



End-user License Agreement

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SAFETY WARNING

Only qualified personnel should install and service the equipment. The installation, starting up, and servicing of heating, ventilating, and air-conditioning equipment can be hazardous and requires specific knowledge and training. Improperly installed, adjusted or altered equipment by an unqualified person could result in death or serious injury. When working on the equipment, observe all precautions in the literature and on the tags, stickers, and labels that are attached to the equipment.

Definitions

- User means a person working on a licensed workstation/computer to operate the Material.
- Seat means a computer/workstation or other user interface device that is enabled to allow use of the Material by a maximum of one User at any given time.
- Concurrent means simultaneous use of The Material by more than one User on different Computer/workstations or other interface devices.
- TRACE™ 3D Plus License Server means computer system network installed software that limits concurrent usage of The Material to the licensed quantity of seats pursuant to an Enterprise License.

1. Grant of License

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The term of the license will depend on the nature of The Material.

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3. Restrictions

automatically and immediately terminate with regard to the User upon any change in the affiliation of the User with Trane during the term of the License.

- d. Upon termination of any License, the User agrees to promptly cease all use of The Materials and to either return or destroy The Materials, together with all copies and merged portions thereof in any form. Should the User fail to comply with this subsection (d), the User agrees that the minimum damages to Trane for such non-compliance shall be no less than ten thousand US dollars (\$10,000) per each month of continuing non-compliance.

3. Restrictions

User shall not resell, rent, lease, sub-license, or otherwise transfer The Material and/or this License. Use of The Material is limited to use within and in connection with the User's business operation. User may not copy, distribute, create derivatives works, reverse engineer, decompile, otherwise attempt to discover the source code of, or disassemble any of The Material.

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User's competency, expertise and/or proficiency to use The Material is assumed, otherwise User should request training and assistance, as available, from Trane prior to use of The Material. The Material, whether used by itself or in combination with other software, programs or systems, is intended as a tool for one or more of the following: a) for estimating heating, cooling, efficiency and/or airflow loads for HVAC and/or BAS systems, b) to aid in HVAC and/or building automation system (BAS) system design and/or equipment selection, c) to assist with design air and water distribution systems, d) to perform building and equipment energy and acoustical simulations, e) to track refrigerant usage, f) to control, operate, service, maintain update or otherwise support an HVAC and/or BAS system, and g) to perform other related tasks. The accuracy and/or efficiency of The Material is highly dependent on user-supplied data and actions. It is the user's responsibility to understand how User's decisions, data and actions affect The Material including its use and output, and to understand that any input and/or calculation mechanisms in The Material is to be used only as a guideline for using The Material. The Material is meant to aid the User: The Material is not a substitute for competency, design services, judgment, or experience. Trane shall not be liable for the operation, operability, efficiency, efficacy, accuracy, desirability or suitability of the HVAC/BAS system, its design or any equipment maintained, selected or operated based on The Material's use. Trane, in providing The Material, accepts no responsibility or liability for the design or improper servicing of the building or support systems, including but not limited to, appropriate sizing, maintenance and/or application of HVAC systems or suitability of the installation to the design or job requirements.

5. Disclaimer of Warranty; Limitation of Liability

- a. USER EXPRESSLY AGREES THAT USE OF THE MATERIAL IS AT USER'S SOLE RISK. TRANE DOES NOT WARRANT OR GUARANTEE THAT THE MATERIAL WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES TRANE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE MATERIAL, OR AS TO THE TIMELINESS, EFFICACY, OPERABILITY, COMPLETENESS, ACCURACY, RELIABILITY OR CONTENT OF THE MATERIAL OR OF ANY DESIGN, FUNCTION, PROCESS, INFORMATION, SERVICE, OR MERCHANDISE PROVIDED THROUGH OR BY USE OF THE MATERIAL.
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- e. TRANE'S MAXIMUM AGGREGATE LIABILITY IN CONNECTION WITH ANY AND ALL CAUSES OF ACTION OR OTHER MATTERS OF ANY KIND ARISING OUT OF THIS AGREEMENT IS LIMITED TO THE AMOUNT ACTUALLY PAID BY USER FOR THE MATERIAL WITHIN THE YEAR PRECEDING USER'S DATE OF NOTICE TO TRANE OF THE CAUSE OF ACTION.



6. Monitoring, Logging and Data Mining; Remote Diagnostics and Repair

- f. TRANE IS NOT RESPONSIBLE FOR THE CONTENTS OF ANY THIRD-PARTY SITES, SERVICES OR INFORMATION, ANY LINKS CONTAINED IN THIRD-PARTY SITES, SERVICES OR INFORMATION, OR ANY CHANGES OR UPDATES TO THIRD-PARTY SITES, SERVICES OR INFORMATION. TRANE IS PROVIDING LINKS AND ACCESS TO ANY THIRD-PARTY SITES, SERVICES OR INFORMATION TO YOU ONLY AS A CONVENIENCE, AND THE INCLUSION OF ANY LINK OR ACCESS DOES NOT IMPLY AN ENDORSEMENT BY TRANE OF THE THIRD-PARTY SITES, SERVICES OR INFORMATION. USER SPECIFICALLY ACKNOWLEDGES THAT TRANE IS NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OR ACTIVITIES OF USERS OR THIRD-PARTIES AND THAT THE RISK OF INJURY OR HARM FROM THE FOREGOING RESTS ENTIRELY WITH USER.

6. Monitoring, Logging and Data Mining; Remote Diagnostics and Repair

6.1 Trane shall have the right, but not the obligation, to monitor the content and/or use of The Material to determine compliance with this Agreement and any operating rules established by Trane, to authenticate user right to access The Material, and to satisfy any law, regulation or authorized government request. When use of The Material entails use of Trane websites, servers, processors or networks or electronic connection to controls, systems and/or equipment provided or serviced by Trane, Trane shall have the unrestricted right, but not the obligation, to operate, modify, service and mine data from the connected product(s) (a) to provide support, updates and fixes, warranty and services and/or products to Users (b) to verify compliance with the terms of this Agreement, (c) for use by Trane for statistical or other analysis of the collective characteristics and behavior of its users, (d) to backup User and other data or information and/or provide remote support and/or restoration, (e) to provide or undertake: engineering analysis; failure analysis; warranty analysis; energy analysis; predictive analysis; service analysis; product usage analysis; and/or other desirable analysis, including histories or trending of any of the foregoing, and (f) to otherwise understand and respond to the needs of the users of Trane's products and services. All data relating to the performance and condition of User's building systems that Trane collects in connection with Trane's performance hereunder shall be owned by User, provided that User grants to Trane the irrevocable, perpetual, nonexclusive, worldwide, royalty-free right and license to use, reproduce, display, distribute internally or externally and prepare derivative works based upon any such data Trane collects. Trane shall not use or publish such data in any way that identifies User as the source of that data without User's prior written consent.

6.2 User authorizes Trane to utilize User's infrastructure to connect to controls, systems and/or equipment provided or serviced by Trane and to provide services contracted for or otherwise requested by User for the purposes set forth in Section 6.1. User acknowledges that Trane is not responsible for any adverse impact to User's infrastructure. User understands and acknowledges that Trane will not be able to collect data or provide services when communications are not operating or have been cut, interfered with or otherwise damaged or of poor quality or if Trane is unable to acquire, transmit or maintain a connection over or to User's communication systems. If User does not allow required communication between the building automation system and Trane websites, servers, processors or networks or electronic connection to controls, Trane may not be able to provide all contracted services.

6.3 Upon User's written request, Trane will endeavor to provide an electronic copy of data collected from User, subject to availability. Trane will use commercially reasonable efforts to store User's data for up to 18 months. Trane cannot guarantee the availability of the data.

6.4 For certain software Material, User must purchase a software maintenance plan to obtain the updates to the software Material. The software Material will continue to function without a software maintenance plan, but User will not be entitled to updates or bug fixes. In some cases and at Trane's absolute discretion, critical defects may be extended without a software maintenance plan.

7. Severability

If any part or parts of this agreement are held to be invalid, the remainder of this agreement shall continue to be valid and enforceable and shall be construed insofar as is possible to achieve the original intentions of the parties hereto.

8. Entirety of Agreement

This agreement and the documents referred to herein contain the full and complete understanding of the parties with respect to the subject matter hereof, and no waiver, alteration, or modification of any of the provisions hereof shall be binding unless agreed to in writing and signed by authorized representatives of the parties. Neither the course of conduct between the parties or trade usage shall act to modify or alter the specific provisions of this Agreement. If User issues a purchase order, memorandum, or instrument covering the services herein provided, it is hereby specifically agreed and understood that such purchase order, memorandum, or instrument is for User's internal purposes only and any and all terms and conditions contained therein, whether printed or written, shall be of no force of effect.

9. Notice

All notices required hereunder shall be in writing and make specific reference to this Agreement. Notice shall be deemed given by Trane to User on the date that it is deposited in the mail, postage paid, addressed to the User at any address provided by User to Trane in accordance with the acquisition by User of The Material, or any other address User shall designate by notice to Trane. Notice shall be deemed given by User to Trane upon receipt of said written notice by the Legal Department of Trane at its address above, or any other address Trane shall designate by notice to User.

10. Changed Terms or Material

In its sole discretion, Trane shall have the right at any time to delete, upgrade, improve, remove, expunge, change or modify or otherwise alter The Material, the terms and conditions applicable to User's use of The Material, or any part thereof, or to impose new conditions, including, but not limited to, adding fees and charges for use of products and/or services that are not presently subject to fees and charges. Such changes, modifications, additions or deletions shall be effective immediately upon notice thereof, which may be given by means including, but not limited to, conventional updates or support of The Material, or by general posting on Trane's public websites, or by electronic or conventional mail, or by any other means by which User obtains notice thereof. Any use of The Material by User after such notice shall be deemed to constitute acceptance by User of such changes, modifications or additions.

11. Equipment

11. Equipment

User shall be responsible for obtaining and maintaining all communication equipment, computer hardware and other equipment or services needed for access to and use of The Material and all charges related thereto. User agrees that Trane is not liable for losses that may occur in cases of malfunction or non-functioning of equipment, the energy management system, failure to identify equipment or system performance issues, failure to recommend corrective action, or otherwise related to the monitoring of User's equipment and building systems.

12. Assignment

Any assignment of this agreement by User without the prior written consent of Trane shall be void. Upon User's insolvency, receivership, voluntary or involuntary bankruptcy, or the institution of proceedings thereof, any assignment by User, Trane shall have the option to terminate this agreement without notice.

13. Indemnification

User agrees to defend, indemnify and hold harmless Trane, its affiliates and their respective directors, officers, employees and agents from and against all claims and expenses, including attorneys' fees, arising out of the use of The Material by User or any breach of this Agreement.

14. Intellectual Property

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15. U.S. Government Restricted Rights

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(b) Civilian Agencies. Notwithstanding any other provision hereof, User agrees that: (i) The Material and Documentation are *restricted computer software* as defined in the Commercial Computer Software--Restricted Rights clause at FAR 52.227-19; (ii) The Material was developed entirely at private expense; (iii) The Material is delivered with only the specific rights set forth in subparagraph (c)(2) of the Commercial Computer Software--Restricted Rights clause at FAR 52.227-19; (iv) The Material is deemed to be adequately marked when the legend below is affixed to The Material or its storage media:

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Notice: Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this restricted computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in subparagraph (c)(2) of the Commercial Computer Software- Restricted Rights clause at FAR 52.227-19.

This Agreement applies to updates, supplements, add-on components, or Internet-based services components, of The Material that Trane may provide to User or make available to User after the date User obtains its initial copy of The Material, unless they are accompanied by separate terms. Trane reserves the right to discontinue Internet-based services provided or made available to User through the use of The Material.

16. Third Party Content

The Material may contain third party content, including but not limited to software. Portions of such third party content may be sub-licensed to User and the User's license to use such third party content is non-exclusive and limited to such rights as Trane has the intention and legal right to sub-license to User. User acknowledges and agrees to abide by the requirements of any such sub-license, which may be provided separately, such as in Additional Terms and Conditions. User may separately obtain third party content that can be used with The Material and User agrees to validly obtain any such third party content and to validly obtain any requisite third party licenses in accordance with the terms and conditions for use of that third party content. The Material may contain other third party content that is licensed under separate applicable license notwithstanding anything to the contrary in this Agreement. Any requisite acknowledgment, notice, and license information (Third Party Software Notices) will accompany the Material. The Third Party Software Notices may be provided in documentation, Readme files, on a device display, via an embedded server, or on a website or mobile app that interacts with The Material. If the Material includes third party content licensed under GPL/LGPL or other copy left licenses, the complete corresponding source code for such content will be provided with the Material or the Third Party Software Notices will include a source code offer.

17. Data Privacy and Security

Trane has implemented various security measures for the purpose of protecting data against accidental or unlawful access, unauthorized disclosure, loss, destruction, and alteration. User is responsible for maintaining the confidentiality of User's user name(s) and password(s). User is responsible for all uses of its password(s), whether or not authorized by User. User must inform Trane immediately of any unauthorized use of User's user name(s) or password(s). Transmission of data over the Internet by its nature entails the use of systems under the control of third parties, and as a result Trane cannot ensure total control of the security of such systems. Trane will take commercially reasonable efforts to ensure that data and other configuration parameters are not visible or accessed by other customers. User acknowledges that the very nature of communication via the Internet restricts Trane from offering any guarantee of the privacy or confidentiality of information relating to User passing over the Internet. In gaining access via the Internet, User also acknowledges and accepts that electronic communication may not be free from interference by unauthorized persons and may not remain confidential. User therefore accepts that access and storage of data is at User's own risk. User is expected to prevent controls and equipment from being exposed to the Internet by adopting generally accepted best practices for the management of its connected equipment and devices, including without limitation, placing controls and equipment behind a firewall with no inbound ports exposed. Any breach in privacy of which User becomes aware should be reported by User to Trane immediately. Trane does not disclose User's information to third parties for their marketing purposes, but Trane does use third party software and services to assist Trane with collecting and analyzing information. Trane may also disclose User information if required to do so by law, in which case, Trane would inform User of such disclosure.

18. Miscellaneous

This Agreement constitutes the entire agreement of the parties with respect to The Material and supersedes all previous written or oral agreements between the parties with respect to The Material. This Agreement, The Material and the use thereof, shall be construed in accordance with the laws of the State of New Jersey, without regard to its conflict of laws rules. User hereby consents to jurisdiction and venue under the laws of the state of New Jersey, U.S.A. By use of The Material, User agrees that its use shall conform to all applicable laws and regulations and User shall not violate the rights of any third parties. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for convenience only and shall not be given any legal import. User shall adhere to the U.S. Export Administration Laws and Regulations and shall not export or re-export any of The Material to any proscribed country or person listed in the U.S. Export Administration Regulations unless properly authorized by the U.S. Government. The parties agree that the Uniform Computer Information Transaction Act (UCITA), or any version thereof, adopted by any state in any form (UCITA), shall not apply to this Agreement and, to the extent that UCITA is applicable, the parties agree to opt-out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein.

Note: Additional conditions may be required to use certain parts of The Material.

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