

SCADA ONEVIEW[®]/ONEVIEW SCADA[™]
END USER LICENSE AGREEMENT

SCADA International A/S

1. General

- 1.1 This end user license agreement (“**License Agreement**”) is a legal agreement between [INSERT LICENSEE NAME] (“**Licensee**”) and SCADA International A/S, A.C. Illumsvej 4, DK-8600 Silkeborg, Denmark (“**Licensor**”). It is entered into in connection with that certain [INSERT ASSOCIATED AGREEMENT] dated as of [DATE, YEAR], by and between Licensor and SCADA INTERNATIONAL, INC. (the “**Service Agreement**”).
- 1.2 This License Agreement sets out the terms and conditions applicable to Licensee’s use of Licensor’s proprietary software program named SCADA OneView® and to documentation, media, printed materials, electronic documentation and/or other information (if any) pertaining to it (collectively “**Software**”). For purposes of this License Agreement, “Software” includes any updates, enhancements, modifications, revisions, or additions to the Software made by Licensor and made available to Licensee, “modify” and “modification” mean making changes to the core program in order to add, enhance, change, or otherwise making changes to the Software outside the functions described in the Service Agreement, and “Configuration” means changes that can be made using the configuration tools provided by Licensor to adapt and enhance the use of the Software within the functionalities described in the Service Agreement.
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3.4 Licensee is not entitled to and shall not exploit the Software for the purpose of providing whether directly or indirectly any services to any third party, such as but not limited to business process outsourcing services.

3.5 Licensee is not entitled to and shall not change or remove any marks or notices concerning copyright, patents, trademarks or other rights placed on, applied to or otherwise implemented in the Software.

4. Upgrade, support and maintenance services

4.1 During the Term Licensor shall make available upgrades, patches, fixes or the like in connection with the Software to Licensee as and when developed by Licensor and Licensee shall upon notification by Licensor to Licensee be obligated to implement and use such upgrades, patches, fixes or the like so long as functionality is retained.

- 4.2 Licensor shall provide advance written notice to Licensee prior to making any updates, bug fixes, or the like in connection with the Software requiring outages of the equipment on which the Software is installed. During the scheduled outages for the update, Licensor shall use commercially reasonable efforts to minimize disruption and impact to Licensee, and be scheduled at a time as agreed to with Licensee. Any other scheduled outages for maintenance of the Software shall be done in accordance with the Software Services and Maintenance Agreement.
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5. Intellectual Property Rights

- 5.1 The Software is protected by copyright laws and international copyright treaties and other Applicable Laws and regulations concerning proprietary rights and intellectual property rights.
- 5.2 Licensor and/or Licensor's authorized third-party vendors (as the case may be) are the sole proprietors and own and retain any and all intellectual property rights in and to the Software, including without limitation copyrights, patent rights, trademark rights, know-how, etc. in and to the Software.
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6. CONFIDENTIALITY

- 6.1 Each party agrees that should a party (the "**Disclosing Party**") share information with the other party (the "**Receiving Party**") which is designated or marked as proprietary or confidential or information which, under the circumstances surrounding disclosure, ought to be treated as confidential by the Receiving Party (hereinafter "**Confidential Information**"), the Receiving Party shall not disclose this Confidential Information to anyone or use this Confidential Information for any purpose independent of the fulfillment of this License Agreement. The Receiving Party shall not use any Confidential Information to the detriment of the Disclosing Party and shall use efforts to protect the confidentiality of any such Confidential Information commensurate with those which it employs to protect its own Confidential Information. The Receiving Party will be responsible for employees, consultants, agents, shareholders and any others who have or may obtain access to the Confidential Information to the full extent it has with respect to its own actions with respect to the use and maintenance of Confidential Information. Confidential Information shall not include information which is: a) rightfully in the possession of or known to the Receiving Party prior to the disclosure without an obligation to maintain its confidentiality, b) publicly known or becomes publicly known through no unauthorized act of the Receiving Party, c) rightfully received by the Receiving Party from a third party without obligation of confidentiality, or d) independently developed by or for the Receiving Party.
- 6.2 In the event the Receiving Party receives a subpoena, request for audit, request for information by any government authority, or a validly issued administrative or judicial process demanding the production of Confidential Information previously provided by the Disclosing Party, the Receiving Party shall

promptly notify the Disclosing Party of this fact and tender the defense of or opposition to this subpoena or demand to the Disclosing Party. If the subpoena or demand is not timely limited, quashed or extended, the Receiving Party shall thereafter be entitled to comply with such subpoena or demand to the extent required by law. If requested by the Disclosing Party after the tender of defense or opposition is accepted, the Receiving Party shall cooperate in such defense or opposition at the expense of the Disclosing Party.

6.3 The Parties acknowledge that unauthorized disclosure of Confidential Information in violation of this Section may result in irreparable harm for which monetary damages or other remedy at law may be inadequate. Each party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper and necessary by a court of competent jurisdiction to prevent any irreparable harm which may be caused by a breach or threatened breach of this License Agreement.

7. Licensee's Feedback

7.1 Licensee may provide Licensor with feedback based on Licensee's experiences obtained using the Software which feedback may include without limitation information concerning usability, bug reports, test results, errors, user applicability, user friendliness etc. ("**Feedback**").

7.2 Licensee acknowledges and agrees that Licensor may free of charge and without any restrictions, obligations or conditions use, improve, develop, modify, alter, disclose, reproduce, make available, license, sub-license, transfer, distribute, market, sell and in any other manner exploit the Feedback for whatever purpose deemed appropriate by Licensor whether in connection with a subsequent commercial release of the Software or in connection with any other software, product, technology or other service made available now or in the future in connection with Licensor's business operations. Notwithstanding the foregoing, Licensor shall anonymize the Feedback so that it cannot identify Licensee and shall not use Feedback that has Licensee specification that was developed for Licensee, Licensee trade secrets or confidential information.

7.3 Licensee agrees that Licensor may collect and use technical data and related information—including but not limited to technical information about Licensee's devices, systems, application software, and peripherals that may be gathered periodically to facilitate the provision of software updates, product support, and other services to Licensee (if any) related to the Software. Licensor may use this information, as long as it is in a form that does not identify Licensee or its Personnel, to operate, provide, improve, and develop Licensor's products, services and technologies, to prevent or investigate fraudulent or inappropriate use of Licensor's products, services, and technologies, for research and development, and for the other purposes described in this License Agreement or to Licensee as part of Licensor's products and services.

8. License Fee

8.1 This License Agreement is subject to Licensee's payment of all applicable license fees and maintenance fees. If, after payment of the one-time license fee, Licensee elects to discontinue Licensor's maintenance of the Software under the applicable Software Services and Maintenance Agreement, Licensee shall be entitled to continue to utilize the version of the Software in effect at the time of such discontinuance, subject to the remaining provisions of this Agreement. For the avoidance of doubt, Licensor will not longer provide upgrades, patches fixes, or the like, following termination of this License Agreement or of the applicable Software Services and Maintenance Agreement.

8.2 Maintenance fees will be as established by Licensor from time to time and set out in the applicable Software Services and Maintenance Agreement. Licensor may increase license and / or maintenance fees with at least six (6) months' prior written notice to Licensee. If Licensee does not agree to such increase of the license and/or maintenance fees and/or the terms and conditions applicable to payment of the license fees, this License Agreement will be deemed terminated in accordance with [Section 11.1](#).

8.3 Notwithstanding anything to the contrary set out in this Agreement, in no event shall Licensee be entitled whether directly or indirectly to claim any refund of any license and/or maintenance fees already paid or accrued and/or any other compensation in connection with termination of this Agreement (and irrespective of the reason hereto) except a termination due to a material uncured breach by Licensor.

9. Indemnification

9.1 Licensor will indemnify, defend and hold Licensee harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) of a third party (collectively, "**Losses**") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Licensee alleging that the use of the Software as permitted hereunder, in the form and for the purpose provided by Licensor infringes any copyright, trademark, or misappropriation of a trade secret of a third party provided that Licensee promptly gives Licensor notice of the claim, suit, action, or proceeding; (b) gives Licensor sole control of the defense and related settlement negotiations; and (c) provides Licensor with all reasonably available information and assistance necessary to perform Licensor's obligations under this paragraph. Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Software in violation of this Agreement or applicable law, (b) use of the Software after Licensor notifies Licensee to discontinue use because of an infringement claim, or (c) modifications to the Software made other than by Licensor. If the Software is held to infringe, Licensor will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Licensee against such claim without cost to Licensee; (b) to replace the Software with a non-infringing Software of substantially similar functionality; or (c) if (a) and (b) are not commercially feasible, terminate this License Agreement and refund to Licensee a pro-rata refund of the subscription fees paid for under this License Agreement for the terminated portion of the term of service. The rights and remedies granted Licensee under this Section 8.1 state Licensor's entire liability, and Licensee's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

9.2 Licensee shall indemnify, defend, and hold Licensor harmless from and against any and all Losses resulting from a claim, suit, action, or proceeding brought by any third party against Licensor that arises out of or results from a claim by a third-party (i) alleging that any data supplied by Licensee or any trademarks or service marks other than Licensor marks, or any use thereof, or any combination of the Software with software or hardware of third parties infringes the intellectual property rights or other rights, or has caused harm to a third party, or (ii) arising out of Licensee's misuse or modification of the Software except such Configuration as permitted herein or other breach of this License Agreement provided that Licensor promptly gives Licensee notice of the claim, suit, action, or proceeding after Licensor learns of such claim or threat and such information and assistance as Licensee may reasonably request in order to prosecute its defense. Licensee may be given the opportunity to control the defense of such action, provided however, that Licensor shall have the right to approve papers filed regarding dispositive motions and shall have the right, reasonably exercised, to approve any settlement of any claims brought against it.

9.3 The indemnification obligations contained in this Section shall survive termination of this License Agreement.

10. WARRANTY

10.1 Scope of Warranty/Warranty of Title. Licensor hereby represents and warrants that: (i) Licensor has good and marketable title and the right to license the Software free and clear of all liens, security interests and encumbrances; (ii) when used in the form and for the purpose provided by Licensor, the Software will and does not infringe, misappropriate or otherwise violate any known or ought to have known intellectual property rights or other right of any third party; (iii) for a period of 90 days from completion of installation, the Software will operate in material conformance with the specifications, if any, set forth in the Service Agreement; (iv) Licensor has utilized commercially-available and reputable software to ensure that Software does not contain any malicious code, including a computer virus.

- 10.2 In the case of a nonconformity with the warranties in [Section 10.1](#) and if Licensor is notified in writing of such nonconformity during the applicable warranty period, Licensor shall provide a remedy by correction in the medium originally supplied, or provision of a procedure to correct the non-conformity. If such remedies are impracticable as reasonably determined by both parties, Licensor may refund the purchase price and implementation cost for the nonconforming Software. Any warranty specified herein is conditioned upon: (a) proper handling, installation and maintenance; (b) not having been subjected to accident, alteration, or abuse; and (c) Licensee providing necessary access and assistance for Licensor to fulfill its warranty obligations.
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12. Term and Termination

- 12.1 This Agreement shall come into force and be effective as of the date of Licensee's installation of the Software ("**Effective Date**") and shall continue in full force and effect until terminated by either party in accordance with this Agreement ("**Term**").
- 12.2 In the event of either party's material breach of this Agreement the other party is entitled to terminate this Agreement with immediate effect if such breach is not cured within 30 days from the date of receipt of notice of breach.

- 12.3 At any time without cause and without causing any breach or incurring any additional obligation, liability or penalty, Licensee may terminate this Agreement and, except as may otherwise expressly be set forth therein, by providing at least 30 days' prior written notice to Licensee.
- 12.4 At Licensee's request, and for a period of 90 days after the termination of this Agreement, Licensor shall grant Licensee access to the Software and reasonably cooperate with Licensee solely for the purpose of retrieving Licensee data.
- 12.5 The following provisions shall survive termination of this License Agreement: Section 3, Section 5, Section 6, Section 8, Section 9, Section 10, and Section 13.

13. Miscellaneous

- 13.1 This License Agreement, together with the Software Services and Maintenance Agreement (if applicable) constitutes the entire, full and complete agreement between Licensee and Licensor concerning the licensing and use of the software hereof and supersede any and all prior agreements whether oral or in writing. Representations by Licensor, whether oral, in writing, electronic or otherwise, that are not expressly set forth in this License Agreement shall not be binding upon Licensor and does not constitute part of this License Agreement. Any amendments to this License Agreement shall thus be binding only if executed as an amendment to this License Agreement signed and duly executed by both parties.
- 13.2 Licensee shall not be entitled to assign this License Agreement or any of Licensee's rights or obligations under this Agreement to any third party without the prior written consent of Licensor. Licensor shall not be entitled to assign this License Agreement or any of Licensor's rights or obligations under this License Agreement to any third party without the prior written consent of Licensee save that Licensee or Licensor may assign this License Agreement to (i) a company affiliated with Licensee or Licensor (ii) an unaffiliated third party to the extent that such assignment takes place in connection with a restructuring, divestiture, merger, acquisition or the like without the consent of Licensor or Licensee.
- 13.3 A party shall not be liable for non-performance of its obligations (other than failure to pay any amounts due) in the event that a situation arises beyond its reasonable control including failure or breakdown of telecommunications networks and lines, regulations by government authorities, lock-outs, strikes, infrastructure breakdowns, natural disasters, epidemics, pandemics, acts of terrorism, fires, floods, storms, fire storms, sabotage, vandalism, damages caused by computer virus, hacking, war, civil wars, riots, nuclear disaster etc. which such party did not take into account prior to the execution of this License Agreement unless the other party (except if performance is de facto impossible) agrees to compensate the affected party for any additional costs incurred as a consequence of a situation beyond such party's reasonable control.
- 13.4 This Agreement shall be governed by and interpreted in accordance with the laws of the state of Oregon, without regard to the conflicts of law rules thereof. Any claim or dispute arising in connection with this Agreement shall be resolved in the federal or state courts sitting in Portland, Oregon. To the maximum extent permitted by law, Licensee hereby consents to the jurisdiction and venue of such courts and waives any objections to the jurisdiction or venue of such courts. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- 13.5 If any term or provision of this License Agreement is declared void or unenforceable in a particular situation, by any judicial or administrative authority, this declaration shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation. To the extent possible the provision will be interpreted and enforced to the greatest extent legally permissible in order to effectuate the original intent, and if no such interpretation or enforcement is legally permissible, shall be deemed severed from the License Agreement.

- 13.6 The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.
- 13.7 This License Agreement may be executed in counterparts and electronically, all of which when executed and delivered shall constitute one single agreement between the parties.

14. Open-source software components

- 14.1 SCADA OneView® software includes the open-source and commercial software components identified in the user manual for OneView. This document provides the notices and information regarding any such open-source software for informational purposes only.

IN WITNESS WHEREOF the parties have executed this License Agreement as of the date first above written by their duly authorized representatives in that behalf.

LICENSEE

By: _____

Name:

Title:

SCADA INTERNATIONAL A/S

By: _____

Name:

Title: