

# CENTUM VP Software License Agreement



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**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.**

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- 1.1 This Agreement applies to the CENTUM VP Release 6 software products (the “Software Product”) of which Yokogawa or any of its licensors owns the intellectual property rights. The Software Product consists of:
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8. Export Control  
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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.

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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.