

Basic Terms and Conditions for license of Gas Chromatograph AI Maintenance Support (“GCAI”)

IM 11B06H01-41EN

THIS SOFTWARE LICENSE AGREEMENT (“AGREEMENT”) IS A LEGALLY BINDING CONTRACT BETWEEN THE END USER (“CUSTOMER”) AND YOKOGAWA ELECTRIC CORPORATION (“YOKOGAWA”) FOR CUSTOMER TO INSTALL OR USE TITLED SOFTWARE PRODUCT. BY INSTALLING OR OTHERWISE USING THE SOFTWARE PRODUCT, CUSTOMER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE, IT MAY NOT INSTALL NOR USE THE SOFTWARE PRODUCT AND HAS TO PROMPTLY RETURN IT TO THE PLACE OF PURCHASE.

1. Scope

- 1.1 This Agreement applies to usage of Gas Chromatograph AI Maintenance Support (the “Software Product”).
- 1.2 The Software Product includes, without limitation, computer programs, key codes (software license files), 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.
- 1.3 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 to Customer a limited term non-exclusive and non-transferable right to use the Software Product within the license metrics and solely for your Customer's internal operation use during the term specified in application form, in consideration of full payment by Customer of the license fee separately specified in fee quotation. Use of the Software Product shall be subject to the terms and conditions of General Specifications, manuals and technical information in addition to this Agreement. For clarification purpose, Customer agrees that Yokogawa will not provide any warranty nor be responsible for damages which Customer incurs while free trial period and promotion license period.
- 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 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) develop or have developed derivative software or other computer programs which are based on the Software Product unless otherwise permitted by Yokogawa in writing; and
- h) to use the Software Product in the way prohibited by any Instruction Manual, guidelines, or instructions etc. regarding the Software Product.

2.3 Any and all technology, algorithms, know-how and process contained in or applicable on the Software Product are the intellectual property or trade secret of Yokogawa or any of its licensors. Copyright, trademark and any other intellectual property rights in and ownership of the Software Product shall be retained by Yokogawa or any of its licensors and none of the rights will be transferred to Customer hereunder.

2.4 Customer agrees to maintain the aforementioned intellectual property and trade secrets of Yokogawa or any of its licensors and key codes (software license files) in strict confidence, not to disclose it to any party other than Customer’s 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 Customer’s hardware or any other media shall be deleted irretrievably. If Customer disposes 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 shall prevail over this Agreement. Some Third Party Software may be licensed to Customer directly by Supplier.

2.7 The Software Product contains open source software (“OSS”), for which separately provided special terms and conditions shall take precedence over this Agreement.

3. Restrictions on use

3.1 Unless otherwise agreed in writing between Customer 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 Supplier assumes liability for any claim or damage arising from the said use and Customer 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 / Maintenance Services

4.1 Yokogawa warrants that 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, technical information or general specifications provided by Yokogawa during the term of license.

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 or the Software Product operates continuously during third party attacks.

4.3 In case, it is found that the Software Product does not operate in compliance with the manuals,

general specifications or technical information of Yokogawa, or its medium has a physical defect during the term of license, Yokogawa will, at Yokogawa's discretion, repair, replace or present a workaround without charge, unless otherwise agreed by Yokogawa. However, if Yokogawa engineer or other engineer is required to attend for repair, replacement or implementing a workaround at the site, you will 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 noncompliance 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) due to update of Platform;
- c) if the Platform to run the Software Product is specified, such Platform has been changed to other Platform without consent of Yokogawa;
- d) modification, improvement or alteration is made by a person other than Yokogawa or its designated service provider;
- e) 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 general specifications of Yokogawa;
- f) the appropriate environmental or other conditions provided by Yokogawa or provider of Platform is not complied with;
- g) the corrective action (including repair, replacement or workaround) for the defect or non-compliance is not implemented as suggested by Yokogawa; or
- h) any other causes which are not deemed attributable to Yokogawa.

4.5 Notwithstanding the foregoing, any warranty for the Third Party Software and/or OSS is subject to the special terms and conditions separately provided with respect to such Third Party Software and/or OSS.**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, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ARE EXPRESSLY EXCLUDED AND DISCLAIMED. THE WARRANTY PROVISIONS OF THE APPLICABLE LAW ARE EXPRESSLY EXCLUDED TO THE EXTENT PERMITTED.****4.7 This Agreement does not include maintenance of Software Product, such as data analysis and reporting and consulting for improvement of condition. However, operational support for Software Product such as training may be agreed separately.**

5. Infringement

- 5.1** If Customer is warned or receives 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"), Customer shall promptly notify Yokogawa thereof in writing.
- 5.2** If the infringement is attributable to Yokogawa, Yokogawa will defend Customer from the Claim at Yokogawa's expense and indemnify Customer 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) Customer promptly notifying Yokogawa of the Claim in writing as provided above;
 - ii) Customer granting to Yokogawa and its designees the full authority to control the defense and settlement of such Claim; and
 - iii) Customer 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 Customer 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 becomes non-infringing, or d) if Yokogawa believes that a) through c) are not practicable, refund Customer the amount of the book value of the Software Product as depreciated.
- 5.4** Notwithstanding the foregoing, Yokogawa shall have no obligation nor liability for, and Customer shall defend and indemnify Yokogawa and its suppliers from, the Claim, if the infringement is arising from a) any modification of or addition to the Software Product or related documentation not provided or approved by Yokogawa, b) a combination of the Software Product and other equipment, software or systems, whether or not Yokogawa supplied or suggested such use of combination, c) design or instruction provided by or on behalf of Customer, d) not complying with Yokogawa's suggestion, e) an act or omission of Customer, its customers or any other persons than Yokogawa, except those carried out on the express instruction of Yokogawa, or f) any other causes not attributable to Yokogawa.
- 5.5** This section states the entire liability of Yokogawa and its suppliers and the sole remedy of Customer with respect to any claim of infringement of 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 or OSS, the special terms and conditions separately provided for such Third Party Software or OSS shall prevail.

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 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 SUCH DAMAGES ARE FORESEABLE OR 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 SOFTWARE PRODUCT EVEN IF SUCH DAMAGES ARE FORESEABLE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IF THE PRODUCT DELIVERED BY YOKOGAWA IS ALTERED, MODIFIED OR COMBINED WITH OTHER SOFTWARE OR IS OTHERWISE MADE DIFFERENT FROM YOKOGAWA'S GENERAL SPECIFICATIONS, MANUALS OR TECHNICAL INFORMATION WITHOUT YOKOGAWA'S PRIOR WRITTEN CONSENT, YOKOGAWA SHALL BE EXEMPTED FROM ITS OBLIGATIONS AND LIABILITIES UNDER THIS AGREEMENT OR BY LAW.

7. Customer Data

- 7.1 Customer shall have the rights and authority over the Customer Data and shall be solely responsible for any problems arising from the legality, reliability, completeness, accuracy, security and quality of the Customer Data. In the event of any infringement of a third party's rights or other problems with the Customer Data, Customer shall resolve such problems at its own responsibility and expense and shall hold Yokogawa harmless.**
- 7.2 Customer shall retain backup copies of all Customer Data at your own risk and expense. In no event shall Yokogawa be liable for any loss or damage (whether direct, indirect, incidental or consequential) arising out of or in connection with the loss of Customer Data.**
- 7.3 In any of the following cases, Yokogawa may access, use or change your data by linking it with Yokogawa's other systems, or Yokogawa may disclose your data to its affiliated companies, etc.**
- i) When it is necessary for Yokogawa or its affiliated companies, etc. to provide the Software Products or related support.
 - ii) It is necessary for the improvement or maintenance of the Software Products or for the security of the Software Products or the Customer Data; or
 - iii) When required to do so by law.
- 7.4 Customer agrees that Yokogawa may use your data free of charge only for the purpose of improving the Software Products.**

8. Assignment

Customer shall not assign its rights or obligations under this Agreement without prior written consent of Yokogawa. If Customer novates or assigns this Agreement and the Software Product with Yokogawa's consent, Customer 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. Personal Information

- 9.1 In the event that an application Form, other documents and the Customer Data submitted by Customer for use of the Software Products contain personal information or anonymized processed information, Customer warrants that it complies with applicable data protection laws, regulations and guidelines and that it has the legitimate authority to provide such personal information or anonymized processed information. Customer shall take all necessary procedures required by applicable laws and guidelines, at its own expense and responsibility.**
- 9.2 When Yokogawa handles personal information or anonymized processed information in providing the Software Products, Yokogawa shall comply with applicable data protection laws, regulations and guidelines as well as its own privacy policy.**

10. Export Control

Customer agrees to comply with any applicable laws, regulations and orders, including those related to export control, of Japan, the United States of America, and any other applicable countries and, if Customer exports or re-exports the Software Product, to obtain export/import permit and take all necessary procedures under Customer's own responsibility and at Customer's own expense.

11. Audit; Withholding

- 11.1** Yokogawa shall have the right to access and audit Customer’s facilities and any of Customer’s records, including data stored on computers, in relation to the use of the Software Product as may be reasonably necessary to verify that the requirements of this Agreement are being met.
- 11.2** 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 Software Product, or if Yokogawa otherwise reasonably believes it is inappropriate for Customer to continue using the Software Product, Yokogawa may suspend or withhold the license provided hereunder.

12. Termination

This Agreement shall terminate upon expiration of the subscription period. Yokogawa shall have the right to terminate this Agreement with immediate effect upon notice to Customer, if Customer or end users breach any of the terms and conditions hereof. Upon termination of this Agreement, Customer 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 Customer for the Software Product shall not be refunded. Clauses 2.4 and 2.5, 4.2, 6 and 13 shall survive any termination of this Agreement.

13. Governing Law; Dispute Resolution

This Agreement shall be governed by and construed in accordance with the laws of Japan. All disputes, controversies or differences which may arise between the parties hereto, out of, in relation to or in connection with this Agreement shall be brought exclusively in the Tokyo District Court (The Main Court) in Japan..

14. Miscellaneous

- 14.1** 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.
- 14.2** 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.
- 14.3** Failure by either party to insist on performance of this Agreement or to exercise a right does not prevent such party from doing so at a later time, either in relation to that default or any subsequent default.