

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 Pty Ltd (“Tyco”) provides You with a licence to use the Licensed Software so that You can update the firmware version of the Products.
- B. There are benefits to Tyco in allowing certain users of the Products to be able to update the firmware version of the Products.
- C. In consideration of the aforementioned benefits and Your compliance with the terms and conditions of this Software Licence Agreement, Tyco agrees to provide You with and You agree to accept certain computer software, a licence to use that computer software and (where applicable) a 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 Tyco 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 Tyco’s 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 Tyco to You in clause 2.1 for the use of the Licensed Software;

“Licensed Software” means the software program known generally 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 product known as the MX4428 Fire Alarm System’s MXP Responder;

“Software Key” means the software key provided to You by Tyco to enable the Licensed Software to be used (if required);

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

“*Territory*” means the country or place specified by Tyco at the time of issuing the Software Key or as otherwise agreed by Tyco; 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 Tyco grants to You, for the Term, a non-transferable and non-exclusive Licence to use 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 Tyco’s prior written consent which may be withheld or granted subject to such conditions as Tyco may determine in its sole discretion.

5.4 Training, Use and Territory

- (a) Where required, You will ensure that You and Your employees attend Tyco’s training in respect of the Licensed Software.
- (b) Where required, You will ensure that only Your employees who have attended Tyco’s training in respect of the Licensed Software will use the Licensed Software and only for the purpose of updating the firmware version of the Products which are to be ultimately installed and used in the Territory.

5.5 Tyco's Remedy

In addition to and without limitation to other remedies available to Tyco 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 Tyco 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 Tyco's 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.

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 Tyco's 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 Tyco's 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 Tyco's 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 Tyco with full details of the circumstances of the proposed use or disclosure and of the relevant information to be used or disclosed and giving Tyco 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

Tyco may request You to:

- (a) supply to Tyco all documents, reports, notes, memoranda, computer media and other materials that:
 - (i) record, contain or relate in any way to Tyco's Confidential Information (including all copies of them);
 - (ii) were provided by or on behalf of Tyco;
 - (iii) are the property of Tyco 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 Tyco owns and 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, Tyco 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 Tyco in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
- (b) give Tyco 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 Tyco (at Tyco's expense) with reasonable assistance in conducting the defence of such a claim;
- (d) permit Tyco to Enhance or substitute the Licensed Software, at its own expense, to render the software non-infringing; and
- (e) authorise Tyco to procure for You the authority to continue the use and possession of the Licensed Software.

8.3 No Indemnity

Tyco 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 Tyco in writing.

8.4 Customer to Indemnify Tyco

You must indemnify Tyco 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, Tyco 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) Tyco 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) Tyco 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, Tyco's 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 Tyco under this Agreement are supplies to a 'consumer' as defined in the Australian Consumer Law, Tyco will comply with any applicable consumer guarantees.

9.5 Limitation

Should Tyco 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, Tyco's liability for that breach will be limited to any one of the following as determined by Tyco 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 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, Tyco may terminate this Agreement (in whole or in part) immediately by notice in writing to You if:
 - (i) any payment due from You to Tyco 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 Tyco 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 Tyco;
 - (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, Tyco 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 Tyco, 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 Tyco; and
- (b) pay Tyco 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 Tyco's 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.