

Software License Agreement

between **algorithmica technologies GmbH**, 10870 N Stelling Rd., Suite 39B, Cupertino, CA 95014, USA, hereafter called the LICENSOR, and **-- Customer --**, hereafter called the LICENSEE.

Preamble

LICENSOR distributes the software **Intelligent Health Monitor** (hereafter called **IHM**), **Advanced Process Optimizer** (hereafter called **APO**), **Advanced Process Controller** (hereafter called **APC**), and **Intelligent Soft Sensor** (hereafter called **ISS**) worldwide that LICENSOR has developed. Both parties agree that IHM is subject to copyright. LICENSEE purchases from LICENSOR the permission to use the software for a specified number of tags and for a specified period of time. The software IHM can be used to **determine the health of process machinery**. The software APO can be used to **optimize the performance of a process industry plant**. The software APC can be used to **keep a process value as constant as possible by changing other process values**. The software ISS can be used to **simulate a sensor where there is no physical sensor**.

§ 1 Object

- (1) The object of this contract is the permission to use the software **software --** in object code with all the rights described in § 2 for the **duration --** starting on **date --**.
- (2) During the duration of this contract as per § 1.1, this contract cannot be terminated by either party except in the event of material breach.
- (3) LICENSOR will provide to LICENSEE one copy of the software.
- (4) The functionality of the software is fully apparent from its manual. The specifications therein act as a complete service description but is not to be understood as a guarantee. A guarantee is only granted when it is explicitly labeled as such.
- (5) Services of installation and configuration and any other services requiring human work are not the object of this contract.

§ 2 Rights

- (1) LICENSEE obtains a non-exclusive and time-limited right to use the software. The software may be used by an unlimited number of persons concurrently. The software is only to be used by employed staff of the LICENSEE. The software may be used only for use in **-- plant and location --**. The permitted use includes the installation, loading into memory and use as described in the manual. LICENSEE may not sublicense the software or provide it to any third party whether in return for money or not.
- (2) LICENSEE may create a backup copy of the software if this is deemed necessary for its continued use. This copy must be complete and be labeled as such.
- (3) LICENSEE is expressly not permitted to decompile the software or to make any changes whatsoever to any part of the software.

(4) LICENSEE may not provide access to the software to any third parties.

(5) If LICENSEE uses the software in a manner that qualitatively or quantitatively exceeds the purchased rights to use, then LICENSEE must inform LICENSOR of this and purchase the remaining rights immediately.

(6) Properties of the software that serve to identify it, such as serial numbers, may not be removed.

(7) The right to use the software is provided for a maximum of **-- number of tags --**.

§ 3 License Payment

(1) The price of the license is **-- price --** per year. All prices quoted are net prices exclusive of all sales or value-added taxes that may be applicable due to the laws of countries of LICENSOR and LICENSEE. The license fee is to be paid in full and in advance on the first of January of every year. Should the license contract begin after the first of January, then the relative remainder of that year's fee is to be paid upon signing this contract.

(2) For the purpose of this contract, the location for the delivery shall be Cupertino, CA, USA.

(3) Delivery of the software fully fulfills the contract. LICENSEE will pay the license fee fully within 30 days of delivery and receipt of the invoice.

(4) In cases of default, an interest rate of 8 percent above the LIBOR base lending rate will be applied.

§ 4 Guarantees

(1) LICENSOR guarantees LICENSEE that the software may be used without any legal or financial obligations to any third-party. LICENSOR cannot guarantee the functionality of the software if it is used in a manner incongruent to its express purpose as stated in its manual or on hardware that is unsuitable for its use.

(2) LICENSEE is required to check the software immediately after receipt for any clear flaws and to report these to LICENSOR without delay.

(3) The IHM software is used to determine whether a process machine is healthy or unhealthy. LICENSOR cannot guarantee that this determination is accurate in all cases. There will be both false-positives and false-negatives. The relative amount of these will depend on user input.

(4) The APO software is used to optimize the performance of a process industry plant. For this purpose, the software makes suggestions for actions. Whether or not those suggestions can be implemented or should be implemented depends upon user input. LICENSOR cannot guarantee that the suggestions can or should always be followed. The responsibility for implementing any and all suggestions rests with LICENSEE.

(5) The APC software is used to keep a process value as stable as possible by changing other process values. These changes are output by the software as suggestions. Whether or not those suggestions can be implemented or should be implemented depends upon user input. LICENSOR cannot

guarantee that the suggestions can or should always be followed. The responsibility for implementing any and all suggestions rests with LICENSEE.

(6) The ISS software is used to simulate a sensor where there is no physical sensor. This simulation is based on historical data that are machine learnt. LICENSOR cannot guarantee that the computed value is always be equal to the value that would have been measured by a physical sensor if it had been present.

(7) The fitness for purpose of the software in § 4.3, § 4.4, § 4.5 und § 4.6 integrally depends upon data quality, data availability and user input. As such, LICENSOR cannot make any guarantees on their fitness for purpose in general.

(8) If the software is found to have a flaw relative to its explicit description in its manual, LICENSEE will alert LICENSOR of this fact and assist LICENSOR in repairing this flaw. LICENSOR will repair this flaw in a timely manner without charge.

(9) LICENSOR may perform the repair work under § 4.4 on the premises of LICENSEE if this is deemed necessary or to provide it remotely.

(10) LICENSEE has the right to terminate this contract after two failed attempts to repair the flaw under § 4.4.

(11) All rights from these guarantees expire within one year.

(12) If the parties have a maintenance contract, then this maintenance contract covers additional services provided by LICENSOR to LICENSEE in the assistance to use the software.

§ 5 Liability

(1) LICENSOR is liable for damages in cases of malicious intent.

(2) Employees, representatives, directors and owners of LICENSOR are not personally liable for any damages whatsoever excepting personal malicious intent.

(3) LICENSOR or its employees have no further liabilities.

(4) LICENSOR is not liable for any damage to devices, machines, persons, intellectual property, immaterial property or any other physical or non-physical object that results from the use of its software. The software provides information only and as such cannot harm anything or anyone. Any conclusions drawn from this information and any actions taken on the basis of this information are the responsibility of the LICENSEE. This applies in particular to damages to monitored machinery, any collateral damage, lost production or maintenance activities.

§ 6 Backup

(1) LICENSEE guarantees to protect the software from access by unauthorized users. This applies both to the software in its original form as an installer executable as well as to the software in its installed, usable form in which LICENSEE uses it.

(2) LICENSEE guarantees to allow LICENSOR to determine whether the software is being used in accordance with this license contract. LICENSOR guarantees not to disturb LICENSEE in normal business activity through this determination and to respect any and all privileged information.

§ 7 Non-Disclosure

(1) Both parties agree to mutual discretion.

(2) Confidential information are all information, data and documents of the other party that are explicitly marked as confidential or elsewhere explicitly described as confidential. Exempted from this are any information, data or documents that are or have been accessible to the general public, have been known before this agreement or must be made known for legal reasons.

(3) Both parties agree not to reveal any confidential information to any third party without the express permission of the other party.

(4) For every violation, the penalty will be 10,000 USD. Other claims may be made in addition.

(5) The software itself, any license codes, any passwords and the entire content of the software database, which includes all measurement data, user data and alarm data, is hereby explicitly marked as confidential.

(6) LICENSOR retains the right to name LICENSEE as a client and a reference in public.

(7) It is the goal of LICENSOR to publish any mathematical or scientific discoveries obtained using its services and software in the scientific and popular literature together with its clients and to present them at conferences and trade shows. This will be done in mutual agreement and cooperation.

§ 8 Demo Version

(1) During a trial period, the use of the software is free of charge for a limited period of time. The permission to use terminates on the last day of this time period. Thereafter, the software may no longer be used unless an extension of the license contract is agreed upon by both parties or a commercial license contract is obtained.

(2) The demo version of the software is fully functional.

(3) During the use of the demo version of the software, commercial use of the software is prohibited. The software is to be used for evaluation purposes only.

(4) LICENSOR gives no warranty of any kind in relation to a demo version of its software.

§ 9 Other Conditions

(1) LICENSEE may only transfer liabilities of LICENSOR towards LICENSEE to third parties if LICENSOR agrees.

(2) A mutual cancellation of claims is only permissible if both parties agree on each claim item used.

(3) Changes or additions to this contract must be made in writing on paper and signed by both parties in the original. This includes changes to the requirement for changes to be made in writing. Electronic documents in text form do not fulfill this requirement.

(4) The general terms and conditions of the LICENSEE do not apply to this contract.

(5) If the software falls under any export restrictions, the LICENSEE retains all liabilities and responsibilities relative to an export of the software or associated service.

(6) This contract falls under the law of the state of California in the United States of America under exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

(7) Place of performance is Cupertino, CA, USA. Exclusive court of jurisdiction is Cupertino.

(8) Both parties agree to go through a mediation procedure before starting a formal legal dispute on any matter.

(9) Should a clause of this contract be or become invalid, then this does not affect any other clause. In such a case, both parties will endeavor to replace this invalid clause with a valid clause that most closely approximates the intention of the original clause while being in the interest of both parties.

(10) Any and all attachments to this contract are an integral and essential part of the contract.

Cupertino,..... ..

Place, Date Dr. Patrick Bangert, CEO
algorithmica technologies Inc.

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Place, Date LICENSEE