



## MTConnect<sup>®</sup> SPECIFICATION IMPLEMENTER LICENSE AGREEMENT

MTConnect<sup>®</sup>, a forum sponsored by the MTConnect Institute ("Institute") and AMT – The Association For Manufacturing Technology ("AMT"), to develop open technical standards and specifications intended to foster greater interoperability between equipment automation/control applications, and field systems/devices in the manufacturing industry, as well as schema, prototype software examples, and related documentation (as defined below, the "MTConnect Specification" and "MTConnect Materials"), and to promote and facilitate implementation of the MTConnect Specification in compliant applications, drivers, and other services.

This MTConnect Specification Implementer License Agreement ("Agreement") sets forth the license terms and other terms of use for you, as an MTConnect Implementer, to make use of the MTConnect Materials for purposes of adopting or implementing the MTConnect Specification in compliant products, whether hardware or software. The purpose and scope of the Agreement is to clear away patent obstacles and create a framework, as more specifically defined by the terms of this Agreement, for Implementers to develop and sell products based on or implementing MTConnect Specifications, as follows:

- Patent licenses to you, the Implementer. The Institute, AMT, and the MTConnect Participants (those who participated in developing the MTConnect Specification) agree to grant to you nonexclusive licenses to any patent claims they control that are necessary to implement the MTConnect Specification, to allow you to make, use and sell MTConnect-compliant products, whether hardware or software. The license grant is made free of royalty obligations; the sole exception is that a reasonable and nondiscriminatory (RAND) royalty may be charged only for patent claims that a Participant has specifically designated as Excluded Claims prior to final adoption and publication of the MTConnect Specification. The MTConnect development process is intended to create specifications that avoid any such Excluded Claims or royalty payments, however, and no Excluded Claim may be designated once an MTConnect Specification has been adopted as final. The specific license terms are defined in Section 2.1.
- Reciprocal patent licenses by You to MTConnect Institute and other MTConnect Implementers. As a condition to these license grants, you as Implementer agree to grant to the Institute and AMT, to each Participant and to all other MTConnect Implementers and their respective Affiliates a reciprocal nonexclusive license to patent claims you control that are necessary to implement the MTConnect Specification, to allow them to make, use and sell MTConnect-compliant products. Because all Implementers must also promise to grant this reciprocal license, that means all other Implementers will promise to grant you a royalty-free license to patent claims they control that are necessary to implement the MTConnect Specification. The specific license terms are defined in Section 2.2.

- Minimum Interoperability standards. Implementers have no obligation to make their own products based on MTConnect “open” and/or available for free – MTConnect Specifications set minimum requirements for interoperability, and developers are free to innovate and add proprietary value to MTConnect-compliant products;

**By checking the box indicating that you accept the terms of this Agreement,** and clicking "I agree" below or otherwise using any of the MTConnect Materials for purposes of implementation in compliant products, you (for yourself and for any other person or entity that employs you, that you represent or on whose behalf you act) hereby enter into this Agreement and, in consideration of the license and agreements contained herein, and other good and valuable consideration the receipt of which is hereby acknowledged, agree as follows.

## 1. DEFINITIONS

<b>You</b>	The term "you" and "your" as used in this Agreement includes you and any other person or entity you that employs you, that you represent or on whose behalf you are acting that will use the MTConnect Materials and/or implement the MTConnect Specification.
<b>Affiliate</b>	means any entity that is directly or indirectly controlled by, under common control with, or that controls another entity. For this purpose, “control” means direct or indirect ownership of, or the right to exercise, greater than 50% of the voting power, or greater than 50% of the ownership interest representing the right to make the decisions for the entity.
<b>MTConnect Specification or Specification</b>	means a final technical specification document, as adopted and approved by the Technical Steering Committee, following approval by majority vote of the Technical Advisory Group, for publication as an MTConnect Specification, that defines specifications, schemas, standard interfaces, objects, and methods for exchange of dynamic sensor data, configuration data, and data representation among machines, software applications and controllers. Specifications shall include or incorporate software code only as reference implementations, optional examples, or other code that will be used for illustrative purposes only and will not be a required portion of the Specification.
<b>MTConnect Materials</b>	means MTConnect Specifications, schema, optional software examples or reference implementations, related documentation or guides, and any materials, updates or modifications related to any of the foregoing.
<b>MTConnect Implementer or Implementer</b>	means any party that has entered into or later enters into a MTConnect Implementer License Agreement.
<b>Necessary Claims</b>	means those claims of all patents and patent applications that an entity owns or controls that would necessarily be infringed by implementation of an MTConnect Specification. A claim is “necessarily infringed” when there is no reasonable non-infringing alternative for implementing the required portions of the Specification. Notwithstanding the foregoing, Necessary Claims do not include the following:  (a) claims other than those set forth above even if contained in

	<p>the same patent or patent application as Necessary Claims;</p> <p>(b) claims that are necessarily infringed only by portions of a product or implementation that are not required for compliance with the Specification;</p> <p>(c) claims covering any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a Specification, but are not themselves expressly set forth in a Specification;</p> <p>(d) claims covering reference implementations or other implementation examples (i.e., examples that may be included in the text of a Specification and which illustrate how the Specification could be properly implemented); or</p> <p>(e) claims covering the implementation of other published specifications not developed by or for MTConnect or AMT, but referred to in the body of a Specification.</p>
<b>Excluded Claims</b>	<p>means Necessary Claims that a Participant has timely disclosed, with all required information, and declared to be excluded from Participant's obligations to license on royalty-free terms; provided that Excluded Claims are subject to obligations to license on reasonable and non-discriminatory terms.</p> <p>It is the general policy and intention of MTConnect to minimize Excluded Claims by drafting MTConnect Specifications to avoid infringing such Claim(s) once a Participant has given notice it intends to designate a claim as an Excluded Claim. The MTConnect website provides information concerning such Excluded Claims, if any have in fact been designated.</p>
<b>Participant</b>	<p>means an entity, company, organization or individual who agrees to the MTConnect IP Policy and participates in the work of the MTConnect Technical Advisory Group, Technical Steering Committee, Drafting Committee, or any other committee or group created by the Technical Steering Committee to assist in technical work to develop MTConnect Materials.</p>
<b>Participant's Excluded Affiliate</b>	<p>means an Affiliate of a Participant that has been approved by the MTConnect Board of Directors as an Excluded Affiliate solely for purposes of the MTConnect IP Policy.</p>

## 2. LICENSES

2.1 Limited Patent Licenses To You as an MTConnect Implementer. The Institute and AMT hereby each agree that it will, and each MTConnect Participant has agreed, pursuant to the MTConnect IP Policy and as a condition of its Participation, that the Participant and its Affiliates will, upon request, grant to you a nonexclusive, worldwide license to their Necessary Claims, royalty-free and under otherwise reasonable and non-discriminatory (RAND) terms, solely to make, have made, use, import, offer to sell, sell and otherwise distribute and dispose of products, whether hardware or software, that comply with all relevant required portions of the MTConnect Specification; provided that (a) such license shall be conditioned upon your grant of a reciprocal royalty-free license as provided in Section 2.2 below; (b) such license does not extend to any part or function of a product that is not required for compliance with the

Specification, including operational reference implementations or other reference examples (i.e., examples that may be included in the text of a Specification and which illustrate how the Specification could be properly implemented); (c) such license need not extend to Necessary Claims for which a grant of such license would require payment of royalties or other consideration to unaffiliated parties; and (d) a Participant may charge a reasonable and nondiscriminatory royalty for certain Excluded Claims that it has specifically and timely identified and designated as Excluded prior to final adoption and publication of the MTConnect Specification.

**2.2 Reciprocal License by You to AMT and other MTConnect Implementers.** In consideration of use of the MTConnect Materials for purposes of adopting or implementing the MTConnect Specification in compliant products, you hereby agree on behalf of yourself, all parties that employ you, that you represent or on whose behalf you are acting for use of MTConnect Materials, and their Affiliates, that you and they will grant to the Institute and AMT, to each Participant and its Affiliates (but *not* to Participant's Excluded Affiliates, if any) and to all other MTConnect Implementers and their respective Affiliates (collectively "Licensees" for purposes of this Section 2.2), a reciprocal nonexclusive, worldwide license to their Necessary Claims, royalty-free and under otherwise reasonable and non-discriminatory (RAND) terms, solely to make, have made, use, import offer to sell, sell and otherwise distribute and dispose of products, whether hardware or software, that comply with all relevant required portions of the MTConnect Specification; provided that (a) such license may be conditioned upon the Licensee's grant of a reciprocal license fulfilling the commitments of Section 2.1 above; (b) such license need not extend to any part or function of a product that is not required for compliance with the Specification, including operational reference implementations or other reference examples (i.e., examples that may be included in the text of a Specification and which illustrate how the Specification could be properly implemented); and (c) such license need not extend to Necessary Claims for which a grant of such license would require payment of royalties or other consideration to unaffiliated parties.

**2.3 Reciprocity.** As further clarification and for avoidance of doubt, no MTConnect Implementer shall have any obligation to grant license rights under Section 2.2 to or for the use of any Participant's Excluded Affiliate, or to any MTConnect Implementer or any other party, if that Participant's Excluded Affiliate or other party does not make available a reciprocal patent license as described in Section 2.1 to its own Necessary Claims of the same purpose and scope, by signing an MTConnect Implementer License Agreement or otherwise, to all MTConnect Implementers. Furthermore, if at any time a Participant's Excluded Affiliate asserts, in court or otherwise, that any implementation of the MTConnect Specification by any Implementer or Participant infringes any Necessary Claims that it owns or controls as a basis to block or obtain royalty payments with respect to that implementation, the Participant affiliated with that Participant's Excluded Affiliate shall automatically lose all license rights to implement the MTConnect Specification in a product, and no Implementer shall have any continuing obligation under Section 2.2 to grant license rights to that Participant.

**2.4 License representation and warranty.** You represent and warrant that you have authority to enter into this Agreement and to make binding license commitments of Section 2.2 and other obligations of this Agreement on behalf of the parties that employ you, that you represent or on whose behalf you are acting in the use of MTConnect Materials. You further agree and warrant that any transfer or assignment of a patent having Necessary Claims to a third party shall be subject to and shall not affect any license granted pursuant to this Agreement.

2.5 Copyright License. Based on your agreement to the terms and conditions of this Agreement, the Institute and AMT hereby grant to you, during the term of the Agreement, a nonexclusive, non-transferable, revocable, non-sublicenseable, fully paid-up and royalty-free, worldwide copyright license to use and to reproduce the MTConnect Specification and other related MTConnect Materials made available to you as necessary in order to exercise the patent rights granted in Sections 2.1. You agree that, to the extent copies and redistributions are permitted, you will only copy or redistribute the MTConnect Materials in the form in which you received them, without modifications, and that all copies and reproductions shall include all copyright notices and disclaimers contained in the MTConnect Materials.

2.6 Use of Name and Trademarks. You may identify a product, whether hardware or software, as complying with the MTConnect Specification if and only if the product complies with all relevant required portions of the MTConnect Specification. You shall not, however, identify any product or service as being certified by, sanctioned by, sponsored by or associated with the Institute, AMT or MTConnect<sup>®</sup> except as provided in a separate trademark agreement and in accordance with policies and procedures which the Institute and AMT may establish, including, but not limited to, policies and procedures that require passing Compliance Tests as a condition of so identifying any product or service.

### **3. GENERAL**

3.1 No Obligation. AMT and the Institute have no responsibility to identify Necessary Claims which may relate to a Specification, or to determine the legal validity or scope of Necessary Claims brought to their attention. Each MTConnect Implementer is responsible for securing its own licenses or rights to any patent or other intellectual property rights that may be necessary for such use, and neither AMT nor the Institute has any obligation to secure any such rights.

3.2 No Other Licenses. Except for the rights expressly provided by this Agreement, neither you, nor AMT, the Institute nor any Participant, grants or receives, by implication, or estoppel, or otherwise, any rights under any patents or other intellectual property rights.

3.3 DISCLAIMER OF WARRANTY. ALL MTCONNECT MATERIALS AND SPECIFICATIONS PROVIDED BY AMT, THE INSTITUTE, OR ANY PARTICIPANT TO YOU OR ANY PARTY ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND. AMT, THE INSTITUTE, AND EACH OF ITS RESPECTIVE OFFICERS, DIRECTORS, AFFILIATES, SPONSORS, AND AGENTS (COLLECTIVELY, THE "AMT PARTIES") AND PARTICIPANTS MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER RELATING TO THESE MATERIALS, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

3.4 LIMITATION OF LIABILITY. IN NO EVENT SHALL AMT, THE INSTITUTE, ANY OTHER AMT PARTY, OR ANY PARTICIPANT BE LIABLE FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OR OTHER DIRECT DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS AGREEMENT, USE OR INABILITY TO USE MTCONNECT MATERIALS, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

3.5 Assignment. You acknowledge that AMT may, at its discretion, transfer, assign, or license its copyright in MTConnect Materials to the Institute or to another organization that will

take over administration and development of the MTConnect Specification and other MTConnect Materials, and you agree that for that purpose AMT may also transfer or assign its rights in this Agreement to AMT or to such other organization.

3.6 Governing Law and Jurisdiction. This Agreement shall be governed and construed by the substantive laws of Virginia without reference to conflict of laws principles. The parties agree that all disputes arising in any way out of this Agreement shall be heard exclusively in, and all parties irrevocably consent to jurisdiction and venue in, the federal courts having jurisdiction of the Eastern District of Virginia, or state courts having jurisdiction in the area in which such federal courts have jurisdiction.

3.7 Complete Agreement; No Waiver. This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings relating hereto. No modifications or amendment of this Agreement shall be binding unless accepted in writing by AMT, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

3.8 Interpretation; Severability. You agree that a printed version of the Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to the Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The language of this Agreement shall be deemed to be the language mutually chosen by the parties and no role of strict construction shall be applied against or in favor of any party. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then (a) such provision shall be deemed modified in a manner that, to the maximum extent possible, effectuates the intent of the parties in a legal, valid and enforceable manner, and (b) the remaining provisions shall continue in full force without being impaired or invalidated in any way.

3.9 Compliance with Laws. Anything contained in this Agreement to the contrary notwithstanding, the obligations of the parties hereto shall be subject to all laws, present and future, of any government having jurisdiction over the parties hereto, and to orders, regulations, directions or requests of any such government.

3.10 Notice to AMT and Request for Non-Electronic Copy. You have the right to receive this Agreement in non- electronic form. You may request a non-electronic copy of this Agreement either before or after you electronically sign it. To receive a non-electronic copy of the Agreement, or to notify AMT for any other purpose, please send an e-mail to [Paul Warndorf](mailto:Paul.Warndorf@AMTonline.org) (pwarndorf@AMTonline.org) or a letter and self-addressed, stamped envelope to:

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