

# END USER LICENSE AGREEMENT

SCADA ONEVIEW<sup>®</sup>/ONEVIEW<sup>®</sup> SCADA

## 1. General

1.1 This end user license agreement (“Agreement”) is a legal agreement between you (“Licensee”) and Scada International A/S, A.C. Illums Vej 4, DK-8600 Silkeborg, Denmark (“Licensor”).

1.2 This Agreement sets out the terms and conditions applicable to Licensee’s use of Licensor’s proprietary software program named SCADA OneView®/OneView® SCADA and to documentation, media, printed materials, electronic documentation and/or other information (if any) pertaining to it (collectively “Software”). For purposes of this Agreement, “Software” includes any updates, enhancements, modifications, revisions, or additions to the Software made by Licensor and made available to Licensee.

1.3 You agree to be bound by the terms and conditions of this Agreement by accessing, installing, copying or otherwise using the Software. If you do not agree, you are not allowed to access, install, copy, use or otherwise exploit the Software in any manner.

## 2. Grant of License

2.1 Subject to Licensee’s compliance with the terms and conditions of this Agreement including without limitation Licensee’s payment of the applicable license and/or maintenance fees to Licensor in due course, Licensor hereby grants Licensee a limited, non-exclusive, non-perpetual, non-assignable, and non-transferable license, without the right to sublicense, to install and use the Software, in object-code form only, on one (1) server owned and operated by Licensee and solely for the purpose of enabling Licensee to access and use the Software for Licensee’s own internal business operations only.

2.2 Except as expressly stated in Section 2.1, Licensee is not granted any rights whether directly or indirectly to access, use or otherwise exploit the Software in any manner.

2.3 All rights not expressly granted are reserved by Licensor.

## 3. Restrictions and limitations

3.1 Licensee is not entitled to, and shall not, reverse-engineer, disassemble or decompile the Software or in any other way attempt to investigate, tamper with or attempt to reveal the source code, the structural framework, or the principles on which the Software is based, except as otherwise expressly permitted under mandatory applicable law.

3.2 Licensee is not entitled to and shall not copy, distribute, make available, sub-license, rent, lend or otherwise dispose of the Software except as otherwise expressly set out in this Agreement.

3.3 Licensee is not entitled to and shall not alter, modify or otherwise change the Software made available under this Agreement and Licensee shall thus only be entitled to access and use the Software in the form made available by Licensor.

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 Licensor undertakes no obligations to provide any upgrades, support and/or maintenance services to Licensee under this Agreement. Licensee acknowledges and accepts that it is the sole responsibility of Licensee to investigate and assess the Software in order to ensure that the Software (i) can operate and function in conjunction with Licensee's IT systems and needs including without limitation Licensee's hardware and software and (ii) may be accessed and used by Licensee in such a way that no risk of damage on Licensee's IT systems, business or business operations may occur. Thus, Licensor's sole obligation under this Agreement is to make the Software available in its standard form.

4.2 Notwithstanding Section 4.1 Licensor may in Licensor's sole discretion decide to make available upgrades, patches, fixes or the like in connection with the Software to Licensee 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.

#### **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.

#### **6. Licensee's Feedback**

6.1 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").

6.2 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.

6.3 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 specifically identify Licensee, 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 Agreement or to Licensee as part of Licensor's products and services.

#### **7. License Fee**

7.1 This Agreement is subject to Licensee's payment of all applicable license and maintenance fees. If, after payment of the one-time license fee, Licensee elects to discontinue Licensor's maintenance of the Software, 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. Maintenance fees will be as established by Licensor from time to time or may be included as a part of separate service or support agreements between Licensor and Licensee.

7.2 Licensor is entitled in Licensor's sole discretion to increase the license and/or maintenance fees payable and/or the terms and conditions applicable to payment of license and/or maintenance fees, with at least six (6) months' prior written notice to Licensee. In the event that 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, the sole remedy of Licensee shall be to terminate this Agreement in accordance with Section 11.1.

7.3 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.

## 8. Indemnification

8.1 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 infringes any copyright, trademark, or misappropriation of a trade secret of a third party, provided that Licensee (a) 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 Agreement and refund to Licensee a pro-rata refund of the subscription fees paid for under this 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.

8.2 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 or other breach of this Agreement, provided that Licensor (a) promptly provides Licensee notice of the claim, suit, action, or proceeding; (b) gives Licensee sole control of the defense and related settlement negotiations; and (c) provides Licensee with all reasonably available information and assistance necessary to perform Licensee's obligations under this paragraph. The indemnification obligations contained in this Section shall survive termination of this Agreement.

## 9. Disclaimer of warranties

9.1 Licensor disclaims any and all warranties, representations and conditions, whether express, implied or statutory, including without limitation any warranties, duties or conditions of or related to merchantability, fitness for a particular purpose, lack of viruses, accuracy or completeness of responses, results, quiet enjoyment, correspondence to description, non-infringement, workmanlike effort and lack of negligence with respect to the Software and the entire risk related to the aforesaid matters shall thus remain solely with Licensee.

9.2 The limitations and exclusions set out in this Section 9 shall apply to the maximum extent not prohibited by applicable law.

## 10. Limitation and exclusion of Liability

10.1 In no event shall Licensor or Licensee be liable to the other or to any third party for any special, indirect, incidental, or consequential damages or losses including, without limitation, damages for loss of profits, loss of business, loss of business opportunities, business interruption, loss of data or the like, any punitive or exemplary damages and/or any product liability arising out of the use of or inability to use the Software, even if a party has been advised of the possibility of such damages. The aforesaid exclusions and limitations shall apply irrespective of whether such damages or losses are caused by acts or omissions by Licensor attributable to Licensor as negligent (including both gross and simple negligence) or incidental. Licensee acknowledges that the foregoing limitation of liability is a fundamental provision of this Agreement, and that Licensor is not willing to make the Software available for Licensee's use absent this limitation.

10.2 In addition to the exclusions and limitations of liability set forth in this Section 10, except in the case of indemnification obligations under Section 8, the entire liability of Licensor (and irrespective of the basis of such liability) to pay any damages, compensation or any other amounts to Licensee during the term of this Agreement shall be limited and capped to an aggregate amount equal to the Software license fee paid by Licensee for use of the Software (and thus less any maintenance fees as well as other licensing fees not pertaining specifically to the server software e.g. licensing fees regarding the Software paid per park/turbine/asset in excess of the license fee for the server license).

10.3 The limitations and exclusions set out in this Section 10 shall apply to the maximum extent not prohibited by applicable law.

## 11. Term and Termination

11.1 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 Section 11.

11.2 In the event of the 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 (a) ten (10) days from the date of notice of breach for non-payment of of amounts due and owing, or (b) thirty (30) business days from the date of receipt of notice of any other material breach. Without limiting the generality of the foregoing (i) any failure by Licensee to pay any license fees due which is not not cured by Licensee within ten (10) days from the date of receipt of the notice of nonpayment and/or (ii) any failure by Licensee to comply with the terms and conditions of this Agreement shall be deemed a material breach of this Agreement by Licensee entitling Licensor to terminate this Agreement for breach with immediate effect.

11.3 Upon termination of this Agreement and irrespective of the reason for such termination, Licensee shall immediately cease to use the Software.

11.4 The following provisions shall survive termination of this Agreement: Section 3, Section 5, Section 6, Section 8, Section 10, and Section 12.

## 12. Miscellaneous

12.1 Licensor is entitled to use the name of Licensee as trade references in connection with Licensor's future development, marketing, licensing and sales of the Software and/or any future commercial release of any software based on or derived from the Software.

12.2 This Agreement constitutes the entire, full and complete agreement between Licensee and Licensor concerning the subject matter 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 Agreement shall not be binding upon Licensor and does not constitute part of this Agreement. Any amendments to this Agreement shall thus be binding only if executed as an amendment to this Agreement signed and duly executed by both parties.

12.3 Licensee shall not be entitled to assign this 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 Agreement or any of Licensor's rights or obligations under this Agreement to any third party without the prior written consent of Licensee save that Licensor may assign this Agreement to (i) a company affiliated with Licensor or (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 Licensee.

12.4 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 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.

12.5 This Agreement shall be governed by and interpreted in accordance with the laws of Denmark, without regard to the conflicts of law rules thereof. Any claim or dispute arising in connection with this Agreement shall be resolved in the court of Aarhus, Denmark. To the maximum extent permitted by law, Licensee hereby consent to the jurisdiction and venue of such courts and waive 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.

12.6 If any term or provision of this 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 Agreement.

12.7 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.