

## FOGHORN END USER LICENSE AND SERVICES AGREEMENT

IMPORTANT NOTICE--PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ACCEPTING ITS TERMS. THIS LICENSE AGREEMENT ("**AGREEMENT**") IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR AN ENTITY), AND JOHNSON CONTROLS, INC. WITH A CORPORATE ADDRESS AT 5757 N. GREEN BAY AVE, MILWAUKEE, WI 53201 USA ("JCI"). BY CLICKING ON THE "ACCEPT" BUTTON, BY INSTALLING THE SOFTWARE, BY EXECUTING A DOCUMENT THAT REFERENCES THIS AGREEMENT OR BY OTHERWISE USING ANY OF THE LICENSED MATERIALS, YOU AGREE TO BE BOUND BY, AND ACCEPT THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT CLICK ON THE ACCEPT BUTTON AND DO NOT INSTALL OR OTHERWISE USE THE LICENSED MATERIALS. YOU AGREE THAT YOUR USE OF THE LICENSED MATERIALS ACKNOWLEDGES THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY AND ACCEPT ITS PROVISIONS. THE TERMS OF THIS AGREEMENT EXCLUSIVELY GOVERN YOUR ACCESS AND USE OF THE LICENSED MATERIALS UNLESS THERE IS A SEPARATE SIGNED AGREEMENT BETWEEN YOU AND JCI GOVERNING YOUR USE OF THE LICENSED MATERIALS. JCI IS NOT RESPONSIBLE FOR ANY THIRD PARTY SOFTWARE, PROPRIETARY OR OTHERWISE, UTILIZED IN CONNECTION WITH THE LICENSED MATERIALS, AND JCI SHALL HAVE NO LIABILITY FOR YOUR USE OF SUCH THIRD PARTY SOFTWARE.

This Agreement is entered into effective as of the date of your acceptance of this Agreement ("**Effective Date**"). If you are entering into this Agreement on behalf of a company or other entity, you represent and warrant that you have authority to bind such company or other entity to this Agreement. This Agreement governs your use of the following, all of which collectively are the "**Licensed Materials**", to develop applications: (a) JCI's application programming interface; (b) JCI software whether in source or executable code ("**Software**"); (c) any advice, opinions, reports, models (including, but not limited to analytic, prototype, mockup and/or machine learning models), results and other deliverables ("**Advice**"), provided by JCI in its performance of Services (as defined below); (d) any accompanying or related documentation to (a), (b) or (c); and (e) other materials including, but not limited to content made available by JCI; all as may be modified by JCI from time to time in its sole discretion. By building applications that interact with JCI's edge computing products and services (the "**JCI Platform**") or by using the Licensed Materials, you unconditionally consent and agree to be bound by, and a party to, this Agreement.

**1.0 License.** Subject to the terms and conditions of this Agreement, JCI grants you a nonexclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term to: (a) install the Software on your device and equipment endpoints; (b) use the Licensed Materials to develop, prototype, implement and test applications, services or products that will interact with the JCI Platform ("**Your Applications**") for your internal business analytics purposes; and (c) use the models, if any (and if any models are code, in object code only), provided as Advice in conjunction with your licensed use of the Software. Any copies of the Licensed Materials that you are permitted to make pursuant to this Agreement must contain the same copyright and other proprietary notices that appear on or in the Licensed Materials.

**2.0 Third Party and Open Source.** You acknowledge that the Software may be accompanied by or contain certain open-source software and third party software (the "**Open-Source Licenses**" and "**Third Party Licenses**"). In such event, JCI shall use commercially reasonable efforts to provide the applicable license terms and other information regarding the Open-Source Licenses and Third Party Licenses in accompanying text files available on installation, in README files, on a page on JCI's website ([www.johnsoncontrols.com/legal/documentation](http://www.johnsoncontrols.com/legal/documentation)), or by some other reasonable means. To the extent inconsistent with the terms of this Agreement, Open-Source Licenses and Third Party Licenses shall be governed by the applicable open-source license which are hereby incorporated by reference and you hereby agree to be bound by the terms of such Open-Source Licenses and Third Party Licenses.

### **3.0 Restrictions and Acceptable Use.**

3.1 Except as may be expressly permitted herein, you will not, by yourself, or through any affiliates, agents or other third parties:

- (a) use the Licensed Materials for purposes other than for internal use or beyond the scope of use permitted in Section 1.0 above;
- (b) disclose, without JCI's prior written consent, performance or capacity statistics or the results of any benchmark test performed on Software, if any;
- (c) sell, distribute, lease, rent, assign, license, sublicense, or otherwise transfer the Licensed Materials, in whole or in part;
- (d) decipher, decompile, disassemble, reverse engineer or otherwise attempt to discover the source code, algorithm, tags, specifications, architecture, structure or other elements of the Licensed Materials or any part thereof;
- (e) modify, copy, adapt, translate or otherwise make any changes to the Licensed Materials or any part thereof;

(f) allow access to the Licensed Materials by anyone other than your authorized employees and contractors who have a need to such access and who are bound by a nondisclosure or confidentiality agreement sufficient to comply with this Agreement;

(g) use the Licensed Materials to provide analytics services to third parties, or otherwise use the Licensed Materials on a service bureau basis; or

(h) provide, disclose, divulge or make available to, or permit use of the Licensed Materials by any third party other than you and your authorized employees and contractors.

3.2 You may not use the Software to submit or link to any content that, in JCI's sole discretion:

(a) infringes or violates the intellectual property or other rights of any person or entity;

(b) intentionally interferes with the operation of the Software or JCI's systems;

(c) violates anyone's privacy or publicity rights;

(d) breaches any duty of confidentiality that You owe to any person or entity;

(d) is vulgar, offensive, inappropriate, harassing, defamatory, abusive, lewd, pornographic, obscene or otherwise objectionable;

(e) contains or installs any viruses, worms, bugs, Trojan horses, malware or other code, files or programs designed or having the capability to disrupt, damage or limit the functionality of any software or hardware;

(f) contains false or deceptive language or comparative claims regarding JCI's or third parties' products, advertising, commercial referrals, spam, chain letters, or any other solicitation, including solicitation of lawsuits; or,

(g) any content that JCI may reject for any reason in its sole discretion.

**4.0 Modifications.** You acknowledge and agree that JCI may modify this Agreement, the JCI Platform and/or the Licensed Materials, from time to time, without notice (a "**Modification**"). A Modification to this Agreement will become effective upon renewal of your then-current subscription term. A Modification to the JCI Platform and/or the Licensed Materials may be made at any time, and will be effective when made generally available. You acknowledge that a Modification may have an adverse effect on Your Applications, including but not limited to changing the manner in which Your Applications communicate with the JCI Platform. Your sole recourse for such adverse effects is to terminate this Agreement pursuant to the Section titled "Termination". Your continued access to or use of the JCI Platform or any Licensed Materials following a Modification shall constitute binding acceptance of the applicable Modification(s). JCI will attempt, but is not obligated, to provide thirty (30) days' notice of any Modification to the Software that is not backwards compatible or that JCI reasonably believes will remove or materially alter significant functionality of the JCI Platform.

## **5.0 Confidentiality.**

5.1 "**Confidential Information**" means the terms and conditions of this Agreement, and any other non-public information , including, but not limited to, information regarding each party's products, services, product designs, plans and roadmaps, prices and costs, trade secrets, know how, inventions, development plans, techniques, processes, programs, schematics, software, data, customer lists, financial information, sales and marketing plans, business opportunities, personnel data, research and development activities, and pre-release products, or any other information which the receiving party ("**Receiving Party**") knows or reasonably ought to know is confidential, proprietary or trade secret information of the disclosing party ("**Disclosing Party**"). Notwithstanding the foregoing, "Confidential Information" will not include any information that is: (a) or becomes publicly available through no act or omission of the Receiving Party; (b) obtained by the Receiving Party without restriction from a third party the Receiving Party believes is legally entitled to make such disclosure; (c) independently developed by the Receiving Party by persons who have not had access to the Confidential Information of the disclosing party; or (d) known to the Receiving Party without restriction prior to its receipt from the Disclosing Party.

5.2 Each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information for any purpose outside the scope of the Agreement, and shall use reasonable efforts not to disclose such Confidential Information to any third party. Without limiting the foregoing, each party shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other party under this Agreement. Each party agrees that it will make Confidential Information available only on a "need to know" basis and only to its employees and representatives who are bound in writing to protect the confidentiality of such Confidential Information. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of such other party's Confidential Information, and, upon the request of the other party, shall promptly return to the other party all copies of Confidential Information within its possession or control. However, a

party will not be liable for any disclosure to the extent it is required by a court of competent jurisdiction, administrative agency or governmental body, or by law, rule or regulation, or by applicable regulatory or professional standards, provided that the receiving party, if legally permissible, provides prompt written notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

## 6.0 Proprietary Rights.

6.1 Ours. You acknowledge that JCI Confidential Information, the Licensed Material, Modifications, JCI methodologies, and any improvements, enhancements, additions, modifications or derivatives of the foregoing, as well as the JCI logo and any trademarks, service marks, trade names, other logos or designations of origin or ownership owned by JCI and used in connection with or embodied in the Licensed Material, and any intellectual property rights in any of the foregoing ("**JCI Property**"), are and will remain the sole and exclusive property of JCI or its suppliers. Any of JCI's rights in and to the JCI Property not expressly granted under this Agreement are withheld. There are no implied licenses.

6.2 Yours. JCI acknowledges that your Confidential Information, and Your Applications (subject to any JCI Technology embodied in Your Applications), are and will remain your sole and exclusive property.

6.3 Feedback. You may, but are not obligated to, provide JCI with feedback or comments related to the Licensed Materials and/or your experience with and use thereof ("**Feedback**"). You agree that JCI shall be free to copy, modify, create derivative works of, publicly display, disclose, distribute, license, sublicense, incorporate, and otherwise use Feedback, including all derivative works thereto, for any and all purposes, commercial or otherwise, with no obligation of any kind to you.

**7.0 Fees and Payment.** You agree to pay JCI the fees in the amounts and on the terms and conditions specified in JCI's applicable quote, order form, or other mutually agreed upon document. Unless otherwise set forth on JCI's quote, payment terms are net thirty (30) days. Any payments not paid when due will accrue interest at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

**8.0 Support.** Subject to payment of the applicable subscription fees and your compliance with this Agreement, you are entitled to JCI's then current general availability support for the Software. Any such support provided by JCI shall be subject to the terms of this Agreement. You are solely responsible for providing all support of Your Applications.

## 9.0 Professional Services.

9.1 In the event you and JCI enter into a mutually agreed upon work order, statement of work or similar document ("**SOW**"), JCI shall use commercially reasonable efforts to provide the Advice and perform the professional and/or data science services specified in the SOW (the "**Services**"). Services and Advice may include, but are not limited to, sample data ingestion, analyses and assessments of data and/or your environment, models, training of your representatives, and the installation, configuration, and/or implementation of the Software and other JCI Property.

9.2 A change order to any SOW shall be made only in writing executed by authorized representatives of both parties (a "**Change Order**"). The foregoing notwithstanding, if JCI, at your request or with your written approval, performs work that is not covered by, or that exceeds the scope of Services in, a SOW, such work shall be deemed Services provided pursuant to this Agreement for which you shall compensate JCI on a time and materials basis in accordance with JCI's then current rates.

## 10.0 Warranty and Disclaimer.

10.1 You represent and warrant that: (a) you have the necessary power and authority to enter into this Agreement, and that the performance of your obligations will not constitute a breach or otherwise violate any other Agreement or the rights of any third party arising therefrom; (b) you will maintain, throughout the Term, all required rights and licenses related to Your Applications and Your Applications shall not infringe or otherwise violate any third party rights, including but not limited to third party privacy or intellectual property rights; and (c) your use of the Licensed Materials complies with all applicable foreign, federal, state and local laws, rules, and regulations.

10.2 JCI WARRANTS THAT THE: (A) SOFTWARE WILL SUBSTANTIALLY CONFORM TO THE APPLICABLE DOCUMENTATION FOR NINETY (90) DAYS FROM THE DATE OF DELIVERY; AND (B) SERVICES WILL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER IN CONFORMITY WITH THE APPLICABLE SOW FOR NINETY (90) DAYS FROM COMPLETION OF THE SERVICES. IN THE EVENT THAT, DURING THE APPLICABLE NINETY (90) DAY WARRANTY PERIOD, YOU DISCOVER THAT THE SOFTWARE OR THE SERVICES DO NOT CONFORM TO THE WARRANTY SET FORTH IN THIS SECTION 10.2, YOU SHALL PROMPTLY NOTIFY JCI IN WRITING OF SUCH NONCONFORMANCE, AND JCI SHALL, AT JCI'S OPTION AND SOLE COST AND EXPENSE, AND AS YOUR SOLE AND EXCLUSIVE REMEDY, PROMPTLY EITHER: (I) PROVIDE SOFTWARE AND/OR SERVICES IN CONFORMANCE WITH THIS WARRANTY, OR (II) REFUND TO YOU THE FEES PAID FOR SUCH NONCONFORMING SOFTWARE AND/OR

SERVICES. EXCEPT AS SET FORTH IN THIS SECTION 10.2, THE LICENSED MATERIALS, JCI PLATFORM AND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. JCI DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE LICENSED MATERIALS THE JCI PLATFORM AND THE SERVICES, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, RESULTS OF USE, RELIABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, INTERFERENCE WITH QUIET ENJOYMENT, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS AND ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. FURTHER, JCI DISCLAIMS ANY WARRANTY THAT YOUR USE OF THE LICENSED MATERIALS OR THE JCI PLATFORM WILL MEET ANY OR ALL OF YOUR REQUIREMENTS OR THAT SUCH USE WILL BE UNINTERRUPTED, ERROR-FREE, VIRUS-FREE, OR SECURE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

#### **11.0 Indemnification.**

11.1 By JCI. JCI will indemnify and hold you harmless from any and all claims, damages, losses, liabilities, actions, judgments, costs, and expenses brought by a third party arising out of or in connection with any allegation that your use of the Licensed Materials, as permitted herein, infringes the intellectual property rights of a third party

11.2 By You. You will indemnify and hold JCI harmless from any and all claims, damages, losses, liabilities, actions, judgments, costs, and expenses brought by a third party arising out of or in connection with: (a) any act or omission by you in connection with your use of the JCI Platform or the Licensed Materials; (b) your use of the JCI Platform or the Licensed Materials, except to the extent JCI is responsible under Section 11.1; or (c) Your Applications.

**12.0 Limitation of Liability.** In no event shall: (a) JCI or its suppliers or channel partners ("**JCI Partners**"), be liable to you for any special, incidental, indirect, direct, exemplary, punitive, compensatory, or consequential damages (including loss of use, data, business or profits) arising out of or in connection with this Agreement, whether such liability arises from any claim based upon contract, warranty, tort (including negligence), strict liability or otherwise, and whether or not JCI has been advised of the possibility of such loss or damage; and (b) JCI's and JCI Partners' cumulative aggregate liability arising out of or related to this Agreement exceed the amount received by JCI pursuant to this Agreement in the twelve (12) months prior to the date the cause of action arose. Any claim arising out of or relating to this Agreement must be brought within one (1) year. The foregoing limitations will survive and apply even if any limited remedy specified in this agreement is found to have failed of its essential purpose. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations and exclusions may not apply to you.

**13.0 Term and Termination.** This Agreement shall commence on the Effective Date and will remain in effect for so long as you have a valid and unexpired license key, until terminated pursuant to this Section (the "**Term**"). Either party may terminate this Agreement at any time, for any reason, or for no reason including, but not limited to, if you violate any provision of this Agreement. Any termination of this Agreement shall also terminate the licenses granted hereunder. Upon termination of this Agreement for any reason, you will stop using, and either return to JCI, or destroy and remove from all computers, hard drives, networks, and other storage media, all copies of the Licensed Materials and any Confidential Information in your possession, and shall certify to JCI that such actions have occurred. The Sections titled "Restrictions", "Proprietary Rights", "Support", "Confidentiality", "Representations and Warranty and Disclaimer", "Indemnification", "Limitation of Liability", "Use of Data" and "Miscellaneous" shall survive termination of this Agreement.

**14.0 Use of Data.** You acknowledge and agree that the Software may obtain information from, or access data about your equipment and can provide JCI with information related to your use of the Software, information regarding your computer system, and information regarding your interaction with the Software, which JCI may use without restriction to provide and improve the Licensed Materials and related products.

#### **15.0 Miscellaneous.**

15.1 Force Majeure. Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquakes, fire and explosions, compliance with any law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including a national or regional emergency, pandemic, but the inability to meet financial obligations is expressly excluded.

15.2 Waiver. Any waiver of the provisions of this Agreement or any agreement related to this Agreement or of a party's rights or remedies under this Agreement or an agreement related to this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or agreement related to this Agreement, or its rights or remedies

at any time will not be construed nor deemed to be a waiver of such party's rights under this Agreement or any agreement related to this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or any agreement related to this Agreement or prejudice such party's right to take subsequent action.

15.3 Applicable Law and Jurisdiction. This Agreement will be governed by and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflict of laws, and you hereby consent to the exclusive jurisdiction and venue of the state and federal courts in the County of San Francisco. This Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods. In the event this Agreement is translated into any language other than English, the original English version shall control and prevail on any question of interpretation or otherwise.

15.4 Severability. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties will endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law. The headings in this Agreement are inserted merely for the purpose of convenience and do not affect the meaning or interpretation of this Agreement.

15.5 Relationship of Parties. This Agreement does not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of this Agreement. Each party hereto is an independent contractor. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

15.6 Non-Assignment. You may not assign your rights or delegate your obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of JCI. Any attempted assignment or delegation without JCI's written consent will be void. The rights and liabilities of the parties under this Agreement will bind and inure to the benefit of the parties' respective successors and permitted assigns.

15.7 Equitable Relief. Each party acknowledges that a breach by the other party of any confidentiality or proprietary rights provision of this Agreement will cause the non-breaching party irreparable damage, for which the award of damages would not be adequate compensation and the non-breaching party is therefore entitled to obtain prompt injunctive relief to enjoin the breaching party from any and all acts in violation of those provisions without the necessity of posting a bond or other security. Such injunctive relief remedy shall be cumulative and not exclusive, and the non-breaching party is entitled to seek any other relief available to such party at law or in equity.

15.8 High Risk Activities and Personal Data Use. The Software is not fault-tolerant and is not designed, manufactured or intended for use in connection with any activities where the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("**High Risk Activities**"). If Your Applications involve the use or processing of personal data, you are solely responsible for: (a) the accuracy and content of such personal data; and (b) compliance with all applicable data protection and privacy laws ("**Personal Data Use**"). Accordingly, JCI and its suppliers specifically disclaim any liability for, and you agree to indemnify JCI from any loss, cost, damage or expense arising from, use of the Software in High Risk Activities or Personal Data Use.

15.9 No Third Party Beneficiaries. The parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

15.10 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written communications between the parties relating in any way to the subject matter hereof. This Agreement is intended by the parties to be a complete and wholly integrated expression of their understanding and agreement. No terms or conditions of your purchase order, acknowledgement or other business form that you may use will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of JCI to object to such terms, provisions or conditions. There are no conditions, understandings, agreements, representations, or warranties expressed or implied, that are not specified herein.

