



PRODUCT ADDENDUM FOR PRODUCTS INCORPORATING THE NIAGARA^{AX} FRAMEWORK OR THE SEDONA FRAMEWORK

The following terms and conditions apply to products incorporating the Niagara^{AX} framework or the Sedona framework licensed by Tridium, Inc., and related documentation (the "Licensed Materials"):

Tridium, Inc. shall be a third party beneficiary of all of purchaser's rights, obligations and limitations described in this Addendum as they apply to Tridium.

No rights granted to purchaser with respect to the Licensed Materials shall extend beyond the term of the Agreement.

Purchaser may not cause any Licensed Materials provided to any customer to cease to operate, to have diminished functionality, or to be inaccessible to customer, by means of time bombs, passwords, or otherwise, for any reason unless it has first agreed in a writing signed by such customer that it has the right to do so.

Purchaser shall protect Tridium, Inc. and the Licensed Materials to the extent required of "Reseller" under the sections in the Authorized Tridium Reseller Agreement between Distech Controls and Tridium, Inc. (the "Agreement") reproduced below:

2. Software License Grants.

2.1 Limited License. Subject to the terms and conditions contained in this Agreement and its Exhibits (including, without limitation, the EULA), Tridium hereby grants to Reseller a non-exclusive, limited license under Tridium's Intellectual Property Rights to:

- i. purchase and use copies of the Licensed Materials and the Hardware designated in Exhibit A as Licensed Materials and Hardware for demonstration and support for (a) demonstration to, and support of, Customers, and (b) development and support of its Reseller Products;
- ii. order and purchase for resale to Customers the Hardware and copies of the Licensed Materials identified in Exhibit A as Licensed Materials for distribution to Customers, and engineer the same for use by its Customers,
- iii. use the Documentation in support of Reseller's authorized use of the Licensed Materials; and
- iv. use the Licensed Materials for such other purposes, and subject to such other limitations, provisions or restrictions, if any, as are set forth in Exhibit A.

2.2 End User License Agreements. This Agreement does not provide Reseller or End Users with any right to install or use the Licensed Materials or Hardware that incorporate, or are accompanied by, an End User License Agreement, except as expressly set forth at 2.1.ii above. Use of such Licensed Materials and Hardware by an End User is governed by the terms of the End User License Agreement, which accompanies or is included with the Licensed Materials. A copy of the End User License Agreements, as they may be updated from time to time, can be found on Tridium's web site, the link as of the Effective Date being:

http://www.tridium.com/cs/purchase_products/signup documents. Reseller shall (i) comply with any reasonable requests of Tridium related to delivery of EULAs to Reseller's Customers and/or confirmation of such Customers' agreement to the terms of the same in a manner consistent with requirements imposed by Tridium on its resellers generally (ii) resell copies of the Licensed Materials complete with the End User License Agreement(s) provided in such materials by Tridium, without altering in any way the manner in which the End User License Agreements appear in, or are required to be executed by, the End User; and (iii) not remove any certificate of authentication that is affixed to any Hardware provided Tridium.

2.3 No Other Rights Granted. Apart from the rights expressly granted under this Section 2, and the rights, if any, granted in Exhibit A, no license or other right is granted by Tridium to Reseller or Customers under this Agreement, either directly or by implication, estoppel, or otherwise, under any other Intellectual Property Rights (including, but not limited to, the right to prepare derivative works), know-how or trade secrets. Reseller shall have no right or access to the Source Code of the Licensed Materials, except to the extent, if any, that such materials are included in the Licensed Materials.

2.4 Restrictions. Reseller shall:

i. use all commercially reasonable efforts to ensure that all Reseller employees, contractors, consultants and Authorized Reseller Partners comply with the terms of this Agreement and that its Authorized Reseller Partners protect the rights and interests of Tridium in accordance with the provisions described at Section 4.3 below;

ii. not make any representations or warranties on behalf of Tridium, about Tridium, about the Intellectual Property or about the Licensed Materials;

iii. not modify, decompile, disassemble, decrypt, extract, or otherwise reverse engineer the Licensed Materials or any part thereof, or any application enabler or grant any other person or entity the right to do so or take any action that would assist any other person or entity in doing so and will promptly notify Tridium of any information that any other person or entity is or is attempting to copy, reverse engineer, disassemble, decompile, translate or modify the Licensed Materials;

iv. not insert, delete, or replace any End User License Agreement, readmeLICENSES file, baja.jar file, or any file with a ".license" extension ("License File") in the Licensed Materials or embedded in the Hardware, or insert any file, except as expressly permitted under the EULA; not modify, change, remove, prepare derivative works of, or otherwise alter, any Binary Code files or any End User License Agreement, readmeLICENSES file, or any License File in in the Licensed Materials or embedded in the Hardware;

v. not loan, rent, lease, give, transfer, publish, disclose, display, or otherwise make available the Licensed Materials, in whole or in part, to any other person or entity except (a) to an entity that is an Authorized Reseller Partner that agrees to be bound by an Authorized Reseller Partner Agreement, (b) to a person or entity that is the final End User of the Licensed Materials and agrees to be bound by the End User License Agreement, or (c) as expressly permitted under the EULA;

vi. not allow any individual to program or engineer any application of the Niagara Framework unless that individual has been trained and certified via the Tridium program as detailed in Exhibit D;

vii. ensure compliance with the training requirements laid out in Exhibit D,

viii. not cause, or permit any of its Authorized Reseller Partners to cause, any Licensed Materials provided to any Customer to cease to operate, to have diminished functionality, or to be inaccessible to the Customer, by means of time bombs, passwords, or otherwise, for any reason unless it has first agreed in a writing signed by such Customer that it has the right to do so;

ix. not remove any certificate of authenticity from any Hardware, or remove or alter in any way any end user license agreement packaged with any Hardware; and

x. cooperate with Tridium as Tridium reasonably requests in addressing any software security issues identified in connection with the Licensed Products, or in connection with testing of the Licensed Products for software security issues, and in the event Tridium provides a mitigation plan related to a security issue, report to Tridium on Reseller's mitigation and communication plan for its Customers and its implementation of the same as reasonably requested by Tridium.

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8. **Confidentiality.**

8.1 **Confidential Information.** During the Term of this Agreement, the Parties acknowledge that Confidential Information may be disclosed by one Party to the other, or by or to a Tridium Entity that is not a party to this Agreement. To the extent that this Section 8 imposes obligations on Tridium, Tridium shall cause each other Tridium Entity to perform such obligation with respect to Confidential Information disclosed to it by Reseller, and to the extent this Section 8 imposes obligations on Reseller with respect to Tridium, Reseller shall have the same obligations to each Tridium Entity with respect to Confidential Information disclosed to Reseller by such entity.

8.2 **Obligations.** Except as otherwise expressly provided in this Agreement, each Party agrees to keep confidential the Confidential Information disclosed to it by the other during the Term of this Agreement, and to not disclose the Confidential Information of the other to third parties except for directors, officers, employees, consultants, counsel, accountants, professional advisers and other agents of the Party or its Affiliates whose duties justify access to such Confidential Information to perform such Party's obligations or exercise its rights hereunder, and who have each agreed to comply with nondisclosure protections at least as protective of the disclosing Party's Confidential Information as those in this Section, and to use such Confidential Information solely for the purposes set forth in this Agreement. Each Party agrees that its obligations with respect to the other Party's Confidential Information shall survive for (i) a period of three (3) years following receipt of such Confidential Information related to the disclosing Party's general business information and (ii) indefinitely with respect to any Confidential Information related to the Licensed Materials and to any other trade secrets or know-how of the disclosing Party. Each Party shall take reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information to prevent the duplication or disclosure of Confidential Information of the other Party. Each Party shall use its best efforts to cause any third parties that may come into possession of any Confidential Information of the other to maintain the confidentiality of such information.

8.3 **Disclosures Required By Law.** The Receiving Party may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it, provided that the Receiving Party (i) gives the Disclosing Party reasonable notice (to the extent permitted by law) to allow the Disclosing Party to seek a protective order or other appropriate remedy, (ii) discloses only such information as is required by the governmental entity, and (iii) uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed..

8.4 **Destruction.** The Receiving Party shall destroy all materials embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) promptly following the earlier of the Disclosing Party's written request or the termination of this Agreement. At the Disclosing Party's option, the Receiving Party shall provide written certification of its compliance with this Section. except that the Receiving Party may retain archival copies of Confidential Information stored on backup disks or in backup storage facilities automatically produced by the Receiving Party's information technology systems in the ordinary course of business which are not, in the ordinary course of business, accessible from employee workstations. Any archival copies of Confidential Information so retained will be held subject to the confidentiality and use limitations of this Agreement and will not be accessed by any person except information technology systems administrators or used for any purpose except necessary data storage systems maintenance.

9. **Warranties and Limitations In Addition to Those Set Forth In Exhibit E.**

9.1 **Training.** Reseller acknowledges that the training and certification provided under this Agreement are intended to convey information about the essential functions of the Licensed Materials, and to certify demonstration of a reasonable level of knowledge of such functions to Tridium, but that neither training nor certification is intended to, or does, indicate that any individual (i) has the knowledge or ability to, or will in any particular case, cause the Licensed Materials to perform in a given environment, configuration or situation as desired or in a safe or appropriate manner, or (ii) will in any particular case train individuals in use of such materials in an acceptable manner. TRAINING SERVICES ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND.

9.2 **Limitation of Liability.** NEITHER ANY TRIDIUM ENTITY NOR ANY OF THEIR RESPECTIVE LICENSORS, OFFICERS, AGENTS, EMPLOYEES OR REPRESENTATIVES SHALL BE LIABLE TO RESELLER FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR PENALTIES (INCLUDING DAMAGES FOR LOST PROFITS, LOST BUSINESS, LOST DATA, BUSINESS INTERRUPTION, AND THE LIKE), HOWEVER THEY ARISE, INCLUDING BUT NOT LIMITED TO, THE USE BY RESELLER OR ITS CUSTOMERS OF THE LICENSED MATERIALS OR HARDWARE OR ANY OTHER PRODUCTS, WHETHER FOR BREACH OF CONTRACT OR IN TORT, EVEN IF TRIDIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.3 **Limitation of Remedies.** IN NO EVENT SHALL ALL TRIDIUM ENTITIES' CUMULATIVE MONETARY LIABILITY IN CONNECTION WITH THIS AGREEMENT OR THE LICENSED MATERIALS OR HARDWARE, TO RESELLER, ITS AUTHORIZED RESELLER PARTNERS AND/OR ITS CUSTOMERS, EXCEED THE LESSER OF THE AMOUNTS PAID TO THEM BY RESELLER PURSUANT TO THIS AGREEMENT OR TWO MILLION DOLLARS.

10 **Assurances by Reseller.**

10.1 **Appropriate Precautions Required by Reseller.** There can be no assurances whatsoever that control systems such as the Licensed Materials and Hardware will protect Reseller, its Customers, or any individual or his, her or their respective property from harm. Appropriate safety precautions must always be taken when operating or maintaining equipment connected to Licensed Materials and Hardware. Tridium assumes no responsibility or liability for any injury or damage to any persons or property resulting from the use by Reseller or its Authorized Reseller Partners or Customers of the Licensed Materials. Further, Reseller represents and warrants that it will use its best efforts to take appropriate precautions, establish appropriate procedures and post appropriate notices to ensure that persons and property are not harmed in the event of an error, malfunction or unexpected operation of the Licensed Materials, Hardware, or other Tridium products.

10.2 **High-Risk Applications.** Unless Tridium has provided its express written consent, neither the Hardware nor Licensed Materials may be, and Reseller shall make reasonable business efforts to ensure that they are not, used in any application in which the failure of the Hardware and/or Licensed Materials could lead to death, personal injury or severe physical or property damage or environmental damage (collectively, "High-Risk Applications"), including but not limited to the operation of nuclear facilities, mass transit systems, aircraft navigation or aircraft communication systems, air traffic control, weapon systems and direct life support machines. Tridium expressly disclaims any express or implied warranty or condition of fitness for High-Risk Applications.

11.3 **Indemnity By Reseller.** Reseller shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against any Tridium Entity arising out of a Reseller Matter and shall pay any damages finally awarded or settlement amounts agreed upon to the extent based upon a Reseller Matter ("Tridium Claim"); provided that Tridium provides Reseller with (i) prompt written notice of such Tridium Claim; (ii) control over the defense and settlement of such Tridium Claim; and (iii) proper and full

information and assistance to settle or defend any such Tridium Claim. Reseller shall indemnify and hold harmless each Tridium Entity, its Affiliates, officers, directors, employees and agents against all losses, claims, damages or other causes of any nature or kind whatsoever (including reasonable attorney's fees) arising directly or indirectly out of third party claims concerning (i) the breach by Reseller of any covenant herein; (ii) the negligence or intentional misconduct of Reseller, its officers, employees, agents or contractors; (iii) any services rendered by Reseller, or (iv) any Reseller Product. Reseller agrees not to interpose any cross-claim, third party claim or similar claim against Tridium based on a claim, suit, action or proceeding threatened or commenced against Reseller related to the Licensed Materials and arising out of any matter other than a Reseller Claim.

13.3 Compliance with Applicable Laws. Tridium and Reseller shall comply with all applicable laws and regulations of governmental bodies or agencies relating to its performance under this Agreement. Tridium and Reseller shall each obtain and maintain all necessary licenses and pay all required fees in connection with its duties hereunder.

13.4 Export. Reseller acknowledges that Hardware and Licensed Materials, including technical data, are subject to U.S. 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. Reseller agrees to fully comply with all applicable export and import laws and regulations including, without limitation, the particular restrictions described in Exhibit G under the caption "Export."

13.5 Equitable Relief. Each Party acknowledges that any breach of its obligations hereunder with respect to the Licensed Materials or the Confidential information of the other Party will cause the non-breaching Party irreparable injury for which it has no adequate remedy at law, and therefore that the non-breaching Party will be entitled to seek and obtain equitable relief, including preliminary injunctions and temporary restraining orders, to prevent any unauthorized use of the non-breaching Party's Confidential Information, in addition to all other remedies available to it under this Agreement or other applicable law. The Parties also agree that any breach by Reseller of its obligations with respect to the Licensed Materials shall give Tridium the right to equitable relief as set forth herein.

13.13 U.S. Government Restricted Rights. The Licensed Materials are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Tridium, Inc., 3951 Westerre Parkway, Suite 350, Richmond, Virginia 23233.