

Note to Resellers: Please pass on this document to your customer to avoid license breach and copyright infringements.

END USER LICENSE AGREEMENT FOR SIEMENS COMMISSIONING TOOL SOFTWARE

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. as the licensor (hereafter "Siemens" or "Licensor") of the LICENSED SOFTWARE specified in Clause 1 (each a "Party" and collectively "Parties"). An amendment or addendum to this EULA may accompany the LICENSED SOFTWARE. The use of the LICENSED SOFTWARE is subject to the provisions of this EULA which is enclosed with the LICENSED SOFTWARE or is integrated therein. Use of the LICENSED SOFTWARE is only permitted in connection with this EULA. The EULA may not be assigned to third parties.

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; AND (2) AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS EULA AND SUCH THIRD PARTY LICENSES. FURTHERMORE YOU CONFIRM THAT YOU HAVE THE POWER TO MAKE SUCH A DECLARATION ALSO FOR YOUR COMPANY. 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. IN SUCH AN EVENT, YOU SHOULD PROMPTLY CONTACT SIEMENS FOR INSTRUCTIONS ON RETURN OR CERTIFIED DESTRUCTION OF THE LICENSED SOFTWARE.

1. **Licensed Software.** As used in this EULA, the term "LICENSED SOFTWARE" shall mean (i) the software offered by Siemens under the brand name "Commissioning Tool" in any release for use with Siemens' APOGEE® building automation products that are separately available for purchase from Siemens and (ii) any related documentation for the LICENSED SOFTWARE.

2. **Intellectual Property Rights Notice.** The LICENSED SOFTWARE and all rights, without limitation including proprietary rights therein (including any all copyrights, patents, trademarks, trade secrets, and publicity rights), are owned by Siemens, its licensors or affiliates. The LICENSED SOFTWARE is protected for Siemens on the basis of copyright law and international treaty provisions as well as on the basis of other laws and agreements regarding intellectual property. 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, estoppel 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 acknowledge and agree that You, and not Siemens, shall be solely responsible for the investigation, defense, settlement and discharge of any intellectual property infringement claim or suit, or any other harm or damages resulting from Your use of or access to the LICENSED SOFTWARE.

3. **License Grant.** Only a license is granted for the LICENSED SOFTWARE, the LICENSED SOFTWARE is not sold. Siemens grants to You in this EULA a revocable, non-transferable, non-exclusive license to use the LICENSED SOFTWARE in object code solely for Your own use provide You comply with all terms and conditions of this EULA. The configuration and execution of the LICENSED SOFTWARE is supervised by either a hardware dongle with a license key, a remote software sentinel with a license key, or a PC-bound copy protection, supplied separately for the LICENSED SOFTWARE. The EULA permits use of the LICENSED SOFTWARE, only within the boundaries established by the dongle or remote sentinel and the license key. Siemens, in its discretion, may withhold distribution of the license key for use of the LICENSED SOFTWARE by You until an executable version of this EULA is signed by the Parties.

4. **Description of Further Rights and Restrictions.**

a) If the LICENSED SOFTWARE was obtained by You from Siemens directly or through its licensed distributors for use on a single machine, then You may only install the LICENSED SOFTWARE on a single machine owned or licensed by You at any one time.

b) If the LICENSED SOFTWARE was obtained by You from Siemens or its distributors for networked use, You may copy and distribute the LICENSED SOFTWARE over an internal network for use, at any one time, by the number of active concurrent users for which You obtained a license key from Siemens.

c) You may not sublicense, assign or transfer this EULA, the LICENSED SOFTWARE or its components, or any portion thereof without express written consent from Siemens.

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 Licensor's or Siemens AG's trademarks or service marks.

g) Siemens may at its discretion offer You support services concerning the LICENSED SOFTWARE ("Support Services"). Siemens is entitled to use the technical data that You make available to Siemens in connection with the use of the LICENSED SOFTWARE and/or with Siemens' Support Services for business purposes, including product ordering, support and development. Siemens does not guarantee that Support Services shall cure any technical problem caused by the use of the LICENSED SOFTWARE.

5. **Reservation of Rights.** Licensor reserves all rights not expressly granted to You in this EULA.

6. **Additional Software / Component or Third Party Licenses.** This EULA applies to updates or supplements to the original LICENSED SOFTWARE provided by Licensor or Siemens, unless Licensor or Siemens provides other terms along with the update or supplement. 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 either: a) specified in the Additional Terms Addendum below, b) separately accompany the LICENSED SOFTWARE and are automatically presented for acceptance prior to first use of the LICENSED SOFTWARE by You and other users You allow access to the LICENSED SOFTWARE in accordance with the single or networked use licenses You obtained from Siemens, or c) are specified in the READ ME OSS document available at "WWW.USA.SIEMENS.COM/BTCPSEULA" for the LICENSED SOFTWARE. The terms of such Third Party Licenses are herein incorporated by reference to this EULA.

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 upon conditions set forth in Clause 4 or if You fail to comply with any provision or condition of this EULA. In such a case You will be obliged to destroy all copies, all related materials of the LICENSED SOFTWARE and all its components. You may terminate this license at any time by deleting or destroying the LICENSED SOFTWARE, all backup copies and all related materials provided to You by Siemens.

8. **Backup Copy and Printing Documentation.** You may make one copy of the LICENSED SOFTWARE, excluding the documentation, as an archival backup copy of the

original. Any other copies You make of the LICENSED SOFTWARE are in violation of this EULA. 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.

9. **Warranty.** Siemens shall be only liable for defects and any violation of property rights, as set forth in this Clause 9.

a) UNLESS SIEMENS AGREES IN A SEPARATE WRITING TO PROVIDE AN EXCEPTION TO THIS WARRANTY DISCLAIMER WITH RESPECT TO THE LICENSED SOFTWARE, 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 9 (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.

10. **Limitation Of Liability.** UNLESS OTHERWISE AGREED IN CLAUSES 9 AND 10, 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 INTENSIONAL MISCONDUCT).

11. **Debugging / Technical Support.** Unless otherwise agreed, Siemens or SIEMENS AG and their affiliates have no obligation to furnish You with any further technical support or to debug the LICENSED SOFTWARE. Siemens reserves the right to improve the LICENSED SOFTWARE described here and to carry out modifications at any time without any prior notice.

12. **Governing Law/Export Restrictions/Legal Compliance.** This EULA shall be governed by and construed and interpreted by the laws of the State of Illinois, without regard to any conflict of laws provisions therein. Licensee shall comply with all then-current export and import laws and regulations of the United States and such other governments as are applicable when distributing or using the LICENSED SOFTWARE. Licensee hereby certifies that it will not directly or indirectly export, re-export, transship, or transmit the LICENSED SOFTWARE, or any portion thereof, or related information, media, or products in violation of United States laws and regulations. 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. **Miscellaneous.** 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.