

## ClearSCADA Product Support Terms and Conditions

These Control Microsystems Inc. (the "Company") ClearSCADA Software Support Terms and Conditions govern the Company's provision of software support services (together, the "Software Support Services") purchased by its customers ("You"). By purchasing Software Support Services from the Company, You agree to be bound by the following terms and conditions. The Company reserves the right to change the terms, conditions, features and pricing of its Software Support Services from time to time. Subject to these Terms and Conditions, the Company will provide to You the Software Support Services for the Company's Software ("Software") for which these services and during the period set forth in the applicable purchase order, that the same are purchased from the Company.

### General Support Provisions.

Technical Support Services. You are entitled to access the Company's technical support resources. The Company will use commercially reasonable efforts to assist You to cause the Software to perform in all material respects in accordance with the applicable documentation for the Software. Technical support includes:

- Unlimited telephone and e-mail technical support assistance during regular business hours of the Company;
- Password controlled access to online product information & resources

Technical support inquiries are limited to: installation of the Software; connection issues between the Software and supported products; product usage or functionality issues related to the Software; Software updates and version enquiries. Some of the following areas that are not supported include, but are not limited to: installation issues not related to the Software, set-up and configuration of databases, networks and third party installations; resolution of network, systems or environmental errors not directly related to the Software; writing scripts or codes; data recovery from corrupted databases; continued support where the Company has provided corrections that You have not implemented, connectivity issues with third-party services or service providers' hardware or software; application consulting or training.

The Company will use commercially reasonable efforts to provide the Software Support Services in a professional manner, but the Company cannot guarantee that every question or problem raised by You can or will be resolved.

Software Maintenance and Updates. The Company will provide both Major and Minor Release Updates (Release Versions) of the software to customers holding active Annual Support Contracts. The Major Release Updates incorporate major changes to the product and are reflected by a change to the product's name or edition (i.e. ClearSCADA 2009 Edition vs. ClearSCADA 2010 Edition). Minor Product Updates are primarily intended to correct field problem reports or to improve performance and are denoted by a change to the "Rx" numeral positioned to the right of the Product name.

Software updates and versions do not include new derivations of the Software that the Company designates as new software products or new similar products for which the Company charges a separate license fee.

**Software Version Support.** Control Microsystems reserves the right to limit support to the then current ClearSCADA version and earlier versions released not more than 24 months prior to the later of the purchase of support or any renewal of support. Control Microsystems may require as a condition to the purchase or renewal of support that the customer purchase and install a version of ClearSCADA compliant with the foregoing. Control Microsystems reserves the right to terminate support for software: (i) that has not been offered for sale to the public by Control Microsystems, for at least twenty-four (24) months prior to date of termination; or (ii) for which Control Microsystems has published notice on its website that such software will not be supported, at least twenty-four (24) months prior to date of termination. Subject to the foregoing, if and only if support is terminated by Control Microsystems during the term for which support has been purchased, Control Microsystems shall refund that part of purchase price paid to Control Microsystems for support that is proportionate to the unused period of support.

**Notification of Errors.** You agree to promptly notify the Company of any problems or errors with the Software, including a reasonable description of such errors) and to answer questions and reasonably assist the Company in its efforts to duplicate any such errors or problems. However, the Company is under no obligation to provide Software Support Services of any kind to correct any errors that cannot be reproduced or verified by it within a reasonable period of time or for problems in the operation or performance of the Software that are caused by a Customer Error.

A "Customer Error" shall mean any problem in the operation or performance of the Software caused by any of the following: (a) non-Company program or hardware products, or use of the Software in conjunction therewith; (b) modifications to the Software made by any party without the Company's express written authorization; (c) Your use of the Software other than as authorized in your license from the Company or these Terms and Conditions or as provided in the documentation; (d) Your use of other than currently supported versions of the Software or any error corrections, updates or upgrades thereto provided by the Company; (e) if You, or a third party, installs or implements the Software without the Company's recommended training or does so improperly; or (f) modifications to the Software's database structure and source files.

**Restrictions.** The Company reserves the right to limit or terminate Software Support Services to any person who uses the service in an unreasonable, excessive, abusive or fraudulent manner, as determined by The Company in its sole discretion. Terms, conditions, support features, procedures, pricing and support availability for Software Support Services are subject to change at any time without notice. Software Support Services coverage is non-transferable.

#### **Term and Termination.**

**Term.** The Software Support Services will commence on the date of purchase and will continue in force for a twelve (12) months term or such other term as agreed in writing by the Company. Software Support Services may be renewed annually for subsequent twelve (12) month periods by purchase of same from the Company at the then current rates and terms.

**Reinstatement after Termination.** If You desire to resume Software Support Services that previously expired or terminated, in addition to the cost of the ClearSCADA software support contract You must first pay 50% of the current list price of the product.

#### **Limitation of Liability and Damages.**

IN NO EVENT SHALL COMPANY BE LIABLE FOR GENERAL OR SPECIFIC DAMAGES OTHER THAN THE COST OR REPLACEMENT OF PRODUCT OR SERVICES SUPPLIED. IN NO EVENT SHALL COMPANY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR OTHER GENERAL OR SPECIFIC DAMAGES OR ANY LOSSES OR EXPENSES SUFFERED BY YOU OR ANYONE ELSE, WHETHER OR NOT THE COMPANY, OR ITS EMPLOYEES, OFFICERS, AGENTS, DEALERS OR INSTALLERS HAS

BEEN INFORMED OF THE RISK OF SUCH LOSS OR EXPENSE AND WHETHER OR NOT SUCH LOSSES OR EXPENSES WERE FORESEEABLE AND WHETHER OR NOT SUCH DAMAGES OR LOSSES OR CLAIMED UNDER ANY THEORY OF LAW OR UNDER CONTRACT, STATUTE, TORT, IMPLIED DUTIES OR OTHERWISE OR DIRECTLY OR INDIRECTLY RELATED TO THE SUPPLY OR USE OF SOFTWARE OR THESE SOFTWARE SUPPORT SERVICES. THE AGGREGATE LIABILITY OF COMPANY IN ANY WAY RELATING TO A SUPPLY OR USE OF THE SOFTWARE SUPPORT SERVICES, IN ANY OCCURRENCE OR SERIES OF OCCURRENCES, SHALL BE LIMITED TO THE CONTRACTUAL VALUE OF THE SOFTWARE SUPPORT SERVICES SUPPLIED.

### **Miscellaneous**

Entire Agreement. These Annual Software Support Terms and Conditions contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. You agree that any varying or additional terms contained in any purchase order or other written notification or document issued by you in relation to the Software and Documentation must be of no effect unless those terms are expressly agreed to in a written document signed by a director of Company.

Export Regulations. You agree to comply fully with all laws and regulations concerning the purchase and sale of products. In particular, You agree to comply with the export laws and regulations of the United States and Canada in so far as they apply to the supply of the Software.

Partial Invalidity. If any provision of these Terms and Conditions or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of these Terms and Conditions, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby and each provision of these Terms and Conditions will be valid and enforced to the fullest extent permitted by law and be independent of every other provision of these Terms and Conditions.

Laws of Ontario. These Terms and Conditions shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable laws of Canada excluding the law of conflicts and excluding the United Nations Convention of Contracts for the Sale of Goods and shall be treated in all respects as an Ontario contract. The Parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario, Canada with respect to any and all disputes arising out of, pursuant to or relating to these Terms and Conditions or the supply of products or services and waives any right that it may have to assert the defense of forum non-conveniens in any suit, action or proceeding.

Waiver. The failure or delay of to exercise any of its rights under these Terms and Conditions or upon any breach of these Terms and Conditions are not be deemed a waiver of those rights or of the breach.

### Survival.

The sections entitled "Limitation of Liability and Damages" and "Miscellaneous" shall survive the termination of this Agreement.