

Yokogawa Software License Agreement (For Opnex Water Loss Management System (OW-LS))

Yokogawa Electric Corporation ("Yokogawa") would deliver the software program: 'Opnex Water Loss Management System' ('OW-LS') ("Licensed Software") to the user of OW-LS ("Licensee") based on this Software Program License Agreement ("this Agreement") and Licensee shall agree to this Agreement for the use of Licensed Software. By using the Licensed Software, Licensee shall agree to be bound by the terms and conditions of this Agreement without any form or manner of the conclusion and execution of this Agreement.

Article 1 (Scope)

- 1.1 This Agreement applies to the Licensed Software.
- 1.2 The Licensed Software on the preceding paragraph includes computer programs, fonts, related documents, databases, data input in fill-in forms and software-embedded text, applets (text or icons embedded in software).
- 1.3 Although the respective composition of the Licensed Software exists independently and solely in terms of its specification and technical composition, the Licensed Software shall be composed of such software and be collectively deemed to be a sole licensed software as OW-LS.

Article 2 (Grant of License)

- 2.1 Yokogawa hereby grants to Licensee, a non-exclusive, non-transferable right to use the Licensed Software ("License") delivered by Yokogawa or any entity designated by Yokogawa solely for Licensee's internal operation use, in consideration of full payment by Licensee of the license fee.
- 2.2 Unless otherwise agreed or provided by Yokogawa in writing, the following acts are prohibited.
 - (1) to sell, lease, distribute, transfer or pledge the Licensed Software or the License to any other person or entity;
 - (2) to sublicense the Licensed Software or the License to any other person or entity; and
 - (3) to use the Licensed Software on the system except the system designated by Yokogawa via the network.
- 2.3 Licensee shall not reproduce the Licensed Software in whole or in part except for backup purpose or storage purpose by Yokogawa's prior approval. In this exceptional case, Licensee shall exercise the same degree of care for such backup or storage as used to protect Licensee's own proprietary information or trade secrets and in no event no less than industry standard.
- 2.4 The Licensee shall not engage in any of the following acts for any reason:
 - (1) to cause, permit or attempt to dump, disassemble, decompile, reverse engineer, or otherwise translate or reproduce the Licensed Software into source code or another human readable format, or
 - (2) to revise or translate the Licensed Software into other language, or otherwise to modify it in a form other than that is provided.
- 2.5 Licensed Software and any and all techniques, algorithms, know-how, and processes therein are the sole property and trade secrets of Yokogawa or any of its licensors. Copyright, trademark and any other intellectual property rights in and ownership of the Licensed Software shall be retained by Yokogawa or any of its licensors and none of the rights will be transferred to Licensee hereunder.
- 2.6 Licensee agrees to maintain the aforementioned intellectual property and trade secrets of Yokogawa or any of its licensors in strict confidence, not to disclose it to any party other than Licensee's employees, officers, directors or equivalent staff who have a legitimate need to know to use the Licensed Software and agreed in writing to abide by the obligations hereunder.
- 2.7 Yokogawa may use or add protective mechanisms (copy-protection) to the Licensed Software. The Licensee shall not cause, permit or attempt to remove any copy-protection in the Licensed Software.
- 2.8 Licensee shall return the Licensed Software and any copies thereof to Yokogawa upon termination or expiration of this Agreement. If Yokogawa approves the Licensee to delete or dispose the Licensed Software and any copies thereof instead of the foregoing return in writing, the Licensee shall completely delete or dispose all records contained therein.
- 2.9 The Licensed Software may contain software which Yokogawa is granted a right to sublicense or distribute by third party suppliers ("Third Party Software", including the software which Yokogawa's subsidiary or affiliate independently develops and/or sells). 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 shall prevail over this Agreement.

Article 3 (Restrictions on Use)

- 3.1 Unless otherwise agreed in writing between Licensee and Yokogawa, the Licensed Software is not intended, designed, produced or licensed for aircraft operation or control, ship navigation, 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 Licensed Software is used for the above mentioned purposes, neither Yokogawa assumes liability for any claim or damage arising from the said use and Licensee 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.

Article 4 (No Warranty)

The Licensed Software is provided "AS IS". TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOKOGAWA DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. YOKOGAWA DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE LICENSED SOFTWARE WILL MEET ANY REQUIREMENTS OR NEEDS LICENSEE MAY HAVE, THAT THE LICENSED SOFTWARE WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION, THAT ANY DEFECTS OR ERRORS IN THE LICENSED SOFTWARE WILL BE CORRECTED, THAT THE LICENSED SOFTWARE HAS NO INCONSISTENCY OR INTERFERENCE WITH OTHER SOFTWARE, THAT THE LICENSED SOFTWARE OR THE RESULTS ARISING THEREFROM IS PRECISE, RELIABLE OR UP-TO-DATE, THAT THE LICENSED SOFTWARE IS COMPATIBLE WITH ANY PARTICULAR SOFTWARE REQUIRED TO RUN THE LICENSED SOFTWARE, OR THAT THE LICENSED SOFTWARE IS FREE OF VULNERABILITY TO INTRUSION OR ATTACK. SOME JURISDICTIONS DO NOT ALLOW THE WAIVER OR EXCLUSION OF IMPLIED WARRANTIES SO THEY MAY NOT APPLY TO LICENSEE.

Article 5 (Infringement)

- 5.1 If Licensee is warned or receives a claim by a third party that the Licensed Software in its original form infringes any third party's patent, trade mark, copyright or other intellectual property rights ("Claim"), Licensee shall promptly notify Yokogawa thereof in writing.
- 5.2 If the infringement is attributable to Yokogawa, Yokogawa will defend Licensee from the Claim at Yokogawa's expense and indemnify Licensee from the damages finally granted by the court or otherwise settled by Yokogawa out of court. The foregoing obligation and indemnity of Yokogawa shall be subject to i) Licensee promptly notifying Yokogawa of the Claim in writing as provided above, ii) Licensee granting to Yokogawa and its designees the full authority to control the defense and settlement of such Claim and iii) Licensee to give every and all necessary information and assistance to Yokogawa upon Yokogawa's request.
- 5.3 If Yokogawa believes that a Claim may be made or threatened, Yokogawa may, at its option and its expense, either
- a) procure for Licensee the right to continue using the Licensed Software;
 - b) replace the Licensed Software with other software product to prevent infringement;
 - c) modify the Licensed Software, in whole or in part, so that it becomes non-infringing; or
 - d) if Yokogawa believes that a) through c) are not practicable, refund Licensee the amount of the book value of the Licensed Software as depreciated.

Article 6 (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 INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, OR OTHER SIMILAR DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, DAMAGES 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, ARISING OUT OF THE USE OR INABILITY TO USE OF THE LICENSED SOFTWARE, 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 5) SHALL EXCEED THE BOOK VALUE OF THE LICENSE FEE PAID TO YOKOGAWA FOR THE USE OF THE CONCERNED PART OF THE LICENSED SOFTWARE.

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.

Article 7 (Term)

Unless otherwise agreed between Licensee and Yokogawa, this Agreement shall remain in full force and effect until the contract is terminated in accordance with Articles 10 or 11 from the date of starting to use the Licensed Software ("Effective Date").

Article 8 (Software Maintenance Service)

- 8.1 Workaround for defects or vulnerabilities, patch software, products information and/or other technical inquiry services will be available subject to a maintenance contract to be purchased from Yokogawa sales/service offices or their agents ("Maintenance Agreement"), however, any maintenance service for the Third Party Software shall be subject to the terms and conditions provided by the Supplier.
- 8.2 Notwithstanding the foregoing 8.1, the Licensee confirms that concluding the Maintenance Agreement for a period of one (1) year from the Effective Date is necessarily, therefore Licensee shall enter into the Maintenance Agreement upon the execution of this Agreement and may receive certain maintenance service from Yokogawa sales/service offices or their agents.

Article 9 (Suspension of Use)

Even after the 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 Licensed Software, or if Yokogawa otherwise reasonably believes it is inappropriate for Licensee to continue using the Licensed Software, Yokogawa may suspend or withhold the License provided hereunder.

Article 10 (Termination)

- 10.1 The Licensee or Yokogawa shall be entitled to terminate this Agreement in whole or in part without any prior notification in the event of any event falling under any of the following items to the other party, and the party who falls under such event shall immediately pay to the other party all debts including debts that have not yet expired.
- (1) fails to comply with any of the material obligations of this Agreement;
 - (2) fail to make progress so as to endanger performance of this Agreement;
 - (3) files for bankruptcy; or
 - (4) becomes insolvent or suffers a material adverse change in financial condition.
- 10.2 Except to the case identified on (2) of the preceding paragraph, either Licensee or Yokogawa shall be entitled to terminate this Agreement by giving written notice to the other party at any time if either party defaults in any obligation under this Agreement that cannot be remedied or if such party defaults in any of its obligations and fails to remedy such failure within two (2) weeks of being sent a notification of such default.
- 10.3 The Licensee or Yokogawa shall be entitled to terminate this Agreement by giving at least three (3) months prior written notice of termination of this Agreement.

Article 11 (Export Control)

- 11.1 The Purchaser shall ensure that the Licensed Software and technical information provided or disclosed by Yokogawa in connection with this Agreement, as well as the products, technical information and other items using the Licensed Software, shall not be transferred from or exported from Japan without obtaining the authorization by Japan, the United States of America and other relevant government and shall comply with the export control regulations of any other applicable countries.
- 11.2 Yokogawa may, upon written notice to the Licensee, postpone the performance of its respective obligations set forth herein if the approval of the Government

of Japan, the United States of America and any other relevant country is delayed or unauthorized as required in connection therewith. In this case, Yokogawa shall be entitled to terminate this Agreement if the period of such extension exceeds one (1) month. Yokogawa shall not be liable for any damages incurred by the Licensee due to such postponement or termination.

Article 12 (Confidentiality)

12.1 The Licensee and Yokogawa shall maintain the confidentiality of all technical and business information of the other party received under or in connection with this Agreement during the term of this Agreement and for a period of three (3) years after the termination of this Agreement, and shall not disclose or divulge such information to any third party without the prior written consent of the other party. Provided, however, confidential information shall not include information that has already been in the public domain, has become in the public domain through no fault of the receiving party, has already been in the possession of the receiving party prior to the disclosure, or has been legally acquired by a third party with legitimate rights without the obligation of confidentiality.

12.2 Notwithstanding the foregoing 12.1, Yokogawa shall be entitled to disclose the information to the entity designated by Yokogawa only for the purpose of troubleshooting affairs. In this case, such designated entity shall be bound by the same obligations as those stipulated herein.

Article 13 (Revision of this Agreement)

No amendment or modification of this Agreement shall be valid or enforceable against the other party unless it is in writing and is signed by an authorized representative of both parties.

Article 14 (Survival)

Clause 2.8, 2.9, 4, 6, 12 and 15 shall survive any termination of this Agreement.

Article 15 (Governing Law; Dispute Resolution)

This Agreement shall be governed by and construed in accordance with the laws of Japan. If you are a Japanese resident 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 resident 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.

Article 16 (Privacy and Data Protection)

16.1 Any information relating to an identified or identifiable natural person ("Personal Data"), which may be shared between the parties as necessary for the execution of this Agreement (the "Purpose"), shall only be processed in a manner that is compatible with the Purpose or for the performance of lawful obligations. The recipient of such Personal Data must ensure that its processing complies with all applicable privacy and data protection regulations.

For the purposes of this Clause, "processing" refers to any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

16.2 If you provide Yokogawa with or grant Yokogawa access to Personal Data of individuals, including your employees, workers, contractors, agents, clients, or customers, you agree that you will notify these individuals of Yokogawa's Privacy Notice, accessible through our websites ([Yokogawa Electric Corporation](#)).