Terms and Conditions

These are the Terms and Conditions ("Terms" or "Agreement") governing the use of each on-premises proprietary software offering from SMA Technologies ("Company" or "Our") to which You subscribe under a separate, signed Order (each, an "OpCon Solution"). These Terms set out Your rights and obligations regarding use of the OpCon Solution. Your access to and use of the OpCon Solution is conditioned on Your acceptance of and compliance with these Terms. These Terms apply to Customer and all users who access or use the OpCon Solution (each, a "User"). By downloading, installing or using the OpCon Solution, You agree to be bound by these Terms. If You disagree with any part of these Terms, then You may not download, install, or use the OpCon Solution.

1. **Scope.** These Terms provide Customer with access to and use of the OpCon Solution identified in the Order linked to these Terms. For purposes of these Terms, the following capitalized words or phrases will have the specified meaning:

   a. "**Customer" (or "You" or "Your")** *means* the entity identified as the "Customer" in the Order.

   b. "**Data Source"** *means* a specified source of data and information accessed by the OpCon Solution, including, but not limited to, external internet websites, internal intranet websites, third-party applications (e.g., ERP systems and EDI exchanges), private and public websites, emails, or paper documents.

   c. "**Documentation"** *means* the technical and user documentation for the OpCon Solution, located at help. smatechnologies.com, which is incorporated herein.

   d. "**IP Rights"** *means* any patent, trade secret, copyright, and trademark rights applied for and/or existing in the United States or any part of the world.

   e. "**Order"** *means* the ordering document linked to these Terms, which contains the details, duration, subscription capacity, and pricing, among other things, related to Customer's use of an OpCon Solution which shall be considered as integrated and incorporated into these Terms for all purposes.

   f. "**SOW"** *means* a statement of work attached to an Order which contains the details of Company's consulting services related to the OpCon Solution.

   g. "**Support"** *means* those support and maintenance services provided by Company for the OpCon Solution under these Terms.

   h. "**Task"** *means* each unique set of instructions executed in the OpCon Solution. For clarification purposes, a Task that runs one time on one machine counts as one Task. A Task that runs multiple times on the same machine using the same parameters counts as a Task. A Task that runs on multiple machines or using multiple parameters counts as multiple Tasks. For licensing purposes, a Task is counted whether the unit of work completes successfully or fails.

2. **License.**

   a. **License**. Subject to these Terms, Company grants to Customer a non-exclusive, non-transferable, and term-based license (the **"License"**) to use the OpCon Solution in accordance with the following:

      i. Customer may install the OpCon Solution in object code format on those computers specified in the Order and may use the OpCon Solution to perform Tasks, among other functions described in the Documentation;

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ii. Customer may allow its employees, majority-owned affiliates, representatives, consultants, contractors or agents to access and use the OpCon Solution; provided that such access and use of the OpCon Solution must be for the sole benefit of Customer, and Customer remains responsible for such Users' compliance with these Terms;

b. License Restrictions. Customer will not, nor will it permit or assist Users to:

i. decompile, disassemble or reverse engineer the OpCon Solution or otherwise circumvent protection of the OpCon Solution;

ii. use the OpCon Solution to develop or market any conversion utility or aid specific to the OpCon Solution enabling users to convert from the OpCon Solution to an alternative software application;

iii. market, sell, lease, lend, provide, transfer, assign, grant or otherwise commercialize any interest in, the License or the OpCon Solution to any third-party;

iv. print, reproduce or copy in any form, in whole or in part, the OpCon Solution, except as is necessary for its own internal use and for backup purposes. Any and all copies made by Customer are subject to these Terms and are the sole and exclusive property of Company and must remain in the custody and control of Customer. Company may adopt from time to time such mechanical or electronic methods as Company deems necessary to control the unauthorized use or distribution of the OpCon Solution, associated Documentation or supporting material; and

v. make unauthorized changes to the underlying database(s) in the OpCon Solution.

c. Customer Data.

Customer owns all data or information that is provided by Customer or stored in the OpCon Solution or provided from a Data Source or Customer's own systems ("**Customer Data"**). Customer grants Company the right to use the Customer Data solely for purposes of performing under this Agreement. During the term of an Order, Customer may export its Customer Data as allowed by functionality within the OpCon Solution in standardized format, as described in the Documentation. Customer grants Company a non-exclusive, royalty-free license to internally and externally use any aggregated and/or anonymized statistical data regarding the performance of the OpCon Solution, including its processing of Customer Data, in a manner that does not allow for the identification of Customer or disclosure of Customer Data. Such data will be used for auditing the number of tasks used during the term of the Order. Company has no need for Customer Data as described this Section 2(c) other than that which is necessary for account management and billing purposes including contact name, phone number, and email address. In the event Company receives any other type of Customer Data, it will be deleted from all systems immediately upon discovery. At no time should Company solicit Customer Data any other purpose than that mentioned herein.

3. Term and Termination.

a. Term. This Agreement continues until its associated Order has expired or been terminated (whichever is earlier) as provided below.

b. Termination for Material Breach. If either party is in material breach of these Terms, the other party may terminate these Terms at the end of a written 30-day notice/cure period, if the breach has not been cured.

c. Suspension. Company may, after giving Customer reasonable notice, temporarily suspend Customer's access to an OpCon Solution if Customer is 30 days or more overdue in its payment of any subscription fees; or Company believes in good faith that, in using the OpCon Solution, Customer has violated, or will violate, a law.

d. Return of Customer Data. Upon request within 30 days after termination or expiration of this Agreement,

Company will make Customer Data available to Customer in an industry standard format; provided, however, that Company may retain copies of Customer Data that are stored on Company's IT backup and disaster recovery systems until the ordinary course of deletion. After such 30-day period, Company has no obligation to Customer to maintain the Customer Data.

e. **Return of Company Property upon Termination**. Upon termination or expiration (whichever is earlier) of this Agreement for any reason, Customer must pay Company all amounts due and owed under the Order(s) and destroy or return all property of Company. Upon Company's request, Customer will confirm in writing its compliance with this destruction or return requirement.

f. **Further Consequences of Termination Upon termination or expiration of these Terms (whichever is earlier) for any reason all licences granted under these Terms shall immediately terminate and the Customer shall immediately cease all use of the OpCon Solution and the Documentation.**

4. Services.

a. **Support**. Subject to Customer's payment of required Support Fees specified in an Order, if any, Company will provide Support for the OpCon Solution under the terms of Company's Support Policy which is located at smatechnologies.com/support, which is incorporated into these Terms for all purposes (**"Support Policy"**). Support includes the following:

i. Such services necessary to install and maintain the OpCon Solution in order that it performs substantially in accordance with the Documentation;

ii. Such improvements, enhancements, extensions and other changes to the OpCon Solution as are determined by Company to be suitable to the uses made of the OpCon Solution by Customer, subject to Company's warranty obligations in Section 7(a);

iii. Updates for the OpCon Solution as required to cause the OpCon Solution to operate under new versions of Customer's operating system(s); provided, however, Customer acknowledges that Company cannot guarantee that the OpCon Solution can be made to operate with all future versions or releases of any particular operating system.

b. **Consulting Services**. As documented in a mutually-signed SOW, Company will provide specified setup, conversion, installation/implementation, and/or customization services with respect to the OpCon Solution, subject in all respects to these Terms and the SOW.

5. Payment.

a. **Fees**. Subject to Customer's right to dispute fees solely as set out in this section, Customer must pay all fees due under the Order within 30 days of the invoice date, in the currency reflected in each Order. Customer may withhold from payment any amount disputed by Customer in good faith if Customer: (i) timely pays all amounts not subject to dispute; (ii) notifies Company in writing of the dispute prior to the due date, specifying in such notice (1) the amount in dispute, and (2) the reason for the dispute; (iii) works with Company in good faith to resolve the dispute promptly; and (iv) promptly pays any amount determined to be due by resolution of the dispute; provided, however, if any dispute lasts longer than sixty (60) days, Company may cease performance hereunder and exercise any rights at law or equity (including, without limitation, termination for material breach). Company may charge Customer 1.5%

late fees if Customer is 30 days late on a payment. Customer is responsible for all applicable sales, use, withholding, value added tax (VAT) and other similar taxes. No Customer purchase order is required unless specified in an Order.

b. Expenses. Customer will reimburse Company for travel expenses incurred in connection with its performance under a SOW; provided such travel expenses are agreed upon in advance by Customer. In connection with any invoice for expense reimbursement, Company will, upon request, provide copies of receipts and other documents reasonably necessary to verify the amount and nature of any such expenses.

c. Taxes. Payment of all sales tax, use tax, VAT, foreign, state or federal taxes, and any other taxes in any form, offsets, withholding or currency control associated with the Order, and all subsequent Support charges, will reside solely with, and be the financial responsibility of, the Customer, excluding taxes based on Company's income which will be paid by Company. Domestic sales and use taxes will be included on invoices where applicable unless Customer provides Company with reasonable evidence of Customer's exemption from such taxes.

d. Audit and True-ups. Customer will provide reports to Company for the purpose of calculation of fees pursuant to and due under the Order. Customer acknowledges that Company may use functionality within the OpCon Solution to collect usage information to assist in such calculations. Once a year, Company, and its designated representatives, will audit Customer's records that relate to its payment obligations under an Order.

6. Proprietary Rights; Confidentiality; Personal Data.

a. Proprietary Rights. Company and its licensors retain ownership of the OpCon Solution and its associated design, software, documentation, processes, algorithms, and user interfaces, and all IP Rights embodied therein ("Company Technology"). Customer may not remove or modify any proprietary marking or restrictive legends from the Company Technology. Company reserves all rights not expressly granted in these Terms.

b. Mutual Confidentiality.

i. Definition of Confidential Information. Confidential Information means all non-public information disclosed by a party ("**Discloser**") to the other party (**"Recipient"**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**"Confidential Information"**). Customer Confidential Information includes, without limitation, the Customer Data. Company's Confidential Information includes, without limitation, the Order, and the Company Technology.

ii. Protection of Confidential Information. A Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) and will not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information to those of its employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the terms of this Agreement.

iii. Exclusions. Confidential Information excludes information that: (1) is or becomes generally known to the public without breach of any obligation owed to Discloser, (2) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (3) is received from a third-party without breach of any obligation owed to Discloser, or (4) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order but will provide Discloser with advance notice to seek a protective order.

c. Protection of Personal Data.

i. Customer shall be the "Data Controller" of any personal data processed while using the OpCon Solution ("**Personal Data**"), and must therefore comply with its legal obligations relating to the processing of personal data.

ii. When the OpCon Solution is installed on premises at a Customer facility, by configuration Company will not have access to Customer network(s) or Personal Data, and does not monitor the processing of Customer Data, except as provided in a separate, signed agreement for Managed Automation Services, as applicable;

iii. (Customer agrees, upon demand, to defend, hold harmless and indemnify Company against any claim, damage, loss, fine, cost, expense or liability suffered or otherwise incurred by the Company arising as a result of or in connection with breach of this clause (c).

7. Warranties.

a. OpCon Solution Warranty. Company warrants that: (i) the OpCon Solution will contain the features and functions contained in the Documentation; and (ii) the functionality or features of the OpCon Solution may change but will not materially decrease during any paid term. AS CUSTOMER'S EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY UNDER THIS WARRANTY, Company will, at its discretion, fix or replace the non-conforming portion of the OpCon Solution within a commercially reasonable period of time after Customer notifies Company of the breach; provided, however, if within the 60 day period following initial delivery of the OpCon Solution to Customer, Company cannot remedy the breach, then Customer may terminate the Order and request a refund of the fees paid for such OpCon Solution. This warranty does not apply if: (1) the OpCon Solution is not used in accordance with Documentation, (2) any equipment owned or supplied by Customer malfunctions, or (3) any other cause which is not attributable to Company.

b. Software Security Warranty. Company warrants that, with respect to the OpCon Solution: (i) it implements and maintains commercially reasonable technical, physical, administrative and organizational controls and procedures that are in each case designed to (1) detect, prevent and respond to attacks, intrusions, or the introduction of third party malicious software, and (2) identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of Customer environment hosting Customer data; (ii) Company regularly tests and monitors the effectiveness of such controls, systems, and procedures; and (iii) Company designates an employee or employees to coordinate implementation and maintenance of its security measures.

c. Consulting Services Warranty. Company warrants that, for a period of 60 days after delivery of any Consulting Service, it has performed such Consulting Service in accordance with the SOW and generally accepted practices within the software industry. Customer must notify Company of any breach of this warranty no later than 10 days after Customer's discovery of the breach. AS CUSTOMER'S EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY UNDER THIS WARRANTY, Company will re-perform the non-conforming portion of the Consulting Services within a commercially reasonable period of time; provided, however, if Company cannot remedy the breach within a reasonable period of time after Customer notifies Company of the breach, but in any event, no later than 60 days after delivery of the Consulting Service, then Customer may terminate the Order and request a refund of the portion of the fee attributable to such non-conforming Consulting Service.

d. Support Warranty. Company warrants that: (i) it will provide Support in accordance with these Terms, the Support Policy and generally accepted practices within the software industry; and (ii) that the Support Policy may change, but

will not materially degrade Support under these Terms.

e. DISCLAIMER. EXCEPT AS EXPRESSLY WARRANTED IN THIS SECTION 7, COMPANY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WHILE COMPANY TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE OPCON SOLUTION, COMPANY DOES NOT GUARANTY THAT THE OPCON SOLUTION CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE OPCON SOLUTION MAY NOT BE ERROR FREE AND USE MAY BE INTERRUPTED.

8. Indemnities; Insurance.

a. **Indemnity.** Company will defend or settle any third-party claim against Customer to the extent such claim alleges that the OpCon Solution (and its underlying technology) infringes or misappropriates its IP rights; provided that Customer promptly notifies Company of the claim in writing, cooperates with Company in the defense, and allows Company to solely control the defense or settlement of the claim (provided that Company may not settle any claim that admits to wrongdoing on the part of Customer or imposes any liability on Customer without Customer's prior written consent, which may not be unreasonably withheld, conditioned or delayed).

i. Company will pay or reimburse Customer any costs incurred in performing its obligations above, and any Company -negotiated settlement amounts or court-awarded damages.

ii. If such a claim occurs or appears likely to prevail on its merits, in Company's sole reasonable discretion, then Company may at its expense modify the OpCon Solution without material loss of function, procure the necessary rights, or replace it with a functional equivalent.

iii. If Company determines that none of the above options are commercially feasible, then Company may terminate the applicable Order, in whole or in part, and will refund to Customer any prepaid and unused fees for such terminated OpCon Solution for the remaining balance of the term set out in the applicable Order.

iv. Company has no obligation or liability under this Section to the extent of any claim arising from: Company's compliance with Customer's specifications, where there would be no infringement but for these specifications; a combination of the OpCon Solution with other technology not contemplated by the Documentation, where the infringement would not occur but for the combination; use of Customer Data; Customer's alteration, modification, conversion or reverse engineering of the OpCon Solution; or Customer's use of the OpCon Solution in violation of these Terms.

THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND COMPANY'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

b. **Insurance.** Company agrees to carry and maintain during the term of this Agreement, at its own cost, commercially reasonable insurance policies and coverage amounts which are incorporated herein by reference. Upon Customer's request, Company will provide evidence of such insurance.

9. Limitations on Liability.

a. EXCLUSION OF DAMAGES. EXCEPT FOR CUSTOMER'S VIOLATION OF THE LICENSE, NEITHER PARTY IS LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF OR UNAUTHORIZED ACCESS TO DATA OR INFORMATION, AND LOST PROFITS) .

b. TOTAL LIMIT ON LIABILITY. EXCEPT FOR INDEMNITY OBLIGATIONS SET OUT IN THESE TERMS, CUSTOMER'S PAYMENT OBLIGATIONS, OR A PARTY'S ACTS OF GROSS NEGLIGENCE OR WILLFUL TORTIOUS MISCONDUCT, EACH PARTY'S TOTAL LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS (WHETHER IN CONTRACT, TORT OR OTHERWISE) WILL NOT EXCEED THE GREATER OF THE AMOUNT PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE ORDER WITHIN THE 12 MONTH PERIOD PRIOR TO THE EVENT THAT GAVE RISE TO THE CLAIM.

c. Exclusions and Limitations. The fees payable by Customer under these Terms take account of the exclusions and limitations of liability and warranty provided under these Terms, which reflects the allocation of risks agreed between the parties, and Customer must consequently assume liability or insure itself for any damage or loss related to such exclusions and limitations. Customer confirms that its insurers are fully aware and agreed with these exclusions and limitations to be also applicable to any recourse by Customer's insurers, either by direct action or subrogation.

10. General.

a. Governing Law and Forum. Terms are governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of these Terms. Any suit or legal proceeding must be exclusively brought in the federal or state courts for the jurisdiction of the main address of the defendant in such proceedings, and each party submits to this personal jurisdiction and venue. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

b. Entire Agreement. These Terms and associated Order(s) constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter.

c. No Assignment. Neither Company nor Customer may assign or transfer Terms, in whole or in part, to a third-party without the other party's prior written consent; provided, however, either party may assign these Terms in connection with a sale of all or substantially all of its assets if such party (i) provides written notice of such assignment specifying the identity and contact information for the assignee, and (ii) ensures that the assignee has agreed in writing to be bound by these Terms. Any assignment in violation of this section is void.

d. Enforceability. If any provision of these Terms is found to be invalid or unenforceable, the other terms remain in effect.

e. Force Majeure Neither party is liable for events beyond their control, including without limitation force majeure events, due to contingencies beyond its control whether directly or indirectly, including but not limited to, fire, explosion, strike, freight embargo, act of God, or of war, civil disturbance, act of any government or any agency or official thereof, labor shortage, transportation contingencies, severe weather, default of manufacturer or supplier as a subcontractor, quarantine or restriction, epidemic or catastrophe, or other conditions beyond the control of such party. In some cases, a country's laws may mandate a different definition of force majeure; in such a case, that definition of force majeure will replace the definition in this Section.

f. Money Damages Insufficient. Any breach by a party of these Terms or a violation of the other party's IP Rights could cause irreparable injury or harm to the other party. The other party may seek injunctive relief to stop such breach or violation or to prevent any future breach or violation.

g. No Additional Terms. No additional or conflicting terms of a Customer purchasing document shall be applicable to the Agreement.

h. Survival, CISG. Any terms that by their nature survive termination of these Terms for a party to assert its rights and receive the protections of these Terms, will survive. The UN Convention on Contracts for the International Sale of Goods does not apply.

i. Relationship of the Parties.   The parties are independent contractors with respect to each other.

j. Export Control Laws. Customer will not import, export, re-export, or transfer, directly or indirectly, any part of the OpCon Solution or any underlying information or technology, except in full compliance with all applicable laws and regulations.

k. Notices. Unless otherwise agreed to by the Parties, all notices required under these Terms (except those relating to OpCon Solution pricing, changes and upgrades) will be deemed effective when received and made in writing by either (i) registered mail, (ii) certified mail, return receipt requested, (iii) overnight mail, addressed and sent to the address in the Order, or (iv) electronic mail to the contact listed in the Order.