



END USER LICENSE AGREEMENT

PLEASE READ CAREFULLY THE TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT (TOGETHER WITH ANY EXHIBITS AND/OR ORDER FORM(S) ATTACHED HERETO - THE “**EULA**”) BEFORE INSTALLING, ACCESSING OR USING ANY INDEGY HARDWARE, SOFTWARE OR ANY ASSOCIATED LICENSED PRODUCT SET FORTH IN AN APPLICABLE ORDER FORM (THE “**LICENSED PRODUCTS**”). BY INSTALLING, HAVING INSTALLED, OR USING THE LICENSED PRODUCTS, USER (AS DEFINED BELOW) IS ACCEPTING AND AGREEING TO BE BOUND BY ALL THE TERMS AND CONDITIONS HEREOF AND REPRESENTING THAT IT HAS FULL RIGHT, POWER, AND AUTHORITY TO ENTER INTO AND PERFORM THIS EULA. **YOU MAY NOT AND WILL NOT BE ABLE TO INSTALL THE LICENSED PRODUCTS UNTIL YOU HAVE ACCEPTED THIS EULA.** FURTHERMORE, YOU HEREBY WAIVE ANY RIGHTS OR REQUIREMENTS UNDER ANY LAWS OR REGULATIONS IN ANY JURISDICTION WHICH REQUIRE AN ORIGINAL (NON-ELECTRONIC) SIGNATURE OR DELIVERY OR RETENTION OF NON-ELECTRONIC RECORDS, TO THE EXTENT PERMITTED UNDER APPLICABLE MANDATORY LAW.

THIS EULA IS MADE BETWEEN YOU (“**USER**”, “**YOU**”) AND INDEGY LTD AND ITS SUBSIDIARIES (“**INDEGY**”) AND SHALL APPLY WITH RESPECT TO THE LICENSED PRODUCTS PROVIDED TO USER BY INDEGY OR ONE OF ITS AUTHORIZED DISTRIBUTORS, AS OF THE EFFECTIVE DATE STATED IN THE RELEVANT ORDER FORM, AND IT SUPERSEDES ANY PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING BETWEEN THE PARTIES.

YOU ASSUME ALL RESPONSIBILITY FOR THE SELECTION OF THE LICENSED PRODUCTS, FOR YOUR RELIANCE ON THE RESULTS OF USE OF THE LICENSED PRODUCTS AND FOR ANY USE MADE BY YOU OR ANYONE ON YOUR BEHALF OF THE LICENSED PRODUCTS NOT IN ACCORDANCE WITH THE TERMS HEREOF OR AS CONTEMPLATED HEREUNDER.

1 DEFINITIONS.

1.1 “**Affiliate**” means any entity which controls, is controlled or is under common control with either of the parties. Any entity shall be deemed to “control” another entity if it owns directly or indirectly more than 50% of the outstanding voting securities or capital of other entity or other comparable equity with respect to an entity other than a company.

1.2 “**Documentation**” means the instructions, user guides, manuals and release notes generally provided by Indegy, at any time, in printed and electronic form, that describe the installation, operation, use or technical specifications of the Licensed Products.

1.3 “**Order Form**” shall mean purchase orders issued by Indegy or one of its authorized distributors to User and executed by the User and signed by the parties from time to time. Each Order Form is hereby incorporated by reference into this EULA. If there are any inconsistencies or conflicts between this EULA and an Order Form, the express inconsistent or conflicting terms of the Order Form shall govern.

1.4 “**Authorized User**” means User’s and its Affiliates’ employees, agents, contractors, consultants, suppliers or other individuals who are authorized by User to use the Licensed Products according to the terms and conditions of this EULA.

2 LICENSE RIGHTS; RESTRICTIONS

2.1 Indegy grants to User, subject to the full compliance of the terms and conditions set forth herein, a non-exclusive, non-transferable, non-sublicensable, limited license, during the Term (as defined in the applicable Order Form), for User and Users’s Authorized Users to install, access, operate and use the Licensed Products, for the number of industrial controllers or other devices (“**Controllers**”) set forth in the Order Form, solely for internal use and not for any further commercialization (the “**Purpose**”) all strictly in accordance with the additional terms stated in the applicable Order Form and the Documentation.

2.2 Indegy may make available Documentation to User solely in connection with the use of the Licensed Products. User may print or copy the Documentation as needed for its own internal business purposes provided that

all copyright notices are included therein. The Documentation shall be considered as Indegy's confidential information. Unless the Documentation is separately referred to herein, all references in this EULA to the Licensed Products shall include the Documentation.

2.3 Use Restrictions.

2.3.1 Except as expressly permitted hereunder, User may not, nor shall it authorize or assist any Authorized Users or third parties to: (i) use the Licensed Product for any purpose other than the Purpose and in any way not explicitly permitted under this EULA; (ii) use the Licensed Product in any location, system, facility or network other than User's facilities, system or network that is owned, secured and overseen by User; (iii) transfer, distribute, reproduce, download, publish, disclose, disseminate, copy, emulate, assign, sublicense, sell, pledge, rent, lease, share or permit any third party (other than its Authorized Users) to access the Licensed Product; (iv) reverse-engineer, decompile, disassemble, alter, enhance, improve, add to, delete from, make derivatives of, separate into component parts, or otherwise modify, or derive (or attempt to derive) the technology or source code underlying, the Licensed Product, nor may it conduct any static/dynamic analysis thereof, or otherwise attempt to discover or recreate the source code of the Licensed Product, or any part or component thereof, provided in object code or source code format; (v) remove, alter, or obscure any proprietary notices (including copyright notices) in the Licensed Product; or (vi) use the results of any benchmarking or testing of the Licensed Product for its own competing development activities.

2.3.2 Without derogating from the foregoing, User shall take commercially reasonable precautions to prevent any unauthorized access and/or unauthorized usage of the Licensed Product, including by any Authorized User. User shall be responsible and liable for any act or omission by any of its Authorized Users.

2.3.3 User will be solely responsible for completing all tasks that are required to prepare its facilities and equipment for the setup and installation of the Licensed Products on its systems or in its facilities, as instructed by the Documentation. The installation and deployment costs shall be paid according to the applicable Order Form. The Licensed Products will be deemed accepted by User upon delivery.

2.4 **Marks and Use of User's Name.** This EULA does not grant User any rights to Indegy's trademarks or service marks. User agrees that Indegy may include its name and logo in lists, presentations, webpages and displays used by Indegy which generally describe its customers.

2.5 **Third Party Licensed Product.** IN ACCEPTING THIS EULA YOU CONFIRM AND ACKNOWLEDGE THE UTILIZATION OF THIRD PARTY SOFTWARE AND COMPONENTS ("3RD PARTY COMPONENTS") IN THE LICENSED PRODUCTS AND ACKNOWLEDGE THAT SUCH 3RD PARTY COMPONENTS ARE BEING INSTALLED WITH YOUR CONSENT. SUCH 3RD PARTY COMPONENTS ARE UTILIZED ON AN "AS IS" BASIS WITHOUT ANY WARRANTY WHATSOEVER AND INDEGY HEREBY EXPRESSLY DISCLAIMS WITH RESPECT TO ANY SUCH 3RD PARTY COMPONENTS, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (A) ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT; AND (B) ALL LIABILITY FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, (INCLUDING WORK STOPPAGE, LOSS OF USE, REVENUE AND/OR PROFITS), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE) ARISING OUT OF THIS EULA OR OTHERWISE OUT OF USER'S USE OF THE LICENSED PRODUCTS, EVEN IF INDEGY HAS BEEN ADVISED OF OR CAN ANTICIPATE THE POSSIBILITY OF SUCH DAMAGES.

2.6 **Transfer to a Third Party.** The rights granted to the User in this EULA are personal and may not be assigned or transferred by User to a third party without Indegy's prior written consent. Any purported assignment or transfer in violation of this section shall be void.

2.7 **Export Restrictions.** User will comply with all applicable national and international laws that apply to User's use of the Licensed Product, including United States export regulations, as well as end user, end use and destination restrictions which may be issued by the United States and/or other governments.

3 **FEES.** In consideration for the license granted to User during the Term as set forth hereunder, User shall pay Indegy a total license fee as set forth in the applicable Order Form, subject to Indegy's issued invoice.

4 **SUPPORT AND MAINTENANCE.** During the Term, and upon User's reasonable request, Indegy shall take commercially reasonable efforts to provide User with its standard support services, and any additional support services as agreed to in an applicable Order Form.

5 WARRANTY; DISCLAIMERS

5.1 **Limited Warranty.** Indegy warrants, for User's benefit alone, that the Licensed Products as provided by Indegy, if operated as directed by Indegy and the Documentation, shall operate for a period of 90 days from the date the Licensed Products were delivered to User, substantially in accordance with the functional specifications in the Documentation.

5.2 **Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1 ABOVE, INDEGY MAKES AND GIVES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND GUARANTIES, WHETHER ORAL OR WRITTEN, IMPLIED, EXPRESS OR STATUTORY, WITH REGARD TO THE LICENSED PRODUCTS, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NO LICENSOR DEALER, DISTRIBUTOR, RESELLER, AGENT, OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS WARRANTY.

5.3 **Exclusive Remedies.** For any breach of the warranties contained in Section 5.1, User's exclusive remedy, and Indegy's entire and sole liability, shall be to use reasonable commercial efforts repair or replace the Licensed Product so that it operates as warranted; provided that (i) User has fully paid all applicable fees, (ii) User is not otherwise in breach of this EULA, and (iii) User has reported in writing to Indegy the claimed failure promptly upon discovery. If Indegy is unable to repair or replace the Licensed Product, User will be entitled to terminate this EULA and recover any prepaid unused amount of the license fees covering the remainder of the current licensing period after the effective date of termination. Indegy may disclaim any obligation or liability under this Section 5 if Indegy determines that the Licensed Product has been: (i) altered, modified, or serviced other than by Indegy; (ii) improperly installed or used in a manner other than as specified in the Documentation (including used on or in conjunction with hardware other than the unmodified version of the hardware with which the Licensed Product was designed to be used); or (iii) if User violated the terms of this EULA.

6 PROPRIETARY RIGHTS

6.1 **Licensed Products.** No rights other than those expressly set forth herein shall pass to the User. User agrees and acknowledges that, as between User and Indegy, Indegy is the sole and exclusive owner of the Licensed Products and any part thereof, and Indegy retains all right, title and interest in the Licensed Products, including any modifications, enhancements, improvements, updates and upgrades to, and derivative works of, the Licensed Products and all Intellectual Property therein or related to any of the foregoing. "Intellectual Property" shall mean all inventions, ideas, concepts, analyses, (whether patented, or patentable, or not), methods, methodologies, designs, processes, patents, patent applications, rights associated with works of authorship, including copyrights, copyrights applications, copyrights restrictions, moral rights, any information, ancillary materials, devices, results, know-how, and all rights relating to the protection of trade secrets and confidential information; design rights and industrial property rights; software, all code including source code, object code, firmware; rights similar to those set forth herein and any other proprietary rights relating to intangible property.

6.2 **Data from Licensed Products.** User shall own any data generated from User's use of Licensed Products under this EULA. User hereby grants to Indegy a non-exclusive, perpetual, irrevocable license to use the data generated from User's use of the Licensed Products for internal research and development purposes and to improve its Licensed Products.

7 CONFIDENTIAL INFORMATION

Each party agrees to keep confidential and to use only for purposes of performing its obligation under this EULA or as otherwise permitted under this EULA, any proprietary or confidential information of the other party disclosed pursuant to this EULA which is marked as confidential or is identified at the time of disclosure as confidential or which would reasonably be considered confidential or proprietary in nature. The obligation of confidentiality shall not apply to information which; (i) is already known to the receiving party at the time of disclosure, which knowledge, the receiving party shall have the burden of proving with written dated documentation; (ii) is, or, through no act, or failure to act, of the receiving party, becomes publicly known; (iii) is legally received by receiving party from a third party without restriction on disclosure, as evidenced by written dated documentation; (iv) is independently developed by receiving Party without reference to the confidential information of the disclosing party, as evidenced by written dated documentation; or (v) is approved for release by written authorization of the disclosing party. Further, the receiving party may disclose confidential information which is required by law, government order or request to be disclosed (provided that the receiving party shall give written notice to the other party prior to such disclosure allowing for the disclosing party to object to such order or request and shall only disclose the exact confidential information or portion thereof specifically requested by such order or request). The receiving party agrees that it shall hold all confidential information in confidence and shall safeguard the confidential information with at least the same degree of care that it takes to protect its own information of a similar nature, which in no event shall be less than a reasonable standard of care. The parties acknowledge that unauthorized disclosure or use of confidential information may give rise to irreparable injury, which may not be adequately compensated by money damages and that the disclosing party shall be entitled to seek specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach thereof, in addition to any other remedies available at law or in equity. Notwithstanding any of the foregoing, User acknowledges and agrees that the Licensed Products and any information related thereto shall be deemed to constitute confidential information of Indegy. Upon any termination of this EULA, each party shall return to the other party all confidential information of the other party, and all copies thereof, in the possession, custody or control of the party unless otherwise expressly provided in this EULA and shall purge and permanently delete any confidential information from its systems.

8 INDEMNIFICATION

8.1 **Indegy's Indemnification Obligations.** Indegy shall defend, indemnify and hold User and its employees, officers and directors harmless at Indegy's sole cost and expense, for any claim, suit or proceeding, finally awarded by a court of competent jurisdiction, brought against User which alleges that the Licensed Product, as delivered and used in accordance with the terms of this EULA, infringes any third-party patent, copyright or other intellectual property right. Indegy will pay the amount of any such adverse final judgment or settlement, provided that User gives Indegy written notice promptly following receipt of notice of such claim, suit or proceeding, allows Indegy to assume full control of the defense and settlement of the claim, and full information and reasonable assistance in its defense or settlement. Indegy shall be entitled to settle or otherwise dispose of such claim, suit or proceeding as it sees fit, provided that any settlement intended to bind User and does not completely relieve User of any liability or that requires User to admit any wrongdoing, shall not be final without User's written consent, which consent shall not be unreasonably withheld.

8.2 **User's Indemnification Obligations.** User shall defend, indemnify and hold Indegy and its employees, officers and directors harmless at User's sole cost and expense, for any claim, suit or proceeding brought against Indegy arising from User's willful misconduct, gross negligence, breach of confidentiality obligations, and Section 2 of this EULA. User will pay the amount of any adverse final judgment or settlement, provided that Indegy gives User written notice promptly following receipt of notice of such claim, suit or proceeding, and full information and reasonable assistance in its defense or settlement. User shall be entitled to direct such defense and to settle or

otherwise dispose of such claim, suit or proceeding as it sees fit, provided that any settlement intended to bind User shall not be final without User's written consent, which consent shall not be unreasonably withheld.

8.3 **Remedies.** Without in any way limiting Indegy's obligations to indemnify and defend User under Section 8.1, if an injunction is obtained in such action against User's use of the Licensed Product, or if Indegy is expecting such injunction to be brought, Indegy shall, at its option and expense, either: (i) obtain for User the right to continue to use the Licensed Product; (ii) replace the Licensed Product with a product with substantially equivalent functionality; or (iii) modify the Licensed Product so that it becomes non-infringing, while maintaining substantially equivalent functionality. If (i), (ii) or (iii) above are not commercially practical, then Indegy shall refund amounts up to the license fees paid for the infringing Licensed Product based on straight-line amortization of the Licensed Product over a five (5) year period beginning on the due date for the license fees set forth in the applicable Order Form. This Section 8 states Indegy's entire liability and User's exclusive remedy for infringement.

9 **LIMITATION OF LIABILITY.** EXCEPT FOR EITHER PARTY'S OBLIGATIONS OF CONFIDENTIALITY, (i) TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL OR EQUITABLE BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS SUBSIDIARIES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOSS OF GOODWILL, COMPUTER FAILURE OR MALFUNCTION, LOSS OF DATA OR BUSINESS INFORMATION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES) ARISING IN CONNECTION WITH THIS EULA OR FROM THE USE OF OR INABILITY TO USE THE LICENSED PRODUCT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE, (ii) EXCEPT FOR USER'S INDEMNIFICATION OBLIGATIONS OR BREACH OF SECTION 2, EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS EULA WILL BE LIMITED TO THE LICENSE FEES PAID FOR THE LICENSED PRODUCT GIVING RISE TO THE CLAIM AS SET FORTH IN THE APPLICABLE ORDER FORM. THE FOREGOING LIMITATION WILL NOT APPLY TO LIABILITY CAUSED BY EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

10 **TERM AND TERMINATION.** The User will have the rights set forth herein for so long as the User complies with the terms of this EULA and any valid applicable Order Form. This EULA automatically terminates if User breaches its terms and such breach is not cured within thirty (30) days of Indegy's written notice of breach or is not able to be cured. Sections 2, 5, 6, 7, 8, 9, 11 and 12 will survive any termination or expiration of this EULA.

11 **RETURN OR DESTRUCTION OF LICENSED PRODUCT AND DOCUMENTATION UPON TERMINATION OF LICENSE.** If any license granted under this EULA is terminated in accordance with the terms of this EULA, User must within thirty (30) days thereafter: (a) cease using the Licensed Product and Documentation; and, if applicable, return the Licensed Product and Documentation and any copies thereof to Indegy or certify in writing that it has been destroyed. This requirement applies to copies of the Licensed Product and Documentation in all forms, partial and complete, in and on all types of media and computer memory, and whether or not modified or merged into other materials.

12 GENERAL

12.1 **Severability.** In the event any provision or part of this EULA is held to be invalid or unenforceable by any court of competent jurisdiction, it shall be amended to the extent required to render it valid, legal and enforceable, or deleted if no such amendment is feasible, and such amendment or deletion shall not affect the enforceability of the other provisions hereof.

12.2 **Waiver.** No waiver of any breach of this EULA will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving Party. 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.

12.3 **Entire Agreement.** This EULA, including any referenced written addenda, Order Forms and exhibits constitutes the entire agreement between the Parties and supersedes all previous agreements or representations, written or oral, with respect to its subject matter. This EULA may not be modified or amended except in writing signed by a duly authorized representative of each Party.

12.4 **Governing Law.** The validity, interpretation, and performance of this EULA shall be controlled by and construed under the laws of the State of New York as if performed wholly within New York and without giving effect to the principles of conflicts of laws. The Parties hereby consent to the exclusive jurisdiction state or federal courts of Southern District of New York, New York, USA. The Parties specifically exclude application of the United Nations Convention on Contracts for the International Sale of Goods to this EULA.

12.5 **Informal Dispute Resolution.** Except for the right of either Party to apply to a court of competent jurisdiction for injunctive relief, if any dispute arises between the Parties, the Parties shall first attempt to resolve such dispute among themselves prior to resorting to any formal legal action. Either Party may notify the other Party in writing of the occurrence of a dispute and establish a mutually convenient time and place to discuss the dispute. In any event, the meeting shall occur within a commercially reasonable period of time (which period shall not exceed fifteen (15) days from the date of the notice) and shall take place between Indegy's appointed individual and User's equivalent representative. If the meeting does not resolve the dispute, either Party may then give the other Party written notice that the dispute continues. Within a commercially reasonable period of time after such notice, which period shall not exceed fifteen (15) days from the date of such notice, designated executives of both Parties shall meet to discuss the issue at a mutually convenient time and place. Such executives of each Party shall be a senior executive of such Party. If the dispute has not been resolved within a reasonable period of time thereafter, then either Party may pursue applicable remedies under this EULA, at law, or in equity.
