



ROCKETPORT™

END USER LICENSE AGREEMENT

COMTROL CORPORATION ("COMTROL") HAS DEVELOPED AN IN-SERVER MULTIPOINT SERIAL COMMUNICATION CARD THAT UTILIZES HARDWARE AND SOFTWARE COLLECTIVELY REFERRED TO AS THE ROCKETPORT ("ROCKETPORT SYSTEM" or "ROCKETPORT DRIVER SOFTWARE"). COMTROL IS WILLING TO PROVIDE A LIMITED LICENSE FOR THE ROCKETPORT SOFTWARE FOR YOUR EXCLUSIVE USE ON THE ROCKETPORT HARDWARE SUPPLIED BY COMTROL, BUT ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS OF THIS AGREEMENT.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE INSTALLING OR INITIALLY OPERATING THE ROCKETPORT SOFTWARE. BY INSTALLING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, DO NOT PROCEED WITH THE INSTALLATION OF THIS PRODUCT. ACCEPTANCE OF THE END USER LICENSE AGREEMENT IS REQUIRED FOR USE OF THE ROCKETPORT SYSTEM.

1. LICENSE GRANTS AND RESTRICTIONS. Subject to the terms and conditions contained herein, Comtrol hereby grants you a non-transferable, non-exclusive, limited license to install, use and execute the ROCKETPORT Software on a single RocketPort platform, which is identified by serial number during the installation process (the "Designated System"), solely for your internal business use. Except as expressly granted herein, no license or other right is granted by Comtrol, either directly or by implication, estoppel, or otherwise (including, but not limited to, the right to prepare derivative works). You shall have no right or access to the source code of the ROCKETPORT Software.

2. YOUR RESPONSIBILITIES. You agree to use all commercially reasonable efforts to ensure that your employees comply with the terms of this Agreement. You and your employee will not: modify, decompile, disassemble, decrypt, extract, or otherwise reverse engineer ROCKETPORT, any part of ROCKETPORT; 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 Comtrol of any information that any other person or entity is or is attempting to copy, reverse engineer, disassemble, decompile, translate or modify ROCKETPORT. You and your employees will not: insert, delete, replace, change or otherwise alter any files in ROCKETPORT or application enabler, modify, change, prepare Derivative Works of or otherwise alter any binary code files included with ROCKETPORT; loan, rent, lease, give, sublicense, transfer, publish, disclose, display, or otherwise make available ROCKETPORT, in whole or in part, to any other person or entity; and you will not modify any application programming interface, including modifying any application programming interface by creating additional classes within any interface, or otherwise causing the addition to or modification of the classes in an interface. You may purchase technical telephone support only from employees and subcontractors of Comtrol designated as an authorized Certified Technical Support Provider.

3. RIGHT TO LICENSE AND CONFIDENTIALITY. Comtrol warrants that it either owns the ROCKETPORT Software or that it has lawfully obtained the right to license the ROCKETPORT Software to you under this Agreement. Comtrol or Comtrol's third party licensor ("Third Party Licensor") each retain its respective right, title and interest, in and to the ROCKETPORT Software (and any portions thereof). You have no right, title, or interest to the ROCKETPORT Software except as provided in this Agreement. You agree to secure and protect the ROCKETPORT Software. You agree that you will not contest or challenge, or take any action that may damage or impair Comtrol's or Third Party Licensor's ownership or rights to the ROCKETPORT Software or its related intellectual property. You will not use the ROCKETPORT Software except as is expressly authorized in this Agreement. You acknowledge that the ROCKETPORT Software contains valuable trade secrets of Comtrol and/or Third Party Licensors and you agree to maintain the confidentiality of the ROCKETPORT Software using at least the same degree of care you use with your own confidential information. You acknowledge that upon your breach of this section, Comtrol, or Third Party Licensor, in the event that Comtrol takes no action, shall be entitled to equitable relief to protect its interests, including preliminary and permanent injunctive relief and you further agree to waive any right or claim to which you may be entitled to immunity or exemption from liability.



4. LICENSE FEES. Any license fees paid by you to Comtrol are paid in consideration of the licenses granted under this Agreement.

5. WARRANTY BY YOU. THERE CAN BE NO ASSURANCES WHATSOEVER THAT THE SYSTEM, PROVIDED TO YOU UNDER THIS LICENSE, WILL PROTECT ANY INDIVIDUAL OR HIS OR HER PROPERTY FROM HARM. APPROPRIATE SAFETY PRECAUTIONS MUST ALWAYS BE TAKEN WHEN OPERATING OR MAINTAINING EQUIPMENT CONNECTED TO ROCKETPORT. COMTROL ASSUMES NO RESPONSIBILITY OR LIABILITY FOR ANY INJURY OR DAMAGE TO ANY PERSONS OR PROPERTY RESULTING FROM THE USE BY YOU OF ROCKETPORT. FURTHER, YOU REPRESENT AND WARRANT THAT YOU WILL 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 ROCKETPORT .

6. DISCLAIMER OF WARRANTY. COMTROL LICENSES THE ROCKETPORT SOFTWARE "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND. COMTROL SPECIFICALLY DISCLAIMS ALL INDIRECT OR IMPLIED WARRANTIES TO THE FULLEST EXTENT ALLOWED BY LAW, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY COMTROL, ITS SUBCONTRACTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY.

7. LIMITATION OF LIABILITY. NEITHER COMTROL OR THIRD PARTY LICENSORS, THEIR OFFICERS, AGENTS, EMPLOYEES OR REPRESENTATIVES SHALL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR PENALTIES (INCLUDING DAMAGES FOR LOST PROFITS, LOST BUSINESS, PERSONAL INJURY, LOST DATA, BUSINESS INTERRUPTION, AND THE LIKE), HOWEVER IT ARISES, WHETHER FOR BREACH OR IN TORT, EVEN IF COMTROL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. LIMITATION OF REMEDIES. NOTWITHSTANDING THE ABOVE, IN NO EVENT SHALL COMTROL OR THIRD PARTY LICENSOR MONETARY LIABILITY, IN CONNECTION WITH THIS AGREEMENT, EXCEEDS THE AMOUNTS YOU PAID TO COMTROL FOR ROCKETPORT PURSUANT TO THIS AGREEMENT.

9. INDEMNIFICATION. You agree to indemnify and hold harmless Comtrol and Third Party Licensors from and 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 a breach of any of your obligations, covenants, representations or warranties contained herein, including your selection of or your transactions and/or agreements with any Certified Technical Support Provider, and the negligence or intentional misconduct of you or your officers, employees, agents or contractors.

10. TERM AND TERMINATION. This Agreement is effective upon your installation of the RocketPort and shall continue until terminated. You may terminate this Agreement at any time by returning ROCKETPORT and all copies and extract to Comtrol. Comtrol may terminate this Agreement upon a material or continuing breach of this Agreement by you upon 10 days prior written notice of termination, stating the cause therefore, with termination becoming effective at the close of said 10-day term if the breach is not then cured to the satisfaction of Comtrol.

11. GENERAL TERMS.

11.1 Non-Assignment. You may not assign this Agreement or your rights and obligations under this Agreement without the prior written consent of Comtrol. Comtrol may assign this agreement.

11.2 Export. Software, including technical data, is 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. You agree to comply strictly with all such regulations and acknowledge that you have the responsibility to obtain all licenses to export, re-export, or import any software provided in the RocketPort Software. The RocketPort Software may not be downloaded, or otherwise exported or re-exported into any country to which the U.S. has embargoed goods or to anyone on the U.S. Treasury Department's list of Specially Designated Nations or the U.S. Commerce Department's Table of Denial Orders.



11.3 Equitable Relief. You acknowledge that any breach of your obligations under this Agreement with respect to RocketPort or the Confidential Information of Control or Third Party Licensors will cause irreparable injury for which there may be no adequate remedy under law, and therefore that Control or Third Party Licensors will be entitled to seek and obtain equitable relief to prevent unauthorized use of RocketPort and/or the Confidential Information, in addition to all other remedies available under this Agreement or other applicable law.

11.4 Entire Agreement. This document contains the entire agreement between the parties relating to its subject matter. This Agreement supersedes all prior agreements and understandings, written or oral, express or implied. This Agreement can be amended or modified only by a writing executed in advance by duly authorized representatives of each of the parties hereto. In the event any foreign ministry or other governmental entity or agency makes any changes, deletions or modifications to this Agreement, holds any provision herein unenforceable or imposes any conditions or restrictions on either party to this Agreement which affects its ability to fully perform, Control shall have the right to immediately terminate this Agreement. By accepting this agreement, you represent and warrant that all consents, approval or authorizations of third parties, foreign ministries or any governmental entities or agencies, required as a precondition or otherwise necessary for you to enter into and perform its obligations under this Agreement have been duly obtained.

11.5 Waiver. A waiver of any breach of default of this Agreement shall not create a waiver of the term or of any subsequent breach of default.

11.6 Governing Law; Choice of Venue. The validity of this Agreement and the rights, obligations and relations of the parties hereunder shall be construed and determined under and in accordance with the substantive laws of the State of Minnesota with respect to claims governed by state law and the laws of the United States with respect to claims arising under the laws of the United States, without regard to conflicts of laws principles and excluding the Convention on Contracts for the International Sale of Goods. Any action arising from or relating to this Agreement or the conduct of the parties hereunder shall be commenced and heard solely within a federal or state court of competent jurisdiction found within the boundaries of the United States District Court for Hennepin County. You, Control and Third Party Licensors consent to personal jurisdiction and venue in such courts.

11.7 Severability. Should any term or provision of this Agreement be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term shall be modified only to the extent required to conform to the requirements of law and the remainder of this Agreement shall not be affected thereby.

11.8 Government Use. ROCKETPORT Software is provided with restricted rights. With respect to any acquisition of the ROCKETPORT Software by or for any unit or agency of the U.S. Government ("Government"), the ROCKETPORT Software shall be classified as "Commercial Computer Software," as that term is defined in the applicable provisions of the Federal Acquisition Regulation ("FAR") and supplements thereto, including the Department of Defense (DoD) FAR Supplement ("DFARS"). If the ROCKETPORT Software is supplied for use by DoD, the ROCKETPORT Software is delivered subject to the terms of this Agreement and either (i) in accordance with DFARS 252.227-7202-1(a) and 227.7202-3(a), or (ii) with restricted rights in accordance with DFARS 252.227 7013(c)(1)(ii), as applicable. If the ROCKETPORT Software is supplied for use by a federal agency other than DoD, the ROCKETPORT Software is restricted computer software delivered subject to the terms of the Agreement and (i) FAR 12.212(a); (ii) FAR 52.227-19; or (iii) FAR 52.227-14 (ALT III), as applicable.