

Intelligent Platforms, LLC, an Emerson Automation Solutions company ("Emerson")

End User License Agreement

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE OPENING THIS PACKAGE OR SIGNIFYING YOUR ACCEPTANCE BY CLICKING THE APPROPRIATE DIALOG BOX. OPENING THIS PACKAGE OR CLICKING THE APPROPRIATE DIALOG BOX OR DOWNLOADING, INSTALLING, COPYING OR USING ANY PART OF THE SOFTWARE SIGNIFIES YOUR ACCEPTANCE AS "CUSTOMER" OF THESE TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH THEM, YOU SHOULD PROMPTLY RETURN THE PACKAGE UNOPENED AND UNUSED ALONG WITH ANY OTHER ITEM THAT WAS INCLUDED IN THE SAME CATALOG NUMBER FOR FULL CREDIT.

1. DEFINITIONS

- 1.1 "Application Software" shall mean those portions of the Licensed Software, in object code form only, created by Emerson.
- 1.2 "Third Party Software" shall mean software, including but not limited to operating systems, owned or licensed by a third party that is supplied to Customer by Emerson.
- 1.3 "Licensed Software" shall mean the Application Software plus any other software (including Third Party Software), in object code form only, supplied by Emerson pursuant to this Agreement. If no operating system software is included in the software provided under this Agreement, Customer must make provision for any required operating system software licenses.

2. LICENSE

2.1 Except as provided in Section 2.2 below, Customer is granted only a personal, non-transferable, nonexclusive license to install and use one copy of the Licensed Software solely for Customer's internal business purpose. Customer's license to use the Licensed Software may be perpetual or subject to a subscription period as specified in the documentation governing Customer's purchase of the license. Customer agrees not to exceed any limits applicable to use of the Licensed Software (e.g., as may be identified in the documentation for the Licensed Software) nor use any features of the Licensed Software for which Customer has not purchased a license. Emerson may use technological and/or other measures to prevent unlicensed access to and/or use of the Licensed Software and/or its features, and Customer acknowledges and agrees to the use of such measures, and that Customer shall not circumvent nor attempt to circumvent such measures. Customer may make one copy of the Licensed Software in machine readable form for backup purposes in support of Customer's use of the Licensed Software. No other copies shall be made unless authorized in writing by Emerson. Customer may not modify, reverse compile or disassemble the software. The Licensed Software, comprising proprietary trade secret information of Emerson and/or its licensors, shall be held in confidence by Customer and protected from copying or disclosure to third parties. No title to the intellectual property is transferred. Customer must reproduce and always include all applicable copyright notices and proprietary markings on any copy. Customer hereby acknowledges and agrees that any Licensed Software that is embedded within Emerson hardware, shall be used, redistributed and/or resold only to the extent permissible under this Agreement and only embedded within the Emerson hardware with which it was provided. Unless otherwise expressly permitted in writing, Customer may not use the Licensed Software to provide hosted services, subscription services, training services, consulting services, service bureau, time sharing, or rental use to third parties.

2.2 If Customer is an authorized Emerson distributor or an original equipment manufacturer or a system provider who incorporates the Licensed Software into its equipment or system for sale to an end user, or if Customer uses the Licensed Software to create redistributables, Customer may only transfer the Licensed Software to an end user provided that the end user agrees to be bound by the provisions of this Agreement. Customer shall use its best efforts to enforce its agreement with customers made in accordance with this section, and shall promptly report any violation or suspected violation to Emerson.

2.3 All rights and benefits afforded to Emerson under this Agreement shall apply equally to the owner of the Third Party Software and its licensors (collectively, the "Third Parties") with respect to the Third Party Software, which is licensed under this Agreement. The Third Parties are intended third party beneficiaries of this Agreement. The provisions of this Agreement relating to the Licensed Software, as the same incorporate Third Party Software, are made expressly for the benefit of, and are enforceable by, the Third Parties. The Third Parties retain title to the Third Party Software. Any Third Party Software, not licensed under this Agreement, shall be subject to third party owner's applicable license agreement and registration requirement, and Customer authorizes Emerson to provide Customer's contact information, including company name, mailing address, telephone number, ship-to recipient address, and primary contact's name, mailing address, telephone number, and email address, to such third party owner for the purposes of product registration, support, and compliance with applicable import and export control laws, regulations, orders, and requirements. **Unless the Third Parties extend a pass-through warranty covering the Third Party Software to Customer, all Third Party Software is provided "AS IS" without warranty of any kind, and the Third Parties disclaim all warranties, either express or implied, including but not limited to the implied warranties of merchantability, title, non-infringement or fitness for a particular purpose with regard to the Third Party Software. The Third Parties shall not have any liability for special, indirect, punitive, incidental or consequential damages.**

2.4 EXCEPT AS PROVIDED IN SECTION 2.2 ABOVE, IF CUSTOMER TRANSFERS POSSESSION OF ANY COPY OF THE LICENSED SOFTWARE TO ANOTHER PARTY WITHOUT WRITTEN CONSENT OF EMERSON, THIS LICENSE IS AUTOMATICALLY TERMINATED. Any attempt otherwise to sublicense, assign or transfer any of the right, duties or obligations hereunder is void.

2.5 If the Licensed Software or associated documentation is provided to any U.S. Government entity, unit, or agency, the restrictions set forth at section 52.227-19(c) ("Commercial computer software - restricted rights") of the Federal Acquisition Regulations (FARs) shall apply. If the Licensed Software or associated documentation is provided to the U.S. Government, Department of Defense (DOD), or any entity, unit, or agency thereof, the restrictions set forth at section 252.227-7015 ("Technical Data - Commercial Items") and section 252.227-7013(c)(1) ("Technical Data - Restricted Rights") of the DOD FAR Supplement (DFARS) shall also apply.

2.6 In the event Customer wishes to assess the vulnerability of the Licensed Software (including conducting a penetration test or any other form of vulnerability assessment or test), Customer agrees to obtain Emerson's prior written consent. Emerson will not unreasonably withhold or unduly delay such consent, but Customer agrees that Emerson may require that: (i) Emerson participate in any such tests/assessments, (ii) receive the results of such tests/assessments, and (iii) Customer not publish, distribute, or otherwise make available the results (in whole or part) to any third party without the express written consent of Emerson. Emerson may further require that any such tests/assessments be conducted in accordance with and subject to a separate written agreement between Customer and Emerson.

2.7 Emerson may attach or otherwise associate digital signatures to files of the Licensed Software to aid detection of subsequent modifications to such files. However, in attaching or associating such digital signatures, Emerson does not (i) guarantee that the Licensed Software or the files can be trusted, nor (ii) assume any liability or claim authorship with regard to third party files.

3. WARRANTY

3.1 Emerson warrants that the Application Software will be in substantial conformance with the manual pertaining thereto as of the date of shipment by Emerson. If, within ninety (90) days of date of shipment it is shown that the Application Software does not meet this warranty, Emerson will, at its option, either correct the defect or error in the Application Software, free of charge, or make available to Customer satisfactory substitute software, or, if none of the foregoing is reasonably available, return to Customer all payments made as license fees and terminate the license with respect to the Application Software affected. Emerson does not warrant that operation of the Application Software will be

uninterrupted or error free or that it will meet Customer's needs. All other portions of the Licensed Software are provided "as is" without warranty of any kind.

3.2 Emerson warrants that the media on which the Application Software is delivered will be free from defects in material or workmanship under normal use and service for a period of ninety (90) days from the date of delivery. If any defects are discovered in the media and reported by Customer within ninety (90) days after delivery, Emerson shall, at no cost to Customer, upon return of media to Emerson, replace the media and deliver to Customer a new and complete copy of the Application Software.

3.3 Any modification to the Licensed Software by the Customer without the express written consent of Emerson shall void the warranty.

3.4 WITH RESPECT TO THE SOFTWARE WHICH IS THE SUBJECT OF THIS AGREEMENT, THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY. NO WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE SHALL APPLY.

4. LIMITATION OF LIABILITY

4.1 IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE SHALL EMERSON OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE LICENSED SOFTWARE OR ANY PART THEREOF OR ANY ASSOCIATED EQUIPMENT, DAMAGE TO ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWN TIME COSTS, OR CLAIMS OF CUSTOMER'S CUSTOMERS AND TRANSFEREES FOR SUCH DAMAGES EVEN IF EMERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.2 EXCEPT AS PROVIDED IN SECTION 5, INDEMNITY, IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL EMERSON'S LIABILITY TO CUSTOMER FOR ANY LOSS OR DAMAGE ARISING OUT OF, OR RESULTING FROM THIS AGREEMENT, OR FROM ITS PERFORMANCE OR BREACH, OR FROM THE LICENSED SOFTWARE OR ANY PART THEREOF, OR FROM ANY SERVICE FURNISHED HEREUNDER, EXCEED THE FEES PAID BY CUSTOMER FOR THE LICENSED SOFTWARE. ALL SUCH LIABILITY SHALL TERMINATE UPON THE TERMINATION OF THE WARRANTY PERIOD AS SET FORTH IN SECTION 3.

4.3 If Emerson furnishes Customer with advice or other assistance which concerns Licensed Software or any portion thereof supplied hereunder or any system or equipment on which any such software may be installed and which is not required pursuant to this Agreement, the furnishing of such advice or assistance will not subject Emerson to any liability, whether in contract, indemnity, warranty, tort, (including negligence), strict liability, or otherwise.

4.4 The products to be licensed or sold hereunder are not intended for use in any nuclear, chemical or weapons production facility or activity, or other activity where failure of the products could lead directly to death, personal injury or severe physical or environmental damage. If so used, Emerson disclaims all liability for any damages arising as a result of the hazardous nature of the business in question, including but not limited to nuclear, chemical or environmental damage, injury or contamination, and Customer shall indemnify, hold harmless and defend Emerson, its officers, directors, employees and agents against all such liability, whether based on contract, indemnity, warranty, tort (including negligence), strict liability, or otherwise, regardless of whether Emerson had knowledge of the possibility of such damages.

5. INDEMNITY

5.1 Emerson warrants that the Application Software shall be delivered free of any rightful claim for infringement of any United States patent, copyright, trademark or trade secret. If notified promptly in writing and given authority, information and assistance, Emerson shall defend, or may settle, at its expense, any suit or proceeding against Customer so far as based on a claimed infringement which would result in a breach of this warranty and Emerson shall pay all damages and costs awarded therein against Customer due to such breach. In case the Application Software is in such suit held to constitute such an infringement and its use is enjoined, Emerson shall, at its expense and option, either procure for Customer the right to continued use, or replace same with a non-infringing product or part, or modify the Application Software so that it becomes non-infringing, or remove the software and refund the license charge pertaining thereto (less reasonable depreciation for any period of use) and any transportation costs separately paid by Customer. The foregoing states the entire liability of Emerson for patent, copyright, trademark and trade secret infringement by the Licensed Software or any part thereof.

5.2 The indemnity under the preceding paragraph shall not apply to any use of Application Software in conjunction with any other product in a combination not furnished by Emerson as a part of this transaction. As to any such use in such combination, or any improper or unauthorized use, installation, or operation of the Application Software, Emerson assumes no liability whatsoever for patent, copyright, trademark or trade secret infringement and Customer will hold Emerson harmless against any infringement claims arising therefrom (including, but not limited to reasonable attorney's fees).

6. TERM AND TERMINATION

6.1 Customer may terminate the license granted hereunder at any time by destroying the Licensed Software together with all copies thereof and notifying Emerson in writing that all use of the Licensed Software has ceased and that the Licensed Software has been destroyed.

6.2 Emerson, upon thirty (30) days notice, may terminate this Agreement and/or any license hereunder if Customer fails to perform any obligation or undertaking to be performed by it under this Agreement or if Customer attempts to assign this Agreement without the prior written consent of Emerson. Within twenty (20) days after any such termination of this Agreement, Customer shall certify in writing to Emerson that all use of the Licensed Software or the affected portion thereof has ceased, and that the Licensed Software or portion thereof has been returned or destroyed, in accordance with Emerson's instructions.

6.3 Sections 4, 6 and 7 of this Agreement shall survive any expiration or termination and remain in effect. Termination of this Agreement or any license hereunder shall not relieve Customer of its obligation to pay any and all outstanding charges hereunder nor entitle Customer to any refund of such charges previously paid.

7. EXPORT

If Customer intends to export (or reexport), directly or indirectly, the software products or technical data relating thereto supplied hereunder or any portion thereof, it is Customer's responsibility to assure compliance with U.S. and any other applicable governmental export control laws and, if appropriate, to secure any required export licenses or approvals in Customer's own name. Customer is also responsible for the accuracy and completeness of any information or certification Customer provides for purposes of export control compliance.

8. PAYMENT TERMS

All quoted charges arising pursuant to this Agreement are due upon delivery of the Licensed Software or any hardware delivered as part of the same Customer order (whichever is earlier) to which such charges pertain and shall be paid within thirty (30) days of the date of invoice therefor. Prices quoted are exclusive of all sales, use, and excise taxes (and any other assessments in the nature of taxes however designated). Customer shall pay all import duties and registration fees and all sales, use and excise taxes (and any other assessments in the nature of taxes however designated) arising from the licensing of the Licensed Software hereunder, exclusive of taxes based on Emerson's net income.

9. FORCE MAJEURE

Emerson shall not be responsible for failures to fulfill its obligations under this Agreement due to causes beyond its control.

10. GOVERNING LAW

This Agreement shall be governed by the laws of the Commonwealth of Virginia, without regard to its conflict of law provisions. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

11. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement with respect to the subject matter hereof and supersedes all proposals, oral or written, all previous negotiations and all other communications between the parties with respect to the subject matter hereof. These terms and conditions shall prevail, notwithstanding any different, conflicting, or additional terms and conditions that may appear on any purchase order or other instrument submitted by Customer. Deviation from these terms and conditions are not valid unless confirmed in writing by an authorized representative of Emerson. The invalidity of any portion of this Agreement shall not affect the remainder of this Agreement.

CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. CUSTOMER FURTHER AGREES THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN CUSTOMER AND EMERSON AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN US RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. FURTHER, NO CHANGE OR AMENDMENT TO THIS AGREEMENT SHALL BE EFFECTIVE UNLESS AGREED TO BY WRITTEN INSTRUMENT SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF EMERSON.

Should you have any questions concerning this Agreement, you may contact Emerson by contacting: Legal Department, Emerson, 2500 Austin Drive, Charlottesville, VA 22911.