

# Terms and Conditions for the OpCon Solution

These are the Terms and Conditions (“Terms”) governing your use of each proprietary software offering from us to which you subscribe under a separate, signed Order.

**Scope.** These Terms provide Customer with access to, and use of the OpCon Solution identified in the Order linked to these Terms. These Terms set out your rights and obligations regarding use of the OpCon Solution. Your access to and use of the OpCon Solution is conditioned on your acceptance of and compliance with these Terms. By downloading, installing, or using the OpCon Solution, you agree to be bound by these Terms. If you disagree with any part of these Terms, then you may not download, install, or use the OpCon Solution.

**1. Definitions.** For purposes of these Terms, the following capitalized words or phrases will have the specified meaning:

**(a) “Agreement”** means these Terms together with all Orders that you execute with us.

**(b) “Company” (or “we” or “our”)** means Unisoft International, Inc., DBA SMA Technologies, or, if different, the entity executing the Order with you.

**(c) “Confidential Information”** means all information, including, but not limited to, the trade secrets and know-how of the respective parties, that a reasonable person in the parties’ industries would regard as being proprietary or confidential, and any information marked “Confidential” or “Proprietary” and, in the case of Company, the OpCon Solution; provided, however, Confidential Information shall not mean any information that: (i) is known to the receiving party at the time of disclosure by the disclosing party; (ii) is developed independently by the receiving party without use of the disclosing party’s Confidential Information; (iii) is within, or later falls within, the public domain without breach of this Agreement by the receiving party; (iv) is publicly disclosed with written approval of the disclosing party; or (v) becomes lawfully known or available to the receiving party without restriction from a source having the lawful right to disclose the information without breach of this Agreement by the receiving party. The receiving party shall have the burden of proof as to establishing by competent evidence any of the exceptions set forth in subsections (i) to (v) above.

**(d) “Customer” (or “you” or “your”)** means the entity identified as the “Customer” in the Order.

**(e) “Data Protection Addendum” (or “DPA”)** means the document that describes the Company’s policies in place to protect data which is incorporated herein.

**(f) “Documentation”** means the technical and user documentation for the OpCon Solution, located at [help.smatechnologies.com](https://help.smatechnologies.com), which is incorporated herein.

**(g) “IP Rights”** means all proprietary information, patents, patent applications, trademarks, trade names, service marks, certification marks, collective marks, designs, processes, inventions, licenses, copyrights, know-how and trade secrets relating to the origin, design, manufacture, programming, operations, function, configuration, or service of the OpCon Solution, and arising in each foregoing case under any jurisdiction in the world.

**(h) "Order"** means the ordering document executed by us that incorporates these Terms among other terms you agree to with us. Each Order, once mutually signed, is incorporated into and forms part of the Agreement for all purposes.

**(i) "SOW"** means a statement of work attached to an Order which contains the details of Company's consulting services related to the OpCon Solution.

**(j) "Support"** means those support and maintenance services provided by Company for the OpCon Solution under these Terms.

**(k) "Task"** means each unique set of instructions executed in the OpCon Solution. For clarification purposes, a Task that runs one time on one machine counts as one Task. A Task that runs multiple times on the same machine using the same parameters counts as a single Task. A Task that runs on multiple machines or using multiple parameters counts as multiple Tasks. For licensing purposes, a Task is counted whether the unit of work completes successfully or fails.

**(l) "User"** means your employees and the respective employees of your majority-owned affiliates, representatives, consultants, contractors, or agents.

## 2. License.

**(a) License.** Subject to these Terms, Company grants to Customer a non-exclusive, non-transferable, and term-based license (the "License") to use the OpCon Solution in accordance with the following:

- (i) Customer may install the OpCon Solution in object code format and may use the OpCon Solution to perform Tasks, among other functions described in the Documentation;
- (ii) Customer may allow its Users to access and use the OpCon Solution; provided that such access and use of the OpCon Solution must be for the sole benefit of Customer, and Customer remains responsible for such Users' compliance with these Terms.

**(b) License Restrictions.** Customer will not, nor will it permit or assist Users to:

- (i) decompile, disassemble or reverse engineer the OpCon Solution or otherwise circumvent protection of the OpCon Solution;
- (ii) use the OpCon Solution to develop or market any conversion utility or aid specific to the OpCon Solution enabling users to convert from the OpCon Solution to an alternative software application;
- (iii) market, sell, lease, lend, provide, transfer, assign, grant or otherwise commercialize any interest in, the License or the OpCon Solution to any third party;
- (iv) print, reproduce or copy in any form, in whole or in part, the OpCon Solution, except as is necessary for its own internal use and for backup purposes. Any and all copies made by Customer are subject to these Terms and are the sole and exclusive property of Company and must remain in the custody and control of Customer. Company may adopt from time to time such mechanical or electronic methods as Company deems necessary to control the unauthorized use or distribution of the OpCon Solution, associated Documentation or supporting material; and
- (v) make unauthorized changes to the underlying database(s) in the OpCon Solution.

(c) Customer Data. Company has implemented a Data Protection Addendum that outlines Company's handling of Customer Data. The DPA is incorporated herein by reference and is located at [https://smatechnologies.com/assets/files/DPA-Data-Protection-Addendum\\_Effective-05.18.2022.pdf](https://smatechnologies.com/assets/files/DPA-Data-Protection-Addendum_Effective-05.18.2022.pdf).

### 3. Term and Termination.

**(a) Term.** This Agreement continues until all Orders expire or have been terminated (whichever is earlier) as provided below. Each Order will set out its own subscription term.

**(b) Termination for Non-Renewal.** Customer may submit a notice of non-renewal no less than 60 days prior to expiration of the then-current term. Such notice should be submitted as per Section 10(k) herein.

**(c) Termination for Material Breach.** If either party is in material breach of these Terms, the other party may terminate this Agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.

**(d) Suspension.** Company may, after giving Customer reasonable notice, suspend Customer's use of an OpCon Solution if Customer is 30 days or more overdue in its payment of any fees owed to the Company; or Company believes in good faith that, in using the OpCon Solution, Customer has violated a law.

**(e) Effect of Termination.** Upon termination or expiration (whichever is earlier) of this Agreement for any reason, Customer must pay Company all undisputed amounts due and owed under the Order(s) and all licenses granted under the Agreement shall immediately terminate and the Customer shall immediately cease all use of the OpCon Solution and the Documentation.

### 4. Services.

**(a) Support.** Your purchase of an OpCon Solution as a subscription includes Support under the terms of Company's Support Policy, located at [www.smatechnologies.com/support](http://www.smatechnologies.com/support), which is incorporated into these Terms for all purposes ("Support Policy").

**(b) Implementation Services.** As documented in a mutually signed SOW, Company may provide specified installation, setup, configuration, and implementation with respect to the OpCon Solution, subject in all respects to these Terms and the SOW.

**(c) Consulting Services.** As documented in a mutually signed SOW, Company may provide specified services beyond those covered in the original implementation with respect to the OpCon Solution, subject in all respects to these Terms and the SOW.

**(d) Training.** As documented in the associated Order, Company may provide basic, advanced or customized training with respect to the OpCon Solution, subject in all respects to these Terms and the SOW.

### 5. Payment.

**(a) Fees.** Subject to Customer's right to dispute fees solely as set out in this section, Customer must pay all fees due under the payment terms set forth in the Order, in the currency reflected in each Order, and if no currency is reflected, in United States currency. Customer may withhold from payment any amount disputed by Customer in good faith solely if Customer: (i) timely pays all amounts not subject to dispute; (ii) notifies Company in writing of the dispute prior to the due date, specifying in such notice (1) the amount in dispute, and (2) the reason for the dispute; (iii) works

with Company in good faith to resolve the dispute promptly; and (iv) promptly pays any amount determined to be due by resolution of the dispute; provided, however, if any dispute lasts longer than thirty (30) days, Company may cease performance hereunder and exercise any rights at law or equity (including, without limitation, termination for material breach). Company may charge Customer a late fee of up to 10% or the maximum allowable by jurisdiction, whichever is less, for every invoice that is over 30 days past due. No Customer purchase order is required unless specified in an Order.

**(b) Task Usage-Based Fees.** Task Usage-Based Fees. The usage-based fees are based on the average daily number of Tasks (across all production environments) that Customer performed within the OpCon Solution over the then-current Annual Period. Tasks are further described in the applicable OpCon Task- Based Model Package located at [www.smatechnologies.com/technology-product-bundles](http://www.smatechnologies.com/technology-product-bundles) ("Task Model"), incorporated herein by reference.

**(c) Taxes.** Payment of all sales tax, use tax, VAT, foreign, state or federal taxes, and any other taxes in any form, offsets, withholding or currency control associated with the Order, and all subsequent Support charges, will reside solely with, and be the financial responsibility of, the Customer, excluding taxes based on Company's income which will be paid by Company. Domestic sales and use taxes will be included on invoices where applicable unless Customer provides Company with reasonable evidence of Customer's exemption from such taxes.

**(d) Definition of Usage-Based Fees. OpCon Tasks.** The OpCon task usage-based fee is based on the average daily number of Tasks (across all production environments) that Customer performed within the OpCon Solution over the then-current Annual Period as defined in the Order Form. Tasks are further described in the applicable OpCon Task Based Model Package located at [www.smatechnologies.com/technology-product-bundles](http://www.smatechnologies.com/technology-product-bundles) ("Task Model"), incorporated herein by reference. Upon the Subscription Start Date, the OpCon Solution will begin measuring Customer's use of the OpCon Solution.

**(e) Audit and True-ups.** Customer will enable the use of the functionality provided within the OpCon solution for the purpose of calculation of fees pursuant to and due under the Order. If the Customer is unable to enable the use of this functionality, the Customer will be required to provide any reports and queries requested to Company for this purpose. Company, and its designated representatives, will audit Customer's task usage records monthly that relate to its payment obligations under an Order at least annually.

**(f) Measurement.** The OpCon Solution will begin measuring Customer's use of the OpCon Solution upon the Order Date.

(i) If Customer has exceeded or will exceed, in any Annual Period, the average number of daily Tasks purchased in Schedule A of the related Order, then Customer may notify Company that it desires to purchase additional Tasks for the remainder of the then-current Annual Period at the effective rate per Task specified in Schedule A. In this case, Company will then invoice Customer for the number of new Tasks purchased.

(ii) Within the 90-day period prior to expiration of the then-current Annual Period, Company will conduct an audit of Customer's Task usage for that period as specified in this Section 5(d). If Company determines, based on such audit, that Customer has exceeded or will exceed, the average number of daily Tasks purchased, Company will then issue an invoice for the next Annual Period based on the new Task usage amount; provided, however, if Company determines that Customer's Task usage was greater than 50% of the purchased number of Tasks, then Company may invoice Customer in arrears for the overage of the past Task usage, at the effective rate per Task specified in Schedule A.

## 6. Proprietary Rights; Confidentiality.

**(a) Proprietary Rights.** Company and its licensors retain ownership of the OpCon Solution and its associated design, software, documentation, processes, algorithms, and user interfaces, and all IP Rights embodied therein ("Company Technology"). Customer may not remove or modify any proprietary marking or restrictive legends from the Company Technology. Company reserves all rights not expressly granted in these Terms.

**(b) Confidential Information.** In the event the receiving party is legally requested or compelled in any form to disclose any of the disclosing party's Confidential Information, the receiving party, unless prohibited by applicable law, shall provide the disclosing party with prompt written notice of such request, so that the disclosing party may seek a protective order or pursue other appropriate remedies to protect the confidentiality of its information. If such protective order or other remedy is not obtained, the receiving party will furnish only that portion of the Confidential Information which the receiving party, upon the opinion of its counsel, is legally required to furnish. The receiving party will reasonably assist the disclosing party in its efforts to obtain a protective order or other remedies to protect or limit the disclosure of the information subject to the request.

Each party acknowledges that in the performance of this Agreement a party may receive Confidential Information from a disclosing party and that such Confidential Information is the exclusive property of the disclosing party. The receiving party agrees to hold the Confidential Information of the disclosing party in strict confidence in accordance with the provisions of this Agreement. A receiving party: (i) shall not permit or suffer its employees or agents to remove any proprietary or other legends or restrictive notices contained or included in any Confidential Information provided by the disclosing party; (ii) shall not permit or suffer its employees or agents to copy or modify any Confidential Information except as specifically authorized in this Agreement; (iii) shall not disclose any Confidential Information to a third party without the prior written consent of the disclosing party; (iv) shall only use the disclosing party's Confidential information for purposes of performing its obligations under this Agreement, and shall not otherwise use the information for its own benefit or for the benefit of any third party; and (v) agrees to keep secure and maintain the Confidential Information of the disclosing party in a manner no less protective than that used to maintain the confidentiality of the receiving party's own Confidential Information. Customer acknowledges that use of the OpCon Solution generates statistical data regarding the use and performance of the OpCon Solution and processing of data. Company may retain such data after any expiration or termination of this Agreement and internally or externally use aggregated and/or anonymized versions of such data for product improvement or the development of new products.

**(c) Limitation on Disclosure.** A receiving party may disclose Confidential Information to its employees or agents under the control and direction of the receiving party only in the normal course of business and on a need-to-know basis within the scope and purpose of this Agreement. Provided, however, prior to any disclosure all such agents shall have entered into written agreements with the receiving party requiring such agents to treat and use all such Confidential Information in a manner consistent with the terms and conditions of this Agreement. Except as expressly set forth herein, no licenses under any patent, copyright or other Intellectual Property Rights of either party are granted.

**(d) Return of Confidential Information.** Upon any termination, cancellation, or rescission of this Agreement, a receiving party shall, at the option of the disclosing party: (i) surrender and deliver all Confidential Information of the other party, including all copies thereof; or (ii) destroy the Confidential Information and all copies thereof and provide satisfactory evidence of such destruction in the form of an affidavit certifying such destruction to the disclosing party within one (1) month following termination; provided, however, that Company may retain copies of Customer

Confidential Information that are stored on Company's IT backup and disaster recovery systems until the ordinary course of deletion.

**(e) Disclosure of OpCon Solution Constitutes Incurable Material Breach.** Customer acknowledges and agrees that any disclosure of the OpCon Solution to a third party in violation of the terms of this Agreement constitutes a material, incurable breach of this Agreement and shall result in the automatic termination of this Agreement and the immediate termination of all licenses granted to Customer by this Agreement. Customer further agrees that it shall be strictly liable for all damages to Company that result from any disclosure of the OpCon Solution to any third party.

## 7. Warranties.

**(a) OpCon Solution Warranty.** Company warrants that: (i) the OpCon Solution will contain the features and functions contained in the Documentation; and (ii) the functionality or features of the OpCon Solution may change but will not materially decrease during any paid term. AS CUSTOMER'S EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY UNDER THIS WARRANTY, Company will, at its discretion, fix or replace the non-conforming portion of the OpCon Solution within a commercially reasonable period of time after Customer notifies Company of the breach; provided, however, if within the 60 day period following initial delivery of the OpCon Solution to Customer, Company cannot remedy the breach, then Customer may terminate the Order and request a refund of the fees paid for such OpCon Solution. This warranty does not apply if: (1) the OpCon Solution is not used in accordance with Documentation, (2) any equipment owned or supplied by Customer malfunctions, or (3) any other cause which is not attributable to Company.

**(b) Software Security Warranty.** Company warrants that it implements and maintains commercially reasonable technical, administrative and organizational means that are in each case designed to (i) detect the introduction of third party malicious software the OpCon Solution before delivery to Customer, and (ii) identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of Customer environment hosting Customer data.

**(c) Support Warranty.** Company warrants that: (i) it will provide Support in accordance with these Terms, the Support Policy and generally accepted practices within the software industry; and (ii) that the Support Policy may change but will not materially degrade Support under these Terms.

**(d) DISCLAIMER. EXCEPT AS EXPRESSLY WARRANTED IN THIS SECTION 7, COMPANY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER UNDERSTANDS THAT THE OPCON SOLUTION MAY NOT BE ERROR FREE AND USE MAY BE INTERRUPTED.**

## 8. Indemnification.

**(a) Indemnity.** Company will (i) defend or settle any third party claim against Customer to the extent such claim alleges that the OpCon Solution (and its underlying technology) infringes or misappropriates its IP Rights and (ii) indemnify Customer against any settlement amounts agreed to by Company or damages awarded against Customer by a court of competent jurisdiction. Company's obligations under this Section are contingent on Customer (i) promptly notifying Company of the claim in writing, cooperates with Company in the defense, and (ii) permitting Company sole control of the defense or settlement of the claim (provided that Company may not settle any claim that

admits to wrongdoing on the part of Customer or imposes any liability on Customer without Customer's prior written consent, which may not be unreasonably withheld, conditioned or delayed).

**(b) Additional Remedies.** If such a claim occurs or appears likely to occur, in Company's sole discretion, then Company may at its expense modify the OpCon Solution without material loss of function, procure the necessary rights to continue using the OpCon Solution, or replace it with a functional equivalent. If Company determines that none of the above options are commercially feasible in Company's reasonable discretion, Company may terminate the applicable Order, in whole or in part, and will refund to Customer any prepaid and unused fees for such terminated OpCon Solution for the remaining balance of the term set out in the applicable Order. **THIS SECTION TOGETHER WITH SECTION 8(A) CONTAIN CUSTOMER'S EXCLUSIVE REMEDIES AND COMPANY'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.**

**(c) Exclusions.** Company has no obligation or liability under this Section to the extent of any claim arising from: (i) Company's compliance with Customer's specifications; (ii) a combination of the OpCon Solution with other products, services, software or materials not supplied by Company or required to use the OpCon Solution as set out in the Documentation; (iii) Customer's alteration, modification, conversion or reverse engineering of the OpCon Solution; or (iv) Customer's use of any version of the OpCon Solution other than the latest version made available by Company.

## 9. Limitations on Liability.

**(a) EXCLUSION OF DAMAGES. EXCEPT FOR AMOUNTS PAID TO THIRD PARTIES UNDER SECTION 8, FRAUD OR DAMAGES CAUSED BY A PARTY'S UNAUTHORIZED USE OR DISCLOSURE OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, NEITHER PARTY IS LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF OR UNAUTHORIZED ACCESS TO DATA OR INFORMATION, AND LOST PROFITS.**

**(b) TOTAL LIMIT ON LIABILITY. EXCEPT FOR AMOUNTS PAID TO THIRD PARTIES UNDER SECTION 8, FRAUD OR DAMAGES CAUSED BY A PARTY'S UNAUTHORIZED USE OR DISCLOSURE OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, EACH PARTY'S TOTAL LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS (WHETHER IN CONTRACT, TORT OR OTHERWISE) WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE ORDER WITHIN THE 12 MONTH PERIOD PRIOR TO THE EVENT THAT GAVE RISE TO THE CLAIM.**

## 10. General.

**(a) Governing Law and Forum.** These Terms are governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of these Terms. The UN Convention on Contracts for the International Sale of Goods does not apply. Any suit or legal proceeding must be exclusively brought in the federal or state courts for the jurisdiction of the main address of the defendant in such proceedings, and each party submits to this personal jurisdiction and venue. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

**(b) Entire Agreement.** This Terms and associated Order(s) constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter.

**(c) No Assignment.** Neither Company nor Customer may assign or transfer Terms, in whole or in part, to a third-party

without the other party's prior written consent; provided, however, either party may assign these Terms in connection with a sale of all or substantially all of its assets if such party (i) provides written notice of such assignment specifying the identity and contact information for the assignee, and (ii) ensures that the assignee has agreed in writing to be bound by these Terms. Any assignment in violation of this section is void.

**(d) Enforceability.** If any provision of these Terms is found to be invalid or unenforceable, the other terms remain in effect.

**(e) Force Majeure.** Neither party is liable for events beyond their control, including without limitation force majeure events, due to contingencies beyond its control whether directly or indirectly, including but not limited to, fire, explosion, strike, freight embargo, act of God, or of war, civil disturbance, act of any government or any agency or official thereof, labor shortage, transportation contingencies, severe weather, default of manufacturer or supplier as a subcontractor, quarantine or restriction, epidemic or catastrophe, or other conditions beyond the control of such party.

**(f) Money Damages Insufficient.** Any breach by a party of these Terms or a violation of the other party's IP Rights could cause irreparable injury or harm to the other party. The other party may seek injunctive relief to stop such breach or violation or to prevent any future breach or violation.

**(g) No Additional Terms.** No additional or conflicting terms of a Customer purchasing document shall be applicable to the Agreement.

**(h) Survival, CISG.** Any terms that by their nature survive termination of these Terms for a party to assert its rights and receive the protections of these Terms, will survive.

**(i) Relationship of the parties.** The parties are independent contractors with respect to each other.

**(j) Export Control Laws.** Customer will not import, export, re-export, or transfer, directly or indirectly, any part of the OpCon Solution or any underlying information or technology, except in full compliance with all applicable laws and regulations.

**(k) Notices.** Unless otherwise agreed to by the parties, all notices required under these Terms (except those relating to OpCon Solution pricing, changes and upgrades) will be deemed effective when received and made in writing by either (i) registered mail, (ii) certified mail, return receipt requested, (iii) overnight mail, addressed and sent to the address in the Order, or (iv) electronic mail to the contact listed in the Order.