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**ELI  
CZECH REPUBLIC**

**EMBEDDED ENGINEER SERVICE**

**FIXED PRICE PROPOSAL  
30013469.4**

12.9.2018

PRESENTED TO: ELI  
Za Radnicí 835  
252 41 Dolní Břežany  
Czech Republic

PROPOSED BY: Rockwell Automation s.r.o.  
Argentinská 1610/4  
170 00 Praha 7  
Czech Republic



**Global Solutions & Services**  
Bringing You a World of Experience

REVISION HISTORY			
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## Executive Summary

Rockwell Automation is providing robust, standardized, and reusable solutions that can be quickly leveraged to other production sites within your enterprise. Our solutions are based on standardized, industry-tested, and proven technologies. The open architecture system also allows for future expansion and integration into the rest of your site and business information systems.

Rockwell Automation develops technologies and provides services that leading manufacturers around the world use to their competitive advantage. Whether architecting a single unit or an entire supply chain, manufacturers rely on their automation, power control, and conversion products and services to manage getting their products and services to market faster, to reduce costs, to better utilize power and plant-floor assets, and to minimize risks in their manufacturing environments. As technology continues to evolve, they must be able to seamlessly integrate people, processes, and technology into a Connected Enterprise to better address the many challenges they face. A Connected Enterprise helps them view real-time data on manufacturing processes, compare performance across plants, quickly scale production up or down, manage energy consumption and even troubleshoot and fix issues remotely.

- Over 22,000 employees worldwide.
- Over 4,600 employees globally in Rockwell Automation's Solutions and Services Business
- More than 400 certified/professional engineers
- Executing in excess of 15,000 projects per year
- World class post-project support organization staffed by nearly 1,700 field and technical engineers
- A network of more than 600 System Integrators
- Representation in 80 countries

Rockwell Automation's Solutions and Services Business Delivery Team provides value added solutions using the latest technologies in such areas as:

- Basic Process Control Systems (BPCS) control chemical unit operations
- Safety Instrumented Systems (SIS) and Emergency Shutdown Systems (ESDs)
- Burner and Combustion Control (boilers, etc.)
- Power and Energy Management Systems
- Turbo Machinery Controls (TMC)
- Information Management Systems
- Batch Management and Control Systems
- Material Handling Control Systems

Rockwell Automation will deploy experienced resources to the project team. The resources will be utilized throughout the project such as onsite kick-off meetings, detailed design specifications, internal testing, software FATs, and onsite start-up activities. The following further details the strength of this partnership to meet your needs.

Our Systems and Solutions Business follows a global Quality Management System (QMS) which defines the overall framework for solutions delivery while engendering a quality culture in our employees. This quality system sets forth within our Project Management and Engineering Methodology: a standard delivery approach; adopted industry requirements; practices compliant to ISO9001:2008; and an integrated quality gate approach tailored to project

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complexity. The quality gate approach ensures the delivery team is following good engineering practices, delivering per the project requirements and specifications, and leveraging best practices and standards. Continuous improvement driven by internal audits, corrective and preventative action, and management review

Rockwell Automation brings years of system integration services and proven execution knowhow. This experience will provide our customers a lower risk solution which will provide a lower Total Cost of Ownership (TCO). The TCO is not just comprised of up-front project costs, but all associated costs with support and maintenance over the life of the system.

Manufacturers today are looking for ways to maximize productivity, solve problems or satisfy a need while managing costs. Maintenance provides one of the last remaining areas of the plant to realize significant impact on both financial and production metrics such as:

- Increased production rate
- Elimination of unplanned downtime
- Decreased scrap or waste
- Improved financial stability
- Reduced maintenance costs

Our Strategic Approach to maintenance blends an appropriate mix of predictive, preventive, and reactive maintenance strategies that will help meet production and business goals. Our Customer Support and Maintenance services team, of nearly 4,500 field and technical engineers, will maximize the benefits of the engineered services provided by Rockwell Automation's Delivery Team.

In providing our services we are committed to complying with safety regulations and to demonstrating the highest standard of occupational safety and health performance. This includes implementing and maintaining health and safety management systems based on OHSAS 18001, but of course will consider any local or corporate customer requirements. To drive continuous improvement, we establish annual corporate performance goals — which translate to local performance metric and activity-based objectives. Rockwell Automation excelled in global safety performance, as measured by Recordable Case Rate (0.36), remained best in class in 2016 when compared to the average private industry rate and with the average rate for electronic manufacturing peers.

Lastly, when you work with Rockwell Automation, you know you are partnering with an ethical, sustainable organization. Rockwell Automation is a recognized global leader in the area of ethics and compliance having been named a World's Most Ethical Company 9 times and winning the BBB International Torch Award and American Business Ethics Award in recent years. Integrity is a core company value that is part of our strategic framework and is an integral part of the company's culture. Many of our accomplishments in the area of ethics, compliance, safety and sustainability are set forth in our Corporate Responsibility Report available [here](#).

The fixed price version of this Rockwell Automation offer can be purchased by remitting purchase order using the directions in section 1.3 or by signing the last page of this document and returning via directions in section 1.3

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## 1 Statement of Work

### 1.1 Pricing Summary

Rockwell Automation's price is based on the Statement of Work set forth in Section 1. All prices are in EURO  
Proposal is valid for 30 days from date of issue.

#### **TOTAL PRICE (EXCL. VAT):**

**15 493, 00 EURO**

Price including 13 working days

Price is for one embedded engineer

Price including travel & living expenses

Payment terms: Net 30 days

Specific working days will be defined and mutually agreed by both side after receiving of Purchase order.

### 1.2 Invoicing Schedule

Invoicing milestones are detailed below.

100% Upon Purchase order

Payment terms: Net 30 Days

### 1.3 Purchase Order Instructions

Please remit purchase orders to: Rockwell Automation s.r.o.  
Argentinská 1610/4  
170 00 Praha  
Czech Republic  
Ref: Proposal #: 30013469.4

Email P.O. to: [racz@ra.rockwell.com](mailto:racz@ra.rockwell.com)

On the face of your purchase order please explicitly reference this proposal (e.g., "This order placed in accordance with Rockwell Automation's proposal #\_\_\_\_ dated\_\_\_\_, " or, simply, "Per Rockwell Automation's proposal #\_\_\_\_ dated\_\_\_\_").

Purchase order acceptance by Rockwell Automation will be via order acknowledge confirmation.

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## 1.4 Statement of Work Summary

Rockwell Automation is pleased to provide this Embedded Engineer proposal to ELI. This proposal will describe the pricing, terms and conditions under which Rockwell Automation will provide the contract.

With a **Rockwell Automation Embedded Engineer Service Agreement**, ELI will have priority access to our global network of technical resources to assist you with your engineering and maintenance service needs. The purchase of Rockwell Automation services can help stabilize your maintenance budget while maintaining the ultimate flexibility to schedule services according to your specific needs when and where you need those most.

This Embedded Engineer allows you to secure a fixed hourly rate for Rockwell Automation On-site Services that ELI may use on a non-fixed scope project services provided by Rockwell Automation Customer Support & Maintenance as described in the Scope of Work section below.

This Embedded Engineer Service Agreement is sold to ELI based on use of standard straight-time labor hours, purchased at a discounted rate.

### Rockwell Automation Partner Benefits

- Established partnership between Rockwell Automation and ELI
- Field Support Engineers have an average of 13 years of industrial automation experience.
- Field Support Engineers receive a minimum of two weeks of training per year.
- Backed and Supported by 24,000 Personnel globally
- Provided with all Necessary Engineering Tools and Software (e.g. Computer, Oscilloscope, Hand Tools, Meters, etc.)
- World-wide resources available to ELI
- and a full range of engineering, services and support.
- Help Maximize The Engineering team's Productivity
- Implement Scheduled Upgrade Projects
- Single Point of Contact for products and services
- Individual Technical Expertise and Troubleshooting Experience
- Maximizing and streamlining current plant resources

#### 1.4.1 Basic for Statement of Work

The following details the information used as a basis for this Statement of Work.

- SUPPORTING DOCUMENTS

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### 1.4.2 Solution Description

The Field Support Engineer will work closely with the ELI engineering team and will be available to assist, at the direction of ELI with many tasks based on ELI's specific requirements including, but not limited to,:

- **Design Analysis & Specification Development**
  - Control system needs analysis
  - Hardware and software alternatives analysis
  - Hardware specification development and documentation
  - Control system architecture layout, including main control elements, peripheral elements, and communications networks
  - Control panel layouts, I/O assignments, and bill of material
  - Functional specification development and documentation
  - Safety Circuit Design
- **Software Development**
  - Software requirement analysis to meet the functional specification
  - Solution Architect consulting
  - Software design to meet the functional specification
  - Program module definition
  - Program layout definition
  - I/O assignment confirmation
  - Software module testing
  - Software test procedure development
  - Software operation simulation to meet functional specification
  - Software documentation using standard Rockwell Automation documentation systems
- **Contractor / Integration Coordination**
  - Attend scheduled meetings with ELI contractors/integrators to clarify and assist where necessary to insure ELI specification and engineering standard are being met.
  - Assist project management, project tracking and contractor/integrator coordination.
  - Provide input for panel inspection and audit on equipment that comes into ELI plants to insure they meet ELI standards and specifications.
  - Provide assistance in tracking open issues to timely closure.
- **Engineering and Project Management & Other Activities**
  - Train and teach his/her knowledge to other programmers
  - Programming experience with Allen-Bradley and most Rockwell Software Products.
  - Experience with Allen-Bradley communication networks
  - Developing controls hardware migrations
  - Project execution and implementation on an as needed basis
  - Installed-base Life Cycle Support development
  - Start up and Commissioning
  - Trouble shooting

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- Provide OJT and technical knowledge to ELI plant technicians and maintenance staff

## **1.5 Customer Responsibilities**

### *1.5.1 Single Point of Contact*

ELI will provide a single point of contact to Rockwell Automation to serve as the primary party responsible for agreement administration and communication. This person will be the primary contact for the scheduling of any applicable visits or onsite engagements and should have a working knowledge of the ELI 's machinery and their process. Additionally, this person will receive shipment of all product and information related to the service agreement including but not limited to welcome kits, status reports, renewal notices, and replacement parts.

### *1.5.2 Maintenance, Electrical, and Operations Staff*

ELI will provide maintenance personnel knowledgeable in the process, operation and system installation to assist the Rockwell Automation Field Service Professional(s) during emergency service calls, scheduled or preventive maintenance visits, and/or system start-up and commissioning activities.

### *1.5.3 Access to the System*

ELI will make the process and systems available to Rockwell Automation during mutually agreed upon scheduled service engagements for the purpose of implementing the services as described in this service agreement.

All requirements necessary to setup, test and start up operation, for example, products or test products, compressed air, power supply, disposal of products and materials, etc., provided free by the customer.

### *1.5.4 Provision of Technical Data*

ELI will make all necessary technical data available to Rockwell Automation engineers.

### *1.5.5 Site facilities*

Where the site activities are involved, our Rockwell Automation engineers will require the following to be provided by ELI

- Site facilities available for Rockwell Automation engineers to use. i.e. canteen, toilets, internet connection, telephone, fax and office. Facility lighting and ventilation must be provided to ensure site work can be carried in safe conditions.
- Full access to site and plant will be available without restrictions (other than as imposed for security purposes and to comply with local working practices). This to include all site passes.
- Where there is an interface to other equipment, e.g. DCS, flow computer, chromatograph etc, experienced engineers from the respective supplier will be available free of charge and in a timely manner.
- All on-site storage and general office facilities will be provided on the site by the Customer and will be free of charge.

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### 1.5.6 System Maintenance and Use

ELI is responsible for (i) the overall performance and overall design of the machine or manufacturing system, including safety features; failure modes are the responsibility of the ELI and not Rockwell Automation. (ii) properly using, calibrating, operating, monitoring and maintaining the products and system consistent with all Rockwell Automation or third-party provided instructions, warnings, recommendations, and product and system documentation; (iii) ensuring that properly trained personnel use, operate and maintain the products and system at all times; (iv) staying informed of product updates and alerts, and implementing all updates and fixes; (v) notifying Rockwell Automation of any problems with the products or system; (vi) all other factors affecting the products or system that are outside of the direct control of Rockwell Automation.

### 1.5.7 No Hire Policy

ELI expressly acknowledges that in connection with this engagement and any resulting Work. ELI will come into direct contact with employees or representatives of Rockwell Automation ("Employees"). ELI agrees that during any Employee's participation in this engagement or the Work and for a period of twelve (12) months after the Employee's participation ends, ELI will not, without the prior written consent of Rockwell Automation, directly or indirectly solicit, hire or induce any such Employee to leave the employ of Rockwell Automation. If ELI breaches this Section, ELI will pay compensation to Rockwell Automation in the form of liquidated damages equal to the greater of one (1) year's compensation either (a) offered to Employee by ELI or (b) paid or offered to the Employee by Rockwell Automation. The foregoing will not apply to Employees who independently respond to general solicitations of employment that are directed to the general public (e.g., newspaper advertisements or internet postings) and not targeting Employee. ELI's obligation under this paragraph will remain in effect for a period of one year following the latter of the termination date of the resultant contract or the last date on which goods are delivered or services are provided by Rockwell Automation under the contract.

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## 1.6 Assumptions, Clarifications and Exceptions

The following assumptions, clarifications and exceptions have been made by Rockwell Automation in the development of this Statement of Work:

Reference	Assumptions
A1.	<p>JOB SITE SAFETY: If the Rockwell Automation Field Service Professional deems any situation to be unsafe, Rockwell Automation may choose to refuse service. The following activities may occur:</p> <ul style="list-style-type: none"><li>• Review customer plant safety policies and procedures</li><li>• Survey work environment for personnel safety</li><li>• Validate clearances for serviceability</li><li>• Verify customer locked-out/tagged-out breaker feeding the equipment</li><li>• Obtain safety equipment from customer (if applicable)</li></ul>
	All aspects of mechanical, electrical and process safety are requirements of the customer.
A2.	SAFETY AND SUBSTANCE ABUSE: Rockwell Automation will comply with its own Substance Abuse Policy which meets the intent of the Drug Free Workplace Act and all other legal requirements regarding drug testing. A copy of this policy can be supplied upon request.
A3.	RoHS: Customer supplied/specified products will meet all applicable material restrictions as defined in RoHS. If it does not, Customer will notify Rockwell Automation prior to shipment of the Customer supplied/specified products to Rockwell Automation. Customer will indemnify Rockwell Automation against any claim arising out of Rockwell Automation's use of Customer supplied/specified products.
A4.	<p>Loop Diagrams</p> <p>Rockwell Automation will not produce any instrument loop diagrams, junction box drawings, cable schedules or any other drawing detailing field or interconnect cabling not in our scope of supply. RA will provide an IO schedule that can be used by ELI</p>
A5.	<p>System Reliability &amp; Integrity</p> <p>Rockwell Automation can only assure the reliability and integrity of equipment supplied as part of the scope of this project and that future system availability calculations specifically shall not include or pertain to any existing equipment or systems that are retained.</p>

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	Clarifications
C1	<p><b>Information Security Standards</b></p> <p>In the performance of all Work pursuant to this Agreement and Statement of Work, Buyer and Rockwell Automation will comply with the following standards and practices:</p> <p>1. Data Transmission</p> <p>Buyer agrees that all transmission or exchange of sensitive data with Rockwell Automation shall take place via secure means [e.g., Rockwell Automation's SharePoint system; password-protected, using a complex password; encrypted WinZip sent via e-mail, or, for large files, Hightail File Transfer Service; Secure File Transfer Protocol (SFTP); physical media such as paper/DVD sent securely; or another equally secure means of transport]. If Buyer requires Rockwell Automation to use a Buyer-specified system, the security of the data in transit and at rest once sent from Rockwell Automation is Buyer's sole responsibility.</p> <p>2. Customer-Provided Hard Disk</p> <p>If Rockwell Automation personnel are required to use Buyer-provided hard disks, Buyer agrees to provide the hard disk with designated backup and recovery processes and in encrypted form, using commercially supported or industry 'best of breed' open source encryption solutions. The Buyer must use commercially reasonable efforts to ensure against introduction of any malicious software into Rockwell Automation's systems. These efforts include the implementation of security patches and antivirus or anti-malware solutions to remediate any vulnerabilities.</p> <p>3. Remote Access</p> <p>Remote access by Rockwell Automation's personnel into Buyer's control system(s) must be accomplished in accordance with either Buyer or Rockwell Automation procedures, whichever is more stringent. If Buyer requires Rockwell Automation personnel to use Buyer-specified procedures, the security of the connection/session is Buyer's sole responsibility, and Buyer is solely responsible for logging activities of all users accessing the Buyer's system.</p>
C2	<p>STANDARD RATE: Applies to all labor provided Monday through Friday between the hours of 7:00 a.m. and 6:00 p.m. local time (excluding Rockwell Automation observed holidays) Starting day is Monday which including 6 standard working hours. Engineer will work from Monday to Thursday, Engineer will work in Friday one time in current month. From Tuesday to Thursday Engineer will work 10 standard working hours.</p>
C3	<p>WAITING TIME: Non-working time spent waiting at the customer's request or due to circumstances beyond Rockwell Automation's control due to job site conditions. It will be invoiced at the rate schedule that is applicable for the time of day and day of the service.</p>
C4	<p>MAXIMUM WORKING TIME: For safety compliance of the Rockwell Automation Field Service Professional and the customer, at no time will a Rockwell Automation Field Service Professional work more than 10 hours (including travel time) during any 24-hour period.</p>
C5	<p>The statement of work is valid for 30 days from date of issue.</p>

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	Exceptions
E1.	Parts, installation of parts, and any travel associated with such activity are not included in this agreement. Any parts required in coordination with this service agreement, is the responsibility of the customer. Rockwell Automation Field Service Professionals do not carry parts. Parts and materials provided will be invoiced per Rockwell Automation standard pricing in effect at the time of services rendered, except in cases of prior contractual agreement. Rockwell Automation shall be the sole authority to determine warranty/non-warranty status of any service disputes.
E2.	Embedded Engineer contract CANNOT be used for fixed scope of work.
E3.	<p>Standby Time</p> <p>Under this proposal stand-by time is not included in the Scope of Work. Stand-by time is defined as time spent on-site waiting for completion of installation and wiring of the project. This includes, but is not limited to, waiting for correction of construction, installation, and wiring errors, and other delays beyond the control of, or not within Rockwell Automation's specific scope of work. Stand by time will be invoiced separately at time and materials rates. Please refer attached schedule of rates.</p>

**Table 1: Assumption, Clarifications, and Exceptions**

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## 1.7 Terms and Conditions of Sale

These Terms and Conditions cover the sale by Rockwell Automation to Buyer of the hardware, software, and/or services (individually a Product and collectively Products) set forth in the Statement of Work, which shall be integrated as set forth in the Statement of Work (collectively the "Work").

1. **GENERAL.** These Terms and Conditions along with the Statement of Work provided by Rockwell Automation in this proposal (the "Agreement") is the entire agreement of the parties, superseding any previous agreements and understandings, whether oral or written. In the event of any conflict between the Statement of Work and these Terms and Conditions, the provisions of the Statement of Work shall prevail. This Agreement exclusively will govern the sale and/or licensing by Rockwell Automation of the Work and any other Products furnished under this Agreement. No addition or modification to this Agreement will be binding unless mutually agreed to in writing. Each party rejects any other terms and conditions that are in addition to or not consistent with this Agreement that may be proposed by the other party or that appear or are referenced in Buyer's purchase order or other requisition or in Rockwell Automation's invoice.

2. **PRICE.** As provided in the Statement of Work exclusive of applicable taxes and duties unless otherwise specified.

3. **PAYMENT.** Net 10 days from date of invoice issued in accordance with the Pricing and Payment Schedule that is part of the Statement of Work unless otherwise set forth in the Statement of Work.

4. **DELIVERY.** Ex Works Rockwell Automation's plant or warehouse (per current Incoterms) or as otherwise specified in the Statement of Work (Delivery). In all cases, title transfers to Buyer upon the earlier of Rockwell Automation's delivery to Buyer or receipt by the first carrier for transport to Buyer, except that title to all intellectual property rights associated with the Work remains with Rockwell Automation or its suppliers and licensors.

5. **ACCEPTANCE.**

(a) Acceptance of the Work occurs either (i) on the date the Work conforms to acceptance criteria in the Statement of Work or is otherwise beneficially used by Buyer, but in no event later than 60 days from start-up or 120 days following Delivery whichever occurs first; or (ii) if no

acceptance criteria is specified in the Statement of Work then acceptance occurs upon Delivery.

(b) *Interim Approvals.* Any Rockwell Automation provided interim Work deliverable requiring Customer approval pursuant to the Statement of Work will be deemed accepted if formal Customer approval, written or as otherwise required, is not received by Rockwell Automation within two calendar weeks after the date submitted.

6. **CHANGES.** Any change resulting from any of the following circumstances is subject to equitable adjustments to price, scheduling, and other affected terms and conditions:

(a) Buyer requested order changes, including those affecting the identity, scope, and delivery of the Work or Products;

(b) Concealed or otherwise unknown physical conditions differing materially from those indicated or anticipated in the Statement of Work or that otherwise differ materially from those ordinarily found under similar circumstances;

(c) Any delays caused by Buyer, its employees, affiliates, other contractors to Buyer, or any other party within Buyer's reasonable control;

(d) Any emergency endangering persons or property. In such circumstances, Rockwell Automation may act at its discretion to prevent damage, injury, or loss.

All changes, except actions necessitated by emergencies as provided in (d) above, must be executed by a written change order signed by both parties or otherwise definitively authorized by both parties. Rockwell Automation will not begin work on a change until such change order is properly authorized. All claims relating to a change must be made within a reasonable time after the occurrence giving rise to the claim. If the parties cannot agree on a change in pricing or schedule, it will be resolved pursuant to Section 26, Disputes.

Rockwell Automation reserves the right to substitute using the latest superseding revision or series or equivalent Product having comparable form, fit, and function, and such

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substitutions shall not be considered changes subject to the other terms of this section.

**7. RETURNS.** All returns of Products will be pursuant to Rockwell Automation's instructions.

**8. DEFAULT, DELAYS, AND TERMINATION.**

(a) *Default by Rockwell Automation.* If Rockwell Automation is in material default of its obligations in the Agreement, Buyer shall give Rockwell Automation written notice, and Rockwell Automation shall have 5 business days to begin action and 90 days (or longer if agreed to in writing) to cure the default. If Rockwell Automation fails to cure the default, Buyer may terminate this Agreement to the extent that Rockwell Automation is in default. Rockwell Automation's liability shall be limited to (a) the proportionate price of the terminated portion of the Work and (b) any documented direct excess procurement costs incurred by Buyer to complete the Work to a capability not exceeding that provided in the Statement of Work, but Rockwell Automation's liability for documented direct excess procurement costs shall be limited to 110% of any amounts paid for the terminated portion of the Work.

(b) *Convenience of Buyer.* Except as set forth in the Statement of Work, Buyer may terminate this Agreement for convenience prior to shipment by giving written notice to Rockwell Automation. Buyer shall pay for any Work performed before receipt of notice and any additional costs of termination (including third-party commitments, reasonable profit, and overhead as may be more specifically provided in the Statement of Work) upon submission of Rockwell Automation's invoices.

(c) *Delays or Default by Buyer.* If Buyer, its employees, affiliates, other contractors to Buyer, or any other party within Buyer's reasonable control causes the delivery, installation, or acceptance of the Work to be delayed beyond the time period set forth in the Statement of Work, or if Buyer materially fails to fulfill any condition of the terms of this Agreement, Rockwell Automation may elect to (a) withhold deliveries and suspend Work, or (b) place the Products in storage at Buyer's risk and cost. If such delay or other non-fulfillment is not rectified by Buyer within a reasonable time upon notice, Rockwell Automation may terminate this Agreement, and Buyer shall pay all costs of termination (including third-party commitments, reasonable profit, and overhead) upon submission of Rockwell Automation's invoices.

(d) *Temporary Suspension of Work by Buyer.* Except as set forth in the Statement of Work, Buyer may, by providing prior written notice, request that Rockwell Automation

temporarily suspend performance and delivery of the Work, in whole or in part. The notice shall specify the portion of the Work to be suspended, the effective date of suspension, Buyer's anticipated duration of suspension, and the reasons for the suspension. Rockwell Automation shall suspend Work as requested, except as necessary for the care or preservation of Work previously executed. On or before the date the suspension begins, Buyer must pay Rockwell Automation the unpaid balance of the portion of the Work previously executed plus any additional costs incurred by Rockwell Automation as a result of the suspension. Rockwell Automation shall resume the suspended Work after a change order is executed covering adjustments to the price, schedule, and any other affected terms or conditions resulting from the suspension. Unless otherwise agreed, the maximum cumulative period for suspension is 60 days. Upon expiration of this or any shorter period agreed upon as provided above, Rockwell Automation may terminate this Agreement, and Buyer shall pay all costs of cancellation (including third-party commitments, reasonable profit, and overhead) upon submission of Rockwell Automation's invoices.

**9. FORCE MAJEURE.** Neither party will be liable for any loss, damage or delay arising out of its failure (or that of its subcontractors) to perform due to causes beyond its reasonable control, including without limitation, acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, acts of terrorism, delays in transportation, or transportation embargoes. In the event of such delay, performance date(s) will be extended as reasonably necessary to compensate for the delay.

**10. SOFTWARE LICENSES AND OWNERSHIP.**

(a) *Standard Software.* Software comprised of firmware or standard software (including, but not limited to packaged software, Rockwell Automation's preexisting templates, models and library files, and commercially available software) (collectively "Standard Software") is subject to Buyer's acceptance of additional terms and conditions set forth in separate Rockwell Automation or third-party click-wrap license agreements provided with such Standard Software. Such terms and conditions shall be the exclusive terms and conditions applicable to such Standard Software, excluding Buyer's obligation to pay any license fee which shall be identified in the Statement of Work.

(b) *Documentation and Application Software.* Rockwell Automation hereby grants to Buyer a non-exclusive, non-transferable license to modify and use solely in conjunction with the Work all documentation and any Application Software

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created by Rockwell Automation as specified in the Statement of Work. Application Software includes application project files for control programming, design, configuration, and visualization in source code and/or scripting code created by Rockwell Automation under the Agreement for operational use with Rockwell Automation's Standard Software or the Buyer's system as specified in the Statement of Work. Buyer is solely responsible for its modifications to documentation and Application Software. Except for any Buyer or third-party confidential information, Rockwell Automation retains all right, title, and interest to documentation and Application Software developed by Rockwell Automation. Buyer shall not sublicense or assign the documentation or the Application Software except to a customer who purchases the Work from Buyer. Buyer may make an additional archival copy of such documentation and Application Software for backup.

(c) In the absence of a separate Rockwell Automation license agreement for software provided by Rockwell Automation under a Statement of Work, Rockwell Automation hereby grants Buyer a non-exclusive, non-transferable license to use such software solely in conjunction with the Work for the project identified in the Statement of Work without the right to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the software (except for modifications of Application Software as set forth above). Ownership of the respective Rockwell Automation or third-party software shall remain with Rockwell Automation or the third party.

(d) *Ownership of Pre-existing Intellectual Property.* Each party shall own all right, title, and interest in all patents, trademarks, copyrights, confidential information, trade secrets, mask rights, and other intellectual property rights as it owned on the date of this Agreement.

(e) *No Other Licenses.* Except as expressly set forth in this Agreement, no license under any patents, trademarks, copyrights, confidential information, trade secrets, mask rights, or other intellectual property rights is granted or implied by either party.

## 11. WARRANTY.

(a) *Warranty for the Work:* Rockwell Automation warrants to Buyer for the lesser period of 18 months from delivery or 12 months from startup, that the Work will perform as stated in the Statement of Work and the Products will be free of defects in material, fabrication, and workmanship provided that: (1) the operating conditions and use of the Work are in accordance with any standards set forth in the Statement of Work, Rockwell Automation's published specifications, and applicable recommendations of Rockwell Automation; and (2)

the installation, adjustment, tuning, and start-up of the Work have been properly performed in accordance with Rockwell Automation's published specifications and any applicable recommendations of Rockwell Automation. Repaired or replacement Products provided pursuant to subparagraph (d) below are similarly warranted for the longer period of six months from date of shipment or the remainder of the original warranty term.

(b) *Products Warranty:* Rockwell Automation warrants to Buyer for the period of 18 months from shipment, that the Products will be free of defects in material, fabrication, and workmanship provided that: (1) the operating conditions and use of the Products are in accordance with any standards set forth in the Statement of Work, Rockwell Automation's published specifications, and applicable recommendations of Rockwell Automation; and (2) the installation, adjustment, tuning, and start-up of the Products have been properly performed in accordance with Rockwell Automation's published specifications and any applicable recommendations of Rockwell Automation. Repaired or replacement Products provided pursuant to subparagraph (d) below are similarly warranted for the longer period of six months from date of shipment or the remainder of the original warranty term.

(c) *Services Warranty:* Rockwell Automation warrants to Buyer for the period of 30 days from the date services are provided that services shall be performed in a workmanlike manner conforming to standard industry practice.

(d) *Remedies:* Remedies under this warranty will be limited to, at Rockwell Automation's discretion, replacement, repair, re-performance, modification, or issuance of a credit for the purchase price of the Products involved, but only after Rockwell Automation's receipt of Buyer's written notification of non-conforming Products or Work and the return of such products pursuant to Rockwell Automation's instructions. Replacement Products, at Rockwell Automation's discretion, may be new, remanufactured, refurbished, or reconditioned. If the repair, re-performance, or replacement does not cure the defective performance, Buyer may request emergency on-site service, which will be at Rockwell Automation's expense (consisting of time, travel, and expenses incurred by Rockwell Automation related to such services). If the defective performance is not due to warranted defects in the Work or Products, the on-site service will be at Buyer's expense. On-site warranty services performed at Rockwell Automation expense shall not include removal or reinstallation costs related to large-scale assemblies such as motors or transformers. The foregoing will be the exclusive remedies for any breach of warranty or breach of contract arising from warranted defects.

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(e) *General*: Warranty satisfaction is available only if (a) Rockwell Automation is provided prompt written notice of the warranty claim, and (b) Rockwell Automation's examination discloses that any alleged defect has not been caused by misuse, neglect, improper installation, operation, maintenance, repair, alteration, or modification by other than Rockwell Automation, accident, or unusual deterioration or degradation of the Products or Work or parts thereof due to physical environment or electrical or electromagnetic noise environment.

(f) THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESSED; IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

## 12. INTELLECTUAL PROPERTY INDEMNITY.

Rockwell Automation will pay costs and damages finally awarded in any suit against Buyer to the extent based on a finding that the design or construction of any Work or Products as furnished, infringe any patent, utility model, copyright, or trademark granted or registered in the country of Rockwell Automation's shipping destination, provided that, Buyer: (i) promptly informs Rockwell Automation of the alleged infringement in writing; (ii) provides Rockwell Automation the exclusive right to defend and settle the suit, at Rockwell Automation's expense; and, (iii) provides all reasonable information and assistance requested for the defense. Rockwell Automation shall have no liability for any infringement that is based upon or arises out of: (a) compliance with Buyer's instructions, specifications or designs; (b) use of Work or Products in a Buyer or third-party process; or, (c) combinations with other equipment, software or materials not supplied by Rockwell Automation. The foregoing states the sole and exclusive obligations of Rockwell Automation for intellectual property infringement.

**13. GENERAL INDEMNITY.** Rockwell Automation agrees to indemnify the Buyer from any suit or proceeding by third parties (which are not Rockwell Automation employees) for damage to third-party tangible property and for bodily injury to the percentage extent directly caused by Rockwell Automation's negligence in the performance of this Agreement. This indemnity is contingent upon Buyer giving Rockwell Automation prompt notice of any such suit or proceeding and all necessary information and assistance so that Rockwell Automation may defend or settle such claim and provided Buyer does not take any adverse position in connection with such claim. If any such damage or injury is caused by the joint or concurrent negligence of Rockwell

Automation and Buyer, or any agent, subcontractor, or supplier to Buyer, each party shall pay for its own defense, and the liability of each party shall be borne in proportion to the party's negligence.

**14. DISCLAIMER AND LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY BUSINESS INTERRUPTION OR LOSS OF PROFIT, REVENUE, MATERIALS, ANTICIPATED SAVINGS, DATA, CONTRACT, GOODWILL, OR THE LIKE (WHETHER DIRECT OR INDIRECT IN NATURE) OR FOR ANY OTHER FORM OF INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND. EACH PARTY'S MAXIMUM CUMULATIVE LIABILITY RELATIVE TO ALL OTHER CLAIMS AND LIABILITIES, INCLUDING OBLIGATIONS UNDER ANY INDEMNITY, WHETHER OR NOT INSURED, WILL NOT EXCEED THE LESSER OF \$1,000,000 OR THE COST OF THE WORK. ROCKWELL AUTOMATION DISCLAIMS ALL LIABILITY RELATIVE TO GRATUITOUS INFORMATION OR ASSISTANCE PROVIDED BY BUT NOT REQUIRED OF ROCKWELL AUTOMATION BY THE STATEMENT OF WORK. ANY ACTION BY EITHER PARTY MUST BE BROUGHT WITHIN 18 MONTHS AFTER THE CAUSE OF ACTION ACCRUES. THESE DISCLAIMERS AND LIMITATIONS OF LIABILITY WILL APPLY REGARDLESS OF ANY OTHER CONTRARY PROVISION AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTY OR CONDITION OR EXCLUSION OF DAMAGES IS SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION. THIS PROVISION EXTENDS TO THE BENEFIT OF ROCKWELL AUTOMATION'S PARENT, SUBSIDIARIES, AFFILIATES, VENDORS, APPOINTED DISTRIBUTORS, AND OTHER AUTHORIZED RESELLERS AS THIRD-PARTY BENEFICIARIES.

## 15. BUYER SPECIFICATION.

(a) Unless otherwise specified in the Statement of Work, Rockwell Automation does not warrant or indemnify and will not otherwise be liable for (i) design, materials, or construction criteria furnished or specified by Buyer and incorporated into the Work or Products, (ii) products supplied by, made by or sourced from Buyer or other manufacturers or vendors specified by Buyer; or (iii) commercially available computer software, hardware, and electrical components. (Such Buyer supplied/specified products shall include but not be limited to any identified in the Statement of Work.) Any warranty or

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indemnity applicable to such Buyer supplied/specified products will be limited solely to the warranty or indemnity, if any, extended by the original manufacturer or vendor other than Rockwell Automation to the extent permissible thereunder.

(b) *RoHS*: Buyer supplied/specified products will meet all applicable material restrictions as defined in RoHS. If it does not, Buyer will notify Rockwell Automation prior to shipment of the Buyer supplied/specified products to Rockwell Automation. Buyer will indemnify Rockwell Automation against any claim arising out of Rockwell Automation's use of Buyer supplied/specified products.

**16. INSURANCE.** During the term of this Agreement, Rockwell Automation shall maintain, at its sole expense, the following insurance coverages:

(a) *Workers' Compensation*: statutory in accordance with applicable law;

(b) *Employer's Liability*: USD 1,000,000 per accident, per employee, per disease;

(c) *Commercial General Liability*: USD 2,000,000 per occurrence single limit of liability, USD 2,000,000 general aggregate that shall include but not be limited to contractual liability, premises liability, advertising liability, and product liability; and

(d) *Commercial Automobile Liability*: USD 2,000,000 per occurrence combined single limit of liability, covering all owned, leased, and non-owned vehicles.

**17. BUYER INFORMATION.**

(a) Buyer represents and warrants that it has the rights to the information provided or made available by Buyer to Rockwell Automation, including but not limited to technical specifications, drawings, source code, application code, communication interfaces, protocols, and all other documentation (collectively "Buyer Information"), for Rockwell Automation to perform its obligations under this Agreement and that such access to and use of Buyer Information under this Agreement will not infringe or violate any agreement, confidentiality obligations, copyrights, or other intellectual property rights of the original vendor or any other third party. Buyer agrees to indemnify Rockwell Automation from any claims arising out of Rockwell Automation's use of Buyer Information pursuant to the Statement of Work.

(b) In Rockwell Automation's performance of services, sales activities, or in connection with Buyer's use of Rockwell Automation Products, Rockwell Automation may obtain, receive, or collect data or information, including Buyer's

contract information, computer system profile, Rockwell Automation Product installation data, and Buyer's usage specific data of Rockwell Automation Products (collectively, the "Data"). In such cases, Buyer grants Rockwell Automation a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely to facilitate the performance of sales and services by Rockwell Automation and its affiliates (including, but not limited to, quality, safety, energy, and security analytics, product and service diagnostics and prognostics, and reporting), and to facilitate or improve Buyer's use of the Products. In addition, Buyer grants Rockwell Automation and its affiliates a license to use and aggregate the Data in support of Rockwell Automation's marketing and sales activities. Rockwell Automation and its affiliates may also use this information in the aggregate, in a form which does not personally identify Buyer, to improve Products and Rockwell Automation may share anonymous aggregate data with our third party suppliers and service providers.

**18. SAFETY AND STANDARDS.**

(a) Rockwell Automation is responsible for compliance of the Work with laws, regulations, and standards, including safety regulations and standards, of the country where the Work will be located that are applicable to the Work at the effective date of this Agreement.

(b) Buyer must inform Rockwell Automation of any other laws, regulations, or standards that may apply to the Work. Rockwell Automation will be responsible for compliance with such other safety or other standards only if documented in the Statement of Work.

(c) Rockwell Automation is not responsible for laws, regulations, or standards that apply to Buyer's (or end user's, if different from Buyer) facility, equipment, process, information system, or data.

**19. SITE RULES, LICENSES, PERMITS, SITE PREPARATION.**

(a) Rockwell Automation agrees to comply with all applicable posted site rules of Buyer (unless inconsistent with the obligations set forth in the Statement of Work) and any additional Buyer's site rules that have been incorporated into the Statement of Work.

(b) Buyer is responsible for:

(1) all licenses, permits, clearances, and site access rights;

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(2) all sites being ready and equipped with all necessary Buyer furnished equipment and facilities;

(3) the sites, including any required Buyer fixtures or facilities being safe, hazard free, structurally sound, and sufficient;

(4) reasonable access to the worksite;

(5) properly using, calibrating operating, monitoring and maintaining the Work consistent with all Rockwell Automation or third-party provided instructions, warnings, recommendations and documentation; and

(6) all other factors affecting the Work that are outside of the direct control of Rockwell Automation.

(7) indemnifying Rockwell Automation for any claims to the percentage extent directly caused by Buyer's breach of the obligations listed in section 19(b) above.

## 20. QUALITY, INSPECTIONS AND TESTING.

(a) Rockwell Automation maintains ISO 9001-2015 certified quality systems globally at its major production facilities.

(b) Unless otherwise agreed in the Statement of Work, customer inspection and testing prior to delivery will be limited to witnessing Rockwell Automation's standard factory tests of the Work or Products on the date scheduled by Rockwell Automation. All such tests will be subject to reasonable advance notice and may be subject to additional charges.

**21. GOVERNMENT CLAUSES AND CONTRACTS.** No government contract clauses, specification, or regulations apply to the Work, Products, or otherwise to this Agreement except to the extent agreed in writing by Rockwell Automation.

**22. EXPORT CONTROL.** Products and associated materials supplied or licensed hereunder may be subject to various export laws and regulations. It is the responsibility of the exporter to comply with all such laws and regulations. Notwithstanding any other provision to the contrary, if U.S. or local law requires export authorization for the export or re-export of any Product or associated technology, no delivery can be made until such export authorization is obtained, regardless of any otherwise promised delivery date, and Rockwell Automation will be relieved of any obligation relative to the delivery of the Product(s) or Work subject to such delayed authorization without liability of any kind to Buyer or any other party. Further, if any required export authorization is denied, Rockwell Automation will be relieved of any further obligation relative to the sale and/or license and delivery of the

Product(s) or Work subject to such denial without liability of any kind to Buyer or any other party. Rockwell Automation will not comply with boycott related requests except to the extent permitted by U.S. law and then only at Rockwell Automation's discretion.

**23. ASSIGNMENT.** This Agreement may not be assigned in whole or in part by either party without the written consent of the other. However, consent will not be required for internal transfers and assignments between party and its parent company, subsidiaries, or affiliates as part of a consolidation, merger, or any other form of corporate reorganization.

**24. EMPLOYEE SOLICITATION.** During the term of this Agreement and for 12 months following its termination, Buyer agrees that if it hires any employee of Rockwell Automation with whom the Buyer has had contact as a result of this Agreement, it will pay Rockwell Automation 50% of the hired Rockwell Automation employee's annual salary.

**25. INDEPENDENT CONTRACTORS.** The parties at all times will be independent. Neither party is an employee, joint venturer, agent or partner of the other; neither party is authorized to assume or create any obligations or liabilities, express or implied, on behalf of, or in the name of the other. The employees, methods, facilities, and equipment of each party at all times will be under the exclusive direction and control of that party.

**26. DISPUTES.** The parties will attempt in good faith to promptly resolve any dispute by negotiations between representatives who have authority to settle the dispute. Any dispute not resolved by negotiation may then be submitted to a court of competent jurisdiction in accordance with the terms provided in this Agreement. These procedures are the exclusive procedures for the resolution of disputes between the parties.

**27. GOVERNING LAW AND FORUM.** This Agreement and all disputes arising under it will be governed by and interpreted in accordance with the internal laws and will be subject to the exclusive jurisdiction of the courts of the state, province, or other governmental jurisdiction in which Rockwell Automation's principal place of business resides but specifically excluding the provisions of the 1980 UN Convention on Contracts for the International Sales of Goods.

## 28. CONFIDENTIALITY.

(a) During the term of this Agreement and for a period of three years thereafter, each party will maintain in strict confidence all technical and business data and information

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disclosed by one party to the other that is marked "Confidential" and will not use or reveal such information without the prior written authorization of the other.

(b) "Recipient" and "Discloser" shall refer to Buyer and Rockwell Automation in their respective roles as both recipient and discloser of Confidential Information under this Agreement.

(c) The obligations of confidentiality and non-use will not apply to information (i) that is published or becomes part of the public domain other than by means of a breach of this Agreement; (ii) that the Recipient can prove by written documentation was known to it prior to disclosure by the Discloser; (iii) that the Recipient subsequently rightfully receives from a third party without an obligation of confidentiality; (iv) that the Discloser discloses to a third party on a non-confidential basis; or (v) that was independently developed by the Recipient.

(d) The Recipient shall not use or disclose any Confidential information, except as expressly authorized by this Agreement, and shall protect all such Confidential information using the same degree of care which Recipient uses with respect to its own similar proprietary information, but in no event with safeguards less than a reasonably prudent business would exercise under similar circumstances. Recipient shall take prompt and appropriate action to prevent unauthorized use or disclosure of the Confidential Information.

(e) If any Confidential information must be disclosed to any third party by reason of legal, accounting or regulatory requirements beyond the reasonable control of the Recipient, the Recipient shall promptly notify the Discloser of the order or request and permit the Discloser (at its own expense) to seek an appropriate protective order.

**29. SEVERABILITY.** If a provision of this Agreement is found unenforceable by law, the remainder of this Agreement shall continue in full force and effect. A delay or failure in enforcing any right or remedy under this Agreement shall not prejudice or operate to waive that right or remedy.

**30. COUNTERPARTS.** This Agreement may be executed in multiple counterparts.

**31. NOTICE.** Written notice will be deemed to have been given when the notifying party delivers such notice to the other party or has sent such notice to the other party by certified or registered mail or facsimile (with confirming letter to follow), directed as follows (unless written notice of a

change of address has been given in accordance with this paragraph):

**To Rockwell Automation:**

\_\_\_\_\_  
**Attn:** \_\_\_\_\_

**Facsimile:** \_\_\_\_\_

**To Buyer:**

\_\_\_\_\_  
**Attn:** \_\_\_\_\_

**Facsimile:** \_\_\_\_\_

**32. PUBLICITY.** Buyer agrees that Rockwell Automation may disclose in the ordinary course of business buyer's name and logo on the Rockwell Automation's customer list and website. For the work performed pursuant to this agreement, Buyer consents to Rockwell Automation's desire to publicize the award of this Agreement by creating a brief success story identifying the type of work performed, the Rockwell Automation products and services used, location, industry and customer's name for marketing purposes only.

**33. LANGUAGE.** The parties acknowledge that they have required that the agreement evidenced hereby be drawn up in English. Les parties reconnaissent avoir exigé la rédaction en anglais du Contrat. In the event of a conflict between the English and other language versions, the English version will prevail.

**34. EXECUTION.** Buyer may accept this Agreement by either signing this Agreement or sending Rockwell Automation a purchase order explicitly referencing on its face this Agreement (e.g., "This order placed in accordance with Rockwell proposal # \_\_\_\_\_ dated \_\_\_\_\_," or, simply, "Per Rockwell proposal # \_\_\_\_\_ dated \_\_\_\_\_").

**Accepted.**

**Customer:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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