

Eaton Corporation End User License Agreement for Foreseer



Table of contents

Eaton Corporation End User License Agreement for Foreseer	3
Eaton Corporation End User License Agreement for Foreseer	3
Copyright	23

Effective Date: February 8, 2021

Last Revised: September 24, 2021

EATON CORPORATION END USER LICENSE AGREEMENT FOR FORESEER

This End User License Agreement (the **"Agreement"**) is a legal agreement between you and the Contracting Entity (as defined below). For the purposes of this Agreement, any reference to "Eaton" shall include the Contracting Entity, its holding company, its affiliates and subsidiaries. This Agreement, and any other terms or conditions notified to you, governs your access to and use of Foreseer as well as Foreseer Reporting Service (FRS), Outpost, Message Manager, and Connectors for Foreseer (the **"Product Software"**).

Your use of the Product Software is subject to the terms of this Agreement as set out below which includes any other terms or conditions of the Product Software which may be notified to you from time to time.

By using the Product Software, you agree to us collecting and using anonymised technical information about the devices you use the Product Software on and related software, hardware and peripherals to improve our products and to provide any services to you.

By using the Product Software, you agree to the terms of this Agreement. Your right to use the Product Software is expressly conditioned on acceptance of this Agreement.

1 INFORMATION ABOUT US

- 1.1 Eaton Corporation is registered in the United States of America and has its registered address at 1000 Eaton Blvd., Cleveland, Ohio 44122 (the **"Contracting Entity"**).
- 1.2 If you have any questions about this Agreement or any other terms or conditions in connection with the Product Software, please contact us at dataprotection@eaton.com.

2 DEFINITIONS

- 2.1 In this Agreement the following expressions shall have the following meanings:

"Arbitrator"	has the meaning as defined in Clause 28.2;
"Business Day"	means a calendar day other than a Saturday, Sunday, Bank Holiday or other statutory holiday in the jurisdiction in which the Contracting Entity is registered;
"Contracting Entity"	has the meaning as defined in Clause 1.1;
"Credentials"	has the meaning as defined in Clause 3.7;
"Dispute"	means any claim, dispute or difference arising

“Documentation”	under or in connection with this Agreement; means any tutorials, user guides and other documents accompanying or made available with the Product Software solely for your own internal business purposes;
“Eaton Hardware”	means the Eaton product provided by Eaton to you, which may include Product Software within it; “Eaton Open Source Components” has the meaning as defined in Clause 10.1;
“Eaton Website”	has the meaning as defined in Clause 16.1;
“Effective Date”	means the date upon which you agree to abide by the terms and conditions of this Agreement;
“Export Laws”	has the meaning as defined in Clause 27.1;
“Fees”	has the meaning as defined in Clause 11.1;
“Feedback”	has the meaning as defined in Clause 21.2;
“Force Majeure Event”	has the meaning as defined in Clause 25.1;
“GDPR”	has the meaning as defined in Clause 19.1;
“Indemnified Parties”	has the meaning as defined in Clause 15.1;
“Intellectual Property Rights”	means any ideas (whether or not patentable), inventions, discoveries, processes, works of authorship, marks, names, know-how, and any and all rights in such materials throughout the world, whether existing under statute, common law or equity, now or hereinafter recognized, including but not limited to (i) patents, designs, inventor’s certificates, utility models, copyrights, moral rights, trade secrets, mask works, trade names and marks, service marks, trade dress, domain names, confidential information and know-how; (ii) any application or right to apply for any of the rights referred to in section (i); and (iii) all renewals, extensions, and restorations, now or hereinafter in force and effect for any of the rights referred to in section (i);
“Materials”	has the meaning as defined in Clause 21.4;
“Product Software”	means the software provided by Eaton to you, which includes any applications, firmware and/or platforms provided to you from time to time;
“Support Services”	has the meaning defined in Clause 12.1;
“Third Party Licensors”	has the meaning as defined in Clause 9.1;
“Third Party Links and Ads”	has the meaning as defined in Clause

23.1; “**Third-Party Providers**” has the meaning as defined in Clause 21.5;
“**Updates**” has the meaning as defined in Clause 6.1.

3 **GRANT AND SCOPE OF LICENSE**

- 3.1 For each of Foreseer, Foreseer Reporting Service (FRS), Outpost, and Message Manager, in consideration of your payment of applicable fees and you agreeing to abide by the terms of this Agreement, Eaton hereby grants to you, a perpetual, non-exclusive, non-transferable, non-sub-licensable, and revocable license to access and use Foreseer, Foreseer Reporting Service (FRS), Outpost, and Message Manager, as the case may be, with the Eaton Hardware, which is provided to you for your own internal business purposes, solely for your use as permitted in these terms. For Connectors for Foreseer, in consideration of your payment of applicable fees and you agreeing to abide by the terms of this Agreement, Eaton hereby grants to you, for a term-based subscription, a limited, non-exclusive, non-transferable, non-sub-licensable, and revocable license to access and use Connectors for Foreseer, which is provided for you for your own internal business purposes, solely for your use as permitted in these terms.
- 3.2 Subject to the limited rights expressly granted above, Eaton and its licensors or suppliers reserve all right, title and interest in and to the Product Software, its underlying technology and all Intellectual Property Rights therein. You acknowledge that no licenses or rights are granted to you by implication or otherwise in respect of the Product Software, other than those expressly set forth in this Agreement. You agree not to remove, change or obscure any Intellectual Property Rights notices incorporated in or accompanying the Product Software. You agree to abide by all applicable national and international laws in connection with the use of the Product Software, including those related to cybersecurity and piracy, data protection, privacy, international communications and the transmission of technical or personal data.
- 3.3 Eaton may make services available to you that are provided, in whole or in part, by other parties. Although Eaton may offer this opportunity, you acknowledge that any third party services that you use in connection with the Product Software are not part of the Product Software. You further acknowledge that these terms do not apply to any third party service providers and that your use of those services may require you to agree to additional terms with the third party service provider.
- 3.4 You shall as soon as reasonably practicable notify Eaton if you become aware of any use of the Product Software other than in accordance with this Agreement and all applicable laws, rules and regulations. Without limiting the generality of the foregoing, you shall notify, and shall promptly notify, Eaton if you become aware of any third party that does or attempts to: (i) de-compile or reverse engineer the Product Software; (ii) sell, re-license, distribute or commercially exploit the Product Software; (iii) except as expressly permitted by this Agreement, make the Product Software available through any means or media

without the prior written approval of Eaton; (iv) except as expressly permitted by this Agreement, copy, modify, publish, transmit, participate in the license or re-license, transfer or sale of, reproduce, create derivative works from, distribute, perform, display or in any way exploit the Product Software, in whole or in part, without the prior written consent of Eaton; and (v) engage in any activity that interferes with or disrupts the Product Software (or the servers and networks connected to the Product Software).

3.5 You shall not make more than one (1) copy of the Product Software and such copy is to be made solely for backup and/or archival purposes. You shall account for and number any such copy. All titles, trademarks, copyright and restricted rights or proprietary notices included in the Product Software shall not be removed and must be reproduced in such copy.

3.6 You shall not make more than one (1) copy of the Documentation for use by you in connection with the authorized use of the Product Software and you shall account for and number any such copy. All titles, trademarks, copyright and restricted rights or proprietary notices included in the Documentation shall not be removed and must be reproduced in such copy.

3.7 You may be required to register to use the Product Software. If so, you must have a valid account with a username and password ("**Credentials**"). You may register for such Credentials at the direction(s) provided with the Product Software or by an authorized Eaton representative. The date of registration shall be the Effective Date of this Agreement. You are responsible for maintaining the confidentiality of your Credentials, and for ensuring that each password is only used by employees granted access to the Product Software on your behalf. You are liable for all transactions and other activities carried out under your Credentials. You agree to promptly notify Eaton if any password is lost, stolen, disclosed to an unauthorized party, or otherwise may have been compromised. You agree to immediately notify Eaton of any unauthorized use of your account or any other breach of security in relation to the Product Software known to you. Eaton shall have no liability for any loss or damage arising from your failure to comply with these requirements or any other losses arising from such unauthorized access. If Eaton suspends or terminates your account under this Agreement, you acknowledge that all information and content associated with such account will no longer be available to you.

4 **LOCATION DATA RESERVED**

5 **NECESSARY EQUIPMENT**

5.1 Full use of the Product Software is dependent upon the purchase of Eaton Hardware in which it is installed, providing hardware that meets the minimum requirements stated in the documentation or to which the

Product Software pertains as described in the Documentation.

- 5.2 In order for the Product Software to operate fully, your device may need to be connected to certain wireless and/or communication based technologies. There may be delays, limitations and other problems inherent in the use of the Internet, intranet, wireless and/or communication based technologies. Eaton is not responsible for any delays, failures or other damages resulting from such problems and/or the costs/charges associated with data usage.
- 5.3 The maintenance and security of this equipment may affect the performance of the Product Software and it is your responsibility to ensure the equipment's functionality is compatible and for making all arrangements necessary for you to have access to the Product Software.
- 5.4 Internet transmissions are never completely private or secure. Any message or information you send using the Product Software may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.

6 UPDATES

- 6.1 You are solely responsible for the maintenance and upkeep of the Product Software. Eaton has no obligation to provide updates or maintenance to the Product Software. You agree to install or allow automatic installation of all corrections of substantial defects, security patches, minor bug fixes and updates, including any enhancements ("**Updates**"), for the Product Software in accordance with the instructions and as directed by Eaton.
- 6.2 The provisions of this Agreement shall govern any Updates provided by Eaton, unless such Updates are accompanied by, or references, a separate license agreement in which case the terms of that license agreement shall prevail.
- 6.3 We reserve the right, without notice to you, to update, change, and discontinue (temporarily or permanently) any feature or component of the Product Software. Alternatively, we may ask you to update the Product Software. By continuing to use the Product Software you accept the updates and changes to the Product Software including any changes to or removal of features or components. You agree that your obligations are neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by us with respect to future functionality or features. Eaton is not liable to you or to any third party for any update, change, suspension, discontinuance of any feature or component of the Product Software. Eaton reserves the right to determine the timing and content of software updates, which may be automatically downloaded and installed by the Product Software without your notice. If you chose not to install such updates or if you opt out of automatic updates you may not be able to continue using the Product Software.

7 **TRANSFER AND ASSIGNMENT RESTRICTIONS**

7.1 You agree not to sell, resell, assign, lease, sub-license, encumber or otherwise transfer your interest in this Agreement or in the Product Software and/or Documentation, in whole or in part, or allow any other person or entity, including

any of your parent or subsidiaries or other subsidiaries of your parent, to copy, distribute, or otherwise transfer the Product Software without the prior written consent of Eaton.

7.2 You may transfer the Product Software directly to a third party only in connection with the sale of the Eaton product in which it is installed or to which the Product Software pertains as described by Eaton in the Documentation. In the event of such a sale, you may not keep any copies of the Product Software or any portion thereof and you undertake to ensure the third party to whom you transfer the Product Software is made aware of, agrees to and complies with all of the provisions of this Agreement. Any transfer of the Product Software is deemed to be a transfer with the sale of the Eaton product and is subject to the provisions of this Agreement.

8 RESTRICTED USES

8.1 In relation to the Product Software, you warrant, represent and undertake that you shall:

- (i) only use the Product Software with the license key, if the Product Software is subject to the use of a license key;
- (ii) not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Product Software, whether in whole or in part, or any content displayed on the Product Software;
- (iii) not copy (except as expressly permitted by this Agreement), enhance, decompile, modify, make derivative works of, disassemble, reverse compile or reverse engineer, attempt to derive the source of code of any part of the Product Software;
- (iv) not copy (except as expressly permitted by this Agreement), reproduce, distribute, republish, download, display, post or transmit the whole or any part of the Product Software in any form or by any means, except as expressly permitted in this Agreement;
- (v) not use any part of the Product Software to establish any independent datafiles, databases, compendiums or any other reference materials except to the extent such foregoing restriction is prohibited by applicable laws or applicable open source license to, and only to, any open source software component that is incorporated into the Product Software (if any). Any attempt to do so is a violation of the rights of Eaton;
- (vi) not access or view Product Software in order to build a similar

- or competitive product or service to the Product Software;
- (vii) not provide false data including false names, addresses, contact details and fraudulent credit card/debit card details;
 - (viii) not enter into fraudulent or deceptive interactions or transactions with Eaton (which shall include entering into interactions or transactions purportedly on behalf of a third party where you have no authority to bind that third party or you are pretending to be a third party);
 - (ix) not use the Product Software in any way that is unlawful, fraudulent or deceptive, or has any unlawful, fraudulent or deceptive purpose or effect;
 - (x) not use the Product Software except in conjunction with the operation of Eaton products to which the Product Software pertains or other products described by Eaton in the Documentation;
 - (xi) not sell any products or services purchased through Eaton, without Eaton's express permission;
 - (xii) not intercept communications transmitted by way of a telecommunication system and/or information society service;
 - (xiii) not to distribute, or otherwise provide to any third party any registration code algorithms, registration codes, or encryption keys, where applicable, used by or in connection with the Product Software without the prior written consent of Eaton;
 - (xiv) not attempt to create any registration codes or passwords, where applicable, to allow unauthorized activation of the Product Software, nor shall you assist others in doing so;
 - (xv) not use any registration code algorithms, registration codes or encryption keys, where applicable, that have not been purchased from Eaton or an authorized representative of Eaton;
 - (xvi) not execute any form of network monitoring which will intercept data not intended for you;
 - (xvii) not install the Product Software on multiple devices or in multiple locations without purchasing a separate license from Eaton or a third party authorized by Eaton;
 - (xviii) use of the Product Software must at all times comply with all applicable laws, rules and regulations and be strictly in accordance with this Agreement;
 - (xix) not use the Product Software to transmit, or procure the sending of, any unsolicited or unauthorized advertising, promotional material, chain letters, mass mailings or any other form of similar solicitation (spam) or of any material that is illegal, offensive, abusive, indecent, defamatory, obscene, menacing or in breach of proprietary rights, confidence, privacy or any other right, or is injurious to third parties.
 - (xx) not attempt to gain unauthorized access to the Product Software, its facilities and/or services or any accounts, databases, computer systems,

- servers and networks connected to the Product Software and the server on which our site is stored. You shall not attack the Product Software via a denial of service attack. You will not misuse the Product Software by knowingly or recklessly introducing viruses, Trojans, worms, logic bombs, harmful data or other materials which is malicious or harmful;
- (xxi) not use the Product Software to harvest or otherwise collect by any means any program material or any information whatsoever (including without limitation email addresses or other personal details of other users);
 - (xxii) provide Eaton with accurate and complete information and acknowledge that Eaton's ability to deliver the Product Software is dependent upon your cooperation, as well as the accuracy and completeness of any information you provide to Eaton. Eaton shall not be liable for any costs, expenses or liabilities resulting from your failure to cooperate or to provide such information;
 - (xxiii) not access the Product Software through the use of any mechanism other than through the use of an authorized connection;
 - (xxiv) not use any automated technology such as a robot, spider or scraper, to access, scrape or data mine the Product Software;
 - (xxv) not modify the paper or digital copies of any Materials you print or download in any way, and you must not use any illustrations, photographs,

video or audio sequences, or any graphics separately from any accompanying text;

- (xxvi) not, without Eaton's prior express written permission, "mirror", screen-scrape or frame by any other similar method, any Materials contained on this Product Software on any other server;
- (xxvii) not use any part of the Materials for commercial purposes without obtaining permission from our licensors or us. If you are in breach of these terms of use, your right to use the Product Software will cease immediately and you must, at our option, return or destroy any copies of the Materials you have made;
- (xxviii) use reasonable endeavours to prevent any unauthorized access to, or use of, the Product Software and, in the event of any such unauthorized access or use, immediately without delay notify Eaton in writing by email to the relevant email address provided in the "contact us" section below and shall immediately without delay telephone Eaton to ensure the email communication has been received.

8.2 By breaching Clause 8.1 of this Agreement, you could potentially commit a criminal offence. We will report any such breach to the relevant law enforcement authorities, and we will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use

the Product Software will cease immediately.

- 8.3 We will not be liable for any loss or damage caused by a distributed denial of service attack, viruses or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Product Software or to your downloading of any material posted on it, or any website linked to it.

9 **THIRD PARTY SOFTWARE**

- 9.1 The Product Software may contain components (including, notwithstanding Clause 10 of this Agreement, open source software components) that are owned by third parties ("**Third Party Licensors**") and are provided with, incorporated into, linked to, or embedded in, the Product Software pursuant to license arrangements between Eaton and any such third parties. Third Party Licensor components in the Product Software are not licensed or warranted under the terms of this Agreement, but are instead subject to any license arrangements between Eaton and any such third parties.
- 9.2 You agree not to modify, delete or obfuscate any copyright or other Intellectual Property Rights notices of Third Party Licensors contained in the Product Software.
- 9.3 To the extent there are any conflicts between the terms of this Agreement and any license arrangement between Eaton and any such third party license corresponding to Third Party Licensor components or additional obligations by such Third Party Licensors that are not set forth in this Agreement, the terms of the license arrangement between Eaton and any such Third Party Licensor or the corresponding open source license will prevail.

10 **OPEN SOURCE SOFTWARE [RESERVED]**

11 **FEES [RESERVED]**

12 SUPPORT SERVICES

- 12.1 Eaton or its suppliers and distributors may provide you with support services related to the Product Software (the "**Support Services**"). Use of Support Services is governed by the terms and conditions for the applicable service offering (if any), the policies and programmes described in the Documentation, and/or other Eaton- provided Materials.
- 12.2 Any additional supplemental Materials provided to you as part of the Support Services shall be considered part of the Product Software, as applicable, and subject to the provisions of this Agreement.

13 *DISCLAIMER OF WARRANTY*

13.1 To the extent permitted by applicable law, you expressly acknowledge and agree that use of the product software is at your sole risk and that the entire risk as to satisfactory quality, performance, accuracy and effort of the product software is with you.

13.2 To the fullest extent permitted by applicable law, the Product Software, the Material and any information and any services performed or provided by or in connection with the Product Software are provided on an “as is” and “as available” basis, with all bugs and faults and without warranty of any kind. Eaton, its affiliates, subsidiaries, and authorized representatives hereby disclaim all warranties and conditions of any kind with respect to the product software and any services, either express, implied, statutory, or otherwise, including, but without limitation, any implied warranties and/or conditions of merchantability, of satisfactory quality, of fitness for a particular purpose, security, completeness, timeliness, accuracy, quiet enjoyment, title, freedom from computer viruses, and of non-infringement of third party rights. Neither Eaton, nor any of its affiliates or subsidiaries, warrant that the functions or services contained in, accessed from, performed by, displayed on, linked to/from, or provided by, the product software will meet your requirements, that the operation of the product software or services will be uninterrupted, error- free, timely, secure, or that defects or errors in the product software or services will be corrected, or that the product software will be compatible with any system, or that the product software will be free from worms, viruses, malware, Trojan horses, or other harmful or disabling components.

13.3 No oral or written information or advice given by Eaton, its affiliates, subsidiaries, or any of their respective authorized representatives shall create a warranty. You assume the entire cost of any and all necessary repairs in the event you experience any loss or damage arising from the use of the product software or any related goods or services. If you are dissatisfied with the product software and/or any related goods or services, your sole and exclusive remedy is to discontinue using the product software.

14 *LIMITATION OF LIABILITY*

14.1 Nothing in this agreement shall exclude or limit Eaton’s liability for death or personal injury resulting from its negligence or of its officers, representatives their servants, agents, affiliates, employees or any other liability which may not be limited or excluded under applicable law. In no event shall Eaton nor any of its officers or other representatives be liable for any loss or damages arising out of or in connection with your use, inability to use or reliance on any facilities, services, products and/or content offered through or from the product software, including, but not limited to, direct loss, loss of data, work stoppage, service interruption, computer failure,

system failure, device damage or malfunction, loss of income, profit or opportunity, loss of or damage to property and claims of third parties or for any indirect or consequential loss whatsoever, even if Eaton has been advised of the possibility of such loss or damages, or such loss or damages were reasonably foreseeable.

14.2 To the fullest extent permitted by law, Eaton, its affiliates, suppliers, licensors, and any other party involved in creating, producing or delivering the product software makes no warranties, either express or implied, about the product software. The product software is provided "as is" and "as available".

14.3 Except for your indemnification obligations pursuant to Clause 15 of this agreement, in no event will the aggregate liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty or claims by third parties arising from any breach of this agreement) of Eaton or its employees or agents to you or to any third party for damages, direct or otherwise, arising out of or in connection with this agreement exceed the lower of \$100 (one hundred United States dollars) or the cost of the product software, regardless of the cause or form of action, and whether such claims are grounded in contract, tort, strict liability or any other legal theory, notwithstanding any failure of essential purpose of any limited remedy.

14.4 Nothing in this agreement shall exclude or limit your liability under Clause 11 for any failure to pay any fees due hereunder or for any breach, misuse or infringement of Eaton's intellectual property rights under Clause 21.

14.5 If you use the Product Software for commercial, business or resale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

14.6 Each provision of this Clause 14 excluding or limiting liability shall be construed separately, applying and surviving even if for any reason one or the other of these provisions is held inapplicable or unenforceable and shall remain in force notwithstanding the termination of this agreement, howsoever arising.

15 **INDEMNIFICATION**

15.1 You agree to indemnify, defend, and hold harmless Eaton, including its officers, directors, employees, affiliates, subsidiaries, agents, licensors, authorized representatives, attorneys, business partners, and respective successors and assigns (the "**Indemnified Parties**") from and against any and all claims, demands, actions, liabilities, judgments, awards, losses, damages, costs and expenses (including reasonable legal fees, costs of defense, and direct, indirect, punitive, special, individual, consequential, or exemplary damages), Eaton or any of the Indemnified Parties suffer in relation to, arising from, or from the purpose of avoiding, any claim or demand from a third party that relates to you: (a) breach or violation of this Agreement; (b) infringement,

misappropriation or any violation of the rights of any other party from use of the Product Software in violation of this Agreement; (c) violation or non-compliance with any applicable law, rule, guidelines, acts, decrees, orders or regulations; (d) use, alteration or export of the Product Software (or any component thereof) in violation of this Agreement; and (e) the use of the Product Software by you or any person using your account.

- 15.2 Eaton and its affiliates reserve the right to assume the exclusive defense and control of any claims or actions subject to indemnification by you and all negotiations for its settlement or compromise, and you agree to fully cooperate with Eaton and its affiliates upon request by Eaton.

16 **AMENDMENTS TO THIS AGREEMENT**

- 16.1 Eaton reserves the right to amend, modify, update or substitute any of the provisions of this Agreement at any time. Any such amendment, modification, update or substitution shall be notified to you either by email or when you next login to your Product Software account or published on our website at www.eaton.com/foreseer (the "**Eaton Website**"), as appropriate. You have the right to withdraw from this Agreement if you do not accept any amendments, modifications, updates or substitution of any of the provisions of this Agreement and in such an event you must cease all access and use of the Product Software immediately. By continuing to use the Product Software after Eaton posts or otherwise notifies you of any changes, you accept and agree to the terms and conditions, as modified.

17 **FOR AUTHORIZED PARTIES IN CALIFORNIA**

- 17.1 In compliance with California Civil Code §1789.3, if you reside in California you have the right to contact Eaton with any complaints or to seek additional information. You may email Eaton at dataprotection@eaton.com.
- 17.2 If you reside in California and have any questions or complaints about the use of the Eaton provided Product Software you may also contact: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs through writing at 400 R Street, Suite 1080, Sacramento, CA 95814, or by telephone at (916) 445-1254 or (800) 952-5210. Hearing impaired persons may call (916) 928-1227 or (800) 326-2297 via TTY device. For further details, please visit https://www.dca.ca.gov/about_us/contactus.shtml.
- 17.3 You acknowledge and agree that this Clause 17 shall only apply to you if you are resident in California.

18 **ENFORCEMENT RIGHTS**

- 18.1 Eaton is not obligated to monitor the access or use of the Product Software, but Eaton reserves the right to do so for the purpose of operating the Product Software, to ensure compliance with these terms, and to comply with applicable law or other legal requirements. Eaton may consult with and disclose unlawful

conduct to law enforcement authorities; and pursuant to valid legal process, Eaton may cooperate with law enforcement authorities as part of an investigation and/or to prosecute users who violate the law. In addition to any of its other rights or remedies, Eaton reserves the right to suspend or terminate your access to all or a portion of your Product Software account, without any liability, if Eaton reasonably suspects that your use of the Product Software is harming or threatening to harm Eaton's systems, or in Eaton's reasonable opinion you have violated your responsibilities. Eaton reserves the right to investigate any violation of these terms and any conduct that affects the Product Software.

19 DATA PROTECTION

- 19.1 For the purposes of this Clause, personal data, data processor and data controller shall have the meanings given to them in the General Data Protection Regulation (the "**GDPR**"). You agree to comply with your obligations as a controller in respect to any processing of personal data and Eaton agrees to comply with its respective obligations under GDPR.
- 19.2 Eaton will at all times take all appropriate technical and organisational measures against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. Although Eaton has undertaken these measures and the requirements set out in GDPR, Eaton cannot guarantee that your personal data is secure when it is sent or transferred by unsecured means.

20 CONFIDENTIAL INFORMATION

- 20.1 All information provided via the Product Software is Eaton's confidential information. You agree to protect Eaton's confidential information, using the same degree of care used to protect your own confidential or proprietary information, but in any case, using no less than a reasonable degree of care.
- 20.2 You agree to only use Eaton's confidential information for the purposes of obtaining the benefit set out in this Agreement and for no other purpose. You agree not to use or disclose Eaton's confidential information without the prior written consent of Eaton, except to share it with your employees who have a need to know the information and are bound by a duty of confidentiality covering the information that is at least as restrictive as the obligations in this Agreement. You agree not to otherwise disclose such information to any third party without the prior written consent of Eaton. You shall be liable to Eaton for any breach of the confidentiality obligations in this Clause 20 of this Agreement by your employees.
- 20.3 Except for personally identifiable information/personal data, the use and disclosure of which is addressed in the Privacy Statement for the Product Software, any and all information and content provided by you to Eaton is provided on a non-proprietary and non-confidential basis, regardless of

whether the information or content is marked or otherwise identified as confidential or proprietary. You agree that Eaton has a royalty-free, perpetual, irrevocable, worldwide, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform, and display any provided information or content for the purpose of operating and/or marketing the services or any related services rendered by Eaton. This license includes any right of publicity rights that may be present in the provided information or content.

20.4 The provisions of this Clause 20 shall survive the expiration or termination of this Agreement.

21 **INTELLECTUAL PROPERTY OWNERSHIP**

21.1 This Agreement does not transfer any Intellectual Property Rights from Eaton to you. Except for the express licenses granted herein, all right, title and interest (including Intellectual Property Rights) in and to any intellectual property owned, created or independently developed by Eaton, including, but not limited to, the Product Software and any derivative work, customisation, modification or enhancement thereof (including all Intellectual Property Rights in any of the foregoing), whether developed prior to, during, or after this Agreement, will remain solely with Eaton and its licensors. Eaton grants no implied licenses hereunder.

21.2 You may provide suggestions, comments or other feedback ("**Feedback**") relating to the Product Software. Your Feedback, even if designated as confidential, shall not, absent a separate written agreement, create any confidentiality obligation for Eaton. Eaton shall be free to use, disclose, reproduce, license or otherwise distribute and exploit such Feedback as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

21.3 You may print off one copy, and may download extracts, of any page(s) of the Materials solely for internal business purposes only. Any paper or digital copies of any Materials which you have printed off or downloaded in any way must not be modified, and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text.

21.4 The content on the Product Software, including all information, text, graphics, images, hyperlinks, illustrations, designs, icons, photographs, documents, products, computer programs, services and written and other materials (collectively, the "**Materials**"), and such information is for general guidance purposes only.

21.5 Unless otherwise noted, all Materials are copyrights, trademarks, trade dress and/or other intellectual properties owned by, controlled by or licensed to Eaton or third parties (hereinafter, the "**Third-Party Providers**").

21.6 Except as stated herein, and to the extent permitted by law, none of the Materials may be copied, reproduced, distributed, republished, downloaded,

displayed, posted or transmitted in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or otherwise, without the prior express written permission of Eaton or the Third-Party Provider.

- 21.7 Any use of these Materials on any other website or networked computer environment for any purpose is prohibited. Any unauthorized use of any Materials contained on this Product Software may violate copyright, trademark, and other laws, including but not limited to laws of privacy and publicity, and may result in severe civil and criminal penalties.

22 **TERMINATION OR SUSPENSION**

- 22.1 This Agreement and the license granted hereunder, shall come into force on the creation of your Product Software account and shall continue in full force and effect unless this Agreement is terminated in accordance with its terms.

- 22.2 Eaton reserves the right, in its sole discretion and without notice to you, to suspend, terminate, modify or delete an account or access to the Product Software or parts thereof, if you are, or Eaton reasonably suspects that you are, failing to comply with any of the provisions of this Agreement or for any actual or suspected illegal or improper use of the Product Software. If you use multiple accounts, if Eaton does take action against you, you may have action taken against all your accounts.

- 22.3 For the avoidance of doubt, any willful unauthorized use, copying, modification, reverse engineering, disclosure, distribution or sublicensing of the Intellectual Property Rights in the Product Software or any related methods, algorithms, techniques or processes by you, your employees, agents, representatives, officers or directors will be deemed a material breach of this Agreement that cannot be cured, and termination may be immediate.

- 22.4 Upon termination for any reason:

- (i) all rights and licenses granted to you under this Agreement shall cease;
- (ii) you must cease all activities authorized by this Agreement, including your use of the Product Software;
- (iii) you must immediately delete, remove and cease access to the Product Software from all devices on which the Product Software has been installed and all copies of the Product Software then in your possession, custody or control. Eaton may also require that you provide it with evidence of compliance with this provision;
- (iv) you must immediately return or destroy all confidential information of Eaton in your possession, provided that you shall not be required to delete Eaton's confidential information that is and remains stored solely on backup storage pursuant to your standard backup retention procedures if only persons of advanced information technology knowledge and ability would be able to locate and access such information (but such

information shall nonetheless remain subject to confidentiality obligations contained herein);

- (v) we may remotely access your devices and remove the Product Software from them and cease providing you with access to the Product Software.

23 LINKS

23.1 The Product Software may contain links to third party websites, services and/or display advertisements for third parties (together, "**Third Party Links and Ads**"). Such Third Party Links and Ads are not under Eaton's control. Eaton disclaims all liability and responsibility for any Third Party Links and Ads and you acknowledge and agree that Eaton is not responsible or liable for: (a) the availability or accuracy of such Third Party Links and Ads; or (b) the contents, products or services on or available from such Third Party Links and Ads. Your use of Third Party Links and Ads is at your own risk and is subject to the terms and conditions of the applicable third party. Eaton provides Third Party Links and Ads for your convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third Party Links and Ads. You will need to make your own independent judgement about whether to use any such independent sites, including whether to buy any products or services offered by them.

24 **REPRESENTATIONS, WARRANTIES, COVENANTS AND DISCLAIMERS**

24.1 You undertake, represent and warrant that:

- (i) you shall comply, at your own expense, with all applicable present or future laws, statutes, instruments, regulations, orders, directives, enactments, including any amendment, extension or replacement thereof which is in force from time to time and which in any way relates to this Agreement and/or the provision of the Product Software or results from your obligations under this Agreement. Without limiting the foregoing, you shall comply with all contracting and procurement regulations associated with the Product Software;
- (ii) you have full power and authority to enter into this Agreement;
- (iii) you shall conduct your business in a manner that reflects favourably at all times on the Product Software and the name and goodwill of Eaton;
- (iv) you shall make no representations, warranties, or guarantees on behalf of Eaton;
- (v) you shall from refrain from amending or varying this Agreement.

24.2 Eaton makes no representations or warranties of any kind regarding the Product Software, the Material, information or any other matter, either express or implied, including, but not limited to implied warranties of fitness for a particular purposes, merchantability, title, accuracy/freedom from error, non-infringement or otherwise. You are not authorized to make any warranty commitment on Eaton's behalf, whether written or oral. You understand that

the Product Software may include hyperlinks to other websites or content or resources. Eaton has no control over any websites or resources which are provided by companies or persons other than Eaton. You acknowledge and agree that Eaton is not responsible whatsoever for any harm suffered by you on or in any way due to any third party websites or resources, even where they are accessed from or referred or linked to such sites by the Product Software. You acknowledge and agree that Eaton is not responsible for the availability of any such external sites or resources, and does not endorse any advertising, products or other materials on or available from such websites or resources. You acknowledge and agree that Eaton is not liable for any loss or damage which may be incurred as a result of the availability of those external sites or resources, or as a result of any reliance placed by you on the completeness, accuracy or existence of any advertising, products or other materials on, or available from, such web sites or resources.

25 **FORCE MAJEURE**

- 25.1 Notwithstanding anything else contained in this Agreement, Eaton shall not be liable for any delay in providing the Product Software or support for the Product Software if such delay arises from or is attributable to acts, events or omissions beyond its reasonable control, including (but not limited to) pandemics, epidemics or endemics, nuclear accident, acts of God, war or terrorist activity, riot, civil commotion, malicious damages (excluding malicious damage involving your employees or your sub-contractors), compliance with any law or governmental order or regulation, accident, industrial action by employees of any provider of electrical power, breakdown of plant or machinery, fire, flood or storm (a **Force Majeure Event**) subject to Eaton promptly notifying you in writing of the reasons for the delay and the expected duration of the delay.
- 25.2 The performance of Eaton shall be suspended during the period that the Force Majeure Event persists and Eaton shall be granted an extension of time for performance equal to the period of the delay arising as a result of the Force Majeure Event.
- 25.3 If a Force Majeure Event continues for more than sixty (60) calendar days, Eaton may terminate this Agreement immediately by notice in writing and neither shall be liable to the other by reason of this termination.

26 **MISCELLANEOUS**

- 26.1 If a term is found unenforceable or invalid, that term will be enforced to the maximum extent permissible and the remaining provisions of the Agreement will remain in full force and effect and an enforceable term will be substituted reflecting our intent as closely as possible. You may not assign or transfer any of your rights under this Agreement, and any such attempt will be void. Eaton may freely assign or transfer its rights to any of its affiliates or subsidiaries, or

to any successor in interest of any business associated with the Product Software. Subject to the foregoing, this Agreement will bind and ensure to the benefit of the parties, their successors and permitted assigns. Eaton's failure to enforce a term of this Agreement is not a waiver of its right to do so later. No failure or delay by Eaton or its affiliates to exercise any right or enforce any obligation shall impair or be construed as a waiver or ongoing waiver of that or any other right or power. Waiving one breach will not be construed to waive any succeeding breach. All waivers must be in writing and signed by the party waiving rights.

27 **REGULATORY MATTERS**

27.1 The Product Software, Documentation and Materials as well as parts of any of these (e.g. new versions, releases, updates, upgrades, patches, fixed or correction of the Product Software) are subject to export laws of various countries, including, without limitation, the laws of the United States, the EU and Ireland ("**Export Laws**"). You agree that you will not submit the Product Software, Documentation or other Materials or parts of any of these to any government agency for licensing consideration or other regulatory approval without the prior written consent of Eaton, and that you will not export, re-export or import any Product Software, Documentation and/or Materials to countries, persons or entities prohibited by any applicable Export Law. You represent and warrant that you are not located within an embargoed nation and that you are not otherwise prohibited under the Export Laws from receiving access to or using the Product Software, Documentation or other Materials. In that context, you are responsible for complying with all applicable Export Laws. If Eaton wants to deliver and/or grant access to the Product Software, Documentation, Materials, or parts of any of these directly to you, you will support Eaton in obtaining any required authorization, approval or other consent from the competent authorities, by providing any necessary or useful declarations or other necessary or useful information, e.g. end user certificates, as may be requested by Eaton. You acknowledge that the delivery of and/or granting of access to the Product Software, Documentation and Materials as well as parts of any of these may be subject to the prior obtaining of export or import authorisations or both from the competent authorities and that this process may (i) considerably delay or prevent the delivery of and/or granting of access to the Product Software, Documentation and Materials or part of any of these, (ii) impact Eaton's ability to provide services and (iii) lead to Eaton having to limit, suspend or terminate your access to any services.

27.2 Eaton assumes no responsibility or liability:

- (i) For any delay caused in the delivery and/or granting of access to the Product Software, Documentation and Materials or parts of any of these due to export or import authorizations or both having to be obtained from the competent authorities;

- (ii) If any required authorization, approval or other consent for the delivery of and/or granting of access to Product Software, Documentation and Materials or parts of these cannot be obtained from the competent authorities; and
- (iii) If the delivery of and/or granting of access to the Product Software, Documentation and Materials or parts of any of these is prevented due to applicable Export Laws; and
- (iv) If access to any services has to be limited, suspended or terminated due to applicable Export Laws.

27.3 Eaton may terminate this Agreement with thirty (30) days' prior written notice if Eaton may not deliver or grant access to the Product Software, Documentation and Materials to you due to an embargo or other comparable trade sanction, which is expected to be in place for six (6) months or longer.

27.4 If the Product Software is licensed to agencies of the U.S. Government, the Product Software is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 C.F.R. § 12.212, and is provided to the U.S. Government only as a commercial end item. Consistent with 48 C.F.R. § 12.212 and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, all U.S. Government End Users acquire the Product Software with only those rights set forth herein. Contractor/manufacturer is Eaton Corporation, 1000 Eaton Boulevard, Cleveland, Ohio 44122.

28 GOVERNING LAW AND JURISDICTION

28.1 To the extent not prohibited by law, You agree that this Agreement and all disputes, claims, actions, suits or other proceedings arising hereunder shall be governed by, and construed in accordance with, the substantive law of the State of Ohio applicable to contracts wholly made and to be performed within the State of Ohio, and to irrevocably submit to the sole and exclusive jurisdiction of the courts of Ohio or the Federal courts of the Northern District of Ohio, and to irrevocably consent to the exercise of personal jurisdiction by such courts and waive any right to plead, claim or allege that Ohio is an inconvenient forum.

29 AGREEMENT

29.1 This Agreement (and any associated order form or other agreements referenced herein) constitutes the entire and exclusive agreement between you and Eaton with respect to the subject matter of this Agreement, and supersedes and replaces any other prior or contemporaneous agreements, or terms and conditions applicable to the subject matter of this Agreement. No provisions in your purchase orders, or in any other business forms employed by you, will supersede the terms and conditions of this Agreement.

30 CONTACT US

Any questions regarding this Agreement should be directed to Eaton at: Eaton
Attn: IP Law Group

1000 Eaton
BoulevardMail
Code 4N Cleveland,
OH 44122

Eaton
Attn: Global Data Protection and Privacy Office
1000 Eaton Boulevard
Cleveland, OH 44122
Email: dataprotection@eaton.com

Copyright

Eaton Corporation End User License Agreement for Foreseer – 7.5.800

Publication date 01/2022

Copyright © 2022 by Eaton Corporation. All rights reserved. Specifications contained herein are subject to change without notice.

Foreseer is a registered trademark of Eaton Corporation.

EATON CORPORATION - CONFIDENTIAL AND PROPRIETARY NOTICE TO PERSONS RECEIVING THIS DOCUMENT AND/OR TECHNICAL INFORMATION THIS DOCUMENT, INCLUDING THE DRAWING AND INFORMATION CONTAINED THEREON, IS CONFIDENTIAL AND IS THE EXCLUSIVE PROPERTY OF EATON CORPORATION, AND IS MERELY ON LOAN AND SUBJECT TO RECALL BY EATON AT ANY TIME. BY TAKING POSSESSION OF THIS DOCUMENT, THE RECIPIENT ACKNOWLEDGES AND AGREES THAT THIS DOCUMENT CANNOT BE USED IN ANY MANNER ADVERSE TO THE INTERESTS OF EATON, AND THAT NO PORTION OF THIS DOCUMENT MAY BE COPIED OR OTHERWISE REPRODUCED WITHOUT THE PRIOR WRITTEN CONSENT OF EATON. IN THE CASE OF CONFLICTING CONTRACTUAL PROVISIONS, THIS NOTICE SHALL GOVERN THE STATUS OF THIS DOCUMENT.

DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

The information, recommendations, descriptions and safety notations in this document are based on Eaton Corporation's ("Eaton") experience and judgment and may not cover all contingencies. If further information is required, an Eaton sales office should be consulted. Sale of the product shown in this literature is subject to the terms and conditions outlined in appropriate Eaton selling policies or other contractual agreement between Eaton and the purchaser.

THERE ARE NO UNDERSTANDINGS, AGREEMENTS, WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, OTHER THAN THOSE SPECIFICALLY SET OUT IN ANY EXISTING CONTRACT BETWEEN THE PARTIES. ANY SUCH CONTRACT STATES THE ENTIRE OBLIGATION OF EATON. THE CONTENTS OF THIS DOCUMENT SHALL NOT BECOME PART OF OR MODIFY ANY CONTRACT BETWEEN THE PARTIES.

In no event will Eaton be responsible to the purchaser or user in contract, in tort (including negligence), strict liability or otherwise for any special, indirect, incidental or consequential damage or loss whatsoever, including but not limited to damage or loss of use of equipment, plant or power system, cost of capital, loss of power, additional expenses in the use of existing power facilities, or claims against the purchaser or user by its customers resulting from the use of the information, recommendations and descriptions contained herein.