

## END USER LICENSE AGREEMENT

**NOTICE TO END USER: BY DOWNLOADING OR INSTALLING THE SOFTWARE, OR BY USING THE DATALOGIC PRODUCT THAT INCLUDES THIS SOFTWARE, THE END USER CONSENTS TO BE BOUND BY THIS AGREEMENT. IF THE END USER DOES NOT AGREE WITH ALL OF THE TERMS OF THIS AGREEMENT, THEN DATALOGIC IS NOT WILLING TO LICENSE THE SOFTWARE AND THE END USER IS NOT ALLOWED TO DOWNLOAD, INSTALL OR USE THE SOFTWARE OR THE DATALOGIC PRODUCT**

This End User License Agreement ("EULA") is between Datalogic IP Tech S.r.l. having its registered office at Via San Vitalino 13, 40012 Calderara di Reno (Bologna), Italy ("Datalogic"), and you, either an individual or a single entity, ("End User or "You") who has purchased one or more SG4 FIELDBUS safety light curtains ("Datalogic Product") subject to the terms and conditions provided in any relevant purchase or sale contract. This EULA applies to the software contained in the Datalogic Product ("Embedded Software") and to any other software, to the extent applicable, offered as optional application software ("Application Software" that together with "Embedded Software" is herein referred to as "Software").

### 1. Grant of License

1.1 Datalogic grants to End User, a personal, non-exclusive, non-transferable, non-sublicensable, revocable, limited license to use the Software, solely on the Datalogic Product in which it is embedded or for which it is intended for use, in machine-readable form only, solely for End User's internal business purposes.

1.2 End Users shall not distribute, sublicense, rent, loan, lease, assign, export, re-export, resell, ship or divert or cause to be exported, re-exported, resold, shipped or diverted, directly or indirectly, the Software under this Agreement. End User shall not, and shall not permit others to: (i) modify, translate, decompile, reverse engineer, disassemble, or extract the inner workings of the Software, (ii) copy the functionality of the Datalogic Products; (iii) remove any proprietary notices, marks, labels, or logos from the Datalogic Products; (iv) rent or transfer all or some of the Software to any other party without Datalogic's prior written consent.

1.3. Title to the licensed Software shall be and remain with Datalogic or the third party from whom Datalogic has obtained a license right. This Agreement does not grant to End User any intellectual property rights. As used in this Agreement the term "purchase" or its equivalent when applied to the Software shall mean "acquire under license". End User is not entitled to receipt or use of the source code of any licensed Software.

1.4 Portions of the Datalogic Product are protected by the relevant and applicable patent and copyright laws, international treaty provisions, and other applicable laws. Therefore, End User must treat the Datalogic Product like any other copyrighted material (e.g., a book or musical recording) except that End User may make one copy of the Software solely for back-up purposes. Unauthorized duplication of the Software constitutes copyright infringement.

1.5 Any use of the Software outside of the conditions set forth herein is strictly prohibited and will be deemed a breach of this Agreement resulting in immediate termination of this Agreement. In the event of a breach of this Agreement, Datalogic will be entitled to all available remedies at law or in equity (including but not limiting to immediate termination of the license without notice, immediate injunctive relief and repossession of all Datalogic Products).

1.6 Without prejudice of the foregoing, End User grants to Datalogic and its independent accountants or consultants the right to examine End User's books, records and accounts during End User's normal business hours to verify compliance with this Agreement. In the event such audit discloses non-compliance with this Agreement, Datalogic shall be entitled to immediately terminate the Agreement, request End User to promptly pay all (additional) license fees due and any further damages, if any.

## **2. License Fee**

License fees shall be due by End User to Datalogic according to the terms provided for in the relevant contract for the purchase of the Datalogic Product.

## **3. Termination**

Without prejudice to any other rights or remedies Datalogic may have, Datalogic may terminate this Agreement if End User fails to comply with the terms and conditions of this Agreement. Datalogic may terminate this Agreement by offering you a superseding Agreement for the Software or any replacement or modified version of or upgrade to the Software and conditioning your continued use of the Software or such replacement, modified or upgraded version on your acceptance of such superseding Agreement. In addition, either party may terminate this Agreement at any time. Subject to the foregoing, termination shall be effective upon notice to the other party. In the event that this Agreement terminates for any reason, End User's license to use the Software will immediately terminate, and End User must immediately stop using the Software, destroy all copies of the Software and all of its component parts, and, upon request, provide an affidavit certifying your compliance with the foregoing. The provisions of Sub-sections 1.2, 1.3, 1.4, 1.5, 4, 5, 6, 8, and 11 shall survive termination of this Agreement.

## **4. Limited Warranty**

Datalogic warrants that, under normal use and operation, the Software will conform substantially to the applicable Datalogic Product documentation for the period specified in the same, provided that the Software is used with the Datalogic Product. Datalogic's entire liability and End User's sole and exclusive remedy for any breach of the foregoing limited warranty will be, at Datalogic's option, the provision of a downloadable patch or replacement software.

Datalogic does not warrant (i) that Software will meet End User's requirements; (ii) that Software will be uninterrupted or defect error free; (iii) any non conformity derived from unauthorized use, and/or improper installation or repair not in compliance with Datalogic Product documentation. End User agrees that the existence of such non conformities or errors and Datalogic's inability to remedy such errors shall not constitute a breach of this Agreement.

EXCEPT AS PROVIDED IN THIS AGREEMENT, THE DATALOGIC PRODUCT IS PROVIDED "AS IS" AND DATALOGIC MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO THE DATALOGIC PRODUCT OR SOFTWARE, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **5. Limitation of Liability**

EXCEPT AS PROVIDED IN THIS AGREEMENT, NEITHER DATALOGIC NOR ITS LICENSORS SHALL BE LIABLE FOR ANY CLAIMS AGAINST END USER BY ANY OTHER PARTY. IN NO EVENT SHALL DATALOGIC'S LIABILITY FOR DAMAGES, IF ANY, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, WARRANTY, OR ANY OTHER BASIS, EXCEED THE PRICE OR FEE PAID BY END USER FOR THE DATALOGIC PRODUCT. UNDER NO CIRCUMSTANCES SHALL DATALOGIC OR ITS LICENSORS BE LIABLE TO END USER OR ANY THIRD PARTY FOR LOST PROFITS, LOST DATA, INTERRUPTION OF BUSINESS OR SERVICE, OR FOR ANY OTHER SPECIAL, CONSEQUENTIAL, CONTINGENT, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR OTHER SIMILAR DAMAGES, EVEN IF DATALOGIC OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. END USER MUST BRING ANY ACTION UNDER THIS AGREEMENT WITHIN 12 (TWELVE) MONTHS AFTER THE CAUSE OF ACTION ARISES.

## **6. Indemnification**

To the maximum extent permitted by law, End User agrees to defend, indemnify and hold harmless Datalogic, its affiliates and their respective directors, officers, employees and agents from and against any and all claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees) arising out of or accruing from or related to Licensee's failure to

comply with the terms of this Agreement, including but not limited to (1) non compliance with any applicable laws or regulations with Datalogic product documentation, (2) unauthorized use or disclosure of Software, and (3) use of Software in combination with software, hardware, systems, or other items not provided by Datalogic.

## **7. Support**

End User may request support for Software from Datalogic at Datalogic's standard support fees and under Datalogic's standard support terms and conditions in effect at the time the support is requested.

## **8. Government Restricted Rights; International Use**

8.1 Use, duplication, or disclosure of the Software by the U.S. Government is subject to the restrictions for computer software developed at private expense as set forth in the U.S. Federal Acquisition Regulations at FAR 52.227-14(g), or 52.227-19 or in the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013(c)(1)(ii), whichever is applicable.

8.2 If End User is using the Datalogic Product outside of the United States, End User must comply with the applicable local laws of the country in which the Datalogic Product is used and with U.S. export control laws. Without prejudice of the foregoing, the End User agrees to not export or re-export the Software, any part thereof, or any process or service that is the direct product of the Software to any country, person or entity subject to U.S. export restrictions. End User specifically agrees not to export or re-export any of the Software: (i) to any country to which the U.S. has embargoed or restricted the export of goods or services or to any national of any such country, wherever located, who intends to transmit or transport the Software back to such country; (ii) to any person or entity who you know or have reason to know will utilize the Software in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any person or entity who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. End User warrants and represents that neither the U.S. Commerce Department, Bureau of Export Administration nor any other U.S. federal agency has suspended, revoked or denied its export privileges.

## **9. Third Party Software**

The Datalogic Product may contain one or more items of third party software which use is governed by separate third party license, unless otherwise stated.

## **10. Notices**

All notices required or authorized under this Agreement shall be given in writing, and shall be effective when received, with evidence of receipt. Notices to Datalogic shall be sent to the attention of Datalogic IP Tech S.r.l., Legal & IP Department, Via San Vitalino 13, 40012 Calderara di Reno (Bologna), Italy, or such other address as may be specified by Datalogic in writing.

## **11. General Provisions.**

11.1. Entire Agreement; Amendment. This document contains the entire agreement between the parties relating to use of the Datalogic Products and the licensing of the Software and supersedes all prior or contemporaneous agreements, written or oral, between the parties concerning the use of the Datalogic Products and licensing of the Software. This Agreement may not be changed, amended, or modified except by written document signed by Datalogic.

11.2. Waiver. A party's failure to enforce any of the terms and conditions of this Agreement shall not prevent the party's later enforcement of such terms and conditions.

11.3. Governing Law; Venue: End User agrees to the application of the laws of the country in which End User obtained the license to govern, interpret, and enforce all of End User's and Datalogic's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement,

without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

All rights, duties, and obligations are subject to the courts of the country in which End User obtained the license. For licenses granted by Licensee who operates in the countries specified below, the following terms applies.

For Americas:

This Agreement is governed by the laws of the State of Oregon. This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Oregon U.S.A, without regard to the rules governing conflicts of law. The state or federal courts of the State of Oregon located in either Multnomah or Lane counties shall have exclusive jurisdiction over all matters regarding this Agreement, except that Datalogic shall have the right, at its absolute discretion, to initiate proceedings in the courts of any other state, country, or territory in which End User resides, or in which any of End User's assets are located. In the event an action is brought to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, both at trial and on appeal.

For Europe, Middle East and Africa:

This Agreement is governed by the laws of Italy. This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of Italy, without regard to the rules governing conflicts of law. Italian Court of Bologna shall have exclusive jurisdiction over all matters regarding this Agreement, except that Datalogic shall have the right, at its absolute discretion, to initiate proceedings in the courts of any other state, country, or territory in which End User resides, or in which any of End User's assets are located. In the event an action is brought to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, both at trial and on appeal.

For Asia- Pacific Countries:

The validity, interpretation and construction of the Agreement shall be governed by and construed in accordance with Laws of the Republic of Singapore. Parties expressly disclaim the application of the United Nations Convention for International Sale of Goods.

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Singapore.

The number of arbitrators will be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties will appoint a third arbitrator who will act as chairman of the proceedings. Vacancies in the post of chairman will be filled by the president of the SIAC. Other vacancies will be filled by the respective nominating party. Proceedings will continue from the stage they were at when the vacancy occurred. If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator will be the sole arbitrator, provided that the arbitrator was validly and properly appointed. All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of these terms and conditions prevails over any other language version.

11.4. Attorneys' Fees. In the event an action is brought to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, both at trial and on appeal.

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