FDI COMMON HOST COMPONENTS
END USER LICENSE AGREEMENT (EULA)

THIS LICENSE AGREEMENT ("Agreement") for the FDI Common Host Components is made and

entered into as of _____ (the "Effective Date") by and between

PROFIBUS Nutzerorganisation e.V,

a not-for-profit corporation with an office located at Haid-und-Neu-Strasse 7, 76131 Karlsruhe, Germany ("PNO"), and

_____,

a _____,

having an address of _____ ("Licensee").

Each of PNO and Licensee may be referred to herein as a "party" and together as the "parties".

1. BACKGROUND

1.1. To promote the use of FDI Technology, FieldComm Group, Incorporate (FCG), Austin, Texas USA, and PNO have developed FDI Common Host Components for FDI host systems that ensure the implementation and improvement of interoperable FDI Technology-based products. Each of FCG and PNO are fully entitled to use and to grant licenses in the FDI Technology to third parties.

1.2. FCG and PNO intend to facilitate the wide spread use of FDI Technology and the creation and use of new product applications based on FDI Technology by licensing the Software.

1.3. Licensee agrees to pay PNO a licensee fee and enter into a Standard Software Maintenance agreement.

1.4. Licensee may propose and offer modifications (e.g., improvements, enhancements, etc.) to the Software to PNO. These proposed modifications are permitted for the sole purpose to enhance the performance, reliability, and quality of Licensee's products and to advance the capabilities and features of Software. As part of the consideration for this license and in accordance with Article 3.3, Licensee agrees to provide all proposed Source Code and software modifications to PNO for evaluation and approval prior to any adoption or distribution of the proposed modification. Upon disclosure, PNO will determine which proposed modifications are to be incorporated in subsequent versions of the Software and will provide same for distribution. PNO agrees to evaluate and adopt all proposed modifications as PNO may deem appropriate in the best interests of all Licensees.

1.5. The parties agree that it is in their mutual best interests to enter into this Agreement to allow Licensee to have access to release and pre-release beta versions of Software and for PNO to set forth reasonable restrictions necessary for the protection of the Software against unauthorized access or use to ensure the integrity and standardization of the Software for its Licensees and the process control industry.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereto, intending to be legally bound, do hereby agree as follows:

FDI COMMON HOST COMPONENTS - END USER LICENSE AGREEMENT (EULA)

2. DEFINITIONS

The following terms have the meanings given below unless otherwise specified in this Agreement:

2.1. "Affiliates" shall mean any corporation, company or other entity, which is Controlled by, Controls or is under common Control with Licensee directly or through one or more intermediaries as long as such Control exists. For purposes of this definition, "Control" shall mean (i) the ownership of the majority of such corporations', company's or other entity's voting stock or the majority of its voting rights, (ii) the right to directly or indirectly appoint the majority of the members of the managing or administrative board or of similar managing authority with the power to represent such corporation, company or other entity, or (iii) the power to direct or cause the direction of the management by contract or otherwise.

2.2. "Pre-release Version", shall mean a version of the Software provided to the Licensee for sole purpose of internal testing and assisting PNO in refining and modifying the Software.

2.3. "Derivative Work" means a work based upon one or more preexisting works including any abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is also a "Derivative Work".

2.4. "FDI" shall mean Field Device Integration.

2.5. "FDI Package" represents the field device in a control and/or asset management system by descriptive or programmed elements.

2.6. "FDI Specification" means the technical specification which describes a way to integrate various field devices into different control and/or asset management systems using FDI Packages.

2.7. "FDI Technology" or "Field Device Integration Technology" is a solution that will enable the integration of products of different manufacturers connected to systems of different manufacturers by so-called FDI Packages into the systems.

2.8. "Source Code" means software written in an alterable programming language.

2.9. "Intellectual Property Rights" or "IPR" means any and all now known or hereafter known (a) rights associated with works of authorship throughout the world, including but not limited to copyrights and moral rights, (b) trademarks, service marks, trade name and logo rights and similar rights, (c) trade secret rights, (d) patent rights, utility models, designs, and algorithms, (e) domain names and Internet keywords and (f) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

2.10. "Licensed Product" means any Licensee software, component, product, process, service, or system embodying, incorporating, made with, or otherwise utilizing all or any part of the Software or modified Software, including, without limitation, any subsequent version or generation of such software.

2.11. "End Customer" means any manufacturer or producer of raw or processed materials or products, and does not include other field equipment or system manufactures, companies providing services to facilitate development of field equipment, systems or related software components or suppliers.

2.12. "Software" means FDI Common Host Components, including any version, update, release, upgrade or modification thereof to be licensed or provided by PNO under this Agreement or Software Maintenance Agreement separately entered into.

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3. GRANT OF LICENSE

3.1. PNO hereby grants Licensee, and Licensee accepts from PNO, a perpetual, non-exclusive, sub-licensable, and world-wide license to the Software, including the right to sublicense those rights to Licensee's Affiliates, subject to the following conditions. Such license includes the rights:

    (a) for Licensee and its Affiliates to use, copy and modify the Software in Source Code form for Licensee's or its Affiliates' own product testing and/or development purposes and with no further distribution thereof to any third parties;

    (b) for Licensee and its Affiliates to copy and distribute the Software in object code form only to third parties within Licensee's or Licensee's Affiliates' Licensed Product made available to Licensee's End Customers and to use, develop, make, have made, sell, offer to sell, or import such products complying with the FDI Specification;

    (c) for Licensee and its Affiliates to sublicense use rights in the Software in object code form only within Licensee's or Licensee's Affiliates' Licensed Product to Licensee's End Customers, including the right to copy the Software, under Licensee's own terms and conditions, which shall be not less restrictive than this Agreement.

3.2. Licensee shall not modify the Software except for product-specific modifications necessary to port or adapt the Software to Licensee's Licensed Product, and provided that any use of the rights licensed herein shall be restricted solely to the extent necessary to use, develop, make, have made, sell, offer to sell, or import products implementing the FDI Specification.

3.3. Licensee shall promptly notify PNO in writing of any required modification of a Software in Source Code format for error correction with a stated date by which such error correction is needed ("Error Correction"). PNO shall inform Licensee at the earliest possible date, if it is not able to provide such Error Correction within such stated period of need, Licensee may then use its Source Code license under Section 3.1(a) to create its own Error Correction for such Software and then to use such Error Correction as if originally licensed to Licensee hereunder, provided such Error Correction shall be conformed to the FDI Specification when incorporating such Software. Licensee shall promptly provide PNO with such Error Correction in Source Code form free of charge and shall grant PNO the irrevocable right to use, modify, distribute, and sublicense such Error Correction in object and Source Code form world-wide without restrictions for the purpose of the further enhancement, development and distribution of the Software.

3.4. Licensee may sublicense the rights granted herein only to Licensee's Affiliates with regard to Licensee's Affiliates' products. However, Licensee and their Affiliates may not grant further sublicenses or distribute or promote the Software independently of Licensee's products or Licensee's Affiliates' products. This limitation on sublicenses shall not, however, affect or restrict Licensee's rights or Licensee's Affiliates' right to use, develop, make, have made, sell, offer to sell, or import products complying with the FDI Specification with a sublicense to End Customers of Licensee's products or End Customers of Licensee's Affiliates' products to use the Software as embedded in such products.

3.5. For open source software, the provisions of this Article 3 shall be superseded by the conditions of use underlying the open source software. PNO shall make the source code available or accessible to Licensee only to the extent stipulated in the conditions of use underlying the open source software. PNO shall notify Licensee of the fact that open source software and pertaining conditions of use exist and make such conditions of use accessible to Licensee or, if required according to the conditions of use, provide Licensee with them.

3.6. This license does not include any other rights than those set forth above.

4. RESTRICTIONS ON USE

4.1. Licensee shall not directly or indirectly, export, re-export, download, ship or use the Software in violation of the laws and regulations of the United States and the laws and regulations of the applicable jurisdiction in which Licensee use the Software. Licensee has been informed of by PNO and therefore acknowledges that the Software is subject to certain export control laws, rules, and/or regulations, including without limitation, those of the United States, and Licensee shall fully comply with all such export/import laws. Licensee shall indemnify, defend and hold PNO, its officers, directors and employees harmless from and against any claims, liabilities, demands, penalties, fines and costs resulting from License's failure to comply with these requirements.

4.2. Licensee shall not remove, obscure or alter any patent, copyright, trademark or other proprietary rights notice(s) in the Software.

4.3. Licensee shall not recreate, post, copy (except for archival purposes), reproduce or otherwise duplicate, replicate, frame, mirror, disclose, publish, modify, create Derivative Works of, or translate the Software, in whole or in part except as provided herein.

4.4. Licensee shall not market or advertise Licensee's product that implement the Software as "certified", "registered", or otherwise "approved" by PNO except with PNO's written consent.

4.5. Licensee shall not use a Pre-release Version of the Software in a production or commercial environment. PNO shall inform Licensee after finalization of an update of the Software.

5. OWNERSHIP

5.1. Nothing in this Agreement shall be construed as having the effect of transferring or changing in any respect any ownership rights or interests in the Software.

5.2. PNO reserves all rights with respect to all and any portion of the Software, and related rights not expressly granted hereby to Licensee nor expressly contemplated herein. This reservation specifically applies, but is not limited, to any Derivative Works and any media, mode or method of distribution or transmission of the Software, now or hereafter available or developed.

6. CONFIDENTIALITY

6.1. PNO and Licensee shall treat any information and data, including but not limited to any kind of business, commercial or technical information and data disclosed between the parties in connection with the purpose of this Agreement as confidential and shall use such information only for the purpose of this Agreement and shall cause, instruct, and oblige any person acting on its behalf and having access to such confidential information to keep the same in confidence at least under the same provisions as herein.

6.2. This confidentiality obligation and the restriction of use shall not apply to information which: (a) is part of the public domain through no fault of the recipient, (b) can be shown to have been independently developed by the recipient, (c) can be shown to have been possessed by the recipient prior to the receipt thereof from the disclosing party, (d) has been acquired from a third party without nondisclosure obligation to a disclosing third party, (e) is required to be disclosed by statutory regulations, (f) is approved for release by written agreement of the disclosing party, (g) is part of general FDI concepts, or (h) is

easily accessible information in the Software . The burden of proof as to any such exclusion from confidentiality shall rest with the recipient.

6.3. This confidentiality obligation shall apply following the date of receipt of the relevant information or data, regardless of cause, and shall survive the termination of this Agreement for further five (5) years.

7. WARRANTY; DEFECTS AS TO QUALITY ("DEFECTS")

7.1. Claims based on Defects of the Software are subject to a statute of limitations of 12 months. This provision does not apply where longer periods are prescribed by law as well as in cases of loss of life, bodily injury or damage to health caused by negligence or where PNO intentionally or grossly negligently fails to fulfil its obligations, fraudulently conceals the Defect, or in case of non-compliance with guaranteed characteristics ("Beschaffenheitsgarantie").

7.2. Software is considered to be defective only if the Licensee can prove that there are reproducible deviations from the specifications.

7.3. Notifications of Defects by the Licensee shall be given in written form without undue delay. Defects and the relevant data processing environment shall be described as precisely as possible therein.

7.4. Claims based on Defects are excluded in case of any of the following:

- insignificant deviations from the agreed characteristics;

- only minor impairment of usability;

- damage from faulty or negligent handling;

- damage from particular external influences not assumed under the Agreement;

- modifications or amendments made by the Licensee or third parties, and any consequences resulting therefrom; or

- incompatibility of the Software provided with the data processing environment of the Licensee.

7.5. In the case of defective Software, PNO shall be first given the opportunity to repair or replace the Software ("Nacherfüllung") within a reasonable period of time. PNO shall be entitled to choose between repair and replacement.

7.6. If the Defect cannot be corrected, the Licensee shall be entitled to rescind the Agreement or reduce the remuneration, irrespective of any claims for damages it may have according to Article 9.

7.7. Claims for damages shall furthermore be subject to Article 9. Any other claims of the Licensee against PNO or its agents or any such claims exceeding those provided for in this Article 7, if based on a Defect, shall be excluded.

8. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT; DEFECTS IN TITLE

8.1. PNO shall provide the Software free from third parties' Intellectual Property Rights ("IPR") with respect to the country of the place of delivery only. If a third party asserts a justified claim against the Licensee based on an infringement of an IPR by the Software provided by PNO and used in conformity with the Agreement, PNO shall be liable to the Licensee within the contractual limitation period stipulated for Defects under Section 7.1 as follows:

   (a) PNO shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Software concerned or whether to modify the Software such that they no longer infringe the IPR, or replace them. If this would be impossible for PNO under reasonable conditions, the Licensee may rescind the Agreement or reduce the remuneration pursuant to the applicable statutory provisions.

   (b) PNO's liability to pay damages is governed by Article 9.

   (c) The above obligations of PNO shall apply only if the Licensee (i) immediately notifies PNO of any such claim asserted by the third party in written form, (ii) does not recognize the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to PNO's discretion, as far as legally possible. If the Licensee stops using the Software in order to reduce the damage or for other good reason, it shall point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

8.2. Claims of the Licensee shall be excluded if the Licensee is itself responsible for the infringement of an IPR.

8.3. Claims of the Licensee are also excluded if the infringement of the IPR is caused by specifications made by the Licensee, by a use of the Software not foreseeable by PNO or by the Software being modified by the Licensee or being used together with products not provided by PNO.

8.4. Where other defects in title occur, the provisions of Article 7 shall apply mutatis mutandis.

8.5. Any other claims of the Licensee against PNO or its agents or any such claims exceeding the claims provided for in this Article 8, based on a defect in title, are excluded.

9. OTHER CLAIMS FOR DAMAGES

9.1. Unless otherwise provided for in the present Agreement, the Licensee has no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the Agreement or tort.

9.2. This does not apply if liability is based on:

   - the German Product Liability Act ("Produkthaftungsgesetz");

   - intent;

   - gross negligence on the part of the owners, legal representatives or executives;

   - fraud;

   - failure to comply with a guarantee granted;

   - negligent injury to life or health; or

   - negligent breach of a fundamental obligation of the Agreement ("wesentliche Vertragspflichten").

However, claims for damages arising from a breach of a fundamental obligation of the Agreement shall be limited to the foreseeable damage which is typical to the Agreement, provided that no other of the above cases applies.

9.3. The above provision does not imply a change in the burden of proof to the detriment of the Licensee.

10. SUPPLEMENTARY CLAUSE: LOST PROFIT, FINANCIAL DAMAGE OF LICENSEE

PNO is not responsible for lost profit, financial damage of Licensee, which emerge due to a failure of the facility, due to flawed logic of programs or data loss. Also, when the Licensee's choice of the system does not comply with his demand or the intended results are not achieved, unless mandatory legal rules on liability for willful intent or culpable negligence precludes these limitations.

11. FEES

11.1. Licensee shall pay to PNO the license fees published in the pricing schedule in effect as of the Effective Date. The current pricing schedule is available from PNO.

11.2. The license fees for Software provided hereunder are exclusive of any sales or use taxes, import or export duties, or any other like taxes or assessments (collectively, "Applicable Taxes"). Licensee shall be solely responsible for the payment of any Applicable Taxes. Licensee hereby authorizes PNO to collect, withhold or pay Applicable Taxes, if any, as required by any local laws.

12. TERM AND TERMINATION

12.1. This Agreement shall be effective from Effective Date and shall continue in force indefinitely unless terminated as provided in this Section.

12.2. In addition to all other remedies available at law or in equity, this Agreement may be terminated by the parties as follows:

    (a)   if a party breaches a material obligation undertaken herein and fails to cure such breach within 60 days after receiving notice of such breach from the other party, then the other party, at its option, may immediately terminate this Agreement;

    (b)   if a party petitions for reorganization under any applicable bankruptcy law, is adjudged bankrupt, has a receiver appointed for its business or makes an assignment or the benefit of creditors, then the other party, at its option, may immediately terminate this Agreement; or

    (c)   if Licensee wish, for whatever reason, to terminate this Agreement, Licensee may do so at any time.

12.3. Any termination hereunder shall have the following consequences:

    (a)   such termination shall not affect the validity of any sublicense to the Software granted to any distributor or End Customer of Licensee within any Licensee product, provided, such sublicense was entered into in good faith prior to the effective date of termination;

(b)   such termination of this Agreement shall not in any way relieve Licensee of its obligation to pay any fees or other debts owed to PNO up to the effective date of termination;

(c)   after fulfilment of all orders issued prior to the termination Licensee shall promptly initiate a commercially reasonable program to stop any further use, copying or distribution of the Software, consistent with all its outstanding commitments previously made in good faith to Licensee's distributors and/or End Customers and shall use its commercially reasonable efforts to reduce or sell off its inventory of any Licensed Products which incorporate the Software in Object Code form;

(d)   Licensee may retain its existing copies of the Software and use them on its computers and equipment after such termination solely and exclusively for the purpose of honoring its outstanding commitments made in good faith to Licensee's distributors and/or End Customer prior to the effective date of such termination to provide them with any needed software maintenance support for their products; and

(e)   such termination shall not in any way relieve Licensee of its obligations under Article 6.0 with respect to protection of PNO's Confidential Information, which shall survive such termination.

13. DISPUTE RESOLUTION; CHOICE OF LAW; COMPLIANCE WITH LAWS; MANDATORY AMENDMENT

13.1. Any claim or dispute of any nature between the parties to this Agreement arising directly or indirectly from the relationship created by this Agreement shall be resolved exclusively by arbitration under the Rules of Arbitration of the International Chamber of Commerce (Paris) in the English language by three arbitrators in accordance with said Rules, in Munich, Germany. The fees of the arbitrator(s) and other costs incurred by the parties in connection with such arbitration shall be paid by the party which is unsuccessful in such arbitration. The decision of the arbitrator(s) shall be final and binding upon both parties and may be enforced in any court of competent jurisdiction.

13.2. This Agreement and its interpretation shall be governed by German law, to the exclusion of the United Nations Convention on contracts for the International Sale of Goods (CISG).

14. STANDARD MAINTENANCE SERVICES

14.1. This Agreement does not include updates to the Software, access to Pre-release versions of the Software or technical support ("Standard Maintenance Services"). Licensee agrees to execute a separate Software Maintenance Agreement for an initial term of no less than 12 months.

15. GENERAL PROVISIONS

15.1. Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture, agency relationship or franchise between Licensee and PNO. Except as provided in this Agreement, neither party shall have any

right, power, or authority to act or to create any obligation, express or implied, on behalf of the other.

15.2. No waiver of any provision of this Agreement shall be effective unless it is made in writing and signed by the party against whom such waiver is sought to be enforced. No failure or delay by either party in exercising any right or remedy under this Agreement, except as provided herein, shall be deemed to be a waiver of any such right or remedy. No amendment or modification of any provision of this Agreement shall be effective unless it is made in writing and signed by both parties.

15.3. This Agreement, and any rights or obligations hereunder, shall not be assigned or sublicensed by either party without the prior written authorization of the other party. In the event of an assignment to a successor in interest to all of a party's assets or substantially all of a party's assets or to a parent or wholly owned subsidiary of a party, or in case of a disinvestment or restructuring of Licensee this Agreement shall inure to the benefit of and be binding upon successors or purchasers or equivalent of substantially all of either party's assets.

15.4. All notices, demands, requests or other communications hereunder shall be made in writing and addressed to the office of the respective party noted on page 1 of this Agreement. Notice shall be deemed received and effective on the earlier of actual receipt, two (2) days after deposit with a nationally recognized overnight courier, or seven (7) days after deposit in the mail – certified and return receipt request. Notices in the form of an e-mail are acceptable if recipient confirms such notice by equivalent means promptly (and in no event less than one business day). In the event that such confirmation has not been received by the sending party within such one business day period, the sending party may thereafter provide notice by the other means permitted hereunder.

15.5. Neither party shall be considered in default or in breach or to have incurred any liability hereunder due to any failure in its performance of this Agreement should such failure arise out of causes beyond its reasonable control, including, without limitation, work stoppages, fires, riots, accidents, floods, storms, widespread unavailability of utilities or fuel, widespread Internet failures, or other similar failures or occurrences (each a "force majeure" event). The time for performance shall be extended for a period equal to the duration of the conditions preventing performance.

15.6. The ownership, liability, and confidentiality obligations shall survive termination of this Agreement by either party for any reason.

15.7. The parties have read this Agreement and agree to be bound by its terms. This Agreement constitutes the complete and entire agreement of the parties and supersedes all previous communications, oral or written, and all other communications between the parties relating to this Agreement and to the subject matter hereof.

15.8. The legal invalidity of one or more provisions of this Agreement in no way affects the validity of the remaining provisions. This shall not apply if it would be unreasonably onerous for one of the parties to be obligated to continue bound to the Agreement.

15.9. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

FDI COMMON HOST COMPONENTS - END USER LICENSE AGREEMENT (EULA)

IN WITNESS WHEREOF, PNO and Licensee have caused this Agreement to be signed and delivered by their duly authorized officers, all as of the date first written above.

PROFIBUS Nutzerorganisation e.V,   **Licensee: _____**

By:_____   By:_____

Name:_____   Name:_____

Title:_____   Title:_____

Date:_____   Date:_____