

License Agreement for FC33/FC34 Software

IM 85A7C04-02E

IMPORTANT - PLEASE READ CAREFULLY BEFORE INSTALLING OR USING:

THIS SOFTWARE LICENSE AGREEMENT (“AGREEMENT”) IS A LEGALLY BINDING CONTRACT BETWEEN THE END USER (“LICENSEE”) AND YOKOGAWA ELECTRIC CORPORATION AND ITS DESIGNATED SUBSIDIARIES (COLLECTIVELY, “YOKOGAWA”) FOR LICENSEE TO INSTALL OR USE YOKOGAWA FC33/FC34 SOFTWARE PRODUCT

BY INSTALLING OR OTHERWISE USING THE SOFTWARE PRODUCT, LICENSEE AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF LICENSEE DOES NOT AGREE, IT MAY NOT INSTALL NOR USE THE SOFTWARE PRODUCT AND HAS TO PROMPTLY RETURN IT TO THE PLACE OF PURCHASE, IF APPLICABLE.

IF THE PURCHASING COMPANY IS NOT THE END USER OF THE SOFTWARE PRODUCT, THE PURCHASING COMPANY IS REQUIRED TO PRESENT THE TERMS AND CONDITIONS OF THIS AGREEMENT TO THE ACTUAL END USER AND OBTAIN ITS CONSENT TO ABIDE BY THEM BEFORE IT STARTS TO USE THE SOFTWARE PRODUCT, BECOMING THE ACTUAL LICENSEE OF THE SOFTWARE PRODUCT AS A RESULT OF SUCH CONSENT.

THE TERMS OF THIS AGREEMENT MAY ONLY BE MODIFIED IN WRITING, SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF YOKOGAWA AND LICENSEE.

1. SCOPE

- 1.1 This LICENSE AGREEMENT applies to the following FC33/FC34 software product and associated documentation developed by Yokogawa ("SOFTWARE PRODUCT").
 - a) FC33/FC34 embedded software product pre-installed on the FC33/FC34 and FC33/FC34 configuration software (used for setting up FC33/FC34 from PC)
 - b) Documentation provided by Yokogawa with regard to the use of the FC33/FC34 software product, such as instruction manuals
 - c) Computer programs, fonts, databases, blank fill-in forms, input data, images, photos, animations, videos, voice, music, text, applets (software linked to text and icons), and other related materials or objects used for each of a) and b) above
- 1.2 The SOFTWARE PRODUCT also includes the updates (including any version or revision) of the SOFTWARE PRODUCT to the extent such updates are provided by Yokogawa.

2. GRANT OF LICENSE

- 2.1 Upon payment of the license fee separately agreed upon to Yokogawa, Yokogawa grants you (including the purchaser and lease users; "you" has the same definition hereinafter) a non-exclusive, non-transferable license ("LICENSE") to use the SOFTWARE PRODUCT for your internal business purposes, subject to the following conditions on use:

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- a) FC33/FC34 software Product installed on the FC33E/FC33U/FC34E/FC34U -
You may use this software on the FC33E/FC33U/FC34E/FC34U designated by Yokogawa.
 - b) FieldEye II Startup Utility or Plug-in Software for setting up FC33E/FC33U/FC34E/FC34U -
You may download or install and use this software on your computers only to the extent that it is necessary for setting up FC33E/FC33U/FC34E/FC34U designated by Yokogawa.
- 2.2 You may not resell, lease, distribute, transfer, pawn or sublicense the SOFTWARE PRODUCT or the License to any third party without prior written permission from Yokogawa.
 - 2.3 You may make one copy of the SOFTWARE PRODUCT for backup or archival purposes with prior permission from Yokogawa; however, you may not copy the entire SOFTWARE PRODUCT or part of it for any other reason. You shall reproduce the copyright, trademark or any other proprietary rights notices appearing on the SOFTWARE PRODUCT on each copy of the SOFTWARE PRODUCT made by you. You shall take appropriate care to store or maintain the copy of the SOFTWARE PRODUCT.
 - 2.4 You may not, for any reason whatsoever, convert (including duplication) the SOFTWARE PRODUCT into source code or other human-readable forms by way of dumping, disassembling, decompiling, reverse-engineering or otherwise, or modify, translate into any other language or otherwise alter the SOFTWARE PRODUCT into a format other than that originally provided. Unless otherwise agreed to by Yokogawa, the source code will not be provided.
 - 2.5 The SOFTWARE PRODUCT and all of the technologies, algorithms, know-how and processes contained therein (collectively, "Technologies") are the property and trade secrets of Yokogawa or the third parties who grant to Yokogawa a right to sublicense such Technologies. Nothing herein shall transfer or convey any part of such Technologies to you.
 - 2.6 The property and trade secrets described in the preceding paragraph shall not be disclosed or divulged to any third party except for your employees or similar staff who have a legitimate need to know to use the SOFTWARE PRODUCT under this LICENSE AGREEMENT. You shall oblige such employees or staff to comply with the non-disclosure obligation hereabove.
 - 2.7 Yokogawa may use or add copy-protection mechanisms for or to the SOFTWARE PRODUCT. Removing or attempting to remove the mechanisms shall be prohibited.
 - 2.8 The SOFTWARE PRODUCT and any copy thereof shall be returned to Yokogawa upon termination of this LICENSE AGREEMENT. You shall dispose of or scrap the SOFTWARE PRODUCT and the storage media on which the SOFTWARE PRODUCT is stored; however, provided that all the contents on the media shall be completely deleted so that no one is able to read nor to restore it.
 - 2.9 The SOFTWARE PRODUCT may contain software programs of third party licensors ("Third Party Programs"). The software programs produced by Yokogawa affiliates and carrying such affiliates' trademarks shall fall under the Third Party Programs. The Third Party Programs may be subject to the terms and conditions imposed by such third party licensors, if any, which may differ from this LICENSE AGREEMENT.
 - 2.10 The SOFTWARE PRODUCT for FC33E-D/FC33U-D or FC34E-D/FC34U-D contains open source software ("OSS"), for which the special terms and conditions separately provided by Yokogawa (IM 85A7C04-3E) shall take precedence over this LICENSE AGREEMENT.

3. RESTRICTIONS ON SPECIFIC APPLICATIONS

- 3.1 Unless otherwise agreed in writing between you and Yokogawa, the SOFTWARE PRODUCT 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 SOFTWARE PRODUCT is used for the above-mentioned purposes, neither Yokogawa nor its suppliers assume liability for any claim or damage arising from the said use and you shall indemnify and hold Yokogawa, its suppliers, their affiliates, subcontractors, officers, directors, employees, staff 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. WARRANTY

4.1 Yokogawa warrants that the SOFTWARE PRODUCT will function in accordance with the instruction manuals for the warranty period specified in Article 4.3, provided that it is used on hardware or its operation environment designated by Yokogawa, under the suitable environmental and other operating conditions designated by Yokogawa or the hardware supplier. However, in no event shall Yokogawa warrant the following items under any operating environment.

- a) Operation of any software program will not be interrupted.
- b) Software does not contain any errors such as bugs.
- c) Software errors such as bugs will be completely corrected.
- d) The SOFTWARE PRODUCT is compatible with or does not interfere with other software or hardware.
- e) The SOFTWARE PRODUCT serves your current or scheduled particular purposes.
- f) The SOFTWARE PRODUCT and its outcomes are optimum, accurate, reliable, or up-to-date.
- g) The SOFTWARE PRODUCT is free of vulnerability (including but not limited to vulnerability to intrusion or attack caused by computer virus or unauthorized access or the like).

Yokogawa shall not be liable for any damage caused by the environment (including without limitation software and hardware) of the customer.

4.2 If the SOFTWARE PRODUCT does not work as described in the instruction manuals or the storage media are found to be broken or damaged during the warranty period specified in Article 4.3, Yokogawa will, at its option, repair, replace or provide workaround for such defective SOFTWARE PRODUCT free of charge. Such repair work, replacement, or information provision shall be made by utilizing communication lines, sending substitute storage media from Yokogawa, or other procedures as Yokogawa deems fit. Services other than the provision of the storage media or information, such as installation, setup, and others, shall be performed at your cost and responsibility. Any cost and expense incurred for the repair or replacement work shall be borne by you separately.

4.3 Unless otherwise agreed in writing, the warranty period of the SOFTWARE PRODUCT shall be one year from the shipment from Yokogawa's factory.

5. DISCLAIMER OF WARRANTY

5.1 Notwithstanding the preceding Article 4, Yokogawa shall not be held liable for any defect or error found in the SOFTWARE PRODUCT, if it is due to the following events:

- a) The hardware on which the SOFTWARE PRODUCT is installed is no longer supported by the supplier of such hardware under the supplier's terms of warranty or the maintenance contract.
- b) Upgrade, improvement, conversion, or other services have been provided by someone other than Yokogawa or the service providers designated by Yokogawa.
- c) Improper use, conversion, addition of functions, or use for purposes not described in the general specifications has been performed by the purchaser or any third party except the service providers designated by Yokogawa.
- d) The appropriate environmental conditions and other operating conditions specified by Yokogawa or the hardware suppliers are not met.
- e) You have not implemented appropriate remedies (including repair or replacement) as proposed by Yokogawa.
- f) Other causes for which Yokogawa is not responsible.

6. SERVICE AFTER WARRANTY PERIOD AND WARRANTY OF THIRD PARTY PROGRAMS

- 6.1 Subject to the separate maintenance contract mutually agreed upon, Yokogawa may repair the defects or errors of the SOFTWARE PRODUCT on a chargeable basis after the warranty period. Yokogawa shall perform such repair and maintenance services only on the latest and the second latest versions (the definition "versions" includes minor updates and revisions) of the SOFTWARE PRODUCT, unless otherwise mentioned in the catalogs or general specifications. Notwithstanding, in no event shall Yokogawa provide any repair or maintenance service for the products order discontinued more than five years before.
- 6.2 Notwithstanding Article 5 and the preceding Article 6.1, the warranty period and other warranty terms for the Third Party Programs (regardless of whether Yokogawa's trademarks or company name are shown on the program, or whether the program has been integrated into or used by the SOFTWARE PRODUCT) shall be subject to the terms and conditions imposed by third party licensors with respect to such Third Party Programs.
- 6.3 Notwithstanding Article 5 and the preceding Article 6.1, the warranty period and other warranty terms for the OSS shall be subject to the special terms and conditions separately provided by Yokogawa.

7. INFRINGEMENT

- 7.1 If you are warned or claimed by a third party that the SOFTWARE PRODUCT infringes any third party's patent, trade mark, copyright or other intellectual property rights ("IP rights"), you shall promptly notify Yokogawa thereof in writing.
- 7.2 In case it is finally judged by a court or otherwise accepted by Yokogawa out of court that the SOFTWARE PRODUCT (without any unauthorized modification and without any combination with non-Yokogawa products) infringes a previously issued or published IP rights of any third party, Yokogawa shall indemnify and hold you harmless from the damages or royalties finally granted by the court or otherwise agreed by Yokogawa out of court. Such indemnity shall be subject to that i) you comply with Article 7.1, ii) you grant to Yokogawa the authority to control the defense and settlement of such claim and ii) you give every and all reasonable assistance to Yokogawa.
- 7.3 If a final injunction is obtained against you, or if Yokogawa reasonably believes that such injunction is likely, Yokogawa may, at its option and its expense, either (i) procure for you the right to continue using the SOFTWARE PRODUCT, (ii) replace or modify the SOFTWARE PRODUCT or the infringing portions thereof so that they become non-infringing without any loss of substantial functionality, or (iii) if Yokogawa believes that (i) and (ii) are not practicable, refund you the price of the infringed SOFTWARE PRODUCT as depreciated according to the Generally Accepted Accounting Principles.
- 7.4 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.
- 7.5 This section 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 Programs, the terms and conditions imposed by third party licensors shall prevail and with respect to the claims arising from or related to the OSS, the special terms and conditions separately provided by Yokogawa shall prevail.

8. LIMITATION OF LIABILITY

IN NO EVENT SHALL YOKOGAWA BE LIABLE FOR (I) ANY LOSS OR DEFERMENT OF PROFIT OR INCOME, LOSS OF PRODUCTION, LOSS OF USE, OR BUSINESS INTERRUPTION, (II) ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR (III) ANY EXEMPLARY, SPECIAL, PUNITIVE, OR SIMILAR DAMAGES OF ANY KIND, WHETHER BASED IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE), WARRANTY (EXPRESS OR IMPLIED), OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF YOKOGAWA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL YOKOGAWA'S LIABILITY IN CONNECTION WITH THIS LICENSE AGREEMENT WHETHER BASED IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE), WARRANTY (EXPRESS OR IMPLIED), OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EXCEED THE SUM OF THE PRICE PAID TO YOKOGAWA IN RELATION TO THE CONCERNED PART OF THE SOFTWARE PRODUCT. FURTHER, IF THE SOFTWARE PRODUCT IS CHANGED, ALTERED, COMBINED WITH ANY OTHER SOFTWARE WHICH HAS NOT BEEN APPROVED BY YOKOGAWA, OR OTHERWISE DIVERGED OR DIFFERED FROM THE GENERAL SPECIFICATIONS WITHOUT PRIOR WRITTEN CONSENT OF YOKOGAWA, YOKOGAWA SHALL BE RELEASED AND EXEMPTED FROM PART OF OR ALL OF ITS LIABILITIES.

9. TERM OF THE LICENSE AGREEMENT

This LICENSE AGREEMENT shall be effective from the day when the purchaser receives the media of or downloads the SOFTWARE PRODUCT until the purchaser gives one month's written notice to Yokogawa to terminate use of the SOFTWARE PRODUCT, or until the purchaser stops using the SOFTWARE PRODUCT.

10. INJUNCTION AGAINST USE OF THE PRODUCT

If, after the license of the SOFTWARE PRODUCT is granted hereunder, the operating environment has changed, an undesirable environmental condition that was not anticipated when the license was granted has been discovered, or any other event has occurred where Yokogawa considers that it is remarkably inappropriate to use the SOFTWARE PRODUCT, Yokogawa may suspend or withhold the license provided hereunder.

11. TERMINATION

If you breach any part of this LICENSE AGREEMENT, Yokogawa may terminate this LICENSE AGREEMENT at any time without any prior notice. Upon termination of this LICENSE AGREEMENT, you shall, and make end users, promptly cease using the SOFTWARE PRODUCT and, in accordance with Article 2.8, 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. Article 2.6 and 2.8, 7, 8 and 12.2 shall survive any termination of this LICENCE AGREEMENT.

12. GENERAL

12.1 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.

- 12.2 This LICENSE AGREEMENT shall be governed by the laws of Japan. All disputes which may arise in relation to this LICENSE AGREEMENT but is not amicably settled shall be finally settled by arbitration in Tokyo, Japan in accordance with the Commercial Arbitration Rules of the Japan Commercial Arbitration Association. The award rendered by the arbitrators shall be final and binding upon the parties hereto. The parties expressly agree to waive any applicable laws permitting appeal to court of law or any other body so that accordingly there shall be no appeal to any court or other body from the decision (or any interim decision) of the panel of arbitrators and neither party shall dispute nor question such decision before any judicial authority in your country, Japan or elsewhere.
- 12.3 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 LICENSE AGREEMENT.
- 12.4 If any part of this LICENSE AGREEMENT is found void or unenforceable, it will not affect the validity of the balance of the LICENSE AGREEMENT, which shall remain valid and enforceable according to its terms. The parties hereby agree to attempt to substitute for such invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.
- 12.5 You shall not assign or transfer any right or obligation under this Agreement to any third party without prior written consent of Yokogawa.
- 12.6 Yokogawa shall have the right to access and audit your facilities and any of your records, including data stored on computers, in relation to the use of the SOFTWARE PRODUCT as may be reasonably necessary in Yokogawa's opinion to verify that the requirements of this Agreement are being met.