

## SOFTWARE LICENCE AGREEMENT

**The MXP Firmware Downloader is subject to this Software Licence Agreement. If You continue with the installation You have agreed to this Software Licence Agreement. If You do not agree with this Software Licence Agreement You must delete all copies of the Licensed Software from Your Equipment.**

### Recital:

- A. You have requested that Tyco Australia Group Pty Ltd (“Johnson Controls”) provides You with a licence to use the Licensed Software so that You can reconfigure the site specific configuration database in the Products.
- B. There are benefits to Johnson Controls in allowing certain purchasers of the Products to be able to reconfigure the site specific configuration database in the Products.
- C. In consideration of the aforementioned benefits and Your compliance with the terms and conditions of this Software Licence Agreement, Johnson Controls agrees to provide You with and You agree to accept certain computer software, a licence to use that computer software and software key in respect of that software on the terms and conditions set out in this Agreement.

### It is agreed:

## 1 Definitions and Interpretation

### 1.1 Definitions

In this Agreement, unless the contrary intention is indicated or the contents clearly require otherwise:

“Agreement” means this Software Licence Agreement;

“Associated Documentation” means any manuals, user guides, the Software Key and all other materials provided to You by Johnson Controls at any time which are designed to assist or supplement the understanding, application and/or functionality of the Licensed Software;

“Australian Consumer Law” means Schedule 2 of the Competition and Consumer Act 2010.

“Confidential Information” means all information relating to the Licensed Software or Johnson Controls business which is disclosed to You or Your employees, agents, contractors or servants or which otherwise comes to Your knowledge or the knowledge of Your employees, agents, contractors or servants in connection with this Agreement from time to time, whether the information is in oral, visual or written form or is recorded in any other medium. It includes:

- (b) the terms of this Agreement;
- (c) the Licensed Software; and
- (d) the Associated Documentation;

“Enhancement” means any alteration, improvement or modification to or upgrade or new release of the Licensed Software and “Enhance” shall have a corresponding meaning;

“Intellectual Property Rights” means copyright, trade marks (whether registrable or not), patents, patent applications, designs, eligible circuit layout rights, trade secrets, know-how, confidential information, moral rights and all other Intellectual Property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organization of July 1967;

“Licence” means the licence granted by Johnson Controls to You in clause 2.1 for the use of the Licensed Software;

“Licensed Software” means the software program known as the MXP Firmware Downloader consisting of a set of instructions or statements in machine-readable form and includes any Enhancement and new release of the Licensed Software provided to You;

“Product” means the products known as the MX4428 Fire Alarm System's MXP Responder;

“Software Key” means the software key provided to You by Johnson Controls to enable the Licensed Software to be used;

“Term” means the term of this Agreement determined in accordance with Clause 3;

“Territory” means the country or place specified by Johnson Controls at the time of issuing the Software Key or as otherwise agreed by Johnson Controls; and

“You” means you personally and, if you are engaged, employed by or otherwise acting on behalf of another party, then “You” also includes that other party/parties. “Your” has a corresponding meaning.

## **1.2 Interpretation**

In this Agreement:

- (a) words importing the singular include the plural and vice versa;
- (b) clause headings are inserted for convenience only and are not to be used in the interpretation or construction of this Agreement;
- (c) unless the contrary intention is clearly indicated, a reference to a Clause or Schedule by number and/or letter is a reference to a clause in or schedule to this Agreement;
- (d) a reference to a person will include a natural person, corporation, incorporated association, statutory corporation, the Crown and any other type of legal entity;
- (e) where “You” includes more than one party, then this Agreement binds each of those parties jointly and severally; and
- (f) all monetary amounts are expressed in Australian dollars (\$).

## **2 Scope of Agreement**

### **2.1 Software Licence**

In consideration for You complying with the terms and conditions of this Software Licence Agreement Johnson Controls grants to You, for the Term, a non-transferable and non-exclusive Licence without right of sublicense to use and execute the Licensed Software in machine-readable form on one computer and only in the Territory.

### **2.2 Associated Documentation**

The Associated Documentation is subject to the same restrictions as are imposed in respect of the Licensed Software and must not be used by You except in accordance with this Agreement and to assist in the normal operation of the Licensed Software.

## **3 Term of Agreement**

This Agreement will commence on the date of Your acceptance of these terms and conditions and continues until it is terminated pursuant to Clause 10.

## **4 Fees**

No fee is payable by You for the use of the Licensed Software.

## **5 Licence**

### **5.1 Use of Licensed Software**

You must not use the Licensed Software and the Associated Documentation except in accordance with this Agreement.

### **5.2 Use on one computer**

You acknowledge and agree that the Licensed Software will only be installed and used on one computer at any one time and only in the Territory.

### **5.3 No Unauthorised Use Without Consent**

Except as otherwise authorised by this Agreement, You must not copy, alter, modify or reproduce the Licensed Software without Johnson Controls prior written consent which may be withheld or granted subject to such conditions as Johnson Controls may determine in its sole discretion.

#### **5.4 Training, Use and Territory**

- (a) You will ensure that You and Your employees attend Johnson Controls training in respect of the Licensed Software.
- (b) You will ensure that only Your employees who have attended Johnson Controls training in respect of the Licensed Software will use the Licensed Software and only for the purpose of reconfiguring the site specific configuration database in the Products which are to be ultimately installed and used in the Territory.

#### **5.5 Johnson Controls Remedy**

In addition to and without limitation to other remedies available to Johnson Controls under this Agreement or otherwise, You recognise that any unauthorised or illegal use, alteration, modification, reproduction, publication, disclosure or transfer of the Licensed Software will entitle Johnson Controls to apply for any available equitable remedy against You, including injunctive relief.

#### **5.6 Acknowledgment of Customer**

- (a) You acknowledge that this Agreement entitles You to use the Licensed Software and Associated Documentation in accordance with this Agreement and there is no transfer of title or ownership of the Licensed Software or the Associated Documentation to You.
- (b) You must not without Johnson Controls prior written consent sublicense, sub-contract, assign or contract out of any of Your rights and obligations under this Agreement.

#### **5.7 Enhancements**

You must accept and do all things necessary to install any Enhancements.

#### **5.8 Insurance**

You warrant that You have obtained and will maintain throughout the Term, insurance policies covering such risks as is usual or reasonable having regard to:

- (a) the nature of Your obligations under this Agreement; and
- (b) the terms and conditions of this Agreement.

#### **5.9 Restrictions on Reverse Engineering and Derivative Works.**

You must not reverse engineer, decompile, or disassemble the Licensed Software, and any attempt to do so shall entitle Johnson Controls to immediately terminate this Agreement except and only to the extent that such activity may be expressly permitted, notwithstanding this limitation, either by applicable law or, in the case of open source software, the applicable open source licence. You must not make any changes or modifications to any portion of the License Software, or create any derivative works, without the written permission of an officer of Johnson Controls except as provided in Section 9.7 of this Agreement with respect to "open source" software.

### **6 Copying**

#### **6.1 Customer Not to Copy Licensed Software**

You must not copy or reproduce the Licensed Software or Associated Documentation by any means or in any form without Johnson Controls written prior consent.

#### **6.2 Reverse Engineering**

You must not reverse assemble or reverse compile or allow or cause a third party to reverse assemble or reverse compile the whole or any part of the Licensed Software.

### **7 Confidentiality**

#### **7.1 Duty**

You must hold the Confidential Information in strict confidence and You must not disclose any of the Confidential Information to any person, except in accordance with clauses 7.3 or 7.4.

#### **7.2 Use of Confidential Information**

You must not make any use of the Confidential Information or any part of it except for performing Your obligations under this Agreement or exercising Your rights under this Agreement.

### **7.3 Publicity**

Subject to the other provisions of this clause 7 neither party may make any statement (either orally, in writing or otherwise) to the press or any other person regarding this Agreement without the other party's consent.

### **7.4 Permitted Disclosure**

- (a) You must not disclose the Confidential Information to any person except:
  - (i) to Your employees, subcontractors and professional advisers on a "need to know" basis;
  - (ii) with Johnson Controls prior written consent;
  - (iii) if required by law, any stock exchange, competent regulatory or emergency services authority; or
  - (iv) if it is in the public domain other than because of a breach of confidence by You or by any of Your employees, professional advisers or subcontractors.
- (b) You must ensure that Your employees, subcontractors and professional advisers are aware of the confidential nature of Johnson Controls Confidential Information and You must ensure that Your employees, subcontractors and professional advisers hold that information in confidence on the terms of this Agreement.

### **7.5 Survival of obligation**

The obligations and restrictions of confidentiality imposed on You under this Agreement survives termination of this Agreement and only terminates with respect to a part of information when one of the conditions in clause 7.6 applies to that part.

### **7.6 Exclusion**

Neither clauses 7.1 nor clause 7.2 apply to:

- (a) information after it has entered into the public domain other than because of a breach of confidence by You or by any of Your employees, professional advisers or subcontractors; or
- (b) the disclosure by You of the minimum information necessary in order to comply with any applicable law or legally binding order of any governmental agency.

### **7.7 Notification prior to disclosure**

Prior to any use or disclosure in reliance on clause 7.6(b) You must give reasonable written notice to Johnson Controls with full details of the circumstances of the proposed use or disclosure and of the relevant information to be used or disclosed and giving Johnson Controls a reasonable opportunity to:

- (a) challenge in a court of law or other appropriate body whether the proposed use or disclosure is in accordance with clause 7.6(b);
- (b) minimise the amount of information which is disclosed; and
- (c) request that the information only be disclosed on confidential terms.

### **7.8 Destruction**

Johnson Controls may request You to:

- (a) supply to Johnson Controls all documents, reports, notes, memoranda, computer media and other materials that:
  - (i) record, contain or relate in any way to Johnson Controls Confidential Information (including all copies of them);
  - (ii) were provided by or on behalf of Johnson Controls;
  - (iii) are the property of Johnson Controls and are in Your possession, custody or control; and
- (b) delete entirely and permanently all of the Confidential Information from every computer disk or electronic storage facility of any type owned or used by You and must confirm in writing promptly when it has complied with these obligations.

## **8 Intellectual Property Rights**

### **8.1 Licensed Software**

Subject to the provisions of this Agreement, You acknowledge that Johnson Controls owns and/or has the right to licence all Intellectual Property Rights in the Licensed Software, Enhancements and the Associated Documentation as contemplated by this Agreement.

### **8.2 Indemnity**

Subject to clause 9, Johnson Controls indemnifies You against any and all direct liability (including but not limited to legal costs and expenses) arising from any proceedings brought by a third party against You to the extent that the action is based on a claim in which it is determined that Your use of the Licensed Software constitutes an infringement of the Intellectual Property Rights of any third party, provided that You:

- (a) notify Johnson Controls in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
- (b) give Johnson Controls the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
- (c) provide Johnson Controls (at Johnson Controls expense) with reasonable assistance in conducting the defence of such a claim;
- (d) permit Johnson Controls to Enhance or substitute the Licensed Software, at its own expense, to render the software non-infringing; and
- (e) authorise Johnson Controls to procure for You the authority to continue the use and possession of the Licensed Software.

### **8.3 No Indemnity**

Johnson Controls will not indemnify You under clause 8.2 if Your liability arises from use of the Licensed Software or Associated Documentation in a manner or for a purpose not in accordance with this Agreement or otherwise not authorised by Johnson Controls in writing.

### **8.4 Customer to Indemnify Johnson Controls**

You must indemnify Johnson Controls against any loss, costs, expenses, demands or liability arising out of a claim by a third party if the claim arises as a result of:

- (a) a breach of this Agreement by You or any changes; or
- (b) any modification, alteration or reconfiguration made by You to the Products.

## **9 Liability**

### **9.1 Use**

The use of the Licensed Software by You is at Your own risk.

### **9.2 Representation**

To the maximum extent permitted by law, Johnson Controls makes no representation or warranty in relation to the Licensed Software including its functionality.

### **9.3 Exclusion of Liability**

- (a) Subject to clause 9.4 and notwithstanding any other provision to the contrary:
  - (i) Johnson Controls excludes all liability in contract, tort (including negligence), by statute or otherwise for any loss, damage, liability, expense, cost, charge, injury or death sustained or incurred by You or any other party; and
  - (ii) Johnson Controls shall not be liable in contract, tort (including negligence), by statute or otherwise for loss or damage (whether direct or indirect) of profits, revenues, use, production, contracts, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever, arising out of or in connection with the use of the Licensed Software or this Agreement.
- (b) If, for any reason, the exclusion in clause 9.3(a) does not apply, then notwithstanding any other provision to the contrary, Johnson Controls total liability for any injury, loss, damage or expense arising out of or in connection with this Agreement or Your use of the Licensed Software, whether that liability arises under contract, any indemnity, tort (including negligence), equity, under statute or otherwise, shall be limited to \$10,000 in aggregate.

### **9.4 Consumer Guarantees**

- (a) To the extent that any goods or services supplied by Johnson Controls under this Agreement are supplies to a 'consumer' as defined in the Australian Consumer Law, Johnson Controls will comply with any applicable consumer guarantees.

## **9.5 Limitation**

Should Johnson Controls be liable for breach of a consumer guarantee applied by the Australian Consumer Law in relation to the supply of goods or services other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, Johnson Controls liability for that breach will be limited to any one of the following as determined by Johnson Controls in its absolute discretion:

In the case of goods:

- (a) the replacement of the goods or the supply of the equivalent goods; or
- (b) the repair of the goods; or
- (c) the payment of the cost of having the goods repaired; or
- (d) the payment of the cost of replacing the goods or of acquiring equivalent goods; and

In the case of services:

- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again.

## **9.6 Exclusion of Warranties**

All implied terms and warranties which would otherwise be implied into this Agreement whether by law or statute or common law are excluded except to the extent that the attempt to exclude them is unlawful and that any such terms and warranties are implied by virtue of the Act or any equivalent state or federal legislation.

## **9.7 Special provisions regarding incorporation of "open source" and other third party software**

Portions of the Licensed Software may be subject to certain third party license agreements governing the use, copying, modification, redistribution and warranty of those portions of the Licensed Software, including what is commonly known as "open source" software. Such portions of the Licensed Software are governed solely by the terms of such other license, and no warranty is provided under this Agreement for open source software. By using the Licensed Software you are also agreeing to be bound to the terms of such third party licenses. If provided for in the applicable third party license, you may have a right to reverse engineer such software or receive source code for such software for use and distribution in any program that you create, so long as you in turn agree to be bound to the terms of the applicable third party license, and your programs are distributed under the terms of that license. If applicable, a copy of such source code may be obtained by contacting your Johnson Controls representative. Any reverse engineering shall be at Your sole risk and Johnson Controls accepts no liability for any loss or damage howsoever incurred by You or any third party as a result of or arising out of any reverse engineering or modifications made.

## **9.8 Survival**

Each provision of this clause is to be construed as a separate limitation applying and surviving even if for any reason one or other of the said provisions is inapplicable or held unreasonable in any circumstances and shall remain in force notwithstanding termination or expiry of this Agreement.

# **10 Termination**

## **10.1 Termination**

- (a) Without limiting any other clause in this Agreement, Johnson Controls may terminate this Agreement (in whole or in part) immediately by notice in writing to You if:
  - (i) any payment due from You to Johnson Controls pursuant to this Agreement or any other Agreement remains unpaid for a period of 30 days;
  - (ii) You breach any material clause of this Agreement or any other Agreement and that breach is

- not remedied within 30 days of written notice of the breach by Johnson Controls to You;
  - (iii) You commit a breach of this Agreement which cannot be remedied;
  - (iv) You commit more than 5 breaches of this Agreement in any 6 month period, whether the breaches are material or otherwise and irrespective of whether the breaches are remedied;
  - (v) You dispose of the Licensed Software, unless the disposal is agreed to in advance in writing by Johnson Controls;
  - (vi) You become or resolve to become subject to any form of insolvency administration; or
  - (vii) You cease or resolve to cease carrying on business.
- (b) Notwithstanding any other term or condition to the contrary, Johnson Controls may terminate this Agreement for any reason by giving You thirty (30) days notice of its intention to terminate the Agreement.

## **10.2 Consequences of Termination**

In the event of termination of this Agreement pursuant to clause 10.1 You must:

- (a) cease use immediately of the Licensed Software and, at the option of and direction of Johnson Controls, return and/or destroy any copies of the Licensed Software or Associated Documentation in Your possession, custody or control and provide written certification of the same noting that if You fail to return or destroy the Software Key in accordance with this clause then the sum of \$10,000 will be a liquidated debt immediately due and payable to Johnson Controls; and
- (b) pay Johnson Controls within thirty (30) days of receipt of a correctly rendered invoice for all sums due and owing for work performed up to and including the date of termination including any amount in respect of the Software Key.

## **11 General**

### **11.1 Assignment**

The rights, responsibilities and benefits of this Agreement must not be dealt with in any way by You (whether by assignment or otherwise) without Johnson Controls prior written consent (which shall not be unreasonably withheld).

### **11.2 Entire Agreement**

This Agreement constitutes the entire Agreement between the Parties and supersedes any prior representation, understanding or arrangement given or made by the Parties whether orally or in writing.

### **11.3 Status of Agreement**

If any provision of this Agreement is at any time construed as illegal, invalid or unenforceable, the legality, validity or enforceability of any other provision contained in this Agreement will not be affected and the illegal, invalid or unenforceable provision will be deemed deleted from this Agreement to the same extent and effect as if it had never been incorporated in this Agreement and all other provisions of this Agreement will continue in full force and effect.

### **11.4 No Merger**

The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of this Agreement will survive and will not merge with or be extinguished by the expiration or earlier termination of this Agreement.

### **11.5 Governing Law**

This Agreement and the interpretation and construction of this Agreement and the rights and liabilities of the parties under this Agreement are and will be governed by and construed in accordance with the laws of the State of New South Wales and the parties unconditionally submit to the jurisdiction of that State.