

**[Clauses 1.- 6. form the Customer Agreement, deleted for this document.]**

## **7. TERMS OF THE SOFTWARE LICENSE**

### **7.1. ETON SYSTEMS SOFTWARE LICENSE AGREEMENT (ESSLA)**

7.1.1. The Licensor is willing to license the Software to the Licensee only upon the condition that the licensee accepts all of the terms contained in this Eton Systems Software License Agreement (ESSLA). By downloading or installing the Software, or using the equipment that contains this Software, the licensee is binding itself and the business entity that it represents to this Agreement.

### **7.2. DEFINITIONS**

7.2.1. In this ESSLA the following terms shall have the meanings hereunder assigned to them:

“**Agreement**”: this Eton Systems Software License Agreement (ESSLA);

“**Duration**”: the License is granted for a duration of twelve (12) months from the date of the initial purchase of the License;

“**Eton Systems UPS**”: the machinery, apparatus, materials, articles, documentation, software and other products to be supplied by the Contractor under the Supply Contract;

“**EtonIngenious™ installation**”: one (1) installation of the EtonIngenious™ API on a ‘master’ PC which also incorporates the database;

“**License**”: the Licensee’s right to use the Software as specified in this Agreement;

“**Pricelist**”: the Pricelist as defined in Appendix 4 of the Supply Contract, which may be updated from time to time;

“**Software**”: Any and all Software supplied with the Eton Systems UPS, including but not limited to the EtonIngenious™ installation;

“**Software License Fee**”: the annual license fee amount as defined in the Agreement, which may be adjusted per the terms of the Agreement;

“**Supply Contract**”: the separate Contract for the supply and/or installation of the Eton Systems UPS;

“**Update**”: general updates, modifications or bug fixes to the Software, applicable to the generation of Software supplied with the Eton Systems UPS under the Supply Contract;

### **7.3. GRANT OF LICENSE**

7.3.1. Conditional upon compliance with the terms and conditions of the Agreement, the Licensor or its subsidiary, affiliate and/or distributor/agent licensing the Software instead of the Licensor, grants to the Licensee a non-exclusive non-transferable license to use the Software (and any Updates) for the Duration.



- 7.3.2. The Licensor's grant of each License is subject to the Licensee's payment of the Software License Fee specified in the Agreement. The number of Licenses granted by the Licensor to the Licensee is specified in the Agreement
- 7.3.3. Each EtonIngenious™ installation requires 1 (one) License of the Software in order to be used and operated, irrespective of whether all functionality of the Software is used or not.
- 7.3.4. The Licensee is entitled to make one copy of the Software in any computer readable or printed form for back-up, provided such copy is not installed or used for other than archival purposes. The Licensee shall ensure that any trademarks, copyright, restricted rights notices or legends appearing on the Software are reproduced on any such copy.

#### **7.4. THIRD PARTY SOFTWARE**

- 7.4.1. The Licensor may distribute third party software together with the Software, in order to enable the Software to be used and operated properly. The Licensee acknowledges that the Licensor is not responsible for the performance or the contents of such third party software and that the Licensee's use of third party programs are subject to additional terms and conditions imposed by the licensor of such programs and the Licensee agrees to abide by such additional terms and conditions.

#### **7.5. UPDATES**

- 7.5.1. For the Duration of the License, the Licensee is entitled to receive and use Updates if and when made commercially available by the Licensor.
- 7.5.2. The Licensee is not entitled to receive new versions and/or new generations of the Software.
- 7.5.3. Any cost associated with the installation of an Update will be invoiced to the Licensee according to the Pricelist.
- 7.5.4. Updates or modifications to the Software due to function changes requested by the Licensee are not included in the Agreement.

#### **7.6. SOFTWARE LICENSE FEE PRICE AND PAYMENTS**

- 7.6.1. The Software License Fee will be invoiced annually, on or around the anniversary date of the Taking-over of the Eaton Systems UPS.
- 7.6.2. The Software License Fee is payable annually for the lifetime of the Eaton Systems UPS.
- 7.6.3. Payments shall be made within 30 days after the date of the invoice. The Licensee shall pay in full all sums invoiced by the Licensor without any set off, counterclaim or deduction, and are not subject to any settlement discount or other special terms of payment.
- 7.6.4. The price of the annual Software License Fee may be adjusted on a yearly basis for inflation and/or exchange rate variations. Any such adjustment of the annual price will be notified In Writing with no less than 30 days notice.

#### **7.7. CONSENT TO USE OF DATA**



7.7.1. The Licensee agrees that The Licensor may collect and use technical information related to the Software gathered as part of the product support services provided to the Licensee, if any. The Licensor may use such information solely to improve its products, services or technologies and will not disclose this information in a form that identifies the Licensee.

## **7.8. LIMITATION OF RIGHTS**

7.8.1. Licensee is prohibited from any use not expressly authorized in the Agreement, including but not limited to the following:

- a) sublease, lease, assign, sell, resell, license, re-license, distribute, rent, lend the Software or the Software License or part thereof, other than to the extent expressly permitted in the Agreement, except that the Software License may be transferred to a leasing-company solely for the purpose of obtaining a financial solution for the purchase of the Eton Systems UPS;
- b) translate, reverse engineer, decompile, disassemble, modify, adapt, create derivative works, merge or separate any part of the Software, except and only to the extent that such activity is expressly permitted by applicable law;

7.8.2. Notwithstanding this limitation, the Software integration interface and Software License are unique to the company and company address specified in the Agreement and must not be transferred to another user, customer or address without written agreement and permission from The Licensor.

7.8.3. The Software License may be transferred with written agreement and permission from The Licensor, and assistance from The Licensor, to a new address within the same country and within the same company. Prices for “Moving of Software” are specified in the Pricelist.

## **7.9. GUARANTEE**

7.9.1. The Licensor guarantees that the Software will perform substantially in accordance with the user guide accompanying the Software, provided that the Software is properly used in the configuration for which it was provided. Any integration with external software will work as it was initially installed and configured. This guarantee is valid for the Duration.

7.9.2. In the event that the Software fails to comply with this guarantee, the Licensee shall notify the Licensor In Writing within the guarantee period, describing the failure.

7.9.3. The Licensor shall upon receipt of such notice, at its own discretion, repair or replace the Software on the number of EtonIngenious™ installations affected by it. The Licensee acknowledges that these are the sole and exclusive remedies under the limited guarantee and this is The Licensor’ sole obligation under the same.

7.9.4. The Licensor shall have no liability for the Software and this guarantee shall be void if:

- a) the Software has been altered in any way;
- b) the media on which the Software was supplied has been damaged by accident, abuse or misapplication;



- c) the problem arises out of the use of the Software other than as intended as set out in the user guide;
- d) the problem arises out of the use of the Software in conjunction with software or hardware for which it is not intended to be used.

7.9.5. In case of an incorrect claim under the guarantee, the Licensee shall reimburse The Licensor for its costs and expenses in connection with the claim, in accordance with the prices specified in the Pricelist.

#### **7.10. DISCLAIMER**

7.10.1. The foregoing limited guarantee states the sole and exclusive remedies for the Licensor', its suppliers' and/or licensors' breach of guarantee. The Licensor, its suppliers and/or licensors do not and cannot guarantee the performance or results the Licensee may obtain by using the Software.

#### **7.11. LIMITATION OF LIABILITY**

7.11.1. The entire risk, as to the performance or results of the Software is assumed by the Licensee. To the maximum permitted extent by applicable law, the Licensor, its suppliers and/or licensors shall not be liable to the Licensee or any other person or entity, for any loss of use, revenue or profit, lost or damaged data, or other commercial or economic loss or for any indirect, incidental, special punitive, exemplary or consequential damages whatsoever, even if the Licensor has been advised of the possibility of such damages. In any case the Licensor, its suppliers' and/or licensors' entire liability in any connection with this Agreement and/or the Software shall not exceed the license fees paid for the Software and only for the Software affected by the cause. This limitation shall apply even in the event of a fundamental breach or a breach of the fundamental terms of this Agreement.

7.11.2. The Licensee is aware and acknowledges that no software is error free and the Licensee is strongly recommended to back-up its files regularly.

#### **7.12. CONFIDENTIALITY**

7.12.1. The source code of the Software, and the algorithms, concepts, techniques, database, database structure, methods and processes embedded therein, constitute trade secrets and confidential and proprietary information of the Licensor and its licensors, and the Licensee shall not access or use, reproduce, divulge or communicate such trade secrets or information in any manner, except to the extent expressly permitted herein.

#### **7.13. DURATION, EXTENSION & TERMINATION**

7.13.1. The Licensee's right to use the Software and Updates is limited to the life time of the Eton Systems UPS specified in the Supply Contract. The Licensor may, but is not obliged to, extend the life time of the Software by extending the Duration.

7.13.2. If the Licensee for any reason uses the License after the time period specified in clause 7.13.1 all conditions in this Agreement will still be valid with the exception that the Licensor will have



no obligations or responsibilities for or in connection with the License or Software whatsoever.

- 7.13.3. Any Update made available or extension of the Duration, may be subject to additional or different terms and conditions.
- 7.13.4. If the Licensee fails to comply with any of the terms and conditions of the Agreement or Supply Contract, the Licensor reserves the right to deactivate the Software until all disputes are solved.
- 7.13.5. Failure to pay the Software License Fee shall result in the grant of License being withdrawn, and the Eton Systems UPS becoming inoperable.
- 7.13.6. Without prejudice to any other rights, the Licensor may terminate the Agreement and the License granted with immediate effect if the Licensee fails to comply with any of the terms and conditions of the Agreement.
- 7.13.7. Upon termination of the License by the Licensor under clause 7.13.4, the Licensee agrees to promptly (at its own expense) purge all copies of the Software from all computer systems on which it was stored, destroy all physical copies of the Software and any other confidential information, and make immediate payment of any outstanding fees.

#### **7.14. OWNERSHIP**

- 7.14.1. The Software is licensed, not sold.
- 7.14.2. All intellectual property rights, including all copyrights, design rights and/or patent rights, and the title in and to the Software, shall at all times remain with the Licensor and/or its licensors. The Licensee shall acquire no right whatsoever to all or any part of the Software except the right to use the Software in accordance with this Agreement. The Licensor and/or its licensors reserves all rights not expressly granted to the Licensee herein.
- 7.14.3. Physical copies of the Software remain the property of the Licensor. The Licensee shall not alter or remove any such copyright, restricted rights notices or legends appearing on any physical copy of the Software.

#### **7.15. MISCELLANEOUS**

- 7.15.1. Neither the Licensor nor the Licensee shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such party. As soon as such obstacle has been terminated, the obligation shall be performed in the contracted manner.
- 7.15.2. No consent or waiver, expressed or implied, by the Licensor of any breach or default of the Licensee in performing its obligations under this Agreement shall be deemed or construed to be a consent or waiver of any other breach or default by the Licensee of the same or any other obligation hereunder. Any failure by the Licensor to complain of any act or failure to act of the Licensee or to declare that the Licensee is in default shall not constitute a waiver by the Licensor of its rights under the Agreement. No waiver of any rights under this Agreement shall be effective unless In Writing and signed by The Licensor.



- 7.15.3. Should any provision or part of this Agreement be found void or unenforceable by a court of competent jurisdiction, such provision or part thereof, shall be deemed severed, and in the remainder of this Agreement shall remain in full force and effect.
- 7.15.4. The division of this Agreement into separate provisions and the insertion of headings shall not affect the interpretation of this Agreement.
- 7.15.5. The provisions within this Agreement which are meant, by their nature, to survive termination of this Agreement shall survive such termination, including without limitation, the ownership, confidentiality, the limitation of liability, governing law and jurisdiction, entire Agreement, waiver and miscellaneous sections herein.

#### **7.16. DISPUTES AND APPLICABLE LAW**

- 7.16.1. All disputes arising out of or in connection with the Agreement shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the SCC). The Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce shall apply, unless the SCC, taking into account the complexity of the case, the amount in dispute and other circumstances, determines, in its discretion, that the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce shall apply. In the latter case, the SCC shall also decide whether the arbitral tribunal shall be composed of one or three arbitrators.

The arbitration shall take place in Gothenburg. The language to be used in the arbitral proceedings shall be English.

- 7.16.2. The Agreement shall be governed by the substantive law of Sweden.