VTScada Software License Agreement

This License Agreement ("**License Agreement**") governs any Software and/or Services in the Order Confirmation that the individual or entity identified as the customer in the Order Confirmation ("**Customer**") purchase directly from Trihedral or through its authorized resellers ("**Reseller**"). This License Agreement, the Order Confirmation, and any other incorporated terms comprise the complete understanding between the parties on the subject matter ("**Agreement**"). By using or accessing the Software or Services, Customer agrees to this License Agreement.

"**Affiliate**" means an entity that controls, is controlled by, or is under common control with, a party. Control means direct or indirect ownership of (i) more than 50% of an entity's voting interest; or (ii) the right to receive more than fifty percent (50%) of an entity's profits.

"**Customer Data**" means data, information, and content that is entered into the Software by the Customer and the output generated by the Customer from the data it entered into the Software (e.g., statistical calculations, sorting, collection, averaging, and other mathematical computations).

"**Documentation**" means the then-current documentation regarding the Software that is generally provided or made available by Trihedral either in print or electronic forms, and which may include end-user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.

"**Indemnified Liabilities**" means any (i) settlement amounts approved by the indemnifying party and (ii) damages and costs in a final judgment awarded against the indemnified party and its Affiliates by a court of competent jurisdiction.

"**Instance**" means a single copy of the Software running on a single physical or virtual machine.

"**Modifications**" means modifications, revisions, enhancements, scripting, fixes, error corrections, workarounds, and improvements made by any person, whether or not issued in a formal update, upgrade, or release.

"**License Key**" means an alphanumeric code that enables the Customer to activate and use the Software.

"**Licensed Instance**" means an Instance of the Software that has been activated using a License Key provided by Trihedral. If the License Key is subsequently used to activate a different Instance of the Software, then the first Instance of the Software will automatically cease to be a Licensed Instance.

"**Order Confirmation**" means the ordering document issued or signed by Trihedral or its authorized reseller, which for Paid Licenses will be identified as an order confirmation form and for a Free License or Demo License is the online check out screen where these terms are agreed to.

"**Services**" means Support and other Services provided by Trihedral.

"**Software**" means the VTScada software in machine executable object code and any training materials and documentation provided by Trihedral, including any Modifications to any of them.

"**Trihedral**" means the Trihedral entity listed on the Order Confirmation, and if the Order Confirmation is silent, the term means (i) Trihedral USA, if the Customer is located in the United States (ii) Trihedral UK if the customer is located within the United Kingdom and (iii) Trihedral CAN if the Customer is located elsewhere

"**Trihedral CAN**" means Trihedral Engineering Ltd., an entity organized under the laws of Nova Scotia, Canada.

"**Trihedral USA**" means Trihedral, Inc., a Florida Corporation.

"**Trihedral UK**" means Trihedral UK Limited, an entity organized under the laws of the United Kingdom.

"**Third-Party Legal Proceeding**" means any claim, demand, action, or legal proceeding made or instituted by someone other than Trihedral, Customer, or any of their Affiliates.

1. **License.**

1.1 **Ordering.** If Customer purchases directly from Trihedral, then Customer will pay Trihedral the fees for the Services and/or any Paid License in accordance with the payment terms stated in the Order Confirmation. If Customer purchases Services and/or any Paid License through a Reseller, then the description of the Services and/or Paid License will be set forth in the ordering document Customer enters

with the Reseller (the "**Order Confirmation,**" which for the purposes of this Agreement is also an "Order Confirmation") and payment will be made to Reseller in accordance with the terms of the Order Confirmation. The Reseller is responsible for the accuracy of the Order Confirmation, Resellers are not authorized to make any promises or commitments on Trihedral's behalf, and Trihedral is not bound by any obligations to Customer other than as specified in this License Agreement. Except as otherwise stated in the Agreement, Customer's purchases are except as may be stated in the Order Confirmation non-cancelable and payment for Services is non-refundable. Customer will pay all applicable sales tax, VAT, GST, use tax, or similar transaction taxes imposed on Customer's purchase of Services and/or use of the Software, unless Customer provides Trihedral with a valid tax exemption certificate. Customer will have no liability for taxes that are imposed on Trihedral or Reseller, as applicable, that are measured by Trihedral's or Reseller's net or gross income.

1.2   **Paid License.** Subject to the terms and conditions of the Agreement, upon payment of the applicable license fees stated in the Order Confirmation, Trihedral grants Customer a non-exclusive, non-sublicensable, non-transferable license to use the Software described in the Order Confirmation ("**Paid License**") for the terms stated in the Order Confirmation for the sole purpose of monitoring, controlling and analyzing Customer's industrial processes and equipment. The Software may be installed on the maximum number of Licensed Instances listed in the Order Confirmation, which is one if no number is listed and is subject to any other restrictions stated in the Order Confirmation, such as the maximum number of tags (i.e. a value, timestamp or quality characteristic). Customer may permit third-party providers to host the Software solely for Customer's personnel use.

1.3   **Free License**. Trihedral makes a version of the VTScada software with limited functionality ("**Trial Version**," also the "**Software**") that will monitor, control and analyze Customer's industrial processes and equipment for no more than 50 IO tags from an external device or source. For those Customers that download the Trial Version, Trihedral grants Customer a free, perpetual, non-exclusive, non-sublicensable, non-transferable, limited license ("**Free License**") to use version of the Trial Version subject to the terms and restrictions of the Agreement. Customer may host the Trial Version on only one server and may only have one instance of the Trial Software and only one Free License. Customers who purchase a Paid License may not also obtain a Free License to the Software. The Trial Version of the Software may only be used in the Country stated in the Order Confirmation and for the purposes stated in that Order Confirmation. The Trial Version may not be used in connection with any High Risk Activity. "**High Risk Activities**" means uses in connection with the operation of nuclear facilities; the manufacture of arms, armament, weapons or ammunition; air traffic control; life support systems; military or defense applications; or where the use or failure of the Services could lead to death, personal injury, property damage or environmental damage.

1.4   **Demo License**. Trihedral makes a version of the VTScada software with License Key functionality ("**Demo Version**," also the "**Software**") that will monitor, control and analyze Customer's industrial processes and equipment for a License Key evaluation period. For those Customers that obtain the Demo Version under an Order Confirmation, Trihedral grants Customer a free, non-exclusive, non-sublicensable, non-transferable, limited license ("**Demo License**") to use a version of the Software subject to the limitations of the License Key and the terms and restrictions of this Agreement. Customer may host the Demo Version on only one server and may only have one instance of the Demo Software per license. The Demo Version of the Software may only be used in the Country entered in the download request. The Demo Version may not be used in connection with any High-Risk Activity.

1.5   **Restrictions.** The Software may only be accessed and used by Customer's personnel ("**Users**"), and Customer is responsible for Users' compliance with the Agreement. Customer, on behalf of itself and its Users, agrees not to: (1) use the Software other than as authorized in the Agreement; (2) modify, decompile, decode, or reverse engineer the Software, (3) create derivative works based on the Software; (4) use the Software or any other Trihedral Confidential Information to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Software, (5) use the Software for competitive analysis or benchmarking purposes, (6) use the Software to provide services to any third party, (7) deactivate, impair, or circumvent any security or authentication measures of the Software, or (8) transfer, sublicense, distribute, sell, lease or use for timesharing or service bureau purposes the Software. Customer will not export or install the Software on a server outside of the United States, Canada or the country identified as Customer's shipping address on the Order Confirmation without obtaining Trihedral's prior written consent.

1.6   **Support and other Services.** Unless otherwise provided in an Order Confirmation, Support for a Paid License is free for the first ninety (90) days after it is initially licensed and is offered on renewal at the rates set forth in Order Confirmation. Support and any other Service are described in the Order Confirmation.

1.7   **Third-Party Solutions.** Customer may decide to interact with, access or use compatible third-party services, content or solutions ("**Third Party Solution**") in connection with the Software. Trihedral does not provide any aspect of the Third-Party Solution and is not responsible for any compatibility issues, errors, or bugs in the Software or Third-Party Solution caused in whole or in part by the Third-Party

Solution. Customer is solely responsible for maintaining the Third-Party Solution and obtaining any associated licenses and consents necessary for Customer's use of the Third-Party Solution in connection with the Software.

1.8   **Personal Data.** The Software has been architected so Trihedral will not process any Personal Data of Customer. "**Personal Data**" means data relating to an identified or identifiable natural person.

2.   **Confidential Information.**

2.1   **Definition.** The term "**Confidential Information**" means any information disclosed under the Agreement that (a) if tangible, is clearly marked as "Confidential" or with a similar designation; (b) if intangible, is identified as "Confidential" by discloser at the time of disclosure and confirmed in writing to recipient as being Confidential Information; or (c) from the relevant circumstances should reasonably be known by recipient to be confidential (e.g. pricing, product plans, etc.). Confidential Information does not include any portion of the information that recipient can prove: (a) was rightfully known to recipient before receipt from discloser; (b) becomes generally known to the public through no fault of recipient; (c) was received by recipient from a third party without any confidentiality obligation; or (d) was independently developed by recipient without breach of this Section 2.

2.2   **Limited Use and Non-Disclosure.** Recipient will (a) use Confidential Information only for the purposes of furthering the business relationship between the parties; (b) protect Confidential Information using the same degree of care it uses to protect its own confidential information of a like nature, but in no event less than a reasonable degree of care; or (c) not disclose Confidential Information to any third party except (i) as required by law and/or (ii) to employees, consultants, and agents who have a need to know it in order to carry out their obligations under the Agreement and are under written confidentiality and non-use obligations at least as restrictive as those stated in the Agreement.

3.   **Intellectual Property Rights**. As between Trihedral and Customer, Customer owns all worldwide right, title and interest in and to Customer Data, including all worldwide Intellectual Property Rights ("**Customer IP**"). Trihedral and its licensors own all worldwide right, title and interest in and to the Software, including all worldwide Intellectual Property Rights ("**Trihedral IP**"). Except as expressly set forth in the Agreement, no rights to any Trihedral IP or Customer IP is granted to the other party. Customer is not obligated to provide Trihedral with any suggestions, enhancement requests, or other feedback about the Software or related technology ("**Feedback**"). However, if Customer's personnel provide any Feedback to Trihedral, Trihedral may use and modify it without any restriction or payment. When the Software is installed on a server that is accessible by the Internet, Customer agrees that Trihedral may obtain data from the Software other than any data that relates to an identifiable individual (PII) for the purpose of supporting and improving the Software and related solutions. "**Intellectual Property Right(s)**" means patent rights (including, without limitation, patent applications and disclosures), trademarks, copyrights, moral rights, know-how, and any other intellectual property rights recognized in the United States, Canada, or the European Union.

4.   **Term and Termination.**

4.1   **Term.** The Agreement is effective on the earlier of the date the first Order Confirmation is entered into by Customer and Trihedral or when the Software is first accessed ("**Effective Date**") and remains in effect until all Order Confirmations are terminated or expire.

4.2   **Termination and Suspension.** Either party may terminate the Agreement or an Order Confirmation if the other party materially breaches the Agreement and fails to cure the breach within 30 days after receiving notice that specifically identifies the breach.

4.3   **Effect of Termination**. Except if Customer terminates for Trihedral's uncured material breach under Section 4.2, termination of the Agreement or an Order Confirmation will not relieve Customer from Customer's obligation to pay Trihedral any fees stated in an Order Confirmation. After termination or expiration of the Agreement, (a) Customer will stop using the Software and will promptly certify in writing that all copies of the Software have been destroyed, (b) any license granted to the Software will immediately end, and (c) Trihedral will have no further obligation to perform any Services. Termination of an Order Confirmation does not terminate the Agreement unless no other Order Confirmations are in effect. Termination of the Agreement will result in the immediate termination of all Order Confirmations. Sections 2, 3, and 6-9 of the Agreement will survive termination.

5.   **Warranty and Warranty Disclaimer.** For Paid Licenses, Trihedral warrants that for a period of 90 days (the "**Warranty Period**") that all of the critical functionality of the Software will perform when operated according to the Documentation, and Trihedral will (at its own cost) rectify any material defects in the Software that Customer notifies it of during the Warranty Period. This constitutes Trihedral's sole remedy for breaches of warranty under the Agreement. Except for that warranty provided to for a Paid License, the Paid License and the Demo and Free License is provided "as is." **To the fullest extent permitted by applicable law, except as expressly provided in the**

Agreement, Trihedral makes no other warranty of any kind regarding the Software or any Service, whether express, implied, statutory or otherwise, including without limitation warranties of merchantability, fitness for a particular use and non-infringement (since Trihedral indemnifies for IP infringement). Trihedral does not warrant and makes no representations (i) that the operation of the Software will be error-free or uninterrupted or (ii) concerning the results obtained from or the conclusions drawn from the use of Software.

6.   **Indemnification.** The indemnity provisions in this Section only apply to Paid Licenses.

6.1   **Trihedral's Indemnification Obligations.** Trihedral will defend Customer and Customer's respective directors, officers and employees ("**Customer's Indemnified Parties**") against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an allegation that (a) the Software infringes, misappropriates or otherwise violates any third party's Intellectual Property Right, (b) Trihedral's willful misconduct or fraud, or (c) Trihedral violated any applicable law.

6.2   **Customer's Indemnification Obligations.** Customer will defend Trihedral, its Affiliates, and their respective directors, officers and employees from and against all third party claims to the extent resulting from or alleged to have resulted from (a) the Customer Data infringes, misappropriates or otherwise violates any third party's Intellectual Property Right, (b) Customer's willful misconduct or fraud, or (c) Customer violated any applicable law.

6.3   **Indemnification Exclusions.** Sections 6.1 (Trihedral's Indemnification Obligations) and Section 6.2 (Customer's Indemnification Obligations) will not apply to the extent the underlying allegation arises from:

    a. the indemnified party's breach of the Agreement; or

    b. modifications to the Software by anyone other than Trihedral or its agents; or

    c. combination of the Software with materials not provided by Trihedral;

    d. failure to use the most current, supported version of Trihedral's Software provided under the Agreement or

    e. compliance with the indemnified party's instructions, design or request for customized features.

6.4   **Indemnification Conditions.** Sections 6.1 (Trihedral's Indemnification Obligations) and 6.2 (Customer's Indemnification Obligations) are conditioned on the following:

    a. The indemnified party will promptly notify the indemnifying party in writing of any allegation(s) that preceded the Third-Party Legal Proceeding and cooperate reasonably with the indemnifying party to resolve the allegation(s) and Third-Party Legal Proceeding. If breach of this Section 6.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 6.1 or 6.2 (as applicable) will be reduced in proportion to the prejudice.

    b. The indemnified party will tender sole control of the indemnified portion of the Third-Party Legal Proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

7.   **Limitation of Liability.** In this Section, "liability" means any liability, whether under contract, tort, or otherwise, including for negligence.

7.1   **General Limitations on Liability.** Subject to section 7.2 (Exceptions to Limitations):

    (a) neither party will have any liability arising out of or relating to the Agreement for: (1) indirect, special, incidental or consequential losses (whether or not foreseeable or contemplated by the parties at the Effective Date); (2) exemplary or punitive damages; or (3) the other party's lost revenues, profits, or data; and

    (b) For a Paid License, each party's aggregate liability arising out of or relating to the Agreement will not exceed the amount paid or payable to Trihedral under the applicable Order Confirmation for the Twelve (12) months preceding the subject claim. For a Free and Demo License, Trihedral's aggregate liability arising out of or relating to the Agreement will not exceed Fifty Dollars (US $50) except for liability that cannot be so limited under applicable law.

7.2   **Exceptions to Limitations.** For a Paid License, nothing in the Agreement excludes or limits either party's liability for: (a) breach of confidentiality obligations under Section 2, (b) the indemnification obligations under Section 6, (c) infringement of the other party's

intellectual property rights; (d) death or personal injury resulting from its negligence or the negligence of its employees or agents; or (e) matters for which liability cannot be excluded or limited under applicable law.

8.   **Dispute Resolution.**

If the Customer is domiciled in the U.S.: The Agreement and all matters arising out of or relating to the Agreement is governed by California law, without regard to conflict of law, and each party irrevocably consents to exclusive jurisdiction over all claims and disputes between the parties, as follows: (a) if Trihedral is the plaintiff, the state and federal courts located in the state and county of Customer's address identified in the Order Confirmation, or (b) if Customer are the plaintiff, the Superior Court of Alameda County, California, and federal court in the Northern District of California. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

If the Customer is domiciled outside of the U.S.*:* Any unresolved dispute arising out of or in connection with the Agreement shall be finally resolved by arbitration with one arbitrator conducted in English under the Rules of Arbitration of the International Chamber of Commerce that are made a part of the Agreement. Either party can obtain temporary restraining orders, preliminary injunctions, and other similar relief in a court of competent jurisdiction when necessary to preserve status quo or prevent injury pending resolution of the dispute on its merits by arbitration. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply. The Agreement and all matters arising out of or relating to the Agreement shall be governed by the laws of (without regard to conflict of law) and the location of the arbitration will be, as follows:

Customer domiciled in Asia	Laws of Singapore	Arbitration will be held in Singapore
Customer domiciled in Canada	Laws of Ontario	Arbitration will be held in Toronto
Customer domiciled in Mexico, Central America or South America	Laws of New York	Arbitration will be held in New York City
Customer domiciled elsewhere (other than the U.S.)	Laws of England	Arbitration will be held in London

9.   **Audit.** Upon written request from Trihedral and subject to reasonable notification, Customer will provide Trihedral or its auditors with access to any books, records, computers, or information that relates to Customer's use of the Software in compliance with the terms of the Agreement. The audit will not unreasonably interfere with Customer's business activities.

10.   **Export Control**. The Software is subject to U.S. and/or Canadian export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import the Software. Where the Trihedral USA is the contracting party or the Customer is based in the United States, the Software may not be downloaded, or otherwise exported or re-exported (i) into or to a national or resident of any country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nations or the U.S. Commerce Department's Table of Denial Orders. By installing or using the Software, Customer is warranting that it is not located in or under the control of, or a national or resident of any such country or on any such list.

11.   **License Rights Applicable to the U.S. Government**. The Software is a commercial product that is developed exclusively at private expense. If the Software is acquired directly or indirectly for use by the U.S. Government, then the parties agree that the Software is considered 'Commercial Items' and 'Commercial Computer Software' or 'Computer Software Documentation', as defined in 48 C.F.R. §2.101 and 48 C.F.R. §252.227-7014(a)(1) and (a)(5), as applicable. Software and Documentation may only be used under the terms and conditions of this Agreement as required by 48 C.F.R. §12.212 and 48 C.F.R. §227.7202. The U.S. Government will only have the rights set forth in this Agreement, which supersedes any conflicting terms or conditions in any government order document, except for provisions which are contrary to applicable mandatory federal laws. Trihedral will not be required to obtain a security clearance or otherwise be involved in accessing U.S. Government classified information.

12.   **Miscellaneous**. Neither party will assign the Agreement in whole or in part without the other party's prior written consent (which consent will not be unreasonably denied, delayed or conditioned), except no consent is necessary for assignment to a successor that is made in connection with a merger or sale of all or substantially all of a party's assets or equity. Any attempted assignment in violation of this restriction is void. The Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. If a conflict exists between any of the terms the Agreement and the Order Confirmation, then the Order Confirmation will govern only if it

is signed by both parties. Neither party relies on any undertaking, promise, assurance, statement, representation, warranty or understanding of any person relating to the subject matter of the Agreement, other than as stated in the Agreement. Notices will be provided in writing and delivered by commercial overnight or next day courier to the address of the other party stated on the Order Confirmation. The Agreement does not create a partnership, agency relationship, or joint venture between the parties. Neither party has the power or authority to bind the other or to create any obligation or responsibility on behalf of the other. Under no circumstances will any employee of one party be deemed to be the employee of the other. If any provision of the Agreement is unenforceable, that provision will be modified to render it enforceable to the extent possible to give effect to the parties' intentions and the remaining provisions will not be affected. The parties may amend the Agreement only in a written amendment signed by both parties. The Agreement does not confer any benefits on any third party unless it expressly states that it does.

The Agreement can be executed electronically and in counterparts, each of which is deemed to be an original and together comprise a single document. Each party represents and warrants that the individual binding a party under the Agreement is authorized to do so.

Prior Versions: June 8, 2016 Version