END USER LICENSE AGREEMENT
FOR SIEMENS' SOFTWARE EMBEDDED IN SMART THERMOSTAT RDS120

IMPORTANT – READ CAREFULLY: This End-User License Agreement ("EULA") is a legal agreement between You (either an individual, a legal entity or any affiliated companies or other entities) and Siemens Industry, Inc., Smart Infrastructure, as the licensor ("Licensor" or "Siemens") for the LICENSED SOFTWARE specified in Clause 1 (each a "Party" and collectively "Parties"). The EULA authorizes You to use the LICENSED SOFTWARE under the terms and conditions set forth below. Read this EULA carefully before installing or using the LICENSED SOFTWARE.

BY INSTALLING, COPYING, OR OTHERWISE USING THE LICENSED SOFTWARE YOU ACKNOWLEDGE THAT YOU: (1) HAVE READ AND UNDERSTOOD THIS EULA AND ANY THIRD PARTY LICENSES (INCLUDING ANY OPEN SOURCE SOFTWARE LICENSES) SET FORTH IN THE "ADDITIONAL TERMS ADDENDUM" BELOW OR MADE AVAILABLE FOR YOUR REVIEW AS SPECIFIED IN CLAUSE 6 ("ADDITIONAL TERMS"); AND (2) AND AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS EULA AND SUCH ADDITIONAL TERMS. FURTHERMORE YOU CONFIRM THAT YOU HAVE THE POWER TO MAKE SUCH A DECLARATION ALSO FOR YOUR COMPANY. YOU FURTHER AGREE THAT IF SIEMENS OR ANY LICENSOR OF SIEMENS IS REQUIRED TO ENGAGE IN ANY PROCEEDING, LEGAL OR OTHERWISE, TO ENFORCE THEIR RIGHTS UNDER THIS EULA, SIEMENS AND/OR ITS LICENSOR SHALL BE ENTITLED TO RECOVER FROM YOU, IN ADDITION TO ANY OTHER SUMS DUE, REASONABLE ATTORNEY'S FEES, COSTS AND DISBURSEMENTS UNLESS OTHERWISE AGREED IN A SEPARATE WRITING BETWEEN THE PARTIES. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS OF THIS EULA, YOU ARE NOT ENTITLED TO INSTALL OR USE THE LICENSED SOFTWARE.

1. LICENSED SOFTWARE. As used in this EULA, the term "LICENSED SOFTWARE" shall mean (i) the software provided by Siemens as firmware for licensed use in or with Siemens's Smart Thermostat RDS120 product referenced hereafter as Smart Thermostat RDS120 Product that you have purchased or are attempting to purchase and (ii) any related documentation for the LICENSED SOFTWARE.

2. INTELLECTUAL PROPERTY RIGHTS NOTICE. The Licensed Software and all rights, without limitation, including all copyrights, patents, trademarks, trade secrets, publicity rights, and other proprietary rights therein, are owned by Siemens, their licensors or affiliates and are protected by international treaty provisions and all applicable national laws. The structure, organization, and code of the Licensed Software are the valuable trade secrets and confidential information of Siemens, their licensors or affiliates. Except as expressly and unambiguously provided herein, You do not possess, and Siemens does not grant to You, any express or implied rights (whether by implication, estoppels or other legal theory) in or to any such intellectual property rights and all such rights are retained by Siemens, its licensors or affiliates. You must reproduce and include the copyright notices with any permitted copies You make of the Licensed Software.

3. LICENSE GRANT. Only a license is granted for the LICENSED SOFTWARE; the LICENSED SOFTWARE is not sold to you. Siemens grants to You in this EULA a revocable, non-transferable, non-exclusive license to use the LICENSED SOFTWARE in object code as installed in or upon installation in the Smart Thermostat RDS120 Product provided You comply with all terms and conditions of this EULA.

4. LIMITATIONS ON LICENSE.

   a) The Smart Thermostat RDS120 Product shall be provided with the LICENSED SOFTWARE installed therein by Siemens.   You are not entitled to make copies of or install the LICENSED SOFTWARE or any upgrade or update thereof in the Smart Thermostat RDS120 Product and must separately request Siemens for such installation service if needed, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.   You may use the LICENSED SOFTWARE, access it, execute it or to interact with it on such Smart Thermostat RDS120 Product.
   b) If this LICENSED SOFTWARE includes any related documentation provided in electronic form, You may print copies of this electronic documentation. You must reproduce and include the copyright notices on any permitted copies You make of such electronic documentation.
   c) You may not sublicense, rent, lease, assign or transfer this EULA, the LICENSED SOFTWARE or its components, or any portion thereof without express written consent from Siemens. Except, in the event that you sell or otherwise transfer the Smart Thermostat RDS120 Product to a third party, you may assign this EULA for the LICENSED SOFTWARE installed in such Smart Thermostat RDS120 Product to such third party provided that the third party agrees to accept such assignment subject to all terms and conditions of this EULA. If you violate these restrictions, this EULA shall automatically be terminated.

d) You may not or direct any third party to, reverse engineer, decompile, decode or disassemble the LICENSED SOFTWARE except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

e) You (or any third party at your direction) also shall not (i) modify or create a derivative work of the LICENSED SOFTWARE, or (ii) extract any individual parts except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

f) This EULA does not grant You any rights whatsoever in relation to the trademarks or service marks of Siemens, Siemens AG or either's affiliates.

5. MISUSE OF THE LICENSED SOFTWARE OR DATA GENERATED BY THE LICENSED SOFTWARE IS STRICTLY PROHIBITED BY LICENSOR, MAY VIOLATE SWISS, U.S. AND OTHER LAWS AND MAY SUBJECT YOU TO SUBSTANTIAL LIABILITY. You are solely responsible for any misuse of the Licensed Software under this EULA and for any liability or damage related in any way to your use of the Licensed Software in violation of this EULA. You are also responsible for using the Licensed Software in accordance with the limitations of this EULA.

6. ADDITIONAL TERMS FOR THIRD PARTY COMPONENTS.. This EULA applies to updates, releases, revisions, enhancements, or supplements to the original LICENSED SOFTWARE provided by Licensor or Siemens, unless Licensor or Siemens provide other terms along with the Update. The LICENSED SOFTWARE may contain certain components such as open source software components or third party components licensed by Siemens (each a "Component"). Each Component may have a separate end user license agreement (a "Third Party License"). The terms of any Third Party License (if any) that apply to the LICENSED SOFTWARE are specified in the READ ME OSS document at "WWW.USA.SIEMENS.COM/BTCPSEULA". The terms of such Third Party Licenses are herein incorporated by reference to this EULA. In the event of any inconsistencies between this EULA and any Third Party License, the terms of this EULA shall control.

7. TERMINATION: This EULA is effective from the first date You install, copy or otherwise use the LICENSED SOFTWARE. Without prejudice to any other rights of Licensor or Siemens, the EULA shall terminate automatically and immediately without notice if You fail to comply with any provision or condition of this EULA. You may terminate this license at any time by disabling or destroying the Smart Thermostat RDS120 Product in which the LICENSED SOFTWARE is installed, and all related documentation provided to You by Siemens.

8. WARRANTY DISCLAIMER. Unless Siemens agrees in a separate writing to provide an exception to this warranty disclaimer with respect to the LICENSED SOFTWARE as provided in the Smart Thermostat RDS120 Product purchased by you, Siemens shall be only liable for defects and any violation of property rights as set forth in this Clause as follows:

a) YOU ACKNOWLEDGE THE LICENSED SOFTWARE IS PROVIDED "AS IS" AND NEITHER SIEMENS NOR ANY OF THEIR LICENSORS (IF ANY) MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT THE LICENSED SOFTWARE WILL NOT INFRINGE ANY THIRD PARTY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER RIGHTS. THERE IS NO WARRANTY BY SIEMENS OR THEIR LICENSORS OR BY ANY OTHER PARTY THAT THE FUNCTIONS CONTAINED IN THE LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY A SIEMENS REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY AFFECT THIS DISCLAIMER. YOU ASSUME ALL RESPONSIBILITY TO ACHIEVE YOUR INTENDED RESULTS AND FOR THE INSTALLATION, USE, AND RESULTS OBTAINED FROM IT.

b) Any further rights and remedies than those as per this Clause 8 (in particular Your right to claim damages) based on a defect or a violation of property rights shall be excluded. This exclusion shall not apply in the event of gross negligence, unlawful intent or insofar as mandatory law provides otherwise.

9. NO OTHER OBLIGATIONS; RESERVATION OF RIGHTS. This EULA creates no obligations on the part of Siemens other than as specifically set forth herein. Siemens reserves all rights not expressly granted to You in this EULA.

10. LIMITATION OF LIABILITY. UNLESS OTHERWISE AGREED IN A SEPARATE WRITING BETWEEN THE PARTIES, IN NO EVENT SHALL SIEMENS, ITS EMPLOYEES, LICENSORS, AFFILIATES, AGENTS OR SIEMENS AG AND THEIR AFFILIATES BE LIABLE FOR ANY LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, PROPERTY DAMAGE, LOSS OF PROFITS, INTERRUPTION OF BUSINESS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, ECONOMIC, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, AND WHETHER ARISING UNDER CONTRACT, TORT, NEGLIGENCE, OR OTHER THEORY OF LIABILITY, OR ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED

SOFTWARE, EVEN IF SIEMENS IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION OF LIABILITY SHALL NOT APPLY IF AND TO THE EXTENT SIEMENS' LIABILITY IS MANDATORY UNDER THE APPLICABLE LAW (e.g., PRODUCT LIABILITY LAW OR INTENTIONAL MISCONDUCT).

11. TECHNICAL SUPPORT AND AUDIT. Siemens and its affiliates have no obligation to furnish You with any technical support services or to debug the LICENSED SOFTWARE unless separately agreed in writing between You and Siemens. Siemens and where applicable their licensors in the Licensed Software shall be free to use any feedback and/or technical data including audit data received from You resulting from your access to and use of the Licensed Software for any purpose for business purposes, including (without limitation) development, manufacture, marketing, product ordering, and maintenance or support of products and services. If and insofar as permissible under the relevant laws You permit Siemens and its affiliates to audit the use of the Licensed Software and will give assistance and access to the necessary information.

12. EXPORT CONTROL. The Software, including technical data / cryptographic software, may be subject to Swiss, German, European Union and U.S. export controls and may be subject to import or export controls in other countries. You agree to strictly comply with all applicable import and export regulations when distributing or using the LICENSED SOFTWARE. Specifically, You agree, to the extent required by U.S. Export Administration Regulations, that You shall not disclose or otherwise export or re-export the Licensed Software or any part thereof as provided in the Smart Thermostat RDS120 Product and delivered under this EULA to any country (including a national or resident of such country) to which the U.S. has restricted or prohibited the export of goods or services. You represent and warrant that You are not (i) located in any country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist sponsoring" country, or (ii) listed on any U.S. Government list of prohibited or restricted parties including the Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List.

13. FOR U.S. GOVERNMENT END USERS: The LICENSED SOFTWARE was developed at private expense and is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212.   Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the LICENSED SOFTWARE with only those limited rights set forth therein.   Publisher is Siemens Industry, Inc., 1000 Deerfield Parkway, Buffalo Grove, Illinois 60089.

14. APPLICABLE LAW AND FORUM. This EULA is governed by the laws of the State of Illinois without regard to any conflict of laws provisions therein. No choice of law rules of any jurisdiction will apply. Any disputes arising out of or relating to this EULA shall be settled by the courts in Illinois to the extent permitted by mandatory law.

15. MISCELLANEOUS. Unless Siemens has given separate individual contract conditions in writing, this EULA represents the entire agreement between You and Licensor or Siemens relating to the LICENSED SOFTWARE and (i) supersedes all prior or contemporaneous oral or written communications, proposals, and representations with respect to its subject matter; and (ii) prevails over any conflicting or additional terms of any acknowledgement or similar communication between the parties during the term of this License. If any provision of this EULA is held invalid, all other provisions shall remain valid unless such validity would frustrate the purpose of this EULA, and this EULA shall be enforced to the full extent allowable under applicable law. No modification to this EULA is binding, unless in writing and signed by a duly authorized representative of each party. This EULA shall be binding on and shall inure to the benefit of the heirs, successors, and assigns of the parties hereto. The failure of either party to enforce any right resulting from the breach of any provision of this EULA by the other party will not be deemed a waiver of any right related to a subsequent breach of such provision or any other right hereunder.