

SENSI END USER LICENSE AGREEMENT

UPDATED MAY 1, 2017

This End User License Agreement (“EULA”) is a contract between you and Emerson Electric Co., a Missouri corporation, its Affiliates as applicable (“Emerson” or “we” or “us” or “our”) and applies to the use of the Sensi mobile application, which may be used in connection with the Emerson Sensi product, along with any use by your authorized agents, employees, or users that you have granted access to receive and/or control of, the Emerson Sensi product (the “Additional Users”). Use of the Emerson Sensi product is governed by our Sensi Terms of Service (“Sensi Terms”) available [here](#); this EULA governs use of the Sensi mobile application. For users of any additional paid Sensi services (“Paid Service Subscription”), additional terms may be found within that specific Paid Service Subscription’s portal or application.

By using the Sensi product or the Sensi mobile application (“Software”), you agree that you have read, agree with and accept all the terms and conditions in this EULA, in our Sensi Terms of Service and in our Privacy Statement (“Sensi Privacy Statement”) which is available at [here](#), each of which are incorporated in this EULA by this reference. You may not modify this EULA by making any typed, handwritten, or any other changes to it for any purpose. You acknowledge that you are accepting this EULA on behalf of all persons who use the Software, including your Additional Users, and that you shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this EULA and any applicable Emerson policies including, but not limited to, acceptable use and privacy policies.

You acknowledge and agree that this EULA is between you and Emerson, not with any third party (including, but not limited to, Apple®, Google®, or any mobile carrier), and that Emerson is solely responsible for the Software, except in situations where you have enabled third party control of your Emerson Sensi thermostat or other Sensi product.

THIS EULA CONTAINS IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. IT INCLUDES: VARIOUS LIMITATIONS ON AND EXCLUSIONS OF OUR LIABILITY TO YOU; YOUR INDEMNITY OF US; AND DISPUTE RESOLUTION PROVISIONS THAT GOVERN HOW DISPUTES WILL BE RESOLVED, INCLUDING ARBITRATION AND A CLASS ACTION WAIVER.

BY CLICKING ACCEPT OR BY USING THE SOFTWARE, YOU ARE SIGNIFYING THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THIS EULA. IF YOU ARE ENTERING INTO THIS EULA ON BEHALF OF AN AUTHORIZED USER, ADDITIONAL USER, A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT INDIVIDUAL, ENTITY AND ITS AFFILIATES TO THIS EULA, IN WHICH CASE THE TERMS “YOU” OR “YOUR” IN THIS EULA WILL REFER TO THAT INDIVIDUAL OR ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH ANY PART OF THIS EULA, YOU MUST NOT ACCEPT THIS EULA AND MAY NOT USE THE SOFTWARE. THIS EULA CONSTITUTES A BINDING AGREEMENT BETWEEN YOU AND EMERSON.

SCOPE OF LICENSE

The license granted to you for this Software by Emerson is a non-transferable, non-exclusive license to use the Software on a device that you own, access, or control, and as permitted by the usage rules set forth for your device (for example, the then-current Apple App Store Terms of Use or the Google Play Terms of Service). All rights not expressly granted to you by this EULA are hereby reserved by Emerson.

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ELIGIBILITY

You must be 18 years old and a resident of the United States of America or Canada to use the Software. You agree that you may only use the Software in a manner consistent with this EULA.

RESTRICTED USE

You may not rent, lease, lend, sell, redistribute, sublicense, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Software. Any attempt to do so, including any alteration of any proprietary notices, is a violation of the rights of Emerson and its licensors. If you breach this restriction, you may be subject to prosecution and damages. Information provided is for informational purposes only. The use of this Software for various purposes should not replace appropriate user judgment, as users will have the best understanding of the context in which the Software is being used.

UPDATES

The Software may automatically download and install updates from Emerson from time to time. These updates are designed to improve, enhance and further develop the Software and may take the form of bug fixes, new or enhanced functions, and completely new versions. You agree to receive such updates (and permit Emerson to deliver these to you) as part of your use of the Software. If you do not want the Software to be automatically updated, you may be able to set your device settings to prohibit automatic updates.

INTELLECTUAL PROPERTY RIGHTS

The Software and all information, documents, and materials available on or through the Software are protected by trademark, copyright 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 in this EULA shall grant you the right or license to use any of the marks. Emerson has the non-revocable worldwide license to use or incorporate feedback received into Sensi.

In the event of any third party claim that the Software or your possession and use of the Software infringes that third party's intellectual property rights, neither Apple (if you downloaded the Software to an Apple iOS device) nor Google (if you downloaded the Software to a device with the Android operating system), will be responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

You understand that devices used to access the Sensi app or alerts may rely on wireless networks such as, but not limited to, 4G LTE, CDMA, GSM ("Wireless Networks") and that actual signal availability may depend on a combination of the third party wireless network carriers and availability of and actions of roaming partners, and that factors outside of Emerson's control, such as weather, buildings, topography, usage, or maintenance activities of wireless network providers may limit or interrupt the Software or alerts. Emerson is not responsible for interruption or limitation of the Sensi mobile application related to issues with Wireless Networks.

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YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, USE OF THE SOFTWARE IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS PROVIDED “AS IS” AND “AS AVAILABLE”, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND EMERSON HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE SOFTWARE, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. EMERSON DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SOFTWARE, THAT THE FUNCTIONS CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY, THE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY EMERSON OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE SOFTWARE PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

If you are using the Software on an Apple iOS device, in the event of any failure of the Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Software to you, but to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Emerson’s sole responsibility.

To the maximum extent permitted by applicable law, in no event shall Emerson’s total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty (\$50) dollars. The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

Certain jurisdictions do not allow the exclusion or limitation of certain damages. If these laws apply to you, some or all the exclusions or limitations set out in this EULA may not apply to you, and you may have additional rights.

INDEMNIFICATION

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 US FOR ANY DAMAGES, LOSSES OR EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY’S FEES AND COSTS) INCURRED BY US IN CONNECTION WITH ANY CLAIMS, SUITS, JUDGMENTS AND CAUSES OF ACTION ARISING OUT OF THE FOLLOWING USE OF THE SOFTWARE BY YOU AND/OR ANY OF YOUR ADDITIONAL USERS (I) MISUSE OF THE SERVICE; (II) 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; (III) BREACH OF ANY PROVISION OF THIS EULA OR ANY OF THE APPLICABLE SENSI TERMS OR POLICIES BY YOU OUR ANY OTHER USER OR AUTHORIZED USER; (IV) ACCOUNT ACCESS OR ACTIVITY DUE TO FAILURE TO PROTECT LOG-ON CREDENTIALS; AND (V) 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

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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 THE CUSTOMER ASSUMES FULL LIABILITY FOR A BREACH BY ANY OF YOUR ADDITIONAL USERS OF THIS EULA. IT IS UNDERSTOOD AND AGREED THAT YOU ASSUME FULL LIABILITY FOR A BREACH BY ANY OF YOUR AUTHORIZED USERS OF THIS AGREEMENT AND EMERSON SHALL HAVE NO LIABILITY FOR ANY MISUSE OR ACTION BY ANY AUTHORIZED USER OR ANY OF YOUR AFFILIATES, SUPPLIERS OR AGENTS.

PRODUCT CLAIMS

You acknowledge and agree that Emerson, and not Apple (if you downloaded the Software to an Apple iOS device) or Google (if you downloaded the Software to a device with the Android operating system), is responsible for addressing any claims of you or any third party relating to the Software or your possession and/or use of that Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. You must notify Emerson if you have, or are aware that any third party has, any such claims. Apple and Google have no responsibility to address any such claims. The limitations of Emerson's liability under this EULA are subject to what is permitted by applicable law.

LEGAL COMPLIANCE

You may not use or otherwise export or re-export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, the Software may not be exported or re-exported (a) into any U.S.-embargoed countries or (b) to anyone on the U.S. Treasury Department's Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List. By using the Software, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture, or production of nuclear, missile, or chemical or biological weapons.

PRIVACY

By using the Sensi or the Sensi mobile application ("Software"), you agree that you have read, agree with and accept the terms of our Sensi Privacy Statement, available [here](#), which is incorporated into this EULA. We will collect, use and disclose your personal information and the personal information of your Additional Users as set out in that Privacy Statement, and you and the Additional Users or third parties you have granted access or control to hereby consent to us doing so.

TERMINATION

The license is effective until properly terminated by you, the owner, purchaser and/or controller of the Emerson Sensi product, or Emerson. Your rights under this license will terminate automatically without notice from the Emerson if you fail to comply with any term(s) of this EULA or the Sensi Terms of Service. Upon termination of the license, you shall cease all use of the Software and destroy all copies, full or partial, of the Software.

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All representations, warranties, indemnifications, and limitations of liability contained in this EULA shall survive the termination of this EULA; 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.

THIRD PARTY TERMS AND BENEFICIARIES

You must comply with all applicable third party terms of agreement when using the Software. If you are using the Software on an Apple iOS device or on a Google Android device, you agree that Apple and Apple's subsidiaries and Google and Google's subsidiaries, are third party beneficiaries of this EULA and upon your acceptance of the terms and conditions of this EULA, Apple and Google will have the right (and will be deemed to have accepted the right) to enforce this EULA against you as a third party beneficiary thereof.

MISCELLANEOUS

You agree that your rights and obligations under this EULA are not assignable. We may freely assign our rights and obligations under this EULA in our sole discretion, without notice to you. This EULA shall bind and inure to the benefit of the parties and their successors and permitted assigns. Both parties are acting as independent contractors with respect to the activities hereunder.

STANDARD DATA FEES AND TEXT MESSAGING RATES MAY APPLY BASED ON YOUR PLAN WITH YOUR INTERNET AND/OR MOBILE PHONE CARRIER.

This EULA and any other documents incorporated by reference constitute the entire agreement and understanding between the parties with respect to the subject matter of this EULA, and they replace any and all prior written or verbal agreements. If any portion of this EULA 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 this EULA, 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 this EULA. The language of this EULA shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against either party, regardless of who drafted or was principally responsible for drafting this or any specific term or conditions hereof.

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 this EULA or the Software, 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 this EULA 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 this EULA or to take any action Emerson deems necessary and appropriate to mitigate

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actions against Emerson, including reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties.

- i. Informal Resolution.** If you have any dispute with Emerson or any related third party, arising out of, relating to, or connected with the Software, 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.
- ii. 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 US OR RELATED THIRD PARTIES ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS EULA; 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.**
- iii. Arbitration Agreement.** Any claims by Emerson, or claims by you that are not resolved by the informal resolution procedure or in small claims court as provided above, arising out of, relating to, or connected with this EULA or this Software must be asserted individually in binding arbitration administered by the American Arbitration Association (“AAA”) 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). This EULA and each of its parts evidence a transaction involving interstate commerce, and the Federal Arbitration Act (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 EULA including any claim that all or any part of this EULA 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 the terms and conditions of this EULA 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 USD for claims less than \$10,000 or \$375 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

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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 your 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>.

MAINTENANCE AND SUPPORT

Please contact us at the information below for customer support. Emerson is solely responsible for providing maintenance and support services for the Software. Third party operating system providers such as Apple and Google have no obligation to provide maintenance or support services for the Software.

CONTACT INFORMATION

If you have questions, complaints or claims with respect to the Software, you can contact us at:

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