

License Agreement for Package Software Product

ATTENTION! -

Please read this LICENSE AGREEMENT (hereinafter referred to as the "Agreement") carefully before installing this package software product of Yokogawa Electric Corporation (hereinafter referred to as "Yokogawa") on the computer.

Installing this package software product indicates your acceptance of the terms and conditions of this Agreement. If you are not the end user, transferring this package software product indicates your acceptance of the terms and conditions of this Agreement. If you don't accept the terms and conditions of this Agreement, please kindly return this package software product, without installing it, to the seller or Yokogawa immediately.

1. Grant of License

- (1) Provided that you accept and agree to the terms and conditions of this Agreement, Yokogawa grants you the right to use one (1) copy of the following package software product of Yokogawa (hereinafter referred to as the "Package Software Product") subject to the terms and conditions of this Agreement.
Product: LL50A Parameters Setting Software and materials related thereto that Yokogawa designates
Number of License: One (1)
- (2) The Package Software Product herein shall include, without limitation, a software program, font, data base, data put into fill-in-the-form, instruction manual, functional specifications, materials related thereto, image, photograph, animation, video image, sound, music, text, and applet. ("Applet" means software component (program) incorporated into text or icon.)

2. Terms and Conditions of License

- (1) Yokogawa grants you, for the purpose of single use, non-exclusive and non-transferable license of the Package Software Product on designated computer agreed by both parties with the license fee agreed separately by the both parties.
- (2) You are, unless otherwise agreed in writing by Yokogawa, not entitled to sell, lend, distribute, transfer or sublicense, or if any, pledge the Package Software Product. You shall not also use the Package Software Product on other computer than the designated one through any network or line, including but not limited to intranet, internet, local area network and wide area network.
- (3) The Package Software Product shall not be copied in whole or in part except keeping one copy for back-up purpose unless otherwise agreed by Yokogawa in advance. You shall secure or supervise the copy of the Package Software Product by you in strict and due care.
- (4) You shall not and shall not have any third party, including the end user, alter, decompile, disassemble, decrypt, extract or otherwise reverse-engineer the Package Software Product or create any derivative works thereof. Unless otherwise separately agreed by Yokogawa, Yokogawa has no obligation to provide you with the source code for the Package Software Product.
- (5) The Package Software Product including all proprietary technology, algorithm, and know-how such as a factor, invariant or process contained therein shall be the proprietary property or trade secret of Yokogawa or a third party which grants Yokogawa the rights.
- (6) The proprietary property and/or trade secret as defined in the preceding Article 2.(5) shall not be published or disclosed to any third parties except for your limited employees or equivalents thereto who need to have access thereto. You are also required to impose the same confidentiality obligation on them.
- (7) Yokogawa may use or add copy protection in or to the Package Software Product. In no event shall you remove or attempt to remove such copy protection.
- (8) The Package Software Product and the all copies thereof shall be returned to Yokogawa or the party designated by Yokogawa immediately after the expiration or termination of this Agreement. Alternatively, if Yokogawa requires in writing to you that all the Package Software Product is destroyed or disposed, all the information therein shall be deleted completely.
- (9) The Package Software Product may include software program of a third party (hereinafter called "Third Party Software", which may include any software program made and provided by Yokogawa's affiliate) granting Yokogawa the right to sublicense. In the case the different terms and conditions from this Agreement shall apply to Yokogawa's sublicense of such Third Party Software, you shall observe such terms and conditions of which Yokogawa notifies you in writing separately.

3. Limitation for Specific Uses

- (1) Unless otherwise agreed by both parties in writing, the Package Software Product shall not be intended to be specifically designed, manufactured or distributed for the purpose of operation of any aviation, vessel, support of those operations from the ground, or for any design, construction, maintenance, operation and/or use of nuclear products and/or facilities.
- (2) Even if you use the Package Software Product for the purpose of preceding Article 3.(1), Yokogawa disclaims any responsibilities, warranties, liabilities, claims or damages whatsoever similar thereto arising out of the use or operations of the Package Software Product for such purpose and you shall indemnify and hold harmless Yokogawa including without limitation its officers, employees, sales representatives, and their officers and employees, from any claim, suit, demand, damage, and similar thereto (including reasonable attorneys' fees).

4. Warranty

- (1) During the warranty period defined in this Article 4.(4) below (hereinafter called "Warranty Period"), Yokogawa warrants that the Package Software Product shall properly function in accordance with the Instruction Manual or Functional Specifications of Yokogawa, on the hardware under the environmental or other conditions designated by the vendor of such hardware or by Yokogawa. However, in no event shall Yokogawa warrant the following under any operating environment and circumstance.
The Package Software Product ;
 - a) will never be interrupted
 - b) will never be free from defect
 - c) will be completely corrected
 - d) will be free from any cross interference such as cross conflict with other software program
 - e) will satisfy your or your customer's any particular and/or prospective purpose
 - f) will be accurate, correct, reliable or most up-dated
- (2) During the Warranty Period, if the Package Software Product fails to operate in accordance with the steps of the instruction manual or functional specifications attributable to Yokogawa, or if defect(s) such as damage of a media of the Package Software Product attributable to Yokogawa is found, Yokogawa agrees to either repair or replace, free of charge, any Package Software Product which shall be returned to Yokogawa's nearest authorized service facility immediately at your expense; where delivery of the Package Software Product is outside of Japan, re-import tax and other charges shall be also borne by you. Further, in the case that repair or replacement of the Package Software Product requires additional works such as loading of the same at the site by Yokogawa or any person designated by Yokogawa is needed, such cost and expense for the works shall be borne by you and you shall initialize or shut down the system and other related system, products or equipment, if deemed necessary at Yokogawa's sole judgment.
- (3) Notwithstanding the preceding Article 4.(2), Yokogawa's warranty shall not apply if the defect of the Package Software Product is caused by any of the followings;
 - a) where hardware on which the Package Software Product operates becomes out of warranty of the vendor and proper maintenance contract for the hardware is not in place;
 - b) where, if Yokogawa designates hardware on which the Package Software Product operates, you changed such hardware to other hardware without Yokogawa's consent;
 - c) where any third party other than entrusted by Yokogawa conducted renovation, or improvement of the Package Software Product;
 - d) where hardware on which the Package Software Product operates was moved by you or any third party without Yokogawa's consent;
 - e) where you or a party you designate (including your customer) misused, renovated, up-graded, or used the Package Software Product for any other purpose than set forth in the Instruction Manuals etc.;
 - f) where the Package Software Product was used or operated under the different operating environment and/or other conditions than the terms designated by Yokogawa or provider of hardware ;
 - g) where you or your customer does not execute the proper trouble or non-conformity avoiding measures (including repair or replacement) Yokogawa proposed; or
 - h) other cause of defect not attributable to Yokogawa

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- (4) The Warranty Period shall be the twelve (12) month period from the date when Yokogawa complete the delivery at the place designated by you (including your customer) or you use part or whole of the Package Software Product for the operation, whichever comes first, unless otherwise agreed in writing by Yokogawa.
 - (5) Under separate maintenance contract, Yokogawa may conduct maintenance service for the Package Software Product, at the expense of you even after the Warranty period. The maintenance service for the Package Software Product shall be classified into those of standard software, customized software.
 - a) Standard Software
Standard Software herein means the standard package software covered by Yokogawa's Catalogue and/or General Specifications. The maintenance service for Standard Software may be available for the latest two versions unless otherwise covered by Yokogawa's Catalogue and/or General Specifications. However, the version of the Package Software Product which has been up-dated for the purpose of the Version-up before the latest one may be available only for five (5) years after the last up-dated. The version after the declaration of the discontinuation of the order acceptance by Yokogawa may be available for five (5) years after such declaration.
 - b) Customized Software
Customized Software herein means the software customized by Yokogawa pursuant to the Quotation or Functional Specifications agreed by both parties. The maintenance service for the Customized Software shall not be available to you after the Warranty Period unless otherwise separately agreed by both parties. However, such maintenance service may be conducted at your expense as remodeling contract agreed by the both parties.
 - (6) Notwithstanding the preceding Article 4.(1), 4.(2), 4.(3), 4.(4) and 4.(5), on the Third Party's Software, warranty, including warranty period, of such third party provider shall apply.

5. Revision-Up Package Software

When you receive the Revision-Up of the Package Software Product which is substituted for or is added to the Package Software Product from Yokogawa, you can install such Revision-Up of the Package Software Product in the computer(s) on which you use the Package Software Product. Furthermore, the Revision-Up of the Package Software Product which is substituted for or is added to the Package Software Product shall be considered as the Package Software Product and you shall agree to comply with the terms and conditions of this Agreement in order to use the Revision-Up of the Package Software Product.

6. If You are not the End User

If you are not the end user of the Package Software Product, you shall present the terms and conditions of this Agreement to your end user and cause your end user to observe such terms and conditions. If Yokogawa incurs damage due to your end user's breach of such terms and conditions as set forth herein, you shall indemnify and hold Yokogawa harmless as set forth herein above. In this case, it is the end user that is granted the license of the Package Software Product by Yokogawa and if you are not the end user, you shall transfer the possession of media and related materials of the Package Software Product to your end user.

7. Intellectual Property Infringement

- (1) If and when any third party should demand injunction, initiate a law suit, or demand damages against you under patent right, utility model right, design patent right, trademark right, copyright and/or any other right relating to any of the Package Software Product including but not limited to its related materials, you shall notify Yokogawa of that effect in writing without delay.
- (2) In case of preceding Article 7.(1), you shall assign to Yokogawa all of the rights to defend you, to negotiate and to settle with the claiming party. Furthermore, you shall provide Yokogawa with necessary information or any other assistance for Yokogawa's defense and negotiation. If and when such a claim should be attributable to Yokogawa, Yokogawa shall defend you and negotiate with the claiming party at Yokogawa's cost and expense and be responsible for the final settlement or judgment granted to the claiming party in the preceding Article 7.(1).
- (3) When any assertion of the infringement of third party's right defined in Article 7.(1) is made or when, at Yokogawa's judgment, there is possibility of such assertion, Yokogawa will, at its discretion and not obligation, take any of the following countermeasures at Yokogawa's cost and expense.
 - a) To acquire the necessary right from a third party which has lawful ownership of the right so that you will be able to continue to use the Package Software Product;
 - b) To replace the Package Software Product with the one, which avoids the infringement;
 - c) To remodel the Package Software Product so that the Package Software Products can avoid the infringement of such third party's right; or
 - d) If and when Yokogawa fails to take either of the countermeasures set forth in a. through c. above, Yokogawa shall indemnify you only by paying back the price amount of the Package Software Product, which Yokogawa has already received.

8. Limitation of Liability

IF AND WHEN YOU SHOULD INCUR ANY DAMAGE RELATING TO THE PACKAGE SOFTWARE PRODUCT OR SERVICE YOKOGAWA PROVIDED TO YOU UNDER THE CONDITIONS DUE TO THE REASON ATTRIBUTABLE TO YOKOGAWA, YOKOGAWA SHALL TAKE ACTIONS IN ACCORDANCE WITH THIS AGREEMENT. HOWEVER, IN NO EVENT SHALL YOKOGAWA BE RESPONSIBLE FOR ANY INDIRECT DAMAGE, CONSEQUENTIAL DAMAGE, PUNITIVE DAMAGE AND/OR SPECIAL DAMAGE, INCLUDING WITHOUT LIMITATION, LOSS OF OPERATIONAL PROFIT, LOSS OF INTERRUPTION OF YOUR BUSINESS, AND LOSS OF BUSINESS INFORMATION AND THAT YOKOGAWA'S LIABILITY TO YOUR DAMAGE SHALL NOT EXCEED THE PRICE AMOUNT OF THE PACKAGE SOFTWARE PRODUCT OR SERVICE YOKOGAWA RECEIVED. IT IS SPECIFICALLY AGREED BY BOTH PARTIES THAT YOKOGAWA SHALL BE RELEASED AND DISCHARGED FROM PART OR ANY AND ALL OF THE LIABILITY AND RESPONSIBILITY UNDER THIS AGREEMENT IF YOU MODIFY, REMODEL, COMBINE WITH OTHER SOFTWARE OR PRODUCTS, OR CAUSE ANY DEVIATION FROM THE BASIC SPECIFICATIONS OR FUNCTIONAL SPECIFICATIONS, WITHOUT YOKOGAWA'S PRIOR WRITTEN CONSENT.

9. Term

This Agreement shall become effective from the date when you receive the Package Software Product and continues in effect unless or until terminated as provided herein, either party gives thirty (30) days prior written notice to the other party or you cease using the Package Software Product by itself.

10. Injunction for Use

During the term of this Agreement, Yokogawa may, at its own discretion, demand injunction against the Package Software Product in case Yokogawa deems the Package Software Product is used improperly or under severer environments than those Yokogawa first granted or any other condition which Yokogawa may not permit.

11. Confidentiality Obligation

- (1) You agree that the structure, organization and code of the Package Software Product are the valuable trade secrets of Yokogawa or third party which grants Yokogawa the rights and the Package Software Product contains other proprietary information and know-how of Yokogawa and its third party, which may be disclosed for the purpose of License granted hereunder. You shall not divulge any of such trade secrets, information and know-how to any third party without Yokogawa's consent and shall not use for any purpose other than License use.
- (2) You shall maintain the Package Software Product, its media, any printing material and any copy thereof in confidence and with care to comply with the said secrecy obligation and protect the right of Yokogawa and third party which grants Yokogawa the rights.

12. Termination by Cause

Yokogawa may terminate this Agreement without any notice or demand to you immediately, if you breach any of the terms and conditions of this Agreement. However, Articles 2.(4), 2.(6), 2.(8), 7, 8 and 11 shall survive even after the termination.

13. Governing Law and Arbitration

- (1) This Agreement shall be governed by and construed in accordance with the laws of Japan.
- (2) All disputes, controversies or differences which may arise between the parties hereto, out of or in relation to or in connection with this Agreement shall be finally settled by arbitration in Tokyo, Japan in accordance with the Commercial Arbitration Rules of the Japan Commercial Arbitration Association. The arbitration is conducted in the Japanese language. The award rendered by the arbitrator(s) shall be final and binding upon the parties hereto.

Concluded.