

**FDI COMMON HOST COMPONENTS
SOFTWARE MAINTENANCE AGREEMENT (SMA)**

THIS SOFTWARE MAINTENANCE AGREEMENT (“Agreement”) 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 _____ (“Customer”).

Each of PNO and Customer may be referred to herein as a “party” and together as the “parties”.

1. DEFINITIONS

Unless otherwise specified in this Agreement all capitalized terms in this Agreement shall have the same meaning as set forth in the End User License Agreement set forth in Exhibit A (“License Agreement”).

2. SCOPE OF AGREEMENT

- 2.1 This Agreement is executed for providing Software updates and Standard Maintenance Services as set for in Section 3 to the Customer who has already executed the License Agreement as set forth in Exhibit A. In the event of any inconsistency or conflict between the terms of this Agreement and the License Agreement, the terms of the License Agreement shall supersede and have control.
- 2.2 The terms of this Agreement shall commence on the date (“Effective Maintenance Date”) and shall remain in force for the length of time (“Maintenance Term”) as set forth in Exhibit A. Thereafter, this Agreement shall be automatically renewed for successive terms of 12 months each subjects to Customer’s payment of the maintenance fee on or before the expiry of the Agreement or before the expiry of any successive renewal, whichever is applicable. (“Anniversary Date”)
- 2.3 In the event the Customer fails to pay maintenance fee at the then current rate on or before the Anniversary Date, PNO shall notify Customer of its default. If Customer fails to cure default within 60 days after receipt from PNO this Agreement shall be deemed automatically terminated according to section 6, provided however that at PNO’s option and subject to the payment by Customer of the then current Maintenance Fee and Maintenance Reinstatement Fee, this Agreement may be reinstated after such termination.
- 2.4 This Agreement shall not be construed as providing a new License Agreement for the software.

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3. STANDARD MAINTENANCE SERVICES

- 3.1 During the term of this Agreement, PNO will provide Customer with the following maintenance services ("Standard Maintenance Services"):
- (a) Reasonable efforts to correct errors or bugs in the Software, provided, however, Customer acknowledges and agrees that (i) PNO may provide work-arounds in lieu of actual error corrections or bug fixes; and (ii) PNO may not be able, with reasonable efforts, to correct every error or fix every bug identified by Customer or by others;
 - (b) New updates, releases or versions of the Software for which PNO does not charge a separate license fee, as such updates, releases or versions are made commercially available;
 - (c) Pre-release versions of the Software for internal testing only;
 - (d) Support for previous releases or versions of the Software for the period specified at the time such new release or version is provided to Customer; and
 - (e) Telephone and web-based support, in the amount of up to 12 hours per term between the hours of 9:00 a.m. and 5:00 p.m., CET, Monday through Friday, excluding national holidays, to assist Customer in using the Software.
- 3.2 Standard Maintenance Services do not include:
- (a) Support to any third party contractors
 - (b) Charges for enhancements that are offered, at PNO's sole discretion, to Customer upon payment of a fee established by PNO
 - (c) On-site support
 - (d) Training
 - (e) Hardware and related supplies
 - (f) Telephone or web based support in excess of the limit stated in section 3.1.

4. MAINTENANCE FEE AND PAYMENT TERMS

- 4.1 Customer agrees to pay PNO a Maintenance Fee, at the then current rate according with the payment schedule set for on the invoice for the Standard Maintenance Services. The current pricing schedule is available from PNO. Any change in pricing schedule will be notified by PNO to Customer at least 30 days before becoming effective.
- 4.2 The Maintenance Fee provided hereunder are exclusive of any sales or use taxes, import or export duties, or any other like taxes or assessments (collectively, "Applicable Taxes"). Customer 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.

5. OBLIGATIONS OF CUSTOMER

- 5.1 Customer shall notify PNO of Customer's designated technical contact. To the maximum extent practicable, Customer's communications with PNO will be through the technical contact.
- 5.2 Customer agrees to install all corrections of substantial defects, minor bug fixes and updates, including any enhancements, for the Software in accordance with the instructions and in order of receipt from PNO.

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- 5.3 Customer agrees not to modify, enhance or otherwise alter the Software, unless and only to the extent specifically authorized in the original License Agreement or the prior written consent of PNO is obtained.
- 5.4 Upon detection of any error in the Software, Customer, as requested by PNO, agrees to provide PNO a listing of output and any other data, including databases and backup systems that PNO reasonably may request in order to reproduce operating conditions similar to those present when the error occurred.

6. TERMINATION

- 6.1 PNO shall have the right to terminate this Agreement and all Standard Maintenance Services provided pursuant to this Agreement (i) upon termination of the Customer's License Agreement by either part for any reason, (ii) if Customer is no longer an affiliate according to the License Agreement, or (iii) if Customer or its employees or agents violate any provision of this Agreement and Customer fails to cure such violations within 60 days after the receipt of written notice from PNO.

7. GENERAL PROVISIONS

- 7.1 Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture, agency relationship or franchise between Customer 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.
- 7.2 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.
- 7.3 This Agreement, and any rights or obligations hereunder, shall not be assigned or sub-licensed 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 Customer 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.
- 7.4 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.
- 7.5 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.

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- 7.6 The ownership, liability, and confidentiality obligations shall survive termination of this Agreement by either party for any reason.
- 7.7 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.
- 7.8 If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful, or unenforceable, then such part shall be severed from the remainder of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by laws. If any provision of this Agreement is held to be unenforceable as written but may be made enforceable by limitation, then such provision shall be enforceable to the maximum extent permitted by applicable law.
- 7.9 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.
- 7.10 Articles 7 to 10 (Warranty, Intellectual Property Rights and Copyright, Defects in Title, Other Claims for Damages, Supplementary Clause: Lost Profit, financial Damage of Licensee) and 13 (Dispute Resolution; Choice of Law; Compliance with Laws) of the License Agreement shall also apply mutatis mutandi to this Agreement.

IN WITNESS WHEREOF, PNO and Customer 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.

Customer: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

License Agreement	FDI Common Host Components End User License Agreement (EULA) between PNO and _____ dated _____
Effective Maintenance Date	
Maintenance Term	12 Months