

# License Agreement: Single Cellome Unit SU10 Software

IMPORTANT - PLEASE READ CAREFULLY BEFORE INSTALLING OR USING:  
THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND YOKOGAWA ELECTRIC CORPORATION AND/OR ITS SUBSIDIARIES (COLLECTIVELY, "YOKOGAWA") FOR YOU TO INSTALL OR USE YOKOGAWA SOFTWARE PRODUCT. BY INSTALLING OR OTHERWISE USING THE SOFTWARE PRODUCT, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE, DO NOT INSTALL NOR USE THE SOFTWARE PRODUCT AND PROMPTLY RETURN IT TO THE PLACE OF PURCHASE FOR A REFUND, IF APPLICABLE. SHOULD THERE BE ANY DISCREPANCY BETWEEN THIS AGREEMENT AND ANY OTHER WRITTEN AGREEMENT MADE BETWEEN YOU AND YOKOGAWA, THE LATTER SHALL PREVAIL.

## 1. Scope

This Agreement applies to any of the above listed Yokogawa software products you may install or use (the "Software Product"). The Software Product consists of:

- a) Standard Software Product: The software products listed in "General Specifications" of Yokogawa.
- b) Customized Software Product: The software products made by Yokogawa based on individually agreed specifications, which will be used with or in addition to the function of the Standard Software Product.

1.2 The Software Product includes, without limitation, computer programs, key codes, manuals and other associated documents, databases, fonts, input data, and any images, photographs, animations, video, voice, music, text, and applets (software linked to text and icons) embedded in the software.

Unless otherwise provided by Yokogawa, this Agreement applies to the updates and upgrades of the Software Product.

## 2. Grant of License

2.1 Subject to the terms and conditions of this Agreement, Yokogawa hereby grants you a non-exclusive and non-transferable right to use the Software Product on the hardware specified by Yokogawa or if not specified, on a single hardware and solely for your internal operation use, in consideration of full payment by you of the price of the ordered device separately purchase. Use of the Software Product shall be subject to the terms and conditions of General Specifications, user's manuals and other associated documents in addition to this Agreement.

2.2 Unless otherwise agreed or provided by Yokogawa in writing, the following acts are prohibited:

- a) to reproduce the Software Product;
- b) to sell, lease, distribute, transfer, pledge, sublicense, make available via the network or otherwise convey the Software Product or the license granted herein to any other person or entity;
- c) to use the Software Product on any unauthorized hardware via the network;
- d) to cause, permit or attempt to dump, disassemble, decompile, reverse-engineer, or otherwise translate or reproduce the Software Product into source code or other human readable format, or to revise or translate the Software Product into other language and change it to other formats than that in which Yokogawa provided;
- e) to cause, permit or attempt to remove any copy protection used or provided in the Software Product;
- f) to remove any copyright notice, trademark notice, logo or other proprietary notices or identification shown in the Software Product; or
- g) to develop or have developed derivative software or other computer programs which are based on the Software Product unless otherwise permitted by Yokogawa in writing.

2.3 Any and all technology, algorithms, know-how and process contained in the Software Product are the property or trade secret of Yokogawa or licensors to Yokogawa. Ownership of and all the rights in the Software Product shall be

retained by Yokogawa or the licensors and none of the rights will be transferred to you hereunder.

2.4 You agree to maintain the aforementioned property and trade secret of Yokogawa or licensors and key codes in strict confidence, not to disclose it to any party other than your employees, officers, directors or similar staff who have a legitimate need to know to use the Software Product and agreed in writing to abide by the obligations hereunder.

2.5 Upon expiration or termination of this Agreement, the Software Product and its copies, including extracts, shall be returned to Yokogawa and any copies retained in your hardware or any other media shall be deleted irretrievably. If you dispose of media in which the Software Product or its copy is stored, the contents shall be irretrievably deleted.

2.6 The Software Product may contain software which Yokogawa is granted a right to sublicense or distribute by third party suppliers ("Third Party Software"). If suppliers of the Third Party Software ("Supplier") provide special terms and conditions for the Third Party Software which differ from this Agreement, the special terms and conditions separately provided by Yokogawa shall prevail over this Agreement. Some software may be licensed to you directly by Supplier.

### **3. Restrictions on Application**

3.1 Unless otherwise agreed in writing between you and Yokogawa, the Software Product is not intended, designed, produced or licensed for actual use in patient care, diagnosis or treatment, aircraft operation or control, ship navigation or marine equipment control, or ground facility or device for support of the aforesaid operation or control, nor for planning, construction, maintenance or operation of any nuclear related facility.

3.2 If the Software Product is used for the abovementioned purposes, neither Yokogawa nor Supplier assumes liability for any claim or damage arising from the said use and you shall indemnify and hold Yokogawa, Supplier, their affiliates, subcontractors, officers, directors, employees and agents harmless from any liability or damage whatsoever, including any court costs and attorney's fees, arising out of or related to the said use.

## 4. Limited Warranty

4.1 Yokogawa warrants that, for one year from the delivery by Yokogawa or any other period to be agreed by Yokogawa in writing (“Warranty Period”), the Software Product shall, if it is properly used on the hardware designated by Yokogawa to install the Software Product and with the software which Yokogawa designates is required to run the Software Product (collectively, “Platform”) and if used in accordance with the environmental or other conditions defined by Yokogawa or provider of Platform, operate substantially in compliance with the manuals or functional specifications provided by Yokogawa. The Warranty Period commences from the delivery of the Software Product by Yokogawa or when any part of the Software Product is used for operation, whichever comes earlier.

4.2 Under no conditions will Yokogawa warrant that:

- a) operation of the Software Product is uninterrupted;
- b) the Software Product is error free;
- c) the Software Product is completely corrected;
- d) the Software Product has no inconsistency or interference with other software;
- e) the Software Product fits for a particular purpose or your intention;
- f) the Software Product or the results arising therefrom is precise, reliable or up-to-date; or
- g) the Software Product is free of vulnerability to intrusion or attack.

4.3 In case, during the Warranty Period, it is found that the Software Product does not operate in compliance with the manuals or functional specifications of Yokogawa, or its medium has a physical defect, Yokogawa will, at Yokogawa’s discretion, repair, replace or present a workaround without charge, through Yokogawa’s distributors. If Yokogawa engineer or other engineer is required to attend for repair, replacement or implementing a workaround at the site, you may be charged for the site service fee. If Yokogawa deems necessary, you are required to initialize or stop the operation of the system, facility or equipment in or on which the Software Product is installed.

4.4 The above warranties shall not be applied to and Yokogawa shall not be liable for the defect or non-compliance which is subject to any of the following circumstances:

- a) the Platform has ceased to be covered by the warranty or maintenance contract of the provider of Platform
- b) if the Platform to run the Software Product is specified, such Platform has been changed to other Platform without consent of Yokogawa;
- c) modification, improvement or alteration is made by a person other than Yokogawa or its designated service provider;
- d) your or third party's (excluding the service provider designated by Yokogawa) misuse, alteration, addition of new function, or use for any purpose not provided in the functional specifications of Yokogawa;
- e) the appropriate environmental or other conditions provided by Yokogawa or provider of Platform is not complied with;
- f) the corrective action (including repair, replacement or workaround) for the defect or non-compliance is not implemented as suggested by Yokogawa; or
- g) any other causes which are not attributable to Yokogawa.

4.5 NOTWITHSTANDING THE FOREGOING, ANY WARRANTY FOR THE THIRD PARTY SOFTWARE IS SUBJECT TO THE SPECIAL TERMS AND CONDITIONS SET FORTH THOSE SEPARATELY PROVIDED WITH RESPECT TO SUCH THIRD PARTY SOFTWARE.

4.6 THE ABOVE WARRANTY IS GIVEN AND ACCEPTED AS A SOLE AND EXCLUSIVE LIABILITY AND IN LIEU OF ALL OTHER LIABILITY OR WARRANTIES OF ANY KIND WHATSOEVER ON THE PART OF YOKOGAWA OR SUPPLIER, EXPRESS OR IMPLIED, IN FACT OR IN LAW. ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE EXPRESSLY EXCLUDED AND DISCLAIMED. THE WARRANTY PROVISIONS OF THE APPLICABLE LAW ARE EXPRESSLY EXCLUDED TO THE EXTENT PERMITTED. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

## **5. Maintenance Services**

5.1 Scope and terms and conditions of maintenance service for the Software Product shall be subject to the latest Yokogawa standard terms and conditions of service or otherwise defined by Yokogawa. Unless otherwise provided in

Yokogawa's General Specifications, services for the Standard Software Product will be available only for the latest version and the immediately preceding version. In any event service for the immediately preceding version will be available only for 5 years after the latest version has been released. In addition, no service will be provided by Yokogawa for the Software Product which has been discontinued for more than 5 years. As for the Customized Software Product, basically, Yokogawa will not provide maintenance service after the Warranty Period, provided that Yokogawa may provide alteration work subject to individual written agreement.

5.2 Notwithstanding otherwise stated in the preceding sub-clause, any maintenance service for the Third Party Software shall be subject to the terms and conditions provided by the Supplier.

## **6. Infringement**

6.1 If you are warned or receive a claim by a third party that the Software Product in its original form infringes any third party's patent (which is issued at the time of delivery of the Software Product), trade mark, copyright or other intellectual property rights ("Claim"), you shall promptly notify Yokogawa thereof in writing.

6.2 If the infringement is attributable to Yokogawa, Yokogawa will defend you from the Claim at Yokogawa's expense and indemnify you from the damages finally granted by the court or otherwise agreed by Yokogawa out of court. The foregoing obligation and indemnity of Yokogawa shall be subject to that i) you promptly notify Yokogawa of the Claim in writing as provided above, ii) you grant to Yokogawa and its designees the full authority to control the defense and settlement of such Claim and iii) you give every and all necessary information and assistance to Yokogawa upon Yokogawa's request.

6.3 If Yokogawa believes that a Claim may be made or threatened, Yokogawa may, at its option and its expense, either a) procure for you the right to continue using the Software Product, b) replace the Software Product with other software product to prevent infringement, c) modify the Software Product, in whole or in part, so that it become non-infringing, or d) if Yokogawa believes that a) through c) are not practicable, refund you the paid-up amount of the book value of the Software Product as depreciated.

6.4 Notwithstanding the foregoing, Yokogawa shall have no obligation nor liability for, and you shall defend and indemnify Yokogawa and its suppliers from, the Claim, if the infringement is arising from a) modification of the Software Product made by a person other than Yokogawa, b) combination of the Software Product with hardware or software not furnished by Yokogawa, c) design or instruction provided by or on behalf of you, d) not complying with Yokogawa's suggestion, or e) any other causes not attributable to Yokogawa.

6.5 This Clause 6 states the entire liability of Yokogawa and its suppliers and the sole remedy of you with respect to any claim of infringement of a third party's intellectual property rights. Notwithstanding anything to the contrary stated herein, with respect to the claims arising from or related to the Third Party Software, those separately provided for such Third Party Software shall prevail.

## **7. Limitation of Liability**

EXCEPT TO THE EXTENT THAT LIABILITY MAY NOT LAWFULLY BE EXCLUDED OR LIMITED BY CONTRACT, YOKOGAWA AND SUPPLIERS SHALL NOT BE LIABLE TO ANY PERSON OR LEGAL ENTITY FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF MATERIALS OR PRODUCTS, LOSS OF PRODUCTION, LOSS OF CONTRACTS, LOSS OR DESTRUCTION OF DATA, LOSS OF AVAILABILITY AND THE LIKE, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, OR OTHER SIMILAR DAMAGES OF ANY KIND, ARISING OUT OF THE USE OR INABILITY TO USE OF THE SOFTWARE PRODUCT, OR ARISING OUT OF ITS GENERATED APPLICATIONS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER BASED IN WARRANTY (EXPRESS OR IMPLIED), CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE GROUNDS. IN NO EVENT YOKOGAWA AND SUPPLIER'S AGGREGATE LIABILITY FOR ANY CAUSE OF ACTION WHATSOEVER (INCLUDING LIABILITY UNDER CLAUSE 6) SHALL EXCEED THE BOOK VALUE OF THE LICENSE FEE PAID TO YOKOGAWA FOR THE USE OF THE CONCERNED PART OF THE SOFTWARE PRODUCT.

If the product delivered by Yokogawa is altered, modified or combined with other software or is otherwise made different from Yokogawa's General Specifications, basic specifications, functional specifications or manuals without Yokogawa's prior

written consent, Yokogawa shall be exempted from its obligations and liabilities under this Agreement or by law.

## **8. Assignment**

You shall not assign its rights or obligations under this Agreement without prior written consent of Yokogawa. If you novate or assign this Agreement and the Software Product with Yokogawa's consent, you shall transfer all copies and whole part of the Software Product to the assignee and shall delete any and all copy of the Software Product in possession irretrievably. This Agreement shall inure to the benefit of and shall be binding on the successors of the parties.

## **9. Export Control**

You agree to comply with the export control and related laws, regulations and orders of Japan, the United States of America, and any other applicable countries and, if you export or reexport the Software Product, to obtain export/import permit and take all necessary procedures under your own responsibility and at your own expense.

## **10. Audit; Withholding**

10.1 Yokogawa shall have the right to access and audit your facilities and any of your records in a commercially reasonable manner, including data stored on hardware, in relation to the use of the Software Product as may be reasonably necessary in Yokogawa's reasonable opinion to verify that the requirements of this Agreement are being met

10.2 Even after license being granted under this Agreement, should there be any change in circumstances or environment of use which was not foreseen at the time of delivery and, in Yokogawa's reasonable opinion, is not appropriate for using the Software Product, or if Yokogawa otherwise reasonably believes it is too inappropriate for you to continue using the Software Product, Yokogawa may suspend or withhold the license provided hereunder.



## **11. Termination**

Yokogawa shall have the right to terminate this Agreement with immediate effect upon notice to you, if you or end users breach any of the terms and conditions hereof. Upon termination of this Agreement, you shall, and make end users, promptly cease using the Software Product and, in accordance with sub-clause 2.5, return or irretrievably delete all copies of the Software Product, certifying the same in writing. In this case the license fee paid by you for the Software Product shall not be refunded. Clauses 2.4 and 2.5, 6, 7, 12 and 13 shall survive any termination of this Agreement.

## **12. Governing Law; Disputes**

This Agreement shall be governed by and construed in accordance with the laws of Japan. If you are a Japanese individual or entity, all disputes, controversies or differences which may arise between the parties hereto, out of, in relation to or in connection with this Agreement (“Dispute”) shall be brought exclusively in the Tokyo District Court (The Main Court) in Japan. If you are not a Japanese individual or entity, any Dispute shall be finally settled by arbitration in Tokyo, Japan in accordance with the Commercial Arbitration Rules of the Japan Commercial Arbitration Association. All proceedings in arbitration shall be conducted in the English language, unless otherwise agreed. The award of arbitration shall be final and binding upon both parties, however, each party may make an application to any court having jurisdiction for judgment to be entered on the award and/or for enforcement of the award.

## **13. Miscellaneous**

13.1 This Agreement supersedes all prior oral and written understandings, representations and discussions between the parties concerning the subject matter hereof to the extent such understandings, representations and discussions should be discrepant or inconsistent with this Agreement.

13.2 If any part of this Agreement is found void or unenforceable, it shall not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms and conditions. The parties hereby agree to

attempt to substitute for such invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

13.3 Failure by either party to insist on performance of this Agreement or to exercise a right when entitled does not prevent such party from doing so at a later time, either in relation to that default or any subsequent one.

LA 80S01A01-01E

1st Edition