

ENSOL FIRMWARE

END USER LICENSE TERMS

Applicable to the Ensol Management Interface (EMI)/Remote Monitoring System (RMS) Firmware supplied within a third-party product.

These End User License Terms (the “**Terms**”) govern your use of the Ensol firmware embedded in or supplied with the product you have acquired. The firmware is the property of **Ensol Systems Inc.** (“**Ensol**”) and is licensed, not sold. The product containing the firmware is supplied to you by a third-party supplier authorized by Ensol (the “**Supplier**”). Ensol is a third-party beneficiary of these Terms and may enforce them directly against you. If you accept these Terms on behalf of an entity, you represent that you have authority to bind that entity, and “you” refers to that entity.

BY INSTALLING, ACCESSING, OR USING THE FIRMWARE OR THE PRODUCT CONTAINING IT, YOU AGREE TO THESE TERMS. IF YOU DO NOT AGREE, DO NOT INSTALL, ACCESS, OR USE THE FIRMWARE OR THE PRODUCT.

ARTICLE 1. DEFINITIONS

- 1.1 **“Device”** means the Ensol hardware circuit board (including the EMI and legacy RMS series) supplied to you within or with the Supplier’s product.
- 1.2 **“Firmware”** means the Ensol proprietary software, in object or compiled form, pre-installed on or supplied for the Device, including the customized Linux-based operating environment, sensor-communication and control software, the web configuration and status interface, the application programming interface (API), any Updates, and associated documentation. The Firmware does not include User Applications or Open Source Components.
- 1.3 **“Updates”** means any bug fixes, patches, updates, upgrades, or new versions of the Firmware that Ensol makes available and designates for use on a particular Device series, whether as a full image file or an in-place upgrade, including an upgrade from RMS-branded Firmware to EMI-branded Firmware on the same Compatible Device.
- 1.4 **“Compatible Device”** means a Device of a series that Ensol designates in its documentation, or otherwise in writing, as compatible with the applicable version of the Firmware. Devices of a new hardware generation (for example, the EMIv4 series) are supplied with their own Firmware and are not Compatible Devices for Firmware designed for earlier series (for example, the RMS-100v2 and EMI-100v3 series), and Devices of earlier series are not Compatible Devices for Firmware designed for a new hardware generation.
- 1.5 **“User Application”** means an applet, script, or program that you independently develop and run alongside the Firmware and that does not modify, incorporate, or interfere with the Firmware.
- 1.6 **“Open Source Components”** means third-party software incorporated into or distributed with the Firmware under open source or free software license terms, including components of the Buildroot Linux environment and associated libraries.
- 1.7 **“High-Risk Use”** means any use in which the failure or malfunction of the Firmware or Device could reasonably be expected to lead to death, personal injury, or severe physical, property, or environmental damage, including use in or with life-support systems, emergency response, or the operation of critical infrastructure.

ARTICLE 2. LICENSE

- 2.1 **Grant.** Subject to these Terms, Ensol grants you a non-exclusive, non-transferable, non-sublicensable, perpetual license to use the Firmware in object/compiled form solely as installed on the Device on which it was supplied, for your internal business purposes and for the intended monitoring, control, and data-logging functions of that Device.

- 2.2 **Device-Locked; Licensed Not Sold.** The Firmware is licensed, not sold. Your license is perpetual with respect to the version of the Firmware supplied with your Device and any Updates you lawfully install on that Device, and continues for so long as you use that Device, unless terminated under Section 10. The Firmware may be used only on the Device on which it was supplied, which must be a Compatible Device designed and supplied by or on behalf of Ensol, and is not transferable to any other device or hardware (including any third-party single-board computer, such as a Raspberry Pi) or to any emulated or virtualized environment.
- 2.3 **Legacy Boards.** Firmware supplied by Ensol for legacy RMS boards, including EMI-branded Firmware supplied as an Update for an RMS board that is a Compatible Device, is licensed under these Terms regardless of the name under which the Device was originally acquired. Nothing in this Section permits the Firmware to be installed on a Device that is not a Compatible Device.
- 2.4 **User Applications.** You may develop, install, and run User Applications on the Device, provided they do not modify, adapt, reverse engineer, incorporate, or interfere with the Firmware. You retain your rights in your User Applications, which are your sole responsibility.
- 2.5 **Updates and Support.** Ensol may, at its discretion, make certain Updates generally available, either directly or through the Supplier, but Ensol has no obligation to provide, or to continue providing, any Updates, maintenance, or support to you. Any other updates or support are provided, if at all, by or through the Supplier or under a separate written agreement with Ensol. Updates may be installed only on the Compatible Devices for which Ensol designates them. The Firmware installed on your Device will not cease to function if Updates are not provided.

ARTICLE 3. RESTRICTIONS

- 3.1 You will not, and will not permit or authorize any third party to:
- 3.1.1. copy the Firmware, except a single copy solely for backup or archival purposes;
 - 3.1.2. modify, adapt, translate, or create derivative works of the Firmware;
 - 3.1.3. reverse engineer, decompile, decrypt, disassemble, or otherwise attempt to derive the source code, underlying ideas, or algorithms of the Firmware, or do anything that would reveal, generate, or reconstruct the source code of the Firmware, except to the limited extent this restriction is expressly prohibited by applicable law and, in that case, only after providing Ensol prior written notice and an opportunity to enable interoperability;
 - 3.1.4. sell, sublicense, rent, lease, distribute, or otherwise transfer or make available the Firmware to any third party (other than transfer of the Device as a whole together with these Terms, where permitted by the Supplier);

- 3.1.5. remove, alter, or obscure any proprietary notices, product identification, or marks on or in the Firmware, Device, or documentation;
- 3.1.6. use the Firmware to build a competing product or service, or a product or service using similar ideas, features, or functions of the Firmware, or to copy any ideas, features, or functions of the Firmware;
- 3.1.7. defeat, circumvent, or disable any security, licensing, or protection mechanism in the Firmware or Device; or
- 3.1.8. install, run, or use the Firmware, or any copy of it, on any hardware other than a Device supplied by or on behalf of Ensol, or in any emulated or virtualized environment.
- 3.1.9. Violation of any restriction in this Section 3 is a material breach of these Terms.

ARTICLE 4. OWNERSHIP AND CONFIDENTIALITY

- 4.1 The Firmware is licensed, not sold. Ensol and its licensors own and retain all right, title, and interest in and to the Firmware and all intellectual property rights therein, including all copyrights, patents, trade secrets, trademarks, and the internal design, structure, and sensor-communication methods embodied in the Firmware. You receive only the limited rights expressly granted in these Terms.
- 4.2 You acknowledge that the Firmware and its internal design constitute valuable trade secrets and confidential information of Ensol. You will protect them using at least a reasonable degree of care, will not use them except as permitted by these Terms, and will not disclose them to any third party.
- 4.3 The Ensol names, logos, and branding (including “Ensol”, “EMI”, and “RMS”) are the property of Ensol; you acquire no rights in them and may use them only to identify the genuine Firmware and Device.

ARTICLE 5. OPEN SOURCE COMPONENTS

- 5.1 The Firmware incorporates Open Source Components, which are licensed to you under the terms of their respective open source licenses. To the extent those license terms conflict with these Terms, the open source license terms govern solely with respect to the applicable Open Source Component. A listing of the Open Source Components and their licenses is available from the Supplier or Ensol on request. Open Source Components are provided “AS IS.”

ARTICLE 6. DATA

- 6.1 The Firmware and Device may collect and store operational and diagnostic metrics locally on the Device (for example, battery voltage and other sensor readings over time) and may make such metrics available through the API. The Firmware does not collect, transmit, or store personal information. You are responsible for any data you extract from the Device and any use you make of it.

ARTICLE 7. THIRD-PARTY APPLICATIONS AND API

- 7.1 The Firmware exposes an API allowing you to connect your own or third-party applications to the Device. Any third-party application is your responsibility. Ensol does not warrant the compatibility, availability, or performance of any third-party application and is not responsible for it. You will not use the API or any third-party application to circumvent Section 3 or Section 4.

ARTICLE 8. HIGH-RISK USE

- 8.1 The Firmware and Device are designed for monitoring and control functions and are not designed, intended, or authorized for High-Risk Use. You will not use the Firmware or Device in any High-Risk Use without independent, redundant safety and fail-safe systems that do not depend on the Firmware or Device. You assume all risk arising from any High-Risk Use or from deployment in power systems or other applications requiring monitoring and control. Ensol disclaims all liability arising from any High-Risk Use.

ARTICLE 9. WARRANTY DISCLAIMER; EXPORT; LIABILITY

- 9.1 **Disclaimer.** THE FIRMWARE IS PROVIDED “AS IS” AND “WITH ALL FAULTS” WITHOUT WARRANTY OF ANY KIND. ENSOL DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. ENSOL DOES NOT WARRANT THAT THE FIRMWARE WILL BE ERROR-FREE OR UNINTERRUPTED. ANY WARRANTY FOR THE PRODUCT OR DEVICE IS PROVIDED, IF AT ALL, BY THE SUPPLIER AND NOT BY ENSOL. USER APPLICATIONS, THIRD-PARTY APPLICATIONS, AND OPEN SOURCE COMPONENTS ARE PROVIDED WITHOUT WARRANTY.
- 9.2 **Export Compliance.** You acknowledge that the Firmware and Device may be subject to the export control and sanctions laws of Canada and, where applicable, the United States, Australia, and other jurisdictions. You will comply with all such laws and will not export, re-export, transfer, or use the Firmware or Device in violation of them, including to any embargoed destination, sanctioned or denied party, or prohibited end-use. You are responsible for obtaining any required export or import authorizations.
- 9.3 **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, ENSOL WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR BUSINESS, ARISING OUT OF OR RELATED TO THE FIRMWARE OR THESE TERMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ENSOL’S TOTAL AGGREGATE LIABILITY UNDER THESE TERMS WILL NOT EXCEED THE AMOUNT PAID FOR THE DEVICE GIVING RISE TO THE CLAIM. THESE LIMITATIONS DO NOT APPLY TO LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.
- 9.4 **Indemnification.** You will indemnify and hold harmless Ensol and its affiliates and their respective directors, officers, employees, and agents from and against all third-party claims and all losses, damages, liabilities, costs, and expenses (including reasonable legal fees) arising out of or relating to your use of the Firmware or Device, any User Application or third-party application, any High-Risk Use, your breach of these Terms, or your violation of any applicable law or third-party right.

ARTICLE 10. TERM AND TERMINATION

- 10.1 These Terms are effective when you first install, access, or use the Firmware or Device and continue perpetually unless terminated.

- 10.2 These Terms terminate automatically, without notice, if you breach Section 3, 4, or 9.2. On termination, you will cease all use of the Firmware and destroy all copies in your possession or control (other than the Firmware embedded in a Device you continue to hold and use in compliance with these Terms).
- 10.3 Sections 3, 4, 5, 6, 8, 9, 10.3, and 11 survive termination. Ensol may seek injunctive relief for any actual or threatened breach of Section 3 or Section 4.

ARTICLE 11. GENERAL

- 11.1 **Governing Law.** These Terms are governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without regard to conflict of laws rules, and the parties submit to the exclusive jurisdiction of the courts of British Columbia sitting in Vancouver. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- 11.2 **Third-Party Beneficiary.** Ensol is a third-party beneficiary of these Terms and may enforce them directly, notwithstanding that the Firmware and Device were supplied to you by the Supplier.
- 11.3 **Relationship to Supplier Terms.** These Terms govern the Firmware license only. Your commercial relationship with, and any warranty or support from, the Supplier are governed by your separate agreement with the Supplier. In the event of a conflict regarding the Firmware license, these Terms prevail.
- 11.4 **Changes to these Terms.** Ensol may present updated license terms with a new version of the Firmware or an Update. Your installation or use of that version or Update after such terms are presented constitutes your acceptance of them. Absent such acceptance, your existing installed Firmware remains governed by the version of these Terms previously accepted.
- 11.5 **Severability; No Waiver; Entire Agreement.** If any provision is held invalid or unenforceable, it will be modified to the minimum extent necessary or severed, and the remaining provisions remain in effect. No failure to enforce any right is a waiver. These Terms are the entire agreement between you and Ensol regarding the Firmware.