emerson thirty (30) days within which to resolve the dispute to your satisfaction. If Emerson does not resolve the dispute through good faith negotiations under this informal process, you may pursue the dispute in accordance with the arbitration agreement below or in small claims court as described above.
- iii. **Class Action Waiver:** YOU HEREBY IRREVOCABLY WAIVE ANY RIGHT YOU MAY HAVE TO A COURT OR TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING AGAINST EMERSON OR RELATED THIRD-PARTIES ARISING OUT OF, RELATING TO, OR CONNECTED WITH THESE TERMS; ARBITRATION CAN THUS DECIDE ONLY YOUR INDIVIDUAL CLAIMS; THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN THE CLAIMS OF OTHER PERSONS OR PARTIES WHO MAY BE SIMILARLY SITUATED.
- iv. **Arbitration Agreement:** Any claims by Emerson, or claims by you that are not resolved by the informal resolution procedure or in a small claims court as provided above, arising out of, relating to, or connected with these Terms or the Services must be asserted individually in binding arbitration administered by the American Arbitration Association ("AAA") before a sole arbitrator in accordance with its Commercial Arbitration Rules and Supplementary Procedures for Consumer-Related Disputes (including utilizing desk, phone or video conference proceedings where appropriate and permitted to mitigate costs of travel). These Terms and each of its parts evidence a transaction involving interstate commerce, and the Federal Arbitration Act ("FAA") (9 USC §1, et. seq.) will apply in all cases and govern the interpretation and enforcement of the arbitration rules and arbitration proceedings. The arbitration shall be held at a location determined by AAA pursuant to the Rules and Procedures (provided such location is reasonably convenient for you), or at such other location as may be mutually agreed by the you and Emerson. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. In addition to and notwithstanding the terms stated above, the following will apply to your dispute(s): (1) the arbitrator, and not any federal, state, provincial or local court or agency, will have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including any claim that all or any part of this Agreement is void or voidable; (2) the arbitrator will not have the power to conduct any form of class or collective arbitration nor join or consolidate claims by or for individuals; (3) the arbitrator's decision shall be controlled by these Terms and conditions and any of the other agreements referenced herein that you may have entered into in connection with the Services; (4) the arbitrator shall apply Missouri law consistent with the FAA and applicable statutes of limitations, and shall honor claims of privilege recognized at law; (5) to the extent permitted by law, the arbitrator shall not have the power to award punitive, incidental, or consequential damages against you or Emerson; (6) in the event that the administrative fees and deposits that must be paid to initiate arbitration against Emerson exceed \$125.00 USD for claims less than \$10,000 or \$375.00 for claims greater than \$10,000 but less than \$75,000, and you are unable (or not required under the applicable Rules and Procedures) to pay any fees and deposits that exceed this amount, Emerson agrees to pay them and/or forward them on your behalf, subject to ultimate allocation by the arbitrator. In addition, if you are able to demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, Emerson will pay as much of the filing and hearing fees in connection with the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive; and (7) with the exception of subpart (3) above, if any part of this arbitration provision is deemed to be invalid, unenforceable or illegal, or otherwise conflicts with the Rules and Procedures established by AAA, then the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting provision were not contained herein. If, however, subpart (3) is found to be invalid, unenforceable or illegal, then the entirety of this Arbitration Provision shall be null and void, and neither you nor Emerson shall be entitled to arbitrate their dispute. For more information on AAA and/or AAA Rules and Procedures, Participants may visit the AAA Website at <http://www.adr.org>.
- 14. CHARGES AND BILLINGS FOR PAID SERVICE SUBSCRIPTIONS:** If you sign up for additional add-on Sensi Services that are Service Subscriptions directly with Emerson, not a third-party or contractor, additional terms and conditions apply and may be found within the specific portals or applications of that paid Service Subscription, or by separate agreement between you and Emerson. The additional terms, in combination with these Terms, will constitute the entire Terms of Service Agreement for the Product or Services, including any paid Service Subscriptions. If you sign up for a paid service with a third-party or contractor, terms of that relationship are between you and the third-party and not with Emerson. You acknowledge that you may incur charges with third-party service providers or contractors. These may include charges resulting from accessing the Internet, purchasing or subscribing to other offerings via the Internet or purchasing equipment for use with or recommended by the Service. You are solely responsible for all charges payable to third parties, including all applicable taxes.
- 15. NOTICE METHOD:** You agree to accept all communications from Emerson regarding use of the Services at the address and/or email address you provide during registration. Please promptly update any changes to your account registration information. Emerson is entitled to rely on the email address and mailing address that you last provided to Emerson. You agree to waive all claims resulting from failure to receive communications because of changes in your email or mailing address. From time to time Emerson would like to send you information about Emerson products and services. If you register for a Service, you are granting Emerson permission to communicate with you by email. Emerson may provide you any notice on your monthly bill, as a bill insert, using the email address you have provided to Emerson, using the Sensi portal, or other communication permitted under applicable law. You agree to be bound by any affirmation, assent, or agreement you transmit through the Services you access by computer or other electronic device, including internet, telephonic, and wireless devices, including but not limited to any consent you give to receive communications from Emerson solely through electronic transmission. You agree that, when in the future you click on an "I agree," "I consent," or other similarly worded "button" or entry field with your finger, mouse, keystroke, or other device, your agreement or consent will be legally binding and enforceable and the legal equivalent of your handwritten signature.
- 16. NUCLEAR/MEDICAL: GOODS AND SERVICES SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT, AND RELATED APPLICATIONS.** You accept the Services with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchaser or users and to defend, indemnify, and hold harmless Emerson from any claims, losses, suits, judgments, and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract, or otherwise, including allegations that Emerson's liability is based on negligence or strict liability.

A French version of these Terms is available upon request. Une version française de ces Conditions est disponible sur demande.