

Emerson Software Product Agreement

This Agreement is between Customer and Emerson. Emerson permits Customer to use the Product solely on the terms and conditions of this Agreement and on the condition that Customer accepts and complies with these terms. By indicating acceptance of this Agreement, including through the process of purchasing the rights to use the Product, indicating assent electronically, or by downloading, installing, copying, using, or accessing the Product, Customer confirms that it accepts and is bound by the terms and conditions of this Agreement.

If you (the individual accepting this Agreement) are accepting this Agreement on behalf of a Customer that is a corporate entity, governmental organization, or other legal entity, you agree that you have legal authority to bind Customer to this Agreement, you accept this Agreement and agree to its terms on behalf of Customer, and you acknowledge that you will be deemed to represent Customer and that your acceptance of this Agreement will bind Customer to its terms. If you do not agree to the terms of this Agreement or if you do not have legal authority to bind the Customer, you should not continue downloading, installing, copying, using, or accessing the Product.

The terms of this Agreement apply whether the Product is a Cloud Software Product or a Distributed Software Product, each of which may be referred to as a Product. Certain terms of this Agreement apply only if the Product is a Cloud Software Product or only if the Product is a Distributed Software Product as indicated. The Product may also be subject to additional Product-Specific Terms that form part of this Agreement.

1. Distributed Software Products

This Section 1 only applies if the Product is a Distributed Software Product.

1.1. Subject to Customer's compliance with this Agreement and payment of applicable fees, Emerson grants Customer a personal, non-transferable, non-sublicensable, non-exclusive, limited license during the Usage Term to use the Product provided to Customer solely: (a) for Customer's internal business purpose; (b) in accordance with the Documentation; and (c) by and through its Authorized Users.

1.2. Emerson may, from time to time, revise or update the Product and, in so doing, incurs no obligation to furnish such revisions or updates to Customer, except as otherwise provided in a separate written agreement. If the Product is licensed on a subscription basis (i.e., the Usage Term is not perpetual), Emerson's standard support as described in the Documentation is provided at no additional charge.

1.3. If and only to the extent that applicable law requires that Customer be able to modify the Product to make it interoperable with other software, Emerson will, at its option: (a) at Customer's expense, use commercially reasonable efforts to make the Product interoperable with such other software; (b) provide Customer a license to use tools and/or technology to make the Product interoperable with such other software; or (c) grant Customer the right to make such modifications only to the extent required by law.

1.4. The Product is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if the Customer is the US Government or any contractor therefor, Customer shall receive only those rights with respect to the Product and Documentation as are granted to all other end users that obtain rights to use the Product, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204 with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212 with respect to all other US Government licensees and their contractors. The Product shall be deemed to be "unpublished" and licensed subject to disclosure prohibitions.

1.5. Unless Emerson provides prior, written approval, the Product may only be used in the country in which it is delivered to Customer. If Customer uses the Product in any country other than the country in which the Product is delivered to Customer without Emerson's prior, written approval, the license granted in this Section 1 is automatically terminated.

2. Cloud Software Products

This Section 2 only applies if the Product is a Cloud Software Product.

2.1. Subject to Customer's compliance with this Agreement and payment of applicable fees, Emerson shall provide Customer with access to the Product during the Usage Term solely for use: (a) in accordance with the Documentation; and (b) by and through its Authorized Users having valid Access Credentials.

2.2. Emerson may, from time to time, revise or update the Product. Emerson reserves the right, in its sole discretion, to make any changes to the Product that it deems necessary or useful to: (a) maintain or enhance: (i) the quality of the Product or the delivery of the Product to its customers; (ii) the competitive strength of, or market for, the Product; or (iii) the Product's cost efficiency or performance; or (b) to comply with applicable law.

2.3. Customer has and will retain sole responsibility for: (a) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Product; (b) all aspects of Customer Systems; (c) Customer's means and methods for connecting to or accessing the Product; (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Product, directly or indirectly, by or through the Customer Systems or Customer's or its Authorized Users' Access Credentials, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

2.4. Emerson will use reasonable efforts to: (a) perform Product maintenance activities (e.g., Product updates, installation of patches and fixes, performance of Product maintenance, etc.) during Scheduled Downtime windows; and (b) provide reasonable advance notice of the timing of Scheduled Downtime windows to Customer through the Documentation or via the Product interface. If Emerson determines that the performance of reasonable emergency maintenance or upgrades of the Product will require Emergency Downtime, Emerson will endeavor to provide as much advance notice of the Emergency Downtime timing as is reasonably practical under the circumstances.

2.5. Emerson has no obligation to monitor Customer Data; however, if Emerson becomes aware that Customer Data may violate the law or any provision of this Agreement or believes that Customer Data may impact the security or operation of the Product, Emerson may: (a) limit access to, or remove, the relevant Customer Data, or (b) suspend Customer's or any Authorized User's access to the Product.

3. Usage Term

The initial Usage Term is as specified in the Offer Document, or, if no Usage Term is specified in the Offer Document, then the initial Usage Term will be 12 months. Except as otherwise specifically set forth in this Agreement, the Usage Term shall automatically renew for successive renewal Usage Terms equal in length to the initial Usage Term unless either party provides written notice of non-renewal at least 30 days prior to the end of the then-current Usage Term. Emerson will provide notice of any price increases for a subsequent Usage Term at least 90 days prior to the end of the then-current Usage Term.

4. Restrictions

4.1. Customer may not exceed any limits applicable to Customer's use of the Product (e.g., as may be identified in this Agreement, the Product-Specific Terms, the Offer Document, or the Documentation (collectively, the "Product Descriptions")) nor use any features of the Product that Customer has not purchased a right to use.

4.2. To the extent the Product Descriptions include a number of users, systems, tags, or other parameter, Customer may not use more than the specified parameter (or, as applicable, use the Product in support of more than the specified parameter) without purchasing additional rights from Emerson.

4.3. Emerson may use technological and/or other measures to prevent unauthorized access to, or use of, the Product or its features, and Customer acknowledges and agrees to the use of such measures, and that Customer shall not actually, nor attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to any such copy protection or security features.

4.4. CUSTOMER MAY NOT USE OR COPY THE PRODUCT EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT. CUSTOMER MAY NOT REVERSE ENGINEER, DECOMPILE, DECODE, OR OTHERWISE ATTEMPT TO DERIVE OR ACCESS THE SOURCE CODE OF THE PRODUCT. CUSTOMER MAY NOT MODIFY, TRANSLATE, ADAPT, OR CREATE DERIVATIVE WORKS OF THE PRODUCT OR ANY COPY (PERMITTED ABOVE) THEREOF, IN WHOLE OR IN PART.

4.5. Customer may not use the Product to provide hosted services, subscription services, training services, consulting services, service bureau, time sharing, or rental use to third parties or otherwise provide access to the Product or extend the benefit of the Product to any third party other than an Authorized User that uses the Product for Customer's benefit.

4.6. Customer may not:

- 4.6.1. use the Product in violation of any governmental law, regulation, or rule or for purposes of competitive analysis of the Product or the development of a competing product or offering;

- 4.6.2. input, upload, transmit, or otherwise provide to or through the Product, any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code;
- 4.6.3. damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Product or Emerson's provision of the Product or any other services or offerings to any third party;
- 4.6.4. access or use the Product in any manner or for any purpose that infringes any intellectual property right of any third party.

4.7. If the Product is made available to Customer for Trial Use, then the Product may only be used for evaluation by Customer in Customer's decision to purchase a right to use the Product and may not be used for production purposes. Notwithstanding anything to the contrary in this Agreement, for Products that are made available for Trial Use, Emerson will have no obligation to restore any Customer Data or to provide access to Customer Data other than the access which is provided through the Trial Use of the Product. All Customer Data to which Emerson has access at the conclusion of the Usage Term for Trial Use of the Product may be permanently deleted in accordance with the timing specified in the Product-Specific Terms for the Product. The Usage Term for Trial Use of the Product will not be automatically renewed.

5. Responsibility for Use of the Product

Customer is responsible and liable for all actions and failures to take required actions with respect to the Product by its Authorized Users or by any other person or entity to whom Customer or an Authorized User may provide access to or use of the Product. Customer shall not provide access to the Product to an Emerson Competitor. Unless other use is specifically permitted for the Product by the relevant Product-Specific Terms, any use of the Product by an Authorized User must be for Customer's benefit.

6. Security Assessments

In the event Customer wishes to assess the vulnerability of the Product (including conducting a penetration test or any other form of vulnerability assessment or test), Customer agrees to obtain Emerson's prior written consent. Emerson will not unreasonably withhold or unduly delay such consent, but Customer agrees that Emerson may require that Emerson participate in any such tests or assessments and that any such tests or assessments be conducted in accordance with, and subject to, a separate written agreement between Customer and Emerson. If Customer discovers a vulnerability, regardless of how it is discovered, Customer agrees to promptly disclose the vulnerability to Emerson and not to publish, distribute, or otherwise make available the vulnerability or the results of any testing (in whole or part) to any third party without the express written consent of Emerson.

7. Data Rights and Privacy

7.1. Customer's use of the Product may result in Emerson having access to Customer Data. As between Customer and Emerson, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all intellectual property rights therein. Customer hereby grants to Emerson a non-exclusive, royalty-free, worldwide license to: (a) reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be reasonably necessary for Emerson to (i) provide the Product and any related offerings to Customer; and (ii) verify compliance with this Agreement; and (b) reproduce, distribute, and to otherwise use and exploit De-Identified Usage Data in any way, in Emerson's sole discretion, including, without limitation, aggregated with data from other customers.

7.2. Customer represents and warrants that (a) Customer has the right to grant the license set forth Section 7.1; (b) the Customer Data, and Customer's provision thereof to Emerson under this Agreement, does not violate the privacy rights, publicity rights, copyright rights, or other rights of any person or entity; and (c) Customer will not, and will not permit any Authorized User to, transmit to or through the Product, or use the Product to process any Excluded Data.

7.3. Emerson's access to Customer Data and collection of Usage Data may continue until Customer ceases use of the Product. If Customer does not allow Emerson to access Customer Data and collect Usage Data, Emerson may not be able to provide the full capabilities of the Product. Customer is solely responsible for compliance with all applicable data protection laws, regulations, and restrictions as it relates to the accuracy and legality of use and movement of Customer Data. All personal information (including the personal information of Customer and its Authorized Users) Emerson collects through or in connection with Customer's use of the Product will be used and disclosed subject to the Emerson privacy notice found at www.emerson.com/en-us/privacy-notice (the "Privacy Notice") and applicable law. In the event of a conflict between the Privacy Notice and applicable data protection laws, the stricter obligation applies.

8. Intellectual Property and Confidential Information

8.1. Customer does not acquire any ownership interest in any Product under this Agreement. Emerson and its licensors reserve and shall retain their entire right, title, and interest in and to the Product and all intellectual property rights in the Product. Customer's right to access and use the Product is at all times subject to the terms and conditions of this Agreement. Customer does not obtain any rights with respect to Emerson's intellectual property associated with the Product except as expressly set forth in this Agreement.

8.2. Unless expressly permitted in writing, each party will: (a) hold Confidential Information in confidence and not disclose it to any third party except as permitted by this Agreement, and (b) only use the Confidential Information to fulfill its obligations and exercise its rights under this Agreement. Each party may disclose Confidential Information to its employees, agents, contractors, affiliates, and other representatives having a legitimate need to know the Confidential Information in connection with the fulfillment of its obligations or exercise of its rights under this Agreement, provided that the party remains liable for any breach of this Section 8.2 by any employee, agent, contractor, affiliate, or other representative to which the party provides access to Confidential Information in the same manner as if the breach had been committed by the party itself.

8.3. The obligations of confidentiality and restrictions on use set out in Section 8.2 will not apply to a party with respect to information that is (a) publicly available through no fault of the party; (b) independently developed by or for the party without reference, directly or indirectly, to the Confidential Information and without breach of this Agreement; (c) possessed or known to the party prior to entry into this Agreement; or (d) received by the party from a third party that has no obligation of confidentiality to the other party. The party that is obligated to maintain the confidentiality of Confidential Information may disclose the Confidential Information pursuant to the order of a court or administrative body of competent jurisdiction or as otherwise required by law, provided (if permitted by law) it notifies the other party in advance and cooperates, at such other party's cost, in any reasonable effort to maintain the confidentiality of the Confidential Information.

8.4. If Emerson receives Feedback from Customer or any of its employees, contractors, or Authorized Users, Emerson is free to use such Feedback for any purpose irrespective of any other obligation or limitation between the parties governing Feedback.

9. Term; Suspension

9.1. The term of this Agreement shall be for the Usage Term unless terminated earlier as permitted herein. If Customer breaches any material term or condition of this Agreement or fails to pay amounts owed for the Product and fails to cure such breach or failure within 30 days of a written notice from Emerson, Emerson may terminate this Agreement or suspend Customer's access to the Product with immediate effect. If Emerson terminates this Agreement or suspends Customer's access to the Product under this Section 9.1, all fees outstanding or payable in the future during the remainder of the then-current Usage Term will automatically accelerate and become due and payable in full immediately prior to such termination or suspension of access. All fees paid for the Product are non-refundable.

9.2. Customer may cease use of the Product at any time but may not terminate this Agreement prior to the end of the Usage Term.

9.3. If Emerson ceases to offer the Product during a finite Usage Term, then Emerson will provide Customer with an alternative or successor product with similar functionality to the Product for the remainder of the Usage Term.

9.4. Upon expiration of the Usage Term or the earlier termination of this Agreement as permitted above, Customer agrees to (a) promptly cease all use of the Product and Documentation, and (b) return to Emerson or destroy all Confidential Information.

9.5. Notwithstanding any term in any other agreement with Emerson, the Usage Term may not be terminated for convenience. A breach or threatened breach by Customer of this Agreement might give rise to irreparable injury to Emerson and/or its licensors for which money damages would not be adequate compensation. In addition to any other legal remedies that may be available, Emerson and its licensors will be entitled to seek injunctive relief against such breach or threatened breach. Sections 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, and 17 shall survive any expiration or termination of this Agreement.

10. Warranty Disclaimer; Limitations of Liability

10.1. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PRODUCT IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND EMERSON AND ITS LICENSORS DISCLAIM ANY AND ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE

PRODUCT, EITHER EXPRESS OR IMPLIED, ARISING BY LAW, USAGE OF TRADE, COURSE OF DEALING, COURSE OF PERFORMANCE, PRIOR ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. EMERSON MAKES NO REPRESENTATIONS OR WARRANTIES ON BEHALF OF ITS LICENSORS. WITHOUT LIMITING THE FOREGOING, NEITHER EMERSON NOR ITS LICENSORS WARRANTS (A) THAT THE PRODUCT WILL BE FREE FROM ANY INTERRUPTIONS, DELAYS, INACCURACIES, SERVER DOWN-TIME, ERRORS, OR OMISSIONS, (B) THE PERFORMANCE OR RESULTS CUSTOMER MAY OBTAIN BY USING THE PRODUCT, OR (C) THE PRODUCT WILL MEET CUSTOMER'S REQUIREMENTS. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE, OR PERFORMANCE OF THE PRODUCT, NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY, CONDITION, REPRESENTATION, OR GUARANTY BY EMERSON. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR MAINTAINING ALL APPROPRIATE BACKUPS OF ITS DATA. THE PRODUCT MAY PROVIDE CUSTOMER WITH DATA, INFORMATION, OR RECOMMENDATIONS REGARDING SYSTEMS, MACHINERY, OR PROCESSES TO ASSIST CUSTOMER IN THE MANAGEMENT OR DECISION-MAKING OF SUCH SYSTEMS, MACHINERY, OR PROCESSES. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ALL DECISIONS OR ACTIONS TAKEN BASED ON THE DATA, INFORMATION, OR RECOMMENDATIONS PROVIDED.

10.2. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ELSEWHERE IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EMERSON, ITS AFFILIATES, AND ITS LICENSORS EXCEED (A) THE FEES PAID FOR THE PRODUCT, IF THE USAGE TERM IS PERPETUAL, OR (B) THE AVERAGE ANNUAL FEES PAID FOR THE PRODUCT, IF THE USAGE TERM IS NOT PERPETUAL.

10.3. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ELSEWHERE IN NO EVENT SHALL EMERSON, ANY EMERSON AFFILIATE, OR ANY EMERSON LICENSOR BE LIABLE FOR ANY DAMAGES ARISING FROM A CYBER ATTACK OR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY, SPECIAL, LOSS OF DATA, OR LOST PROFITS DAMAGES OF ANY KIND (INCLUDING ANY LOST REVENUE, PROFITS, SAVINGS, BUSINESS OPPORTUNITIES, USE, OR GOODWILL) HOWEVER ARISING, REGARDLESS OF WHETHER SUCH DAMAGES ARE FORESEEABLE.

10.4. THE LIMITATIONS OF LIABILITY ABOVE SHALL APPLY: (A) TO ALL CLAIMS IN THE AGGREGATE ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER OF THIS AGREEMENT; (B) REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UNDER WHICH THE CLAIM ARISES, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, STRICT LIABILITY, OR OTHERWISE; (C) REGARDLESS OF WHETHER EMERSON HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES; AND (D) REGARDLESS OF IF THE REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. THE LIMITATION OF LIABILITY IS AN AGGREGATE LIMIT AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE CLAIM.

10.5. THE DISCLAIMER OF WARRANTIES AND LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT ARE FUNDAMENTAL PARTS OF THE BASIS OF THE PARTIES' BARGAIN HEREUNDER, AND CUSTOMER ACKNOWLEDGES THAT SUCH PROVISIONS REPRESENT A REASONABLE ALLOCATION OF RISK. IF THE FOREGOING LIMITATION OF LIABILITY IS UNENFORCEABLE UNDER APPLICABLE LAW, THEN EMERSON'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

11. Governing Law

This Agreement, and all matters concerning its construction, interpretation, performance or validity, shall be governed by the laws of the State of Missouri, excluding its conflict laws. Each Party shall institute and maintain any legal suit, action, or proceeding arising out of or relating to this Agreement in the federal or state courts in each case located in the State of Missouri. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY: (A) CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE AFOREMENTIONED COURTS; AND (B) WAIVES ANY OBJECTION TO THAT CHOICE OF FORUM BASED ON VENUE OR TO THE EFFECT THAT THE FORUM IS NOT CONVENIENT. The 1980 United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

12. Export Restrictions

The Product, Documentation, and any related technical data included with, or contained in, such Product, and any products utilizing any such Product, Documentation, or technical data (collectively, "Regulated Products") may be subject to US export control laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. The Customer shall not, and shall not permit any third parties to, directly or indirectly, export, reexport, or release any Regulated Products to any jurisdiction or country to which, or any party to whom, the export, reexport, or release of any Regulated Products is prohibited by applicable federal or foreign law, regulation, or rule. Customer shall comply with all applicable federal and foreign laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting or reexporting any Regulated Products.

13. Nuclear Applications

THE PRODUCT MAY NOT BE USED IN ANY NUCLEAR OR NUCLEAR-RELATED APPLICATION UNLESS AGREED IN A SEPARATE WRITING BY BOTH PARTIES AND COMBINED WITH AN EXECUTED NUCLEAR DEFENSE & INDEMNIFICATION AGREEMENT. NUCLEAR AND NUCLEAR-RELATED APPLICATIONS INCLUDE ANY NUCLEAR POWER GENERATING PLANT (INCLUDING NUCLEAR ISLAND, TURBINE ISLAND, AND BALANCE-OF-PLANT AREAS), NUCLEAR RESEARCH FACILITY, AND MARINE VESSEL POWERED BY NUCLEAR MARINE PROPULSION. Licensee (a) accepts the Product with these restrictions; (b) agrees to communicate these restrictions in writing to any permitted assignee of this Agreement; and (c) agrees to defend, indemnify, and hold Emerson and Emerson affiliates harmless from all claims arising from such use of the Product. This indemnity covers every sort of claim, including allegations of negligence, strict liability or product liability.

14. Third-Party Software

14.1. Customer acknowledges that the Product may include Third-Party Components, including Open Source Components, and that the rights to use such Third-Party Components as part of the Product may be provided either by Emerson via the rights granted in Sections 1 or 2 of this Agreement or via rights granted directly to Customer by the licensor of the Third-Party Component. For any Third-Party Component for which Customer's rights to use are provided under this Agreement, the third party that owns the rights to such Third-Party Component shall be a beneficiary of this Agreement and shall have the right to enforce its rights under this Agreement independently of Emerson. Customer authorizes Emerson to provide its contact information, including company name, mailing address, telephone number, ship-to recipient address, and primary contact's name, mailing address, telephone number, and email address, to providers of Third-Party Components for the purposes of product registration, support, and compliance with applicable import and export control laws, regulations, orders, and requirements.

14.2. If the Product is a Distributed Software Product, Customer acknowledges receipt of license notices for the Third-Party Components for the initial delivery of the Product. In most cases, Distributed Software Products are provided with a notice file that provides a list of Third-Party Components for which Customer's use is governed by a license other than the license granted in Section 1. If no notice file is provided with the Distributed Software Product, Emerson will provide a list of Third-Party Components for a particular version of the Distributed Software Product upon Customer's request.

14.3. To the extent required by the licenses covering Third-Party Components, the terms of such licenses will apply to such Third-Party Components in lieu of the terms of this Agreement. To the extent the terms of the licenses applicable to Third-Party Components prohibit any of the restrictions in this Agreement with respect to such Third-Party Component, such restrictions will not apply to such Third-Party Component. To the extent the terms of the licenses applicable to Third-Party Components require Emerson to make an offer to provide source code or related information in connection with the Third-Party Components, such offer is hereby made.

15. Audit

Customer agrees that Emerson may audit Customer's facility and records to confirm compliance with the terms of this Agreement during the Usage Term and for two years thereafter. Emerson agrees to provide reasonable written notice prior to conducting such an audit and agrees to conduct the audit during regular business hours without unreasonably interfering with Customer's normal business operation. No more than one audit may be conducted in any 12-month period unless Emerson reasonably and in good faith believes that Customer is in violation of the terms of this Agreement. Customer shall cooperate with Emerson's personnel conducting such audits and provide all reasonable access requested by Emerson to records, systems, equipment, information, and personnel, including machine IDs, serial numbers, and related information.

16. Entire Agreement

16.1. CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. CUSTOMER FURTHER AGREES THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. Notwithstanding the foregoing, if a Prior Agreement directly conflicts with this Agreement, then the Prior Agreement shall control only with regard to: (a) governing law and venue controlling over Section 11 of this Agreement; (b) confidentiality controlling over Sections 8.2 and 8.3 of this Agreement, but only if the Prior Agreement contains confidentiality terms that require both Emerson and Customer to protect confidential information that is received from the other party; and (c) limitation of liability controlling over Section 10.2 of this Agreement.

16.2. This Agreement and the rights to access the Product may only be transferred or assigned (by operation of law or otherwise) with Emerson's written consent and upon payment of transfer fees. This Agreement shall be binding upon and shall inure to the benefit of each party's permitted successors and assignees. Except for expressly identified third-party beneficiaries, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assignees and nothing herein, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

16.3. Emerson may modify this Agreement from time to time by making an updated version of the Agreement available on Emerson's website at www.emerson.com/software-license-agreement (the "Agreement URL"). No modifications to this Agreement will become effective during a Usage Term; however, the version of this Agreement that is available via the Agreement URL on the date that a Usage Term is renewed (either expressly or automatically under Section 3) will govern the relationship between Emerson and Customer with respect to Customer's use of the Product during the renewal Usage Term.

16.4. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

16.5. For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole.

16.6. Unless the context otherwise requires, references herein: (a) to Sections, Annexes, Schedules, and Exhibits refer to the Sections of, and Annexes, Schedules, and Exhibits attached to, this Agreement; (b) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (c) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

17. Definitions

17.1. "Access Credentials" means any user name, identification number, password, security key, token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Product.

17.2. "Authorized User" means any individual that is authorized by Customer to use the Product in accordance with the restrictions of this Agreement. Customer may permit contractors to be Authorized Users provided that all use is solely in compliance with the terms of this Agreement.

17.3. "Cloud Software Product" means software that is hosted by Emerson in an internet-accessible environment and that is made available for use by Customer in accordance with this Agreement, as well as services and Documentation related to such Emerson-hosted software that are provided or otherwise made available to Customer by Emerson.



17.4. “Confidential Information” means information that is provided by a party to the other party or that otherwise becomes known by such other party in connection with the Product and that (a) with respect to information that is provided by Emerson to Customer or that otherwise becomes known by Customer, is any non-public information related to the Product or Documentation, including any benchmarking data or other results of use or testing of the Product that are indicative of its performance, operation, efficacy, reliability, or quality; and (b) with respect to information that is provided by Customer to Emerson or that otherwise becomes known by Emerson, is Customer Data.

17.5. “Customer” means the individual or entity that has purchased, is purchasing, or has otherwise acquired the right to use the Product and that enters into this Agreement that defines such right to use the Product.

17.6. “Customer Data” means information, data, and other content, in any form or medium, that is entered, submitted, posted, or otherwise transmitted to the Product by or on behalf of Customer or an Authorized User as well as any data that is generated by the Product through Customer’s use of the Product to process the Customer Data. Emerson will have access to Customer Data if the Product is a Cloud Software Product and may have access to Customer Data if the Product is a Distributed Software Product.

17.7. “Customer Systems” means Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

17.8. “De-Identified Usage Data” means Usage Data that is modified to remove any information that identifies or could reasonably be used to identify an individual person or Customer.

17.9. “Distributed Software Product” means software that is made available for use by Customer in accordance with this Agreement and that (a) Emerson provides to Customer for Customer to install or (b) is pre-installed on hardware that Emerson provides to Customer, as well as all related access keys, license management devices, Documentation, and revisions or updates to the foregoing that are provided or otherwise made available to Customer by Emerson.

17.10. “Documentation” means user manuals, data sheets, or operating instructions provided by Emerson with the Product.

17.11. “Downtime” means a period of unavailability of the Product as more specifically defined in the Product-Specific Terms.

17.12. “Emergency Downtime” means periods of Downtime required for Emerson’s performance of reasonable emergency maintenance or upgrades of the Product.

17.13. “Emerson” means the Emerson entity that provides the right to use the Product to Customer. If the Emerson entity for a particular Product is not identified in the Product-Specific Terms, then: (a) for Products related to process control for process industries, process control field device management, process control data management and analytics, operations and alarm management, process simulation, facility modeling, manufacturing execution systems, and drug development lifecycle management, Emerson means Fisher-Rosemount Systems, Inc.; (b) for Products related to process control for power and water industries and process control for renewable energy industries, Emerson means Emerson Process Management Power & Water Solutions, Inc.; (c) for Products related to machinery monitoring functionality, Emerson means Computational Systems, Incorporated; and (d) for Products related to the operation and configuration of flow computers and remote terminal units, the operation and configuration of controllers for loading and unloading hydrocarbons from transporting vessels, supervisory control and data acquisition, operational management of pipelines, and controlling and monitoring the transfer of materials from storage terminals, Emerson means Bristol, Inc.

17.14. “Emerson Competitor” means, with respect to a particular Product, any person or entity, or any affiliate of such person or entity, that sells or offers for sale any software, software-as-a-service, or other product offering that provides substantially similar functionality to the Product.

17.15. “Excluded Data” means any individual’s medical records or other protected health information regulated by the Health Insurance Portability and Accountability Act.

17.16. “Feedback” means any communications or materials that are communicated to Emerson or an affiliate of Emerson suggesting, requesting, or recommending changes to a Product or Documentation, including, without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like.

17.17. “Offer Document” means the applicable Emerson proposal, quote, or offer letter addressed to Customer describing the Product or an executed order form according to which Customer agrees to purchase the Product. In the

event of any disagreement between the terms of a proposal, quote, or offer letter and the terms of an executed order form, the terms of the executed order form will prevail.

17.18. “Open Source Component” means a Third-Party Component that is licensed according to a so-called “open source” software license, which means any software license approved as an open source license by the Open Source Initiative or any substantially similar license.

17.19. “Prior Agreement” means a separate agreement according to which the rights to use the Product pursuant to this Agreement were purchased, the terms of which apply to Emerson and Customer, and that has been signed by duly authorized officers of each party to such separate agreement.

17.20. “Product” means a Cloud Software Product or a Distributed Software Product.

17.21. “Product-Specific Terms” are terms that apply to a particular Product and are located at www.emerson.com/software-license-agreement-product-terms. The Product-Specific terms that apply to a particular Product are part of this Agreement with respect to the particular Product.

17.22. “Scheduled Downtime” means periods of Downtime related to regular maintenance or upgrades of the Product.

17.23. “Third-Party Component” means a software component of the Product that is developed by a person or entity other than Emerson or an Emerson affiliate.

17.24. “Trial Use” means a limited, short-term use of the Product that may be made available to Customer for Customer’s evaluation of the Product.

17.25. “Usage Data” means statistical and other information related to the performance, operation, and use of the Product by Customer and may include information derived from Customer Data.

17.26. “Usage Term” means the period of time that Customer is authorized to access the Product and may be either a perpetual or finite period. The Usage Term begins on the earlier of (a) the date the Product (including, if applicable, any license key) is made available to Customer or (b) the date the Product is first used (by Emerson or a third party) for the benefit of the Customer. The Offer Document may identify the Usage Term using the terms “License Term” or “Subscription Term”, both of which are synonymous with Usage Term.