

## FDI DEVICE PACKAGE IDE END USER LICENSE AGREEMENT (EULA)

Before installing and using the FDI Device Package IDE software (“Software”) to Your computer, You must accept the following legal terms. By clicking on the **“I read and understood the license agreement. I accept all documented terms and conditions described above.”** box, You agree to the terms of this License Agreement, which constitutes the entire agreement of the parties with respect to the subject matter hereof (“Agreement”).

This is a legal contract between You (or “Licensee”) and PROFIBUS Nutzerorganisation e.V., a not-for-profit corporation with an office located at Haid-und-Neu-Strasse 7, 76131 Karlsruhe, Germany (“PNO”) PNO. By installing the Software, You agree to be bound by the terms of this Agreement. If You do not accept or agree with the terms of this Agreement, do not install the Software. This is a license, not a sale. The Software is provided under the terms of this Agreement, and it states what You may and may not do with the Software and contains limitations on warranties and remedies.

Only You may use the Software. If anyone else wants to use the Software, they must install it themselves and must separately agree to this Agreement. Each of You and PNO may be referred to herein as a “party” and together as the “parties.”

By accepting the terms of this Agreement, You agree that:

### 1. Definitions

- 1.1. The capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth below.
- 1.2. “Documentation” means the authorized manuals, user guides and other related documentation for the Software.
- 1.3. “FDI Package” means software that represents the field device in a control and/or asset management system by descriptive or programmed elements.
- 1.4. “FDI Package IDE” means the integrated development environment that will be the tool for developing FDI Packages.

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### 2. License Grant

- 2.1. PNO hereby grants to You a worldwide, personal, revocable (as provided in the termination provisions herein), non-exclusive, non-sublicenseable, non-assignable (except as provided herein), license to use the Software on a single device to develop FDI Packages. Licensee may make a reasonable number of copies of the Software for archival or backup purposes.
- 2.2. PNO grants Licensee the right - which shall be revocable for good cause - to assign the right to use granted to it to a third party. If the right to use is transferred to a third party, Licensee shall ensure that the right to use granted to the third party does not exceed the scope of rights to the Software granted to Licensee under this Agreement, and Licensee shall ensure that the third party shall be obliged to comply with at least the same obligations as are imposed herein. When doing so, Licensee may not retain copies of the Software. Licensee shall not be entitled to grant sublicenses. Where Licensee provides the Software to a third party, Licensee shall ensure that any existing export requirements are observed and shall hold PNO harmless in this respect.
- 2.3. This license does not include any other rights, including without limitation the right to copy (except for archival purposes), disclose or otherwise transfer (except as provided herein) the Software, related Documentation, or other proprietary information or Confidential Information of PNO.

### 3. Restrictions on Use

- 3.1. You 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 You use the Software. You acknowledge that the Software is subject to certain export control laws, rules, and/or regulations, including without limitation, those of the United States, and You shall fully comply with all such export/import laws. You 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 Your failure to comply with these requirements.
- 3.2. You shall not reverse engineer, disassemble, decompile, access or otherwise attempt to discover the source code for the Software, except when permitted by applicable law to obtain the information necessary to achieve the interoperability with other programs.
- 3.3. The software may include technological measures that are designed to prevent or detect unlicensed use of the software. Circumvention of these technological measures is prohibited, except and only to the extent that applicable law expressly permits. Any attempt to circumvent technical limitations is considered a material breach under this Agreement and may render the software or certain features unusable or unstable.
- 3.4. You shall not remove, obscure or alter any patent, copyright, trademark or other proprietary rights notice(s) in the Software.
- 3.5. You 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.
- 3.6. You shall not rent, lease, sublicense, sell, assign (except as provided herein), market, transfer (except as provided herein), distribute or loan by any means the Software to any third party.

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- 3.7. You shall not allow access to the Software to any third party.
- 3.8. You shall not market or advertise FDI Packages generated by the Software as "certified," "registered," or otherwise "approved" by PNO except with PNO's written consent.

### 4. Confidentiality

- 4.1. Each Party shall treat Confidential Information as confidential and shall use such Confidential Information only for the purpose of this Agreement and shall cause, instruct, and oblige, in writing, any person acting on Your behalf and having access to such Confidential Information to keep the same in confidence and subject to restrictions at least as restrictive as the provisions as herein. "Confidential Information" means the Software, the Documentation, and any kind of business, commercial or technical information and data disclosed between the parties in connection with the purpose of this Agreement that is marked as confidential, or that would reasonably be understood to be confidential.
- 4.2. 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 Yours;
  - (b) can be shown to have been independently developed by You;
  - (c) can be shown to have been rightfully possessed by You prior to the receipt thereof from PNO;
  - (d) has been acquired from a third party without nondisclosure obligation to the disclosing third party;
  - (e) is required to be disclosed by law, statutory regulations or governmental order, provided that the disclosing Party shall notify the other Party within a reasonable time prior to disclosure to allow PNO to seek appropriate protective measures or other remedies; or
  - (f) is approved for release by written agreement of the disclosing Party.

The burden of proof as to any such exclusion from confidentiality shall rest with the recipient.

### 5. Warranty, Defects as to Quality ("Defects")

- 5.1. 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 ("Beschaffensgarantie").
- 5.2. Software is considered to be defective only if the Licensee can prove that there are reproducible deviations from the specifications.

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- 5.3. 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.
- 5.4. 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.
- 5.5. 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.
- 5.6. 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 7.
- 5.7. Claims for damages shall furthermore be subject to Article 7. Any other claims of the Licensee against PNO or its agents or any such claims exceeding those provided for in this Article 5, if based on a Defect, shall be excluded.

### 6. Industrial Property Rights And Copyright; Defects In Title

- 6.1. 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 5.1 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 7.
  - (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.

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- 6.2. Claims of the Licensee shall be excluded if the Licensee is itself responsible for the infringement of an IPR.
- 6.3. 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.
- 6.4. Where other defects in title occur, the provisions of Article 5 shall apply mutatis mutandis.
- 6.5. Any other claims of the Licensee against PNO or its agents or any such claims exceeding the claims provided for in this Article 6, based on a defect in title, are excluded.

### 7. Other Claims for Damages

- 7.1. 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.

This does not apply if liability is based on:

- the German Product Liability Act (“Produkthaftungsgesetz”);
- intent;
- gross negligence on the part of 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.

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

### 8. 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.

### 9. Term and Termination

- 9.1. This Agreement shall be effective from the installation of the Software and shall continue in force indefinitely unless terminated as provided in this Section.

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- 9.2. 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 30 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 You wish, for whatever reason, to terminate this Agreement, You may do so at any time.
- 9.3. Any termination hereunder shall have the following consequences:
- (a) You shall immediately stop any further use of the Software; and
  - (b) You shall remove the Software from Your computers and certify in writing to PNO that all such materials have been erased, destroyed or returned.
- 9.4. Sections 1, 4, 5, 6, 7, 8, 9.3, 9.4, 10, 12, 14 and 15 and the indemnification obligations in Section 3.1 shall survive termination of this Agreement by either party for any reason.

### **10. Dispute Resolution; CHOICE OF LAW; Compliance with Laws; Mandatory Amendment**

- 10.1. If there is any claim or dispute of any nature between the parties to this Agreement arising directly or indirectly from the relationship created by this Agreement, the party asserting the claim shall provide the other party with written notice as to the nature of the asserted claim or dispute ("Notice of Dispute"). The parties shall then attempt to resolve such matter amicably between the staff of each party and, failing such settlement, shall escalate such matter to the chief executive officer of each party, who shall then also attempt to resolve such matter amicably. No other action may be taken under Section 7.2 below for at least ninety (90) days from the date of the Notice of Dispute to permit a reasonable time for such settlement discussions to occur.
- 10.2. Failing an amicable settlement as provided in Section 7.1 above, any claim or dispute between the parties arising out of or relating to this Agreement shall be resolved exclusively by final and binding arbitration in the English language in Munich, Germany, in accordance with the applicable commercial arbitration rules of the International Chamber of Commerce (Paris) by three arbitrators in accordance with said Rules. 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 award of the arbitrator(s) may be enforced in any court of competent jurisdiction.
- 10.3. 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).

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### 11. Support Services

11.1. PNO offers support and services for the version of Software that You licensed. The Support Period is defined at the time of purchase, and can optionally be extended. For the term as specified by the Support Period of the license and subject to the limitations and conditions in this section, PNO shall provide to You support and service for the Software in the English language as follows (collectively, "Support Services"):

- (a) Reasonable efforts to correct errors or bugs in the Software, provided, however, You acknowledge and agree 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 You 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; and
- (c) Support for previous releases or versions of the Software for the period specified at the time such new release or version is provided to You.

11.2. Support Services from PNO shall be limited to You, and PNO shall be under no obligation to supply such Support Services to any third party contractors. You shall not refer any third party contractors to PNO for such service except with PNO's prior written consent.

11.3. PNO shall provide the above Support Services for the Software at no charge to Licensee during the Support Period. If You desire to receive the Support Services after the Support Period, You can obtain an extension from PNO or PNO's authorized distributors.

11.4. Training classes or consultation in the use of the Software are not included in Support Services for the Software.

### 12. License Files and Activation

12.1. When you purchase the Software from PNO or an authorized distributor, you will receive a license file to activate the Software. You may not re-license, reproduce or distribute any license file except with the express written permission of PNO. If the Software that you have licensed is an upgrade or an update, then the latest update or upgrade that you download and install replaces all or part of the Software previously licensed. The update or upgrade and the associated license file does not constitute the granting of a second license to the Software in that you may not use the upgrade or updated copy in addition to the copy of the Software that it is replacing and whose license has terminated.

12.2. The Software may use your internal network and Internet connection for the purpose of transmitting license-related data at the time of installation, registration, use, or update to a license server and validating the authenticity of the license-related data in order to protect PNO against unlicensed or illegal use of the Software. Activation is based on the exchange of license related data between your computer and the license server. You agree that PNO may use these measures and you agree to follow any applicable requirements. You further agree that use of license files that are not or were not generated by PNO and lawfully obtained from PNO, or an authorized distributor as part of an effort to activate or use the Software violates PNO's intellectual property rights as well as the terms of this Agreement. You agree that efforts to circumvent or disable PNO's copyright protection mechanisms, the license management mechanism, or the license server violate PNO's in-

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tellectual property rights as well as the terms of this Agreement. PNO expressly reserves the rights to seek all available legal and equitable remedies to prevent such actions and to recover lost profits, damages and costs.

### 13. Third Party Licenses

13.1. For open source software, the provisions of this Article 2 shall be superseded by the conditions of use underlying the open source software. PNO shall make the source code available or accessible to You only to the extent stipulated in the conditions of use underlying the open source software. PNO shall notify You of the fact that open source software and pertaining conditions of use exist and make such conditions of use accessible to You or, if required according to the conditions of use, provide You with them as part of the user documentation.

### 14. General Provisions

14.1. Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture, agency relationship or franchise between You 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.

14.2. 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.

14.3. This Agreement, and any rights or obligations hereunder, shall not be assigned 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 PNO, 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.

14.4. All notices, demands, requests or other communications hereunder shall be made in writing and addressed to the office of PNO noted on page 1 of this Agreement or Your last address known to PNO, respectively. 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 requested. 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.

14.5. 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.

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14.6. 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. Binding Effect of Electronic Agreement**

You will submit this Agreement electronically and agree the electronic version of the Agreement shall have the same legally binding effect as an original paper version would have.