

# Dual-redundant Platform for Computer Software License Agreement

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## **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 DUAL-REDUNDANT PLATFORM FOR COMPUTER 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 FOR A REFUND, 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 Agreement applies to the Dual-redundant Platform for Computer software products (the “Software Product”) of which Yokogawa or any of its licensors owns the intellectual property rights. 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 developed/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 (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 Licensee a non-exclusive and non-transferable right to use the Software Product on the hardware separately specified by Yokogawa and solely for your Licensee’s internal operation use, in consideration of full payment by Licensee of the license fee separately agreed upon. Use of the Software Product shall be subject to the terms and conditions of General Specifications in addition to this Agreement.
  - 2.2 Unless otherwise agreed or provided by Yokogawa in writing, the following acts are prohibited:
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    - 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;
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    - 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;

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  - 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.
- 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 Licensee hereunder.
- 2.4 Licensee 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 Licensee'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 Licensee's hardware or any other media shall be deleted irretrievably. If Licensee 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 Licensee 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 Licensee 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 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.
4. Limited Warranty / Maintenance Services
- Yokogawa warrants that the media on which the Software Product is provided is free of defects in materials and workmanship for a period of 90 days from the delivery and shall replace the defective media free of charge, which shall be Licensee's sole remedy and Yokogawa's entire liability. Except for the foregoing, the Software Product is provided "AS IS". 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 (any maintenance service for the Third Party Software shall be subject to the terms and conditions provided by the Supplier).
- 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 SOFTWARE PRODUCT WILL MEET ANY REQUIREMENTS OR NEEDS LICENSEE MAY HAVE, THAT THE SOFTWARE PRODUCT WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION, THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE PRODUCT WILL BE CORRECTED, THAT THE SOFTWARE PRODUCT HAS NO INCONSISTENCY OR INTERFERENCE WITH OTHER SOFTWARE, THAT THE SOFTWARE PRODUCT OR THE RESULTS ARISING THEREFROM IS PRECISE, RELIABLE OR UP-TO-DATE, THAT THE SOFTWARE PRODUCT IS COMPATIBLE WITH ANY PARTICULAR SOFTWARE REQUIRED TO RUN THE SOFTWARE PRODUCT, OR THAT THE SOFTWARE PRODUCT 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.
5. Infringement
- 5.1 If Licensee 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"), 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 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 Licensee 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 Licensee 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 Licensee, d) not complying with Yokogawa's suggestion, or e) 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 Licensee 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 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 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 5) 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.

#### 7. Assignment

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

#### 8. Export Control

Licensee agrees 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 Licensee exports or re-exports the Software Product, to obtain export/import permit and take all necessary procedures under Licensee's own responsibility and at Licensee's own expense.

#### 9. Audit; Withholding

- 9.1 Yokogawa shall have the right to access and audit Licensee's facilities and any of Licensee'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.
- 9.2 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 Licensee to continue using the Software Product, Yokogawa may suspend or withhold the license provided hereunder.

#### 10. Termination

Yokogawa shall have the right to terminate this Agreement with immediate effect upon notice to Licensee, if Licensee or end users breach any of the terms and conditions hereof. Upon termination of this Agreement, Licensee 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 Licensee for the Software Product shall not be refunded. Clauses 2.4 and 2.5, 5, 6 and 11 shall survive any termination of this Agreement.

11. Governing Law; Dispute Resolution

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.

12. Miscellaneous

- 12.1 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.
- 12.2 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.
- 12.3 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.