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1. Definitions.

The following are the definitions of various terms used in this Agreement.

- a) “Effective Date” means date Licensor sends License to Licensee and/or Licensee installs, downloads, copies or otherwise Uses, in whole or in part.
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 - f) Purchase Order means order placed by the Licensee to the Licensor directly or to the Reseller detailing the Number of Licenses to be procured, Prices and other terms and conditions relevant thereto.
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4. The Term of the Product license(s) granted under this Agreement shall be for the Period mentioned in the Purchase Order unless terminated earlier. This Agreement will terminate upon Licensee breaching the terms of this Agreement or failure to comply with any of the conditions set forth elsewhere in this Agreement including but not limited to failure in meeting the payment obligations as envisaged in the Purchase Order.
5. Licensee agrees that the Software is protected by trade secret, copyright, and other proprietary rights, and that title and ownership to the Software remains in Licensor, its Affiliates and/or Third-Party Vendor where applicable. The Software is covered by licensed patents referred in <https://www.acqueon.com/acqueon-licensed-patents/> and Acqueon patents referred in <https://www.acqueon.com/acqueon-patents/>. Licensee does not acquire any right, title or interest in or to the License(s) or any intellectual property rights contained therein. Licensor reserves all rights not expressly granted herein, and the Software may not be used beyond the scope granted hereby. The Software shall be used only by Licensee, and the License granted hereunder does not include the right to sublicense.
6. Licensee shall:
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 - b) keep the Software confidential;
 - c) not alter, modify or adapt the Software or any part thereof;
 - d) not sell, rent, sublicense, publish, display, distribute, modify, adapt, enhance, extend, translate, reverse engineer, de-compile, disassemble, make any attempt to discover the Source Code of the License or underlying ideas, or algorithms of any products or any software contained therein or create derivative works of the Software or any part thereof;
 - e) Not remove or modify any proprietary markings or restrictive legends placed on the Software;
 - f) Not attempt to unlock or bypass any “copy-protection”, licensing or authentication algorithm utilized by the “Software”.
7. The Licensee shall take necessary steps to secure and protect the Software and any copies thereof in a manner consistent with the maintenance of rights therein and to take appropriate action by instruction or agreement with its employees and agents to satisfy its obligations under this agreement.

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8. Licensee agrees that Licensor or its authorized representative may collect, maintain, process and use diagnostic, technical, usage and related information, including but not limited to information about Licensee computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services (if any) related to the Software, and to verify compliance with the terms of this License. Licensor may use this information, to provide and improve products and services. To enable Licensor's partners and third-party developers to improve their software, hardware and services designed for use with Licensor products, Licensor may also provide any such partner or third party developer with a subset of diagnostic information that is relevant to that partner's or developer's software, hardware and/or services.
9. **HIGH RISK ACTIVITIES** - The Product is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Product could lead directly to death, personal injury, or severe physical or environmental damage (High Risk Activities). Accordingly, Licensor and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities. Licensee agrees that Licensor and its suppliers will not be liable for any claims or damages arising from the use of the Product in such applications.
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12. To the fullest extent allowed by law, and except for the warranties expressly stated herein, this software is provided "as is", and Licensor disclaims all other warranties, terms or conditions, express or implied, either in fact or by operation of law, statutory or otherwise, including warranties, terms or conditions regarding merchantability, fitness for a particular purpose, non-infringement, and satisfactory quality.
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15. Confidentiality. As a result of the relationship entered into by the parties under this Agreement, the parties acknowledge that they may from time to time require or gain access to Confidential Information of the other party. The receiving party: (a) shall hold all Confidential Information in confidence; (b) shall use the Confidential Information only for the purposes expressly permitted herein; (c) shall reproduce the Confidential Information only to the extent necessary for such purpose; (d) shall restrict disclosure of the Confidential Information to its employees, consultants, agents and representatives with a valid need to know in connection with this Agreement and who are bound to protect the confidentiality of such Confidential Information (and shall advise such employees, agents and representatives of the obligations assumed herein); and (e) shall not disclose or cause to be disclosed the Confidential Information to any third party without prior written approval of the disclosing party, except as allowed under (d) above. Confidentiality Exceptions. The foregoing confidentiality restrictions shall not apply to Confidential Information that: (a) is or becomes a part of the public domain through no wrongful act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party without reference to or reliance on the Confidential Information; or (e) that the disclosing party agrees in writing is free of such restrictions.
- 16.

a) Indemnity. Licensor agrees, at its own expense, to defend or, at its option, to settle, any claim or action brought against Licensee to the extent it is based on a claim that the Licensed Product as used within the scope of this Agreement infringes or violates any United States patent, copyright, trademark, trade secret or other proprietary right of a third party, and will indemnify and hold Licensee harmless from and against any damages, costs and fees reasonably incurred (including reasonable attorneys' fees) that are attributable to such claim or action and which are assessed against Licensee in a final judgment. Licensee agrees that Licensor shall be released from the foregoing obligation unless Licensee provides Licensor with: (i) prompt written

notification of the claim or action; (ii) sole control and authority over the defense or settlement thereof; and (iii) at no cost to Licensor, all available information, assistance and authority to settle and/or defend any such claim or action.

b) Limited Remedies. If any Licensed Product becomes, or in the opinion of Licensor is likely to become, the subject of an infringement claim or action, Licensor may at its sole option: (i) procure, at no cost to Licensee, the right to continue using the Licensed Product; (ii) replace or modify the Licensed Product to render it non-infringing, provided there is no material loss of functionality; or (iii) if, in Licensor's reasonable opinion, neither (i) nor (ii) above are commercially feasible, terminate the License and refund prorated amount Licensee paid for such Licensed Product.

c) Exceptions. Licensor will have no liability under this Section for any claim or action where: (i) such claim or action would have been avoided but for modifications of the Licensed Product, or portions thereof, made after delivery to Licensee; (ii) such claim or action would have been avoided but for the combination or use of the Licensed Product, or portions thereof, with other products, processes or materials; (iii) Licensee continues allegedly infringing activities after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; (iv) Licensee's use of the Licensed Product is not strictly in accordance with the terms of this Agreement; or (v) such claim or action is based on the Intellectual Property Rights of Licensee or one of its affiliated parties. Licensee will be liable for all damages, costs, expenses, settlements and attorneys' fees related to any claim of infringement arising as a result of (i)-(v) above.

17. Licensee shall not assign this Agreement, or any License hereunder, without the express written consent of Licensor. Any attempt to sublicense, assign or transfer this Agreement or the Licenses granted herein shall be void.

18. Effect of Termination or Expiration. Upon the expiration or termination of this Agreement for any reason:

(1) all Licenses granted hereunder automatically revert to Licensor and Licensee will no longer have access to the Products; and

(2) Licensee shall

a) return to Licensor all Confidential Information, and all other material received from Licensor in Licensee's possession or control, or, at Licensor sole discretion, Licensor may request that Licensee destroy all such materials in Licensee's possession or control;

b) erase any and all of the foregoing from all computer memories and storage devices within Licensee's possession or control;

c) Licensee agrees to destroy the Product installed in their environment together with all copies thereof in the event of termination of this agreement;

d) provide Licensor with a written statement by an officer of Licensee certifying that Licensee has complied with the foregoing obligations. If Licensor does not receive such notice within five (5) business days after the expiration of this Agreement, Licensor shall issue to Licensee an invoice for its customary list-price license fee for the Services and Licensee shall be obligated to pay such invoice.

19. At the request of Licensor, Licensee shall furnish with a signed statement that the Licenses are being used pursuant to the terms and conditions of this Agreement. Licensee also agrees to permit Licensor and its Third-Party Vendor to review the relevant records and inspect Licensee facilities to verify compliance with this Agreement. Licensor will conduct such inspection during normal business hours in a manner that does not unreasonably interfere with Licensee business operations.
20. Entire Agreement. This Agreement shall constitute the complete agreement between the parties and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.
21. This Agreement shall be construed, governed and enforced in accordance with the laws of the United States the jurisdiction shall be Dallas - Texas.