

# END USER LICENSE AGREEMENT (EULA)

## For EIG ENERGYPQA.COM® Service, Software and Documentation

PLEASE CAREFULLY REVIEW THE FOLLOWING END USER LICENSE AGREEMENT FOR THE ENERGYPQA.COM® CLOUD PLATFORM SERVICE (“ENERGYPQA.COM® OR ENERGYPQA®”) AND ANY AND ALL TERMS OF USE THAT REFERENCE THIS AGREEMENT (“AGREEMENT”) BEFORE REGISTERING, ACCESSING AND/OR USING THE SOFTWARE AND SERVICE. THIS AGREEMENT IS A LEGALLY BINDING CONTRACT BETWEEN SUBSCRIBER AND EIG (AS DEFINED BELOW). THIS AGREEMENT GOVERNS ALL USE OF THE ENERGYPQA.COM® SERVICES, SOFTWARE AND ASSOCIATED DOCUMENTATION, BOTH ONLINE AND OFFLINE.

BY CLICKING “I AGREE” OR DOWNLOADING OR REGISTERING OR ACCESSING OR OTHERWISE USING THE SOFTWARE OR SERVICES, SUBSCRIBER CONSENTS TO ALL OF THE TERMS AND CONDITIONS SET OUT IN THIS AGREEMENT. IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT, THEN DO NOT CLICK “I AGREE” OR DO NOT REGISTER OR ACCESS OR OTHERWISE USE THE SOFTWARE OR SERVICES.

EIG MAY GRANT YOU AN OPT-OUT TRIAL SERVICES PERIOD WHERE YOU MAY TRY OUT THE SOFTWARE AND SERVICES FOR FREE BY SETTING UP YOUR ACCOUNT (“OPT-OUT TRIAL SERVICES”). AFTER SETTING UP YOUR ACCOUNT YOU WILL HAVE A PERIOD OF TIME TO USE THE OPT-OUT TRIAL SERVICES FREE OF CHARGE (“TRIAL PERIOD”). FOLLOWING THE TRIAL PERIOD EIG MAY DEACTIVATE YOUR ACCOUNT UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SERVICES. IF DURING OR FOLLOWING THE TRIAL PERIOD YOU DECIDE TO PURCHASE A SUBSCRIPTION THEN PLEASE CONTACT AN EIG AGENT TO DO SO. FOR THE AVOIDANCE OF DOUBT, IF YOU PURCHASE A SUBSCRIPTION THROUGH AN EIG AGENT, THIS AGREEMENT SHALL COME INTO FULL FORCE AND EFFECT.

**IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS AGREEMENT AND ANY TERMS OF USE WITHIN THE SOFTWARE FOR ENERGYPQA.COM® SERVICE, THE TERMS OF THIS AGREEMENT SHALL PREVAIL AND CONTROL.**

EIG may modify the terms and conditions of this Agreement from time to time and shall notify the Account by email and post the most up to date version of this Agreement at <http://www.electroind.com/legal>. Subscriber’s continued use of any part of the Services following modification to the Services or this Agreement constitutes Subscriber’s consent to be bound by the modified Agreement.

## 1. DEFINITIONS.

**1.1. "Account"** means the account located upon the Infrastructure, created and maintained by Subscriber in order to access the Services.

**1.2. "Device"** means any servers, workstations, computers or any mobile devices upon which or through which the Services are used and / or installed.

**1.3. "EIG"** means E.I. Electronics, LLC, a Delaware corporation, doing business as Electro Industries/Gauge Tech located at 1800 Shames Drive, Westbury, New York 11590.

**1.4. "EIG Agents"** means EIG's employees and authorized third party suppliers, distributors and licensors.

**1.5. "Infrastructure"** means the technical systems and hardware of EIG or its third-party suppliers, including without limitation the cloud servers and all connected devices of EIG or its third party suppliers.

**1.6. "Virus or Malware"** means programming or software code designed to damage, destroy or otherwise interfere with the Services, or Infrastructure, including not limited to: disabling codes or other embedded device or code (like back doors, time bombs, Trojan Horses or worms) or intended to allow for the unauthorized obstruction or prevention of use of the Services or Infrastructure.

**1.7. "Order"** means the agreement to purchase Services as between Subscriber and EIG or Subscriber and/or authorized EIG Agent.

**1.8. "Services"** means ENEGYPQA.COM® cloud services and components thereof, including the cloud platform services and/or components for managing and controlling EIG cloud servers, the Software, any EIG documentation both on and offline, as well as any modifications, derivatives, updates or upgrades as may be offered by EIG from time to time.

**1.9. "Software"** means any downloadable client software which is provided by EIG for the purpose of accessing the Services. The Software may refer to any one and/or any combination of the following software provided by EIG:

1.9.1. CommunicatorPQA® application;

1.9.2. MeterManagerPQA® application;

1.9.3. EnergyReporterPQA™ application; and

1.9.4. HMIPQA™ application.

**1.10. "Subscriber", "You", "Your" or "End User"** means an individual or entity (including that entity's parent or affiliated companies) to which Services are provided by EIG.

**1.11. "Subscription"** means the non-exclusive, non-transferable right to use the Services, as ordered by Subscriber, subject to the terms of this Agreement and the full and timely payment of the Subscription Fees. To be clear, the Services are subscribed to by the Subscriber via a Subscription. A Subscriber may choose to subscribe to one or more Services under his or her Subscription as may be offered by EIG from time to time.

**1.12. "Subscription Fees"** means the fees payable in respect of an Order.

**1.13 "Subscription Period"** means the initial period of the Subscription and all renewal periods of the Subscription.

**1.14 "End User Data"** means data entered or uploaded by Subscriber to the Services via the Software and/or data pushed to the Services via the Software including, but not limited to, data aggregated from metering devices, non-metering devices, etc., and data generated by the Software.

**1.15 "EIG Data"** means all information, including, but not limited to, data, analyses, measurements, reports, trends, and metrics, generated from, derived from, based on or related to End User Data.

**2. SUBSCRIPTION AND TERMINATION.** Subject to the terms and conditions of this Agreement, Subscriber may use the Services only in accordance with any written communication by EIG to Subscriber, including any then-current product documentation as posted on <http://www.electroind.com/> from time to time. This Agreement applies to the Subscriber that uses any part of the Services or that installs, otherwise uses or, permits the installation of the Services on one or more Devices and/or Infrastructure as owned, operated, rented or overseen by them to facilitate the provision of and/or utilization of the Services. Throughout the Subscription Period, unless terminated in accordance with the terms herein, EIG grants Subscriber the following rights only if Subscriber complies with all of the terms of this Agreement.

The Subscription, which may be on a trial basis under the Trial Period, begins at the time the Subscriber's Subscription is activated by EIG and thereafter continues in effect until the date of termination, which such termination may occur as set forth hereinafter.

- a. The Trial Period ends with no purchase of a Subscription;
- b. EIG may terminate the Agreement and Subscription due to Subscriber's cancellation or breach of any of terms of this Agreement including without limitation those terms in Sections 6 and 9 of this Agreement and for non-payment of any Fees when due;
- c. EIG may terminate the Agreement and Subscription upon expiration of the Subscription Period in the relevant Order or other non-renewal of the Service;
- d. EIG may terminate the Agreement and Subscription if in its sole discretion the use or provision of the Services is illegal in the jurisdiction covering their use, or the Services requires the consent, approval, authorization, or exemption from governmental authority and such consent, approval, authorization, or exemption has not been obtained; and
- e. EIG may terminate this Agreement and Subscription with immediate effect if the other party commits a material breach of any of the terms herein and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach under this Clause.

**The Subscription Fees are non-refundable.**

As of the expiration of a period of 14 days after effective date of cancellation or termination of the Services, Subscriber shall have no further right to access or use the Services that have been cancelled or terminated, and EIG at its sole discretion shall be able to remove or destroy all Subscriber data and settings. All licenses and subscriptions granted hereunder shall be term licenses for the Subscription Period set forth in the relevant Order. EIG reserves the right to withdraw at any time any free service that it offers in addition to the Service.

**3. GRANT OF RIGHT OF USE.** The Services are licensed and not sold. During a Subscription Period and subject to the due payment by Subscriber and receipt by EIG of all due and payable Subscription Fees, EIG grants Subscriber a revocable, limited, non-transferable, non-exclusive license to access the Services pursuant to the terms of this Agreement. This Agreement covers any updates, new releases or enhancement(s) of the Services, which EIG may make available to Subscriber from time to time.

**4. ACCOUNT; SECURITY.** EIG respects your privacy and the terms of EIG's Privacy Policy can be

found at <http://www.electroind.com/legal>. To access and use the Services, Subscriber must create an account that is protected by a username and password ("Account") and Subscriber must keep any passwords and other Account details secret. Subscriber agrees to provide EIG with accurate and complete information when registering for an Account and at all times thereafter. EIG must be promptly notified if changes to such Subscriber's information occur. Your registration, access and use of the Software is governed by EIG's Privacy Policy, which is incorporated by reference into this Agreement.

Subscriber acknowledges and agrees that it is responsible for providing the following: (i) all equipment, such as a computer and modem, necessary to access the Internet; (ii) its own access to the Internet; and (iii) payment of all telephone, cable, satellite, or other fees associated with such access.

Subscriber is solely responsible for access to, content in or sharing and use of its Account. EIG shall not be liable for any loss or damage arising from any access to, or sharing and use of, Subscriber's Account. In the event that Subscriber reasonably believes there has been any unauthorized access to the Account, Subscriber must notify EIG immediately by email to [mrktg@electroind.com](mailto:mrktg@electroind.com).

**5. SUPPORT.** During a Subscription Period, EIG will provide Subscriber with the support described in this paragraph ("Support"). In EIG's sole determination, Support shall consist of: (i) reasonable telephone or electronic support to Subscriber in order to help Subscriber locate and correct problems with the Services and / or (ii) supplying extensions, enhancements and other changes that EIG may make to the Services from time to time.

**6. SUBSCRIBER'S CONDUCT; CONTENT OF DATA.** Subscriber must comply at all times with any and all applicable local, state, federal, international laws and treaties laws. In the event that any part of this Agreement is determined to violate any applicable local, state, local, federal or foreign laws, rules or regulations, then the remaining provisions of this Agreement shall remain in full force and effect and shall be enforced to the fullest extent permitted by law.

Subscriber represents and warrants that it has obtained sufficient consent and rights to (i) access and use Subscriber's, any third party's, and/or end user's systems or networks on which the Services are implemented and used, and (ii) access, use and store all data and files required by the Services on the Devices. Subscriber further represents and warrants that it will not: (i) violate any third-party rights while using the Services, including any intellectual property rights, (ii) misuse or fraudulently use credit or debit cards using the Services, (iii) export or otherwise ship or transport the Services in violation of applicable laws, rules and regulations, (iv) without authorization, misrepresent any person's or entity's identity or impersonate any person in an attempt to gain access to any Account, the Infrastructure or the networks, or property of any third person, or (v) misuse the Services for illegal purposes, including but not limited to storing illegal files or data in its Account.

EIG reserves the right, with or without notice to you, to remove any data and files from its Infrastructure that EIG in its sole reasonable discretion believes or suspects is: (a) Virus or Malware; (b) is illegal, libelous, abusive, threatening, harmful, vulgar, pornographic, obscene; (c) is used for the purpose of spamming, creating chain letters or for the use or dissemination of illegal material of any kind or nature; (d) is used in such a manner as to defame or harass; or (e) infringes the intellectual property rights or any other rights of any third party.

**7. COLLECTION AND USE OF DATA.** You expressly agree that EIG and the EIG Agents may collect, process and use your data for the implementation and processing of the contractual relationship with you. You understand and agree that some of the Services are designed to automatically communicate certain network parameters and other information about the Services and their performance back to

EIG. You acknowledge that when You access or use the Services and/or Software, EIG may use automatic means (including, for example, cookies and web beacons) to collect information about Your Computing Device and about Your use of the Services and/or Software. EIG may use such information and your data (a) to monitor, provide and improve the performance of the Services, Software, Services updates, and Support; (b) to alert You in the event that upgrades or updates are available; and (c) as necessary to comply with EIG's legal obligations and to protect EIG's legal rights. By accessing and using the Services, and providing information to or through the Software, You consent to all use and actions taken by EIG with respect to Your information.

All ownership rights in and to the Services and/or Software shall remain exclusively with EIG and its licensors, as applicable. Access to the Services is provided to Subscriber only to allow Subscriber to exercise Subscriber's rights under this Agreement, and no implied license or right not expressly set forth in this Agreement is granted to Subscriber.

- (a) End User Data. In connection with the Services and/or Software, EIG may collect and maintain End User Data provided by You. EIG shall maintain all personal identifiable aspects of all End User Data as confidential. All third parties authorized by EIG which may have access to the End User Data shall be under obligations of confidentiality to maintain the End User Data as confidential. You agree to and do hereby grant to EIG the irrevocable, perpetual, transferrable right to use any End User Data.
- (b) EIG Data. All EIG Data is the sole property of EIG. EIG has the right to use, collect, store, create, aggregate, mine, analyze or modify, EIG Data in any form, for any purpose and in any manner.

**8. DATA PROTECTION.** Each party shall comply with its respective obligations under applicable data protection laws ("DPL"). Subscriber shall not perform any act that puts EIG in breach of its obligations as per this Section, and nothing in this Agreement shall be deemed to prevent any party from taking action it reasonably deems necessary to comply with DPL. Subscriber agrees that during the course of this Agreement: (i) in respect of data Subscriber collects, accesses or otherwise uses, Subscriber alone shall determine the purposes for which and the manner in which personal data is, or will be, processed; (ii) Subscriber is the data controller in respect of all personal data Subscriber may process; and (iii) Subscriber consents and, in the event Subscriber processes any third party data, has obtained the consent from such third party, to send its personal data to EIG. EIG agrees that, with Subscriber's express consent, EIG is the data processor in respect of the personal data it processes as provided by Subscriber. Subscriber warrants and undertakes that any instructions given by Subscriber to EIG will at all times be in accordance with the requirements of DPL. Subscriber expressly agrees that EIG may transfer personal data outside the European Economic Area without Subscriber's further consent in order to provide the Services.

EIG may comply with requests for information from legitimate judicial, legal or regulatory authorities or pursuant to a court order or a subpoena, discovery request or other lawful process that EIG receives. EIG may comply with these subpoenas or court orders with or without notice to Subscriber. The terms of EIG's Privacy Policy can be found at <http://www.electroind.com/legal>.

**9. RESTRICTIONS.** Except as otherwise expressly provided under this Agreement, Subscriber shall have no right and Subscriber shall not permit any third party to: (i) knowingly harm, disrupt or otherwise

engage in activity that diminishes the EIG brand, the Services, or Infrastructure; (ii) transfer, assign or sublicense the limited rights granted to Subscriber in this Agreement to any other person, or entity, or use the Services other than as authorized; any such attempted transfer, assignment, sublicense or unauthorized use shall be void; (iii) make error corrections to or otherwise modify or adapt the Services or decompile, decrypt, disassemble, reverse engineer or attempt to reconstruct or discover any source code or underlying ideas, algorithms, file formats or programming or interoperability interfaces of the Services or of any files contained or generated using the Services by any means whatsoever or otherwise reduce the Services to human-readable form, except to the minimum extent expressly permitted under applicable law notwithstanding this restriction; (iv) use or permit the Services to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of EIG; (v) attempt to alter, circumvent or provide the method or means to circumvent any disabling mechanism in the Services; (vi) use the Services in any manner not expressly authorized herein; (vii) alter, remove or fail to reproduce any proprietary notices from the Services; (viii) engage in any behavior that is designed to hack into or gain unauthorized access to protected areas of the Services and/or EIG's Infrastructure, computers, servers or networks, and/or any computers or systems used by other users of the Services; (ix) upload/post anything that could destroy, damage, or impair any portion of the Services or any computers, systems, hardware, or software used by EIG or other users; (x) make attempts to defeat or circumvent security features, or to utilize the Services for any purpose other than its intended purposes; or (xi) use any automated technology such as a robot, spider, or scraper to access, scrape, or data mine the Services.

**10. SERVICE UPDATES.** Some Services may require, for optimum use, and EIG may provide to Subscriber, in a number of formats (feeds, definition files etc.), content and firmware upgrades that is automatically synchronized or updated from time to time with EIG's servers or systems ("Content"). Such Content may be provided for a limited time, from time to time, in accordance with an applicable Service. Subscriber consents that the respective Service may automatically contact EIG to receive Content without limitation if any of the following events occur: (i) the Service is successfully installed by Subscriber; (ii) Subscriber fails to install the Service successfully; (iii) the Service has been successfully configured; (iv) the Service is uninstalled; and (v) the Service is updated. Subscriber acknowledges and consents that any data collected may be sent to EIG or any EIG Agent for processing. To be clear, the Services may automatically update the Software installed on any Device when a new version or a firmware upgrade of the Services is available.

**11. INTELLECTUAL PROPERTY RIGHTS:** Subscriber agrees that EIG and its suppliers and/or licensors own all right, title and interest, including, without limitation, all intellectual property rights, in and to the Services (including all modifications). The Services are protected by world-wide copyright, trademark, patent and other intellectual property laws and treaties. Subscriber agrees that (i) rights in the Services are licensed (not sold) to Subscriber, and (ii) that Subscriber shall have no rights or title in, or to, the Services other than the right to use them in accordance with the terms of this Agreement and (iii) Open Source and / or third-party software may be incorporated into the Services. The Services may be a trade secret of and proprietary to EIG, its suppliers and / or licensors, including but not limited to, the specific internal code, design and structure of individual programs and software, the display and associated interface information.

Certain elements of the Services, Software and/or Documentation including, but not limited to, text, graphics, photos, images, video, audio, color selections, organization and layout, are copyright protected under United States and international copyright laws. Any EIG element protected by intellectual property laws may not be copied, republished, posted, modified, edited, transmitted,

distributed, used to create derivative works of, or reverse engineered without permission of EIG. No right, title or interest in any protectable EIG element is transferred to the Subscriber as a result of accessing, downloading, or printing any protectable EIG element from the Service. The Subscriber is required to retain all copyright and other proprietary notices on any documents contained on the Services. No information, data, documents, or records found through the Service, Software and/or Documentation shall be made available as part of another website, app or online location, whether by hyperlink, framing on the internet or otherwise, without the express written consent of EIG. The Subscriber acknowledges that the Subscriber has no right, title or interest in or to the Service, Software and/or any EIG element.

The Subscriber agrees to maintain the trademarks, service marks, trade names, domain names, or the company name of EIG (collectively, "Marks") in the Service, Software and/or the Documentation in a manner which complies with the intellectual property rights of EIG and/or its affiliates and this Agreement. The Subscriber agrees that EIG is the exclusive owner of the Marks and all the goodwill associated therewith. The Subscriber agrees to comply with all federal, state, local and foreign laws, rules, regulations and treaties, pertaining to the proper use and designation of the Marks in any country where the Marks could be in commerce. The Subscriber also agrees not to use the Marks as any trade name, corporate name, or Internet domain name, or to use the Marks in conjunction with any other marks without the prior written approval of EIG. The Subscriber agrees not to impair EIG's rights in the Marks, or any confusingly similar marks, or its right to use thereof or the goodwill of the business connected with such use and symbolized by the Marks. The Subscriber acknowledges the validity of the Marks and agrees not to take any action to challenge the validity or enforceability of the Marks. The Subscriber agrees to give EIG prompt notice of any known or suspected infringements of the Marks and cooperate fully and in good faith with EIG for policing, securing and preserving EIG's rights in the Marks.

**12. THIRD PARTY COMPONENTS; OPEN SOURCE.** Part of the Services may incorporate third party software, including open source software ("Open Source"), which Subscriber may use under the terms and conditions of the specific license under which the open source software is distributed. Subscriber agrees that Subscriber will be bound by any and all such Open Source license agreements. Title to software remains with the applicable licensor(s). Any Open Source provided with or contained in the Services is provided AS IS and without any warranty of any kind. **For clarification, this Agreement does not limit Subscriber's rights under, or grant Subscriber rights that supersede, the license terms of any applicable Open Source license agreement.**

**13. SERVICE EVALUATIONS AND FREWARE.** As described in the "OPT-OUT TRIAL SERVICES" section above, Subscriber may be given a period to evaluate the Services at no cost. Subscriber may evaluate the Services to determine whether to license the Services. Subscriber may only evaluate the Services once. Prior to or at the end of the Trial Period, Subscriber must either license the Services or cease all use of such Services. Subscriber's use of the Services during the Trial Period or for any Service that is offered as free shall be without warranty of any kind and is provided AS IS. EIG has no duty to provide support to Subscriber during the Trial Period or any evaluation period or for any Service offered as free.

**14. INDEMNIFICATION.** Subscriber agrees to indemnify, defend, and hold harmless EIG, including its officers, directors, employees, affiliates, agents, licensors, representatives, attorneys, business partners, and respective successors and assigns ("Indemnified Parties") from and against any and all claims, demands, actions, liabilities, judgments, awards, losses, damages, costs and expenses (including reasonable attorneys' fees, costs of defense, and direct, indirect, punitive, special, individual, consequential, or exemplary damages), EIG or any of the Indemnified Parties suffer in relation to,

arising from, or from the purpose of avoiding, any claim or demand from a third party that relates to you: (a) breach or violation of this Agreement; (b) infringement, misappropriation or any violation of the rights of any other party; (c) violation or non-compliance with any applicable law, rule, guidelines, acts, decrees, orders or regulations; (d) use, alteration or export of the Service or Software (or any component thereof) in violation of this Agreement; and (e) the use of the Service or Software by you or any person using your account. EIG reserves the right to assume the exclusive defense and control of any claims or actions subject to indemnification by you and all negotiations for its settlement or compromise, and you agree to fully cooperate with EIG upon request by EIG.

**15. DISCLAIMER OF WARRANTIES. TO THE EXTENT PERMITTED BY LAW, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SERVICE AND/OR SOFTWARE IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT OF THE SERVICE AND/OR SOFTWARE IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE AND ANY SERVICES PERFORMED OR PROVIDED BY OR IN CONNECTION WITH THE SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL BUGS AND FAULTS AND WITHOUT WARRANTY OF ANY KIND. EIG AND ITS AFFILIATES HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND WITH RESPECT TO THE SOFTWARE AND ANY SERVICES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT WITHOUT LIMITATION, ANY IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, SECURITY, COMPLETENESS, TIMELINESS, ACCURACY, QUIET ENJOYMENT, TITLE, FREEDOM FROM COMPUTER VIRUSES, AND OF NON- INFRINGEMENT OF THIRD PARTY RIGHTS. NEITHER EIG, NOR ANY OF ITS AFFILIATES, WARRANT THAT THE FUNCTIONS OR SERVICES CONTAINED IN, ACCESSED FROM, PERFORMED BY, DISPLAYED ON, LINKED TO/FROM, OR PROVIDED BY, THE SERVICE AND/OR SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, TIMELY, SECURE, OR THAT DEFECTS OR ERRORS IN THE SOFTWARE OR SERVICES WILL BE CORRECTED, OR THAT THE SERVICE OR SOFTWARE WILL BE COMPATIBLE WITH ANY SYSTEM, OR THAT THE SERVICE OR SOFTWARE WILL BE FREE FROM WORMS, VIRUSES, MALWARE, TROJAN HORSES, OR OTHER HARMFUL OR DISABLING COMPONENTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY EIG, ITS AFFILIATES, OR ANY OF THEIR AGENTS SHALL CREATE A WARRANTY. YOU ASSUME THE ENTIRE COST OF ANY AND ALL NECESSARY REPAIRS IN THE EVENT YOU EXPERIENCE ANY LOSS OR DAMAGE ARISING FROM THE USE OF THE SERVICE, SOFTWARE OR ANY RELATED GOODS OR SERVICES. IF YOU ARE DISSATISFIED WITH THIS AGREEMENT, THE SERVICE, SOFTWARE AND/OR ANY RELATED GOODS OR SERVICES, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICE AND/OR SOFTWARE.**

**16. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EIG OR THE EIG AGENTS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SERVICES AND/OR SOFTWARE,**



**THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, UNDER ANY THEORY OF LAW OR FAULT OF EIG OR ANY OF THE EIG AGENTS, AND EVEN IF EIG OR ANY OF THE EIG AGENTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EIG FURTHER EXCLUDES ANY LIABILITY FOR FAILURE TO REPAIR ANY SERVICES AND/OR SOFTWARE. NOTWITHSTANDING THE FOREGOING, THE MAXIMUM LIABILITY THAT EIG SHALL INCUR HEREUNDER SHALL BE LIMITED TO THE ACTUAL PRICE PAID BY SUBSCRIBER FOR THE RESPECTIVE SERVICE FOR THE TWELVE MONTH PERIOD PRIOR TO THE DATE WHEN THE APPLICABLE CLAIM AROSE.**

**17. EFFECT OF TERMINATION.** Upon termination of this Agreement, Subscriber must cease all use of the Services (including any components). All provisions of this Agreement which, by their nature, should survive termination, shall survive termination, including, without limitation, this section (Section 17), definitions (Section 1), data use and protection (Sections 7 and 8), ownership provisions (Sections 11 and 12), indemnification (Section 14), warranty disclaimers (Section 15), and limitations of liability (Section 16), governing law (Section 19), and miscellaneous (Section 24).

**18. ENTIRE AGREEMENT.** This Agreement (as may be amended from time to time) is the entire agreement between Subscriber and EIG relating to the Services and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Services. **To the extent the terms of any EIG Terms of Use, policies or programs conflict with the terms of this Agreement, the terms of this Agreement shall prevail and control. In addition, the terms set out in this Agreement shall prevail and control over any and all additional or conflicting terms or provisions contained in any document of Subscriber's, whether set out in a purchase order or alternative license, and any and all such additional or conflicting terms shall be void and shall have no effect.** If this License is translated into a language other than English and there are conflicts between the translations, the English version shall prevail and control. **Notwithstanding the foregoing, however, this Agreement does not limit Subscriber's rights under, or grant Subscriber rights that supersede, the license terms of any applicable Open Source license agreement for the Services.**

**19. GOVERNING LAW.** To the extent not prohibited by law, you agree that this Agreement and all disputes, claims, actions, suits or other proceedings arising hereunder shall be governed by, and construed in accordance with, the substantive law of the State of New York applicable to contracts wholly made and to be performed within the State of New York, and to irrevocably submit to the sole and exclusive jurisdiction of the courts of New York or the Federal courts of the Eastern District of New York, and to irrevocably consent to the exercise of personal jurisdiction by such courts and waive any right to plead, claim or allege that New York is an inconvenient forum.

**20. EXPORT CONTROLS.** Subscriber agrees that the Services will not be used, shipped, transferred or exported into any country or to anyone: (i) which the US or UN has embargoed goods; (ii) where the national legislation of the relevant EU Member State has embargoed goods; (iii) listed in any enacted Common Position on restrictive measures imposed by the EU; (iv) on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Person's List or Entity List or any other restricted parties lists by the United States government; or (v) in any manner prohibited by the EU Common Foreign and Security Policy, the United States Export Administration Act, or any other EU or US export laws or regulations. By using the Services, Subscriber represents

that Subscriber is not located in, under the control of, or a national or resident of any such country or on any such list and Subscriber takes full and sole responsibility for such use.

**21. TAXES.** Any sales, use, value added or other taxes (including applicable withholding taxes) imposed by the laws of Subscriber's jurisdiction shall be borne by the Subscriber. If the Subscriber is required by the applicable laws of its jurisdiction to withhold or deduct any taxes (including, but not limited to, VAT and withholding corporate income tax), fees or other charges from the sums payable to EIG under this Agreement, the price of this Agreement shall be automatically increased so as to ensure that EIG receives such amount that it would receive if no such taxes, fees or other charges were applicable.

**22. U.S. GOVERNMENT END USER PURCHASERS.** The Services, Software and associated documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the Agreement may be incorporated, EIG may provide to Government end user the Services, Software and Documentation with only those rights set forth in the Agreement. Use of either the Services, Software and/or Documentation constitutes agreement by the Government that the Services, Software and Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.

**23. EQUITABLE RELIEF.** The parties agree that irreparable damage may occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties may be entitled to equitable relief, including injunctive relief or specific performance of the terms hereof (without any requirement to post bond or guarantee), in addition to any other remedy to which they are entitled at law or in equity.

**24. MISCELLANEOUS.** The delay or failure of either party to exercise any right provided in this Agreement shall not be deemed a waiver. This Agreement: (i) may not be amended by Subscriber, but EIG may amend this Agreement from time to time and shall post any amended Agreement on its website at <http://www.electroind.com/legal> and (ii) is for the sole benefit of EIG and Subscriber and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. If any provision of this Agreement shall be held to be illegal, void or unenforceable by any court of competent jurisdiction or arbitral tribunal, such provision shall be of no force and effect and shall not impair the enforceability of any other provision of this Agreement and the parties agree that the relevant provision shall be deemed replaced by such provision which is binding and enforceable and which differs as little as possible from the non-binding and/or non-enforceable provision, taking into effect the object and purpose of this Agreement. The remedies of the parties under this Agreement are cumulative and will not exclude any other remedies to which the respective party may be lawfully entitled.

Subscriber may not assign, pledge or otherwise transfer this agreement, nor any rights or obligations hereunder in whole or in part to any entity.

Paragraph headings are for convenience and shall have no effect on interpretation.

All notices must be in writing and shall be mailed by registered or certified mail (effective on the third

day following the date of mailing) to:

Electro Industries/Gauge Tech  
1800 Shames Drive,  
Westbury, New York 11590

E134762 Rev 2.00  
2/16/2021