FIELDCOMM GROUP FDI DEVICE PACKAGE IDE   END USER LICENSE AGREEMENT

Before installing and using the FieldComm Group 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 and FieldComm Group, a not-for-profit corporation with an office located at 9430 Research Blvd., Suite I-120, Austin, TX 78759 ("FieldComm"). 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 FieldComm 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

The capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth below.

1.1.   "Documentation" means the authorized manuals, user guides and other related documentation for the Software.

1.2.   "FDI Package" means software that represents a field device in a control and/or asset management system by descriptive or programmed elements.

1.3.   "FDI Package IDE" means the integrated development environment that will be the tool for developing FDI Packages.

2. License Grant

2.1.   FieldComm 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.   This license does not include any other rights, including without limitation the right to copy (except for archival purposes), disclose or otherwise transfer the Software, related Documentation, or other proprietary information or Confidential Information of FieldComm.

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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 FieldComm, 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.

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, distribute or loan by any means the Software to any third party.

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 FieldComm except with FieldComm's written consent.

4. Confidentiality

4.1.   You agree to 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 by FieldComm in connection with 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. (a)   is part of the public domain through no fault of Yours;

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b. (b)   can be shown to have been independently developed by You;

c. (c)   can be shown to have been rightfully possessed by You prior to the receipt thereof from FieldComm;

d. (d)   has been acquired from a third party without nondisclosure obligation to the disclosing third party; or

e. (e)(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. If any Confidential Information is required to be disclosed by law, statutory regulations or governmental order, You may disclose such information provided that the You notify FieldComm within a reasonable time prior to disclosure to allow FieldComm to seek appropriate protective measures or other remedy.

5. DISCLAIMER OF WARRANTIES, INDEMNIFICATION AND LIABILITY LIMITATION

5.1.   The Software is provided on an as is basis, WITHOUT ANY WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, OR ANY WARRANTY ARISING BY LAW, STATUTE, USAGE OF TRADE, OR COURSE OF DEALING.

5.2.   IN NO EVENT WILL FIELDCOMM OR ANY OF ITS OFFICERS, AGENTS AND EMPLOYEES, BE LIABLE TO YOU FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER SUCH ALLEGED DAMAGES ARE LABELED IN TORT, CONTRACT OR INDEMNITY, EVEN IF FIELDCOMM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Term and Termination

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

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

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

6.3.   Any termination hereunder shall have the following consequences:

a. (a)   You shall immediately stop any further use of the Software; and

b. (b)   You shall remove the Software from Your computers and certify in writing to FieldComm that all such materials have been erased, destroyed or returned.

6.4.   Sections 1, 3, 4, 5, 6.3, 6.4, 7, 9, 11 and 12 shall survive termination of this Agreement by either party for any reason.

7. Dispute Resolution; CHOICE OF LAW; Compliance with Laws; Mandatory Amendment

7.1.   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.

7.2.   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 Austin, Texas, USA in accordance with the applicable commercial arbitration rules of the American Arbitration Association ("AAA") as in effect at the date of initial notice by either party to commence such arbitration. 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.

7.3.   If any dispute is submitted to arbitration, each party shall, not later than thirty (30) calendar days before the date set for hearing, provide to the other party and to the arbitrator(s) a copy of all exhibits upon which the party intends to rely at the hearing and a list of all persons each party intends to call at the hearing. Each of the parties hereto shall submit with its respective statement of claim or defense and any counterclaim or reply all documents considered relevant to the positions advanced therein. None of the parties hereto shall have the right to request or compel the other to produce additional documents except where the arbitrator directs the production of documents.

7.4.   This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, USA, excluding its conflict of laws rules.

7.5.   If an arbitrator makes a final determination that any portion of this Agreement violates any local, state, federal, country or international law or treaty, and appeals or other further proceedings have been exhausted (or the time for such appeal or other proceeding has expired without such appeal), including (solely by way of example) antitrust laws, the invalidated provision shall be stricken, and the parties shall negotiate in good faith an alternative provision that they reasonably believe complies with such law and comes as close as reasonably and lawfully possible to achieving the parties' original intention for such provision. If the parties cannot agree upon such an amendment, then any party may withdraw from this Agreement.

8. Support Services

8.1.   FieldComm 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, FieldComm shall provide to You support and service for the Software in the English language as follows (collectively, "Support Services"):

   a. (a)   Reasonable efforts to correct errors or bugs in the Software, provided, however, You acknowledge and agrees that (i) FieldComm may provide work-arounds in lieu of actual error corrections or bug fixes; and (ii) FieldComm may not be able, with reasonable efforts, to correct every error or fix every bug identified by You or by others;

   b. (b)   New updates, releases or versions of the Software for which FieldComm does not charge a separate license fee, as such updates, releases or versions are made commercially available; and

   c. (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.

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

8.3.   FieldComm 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 may be able to obtain an extension from FieldComm or FieldComm authorized distributors.

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

9. License Files and Activation

9.1.   When you obtain the Software from FieldComm 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 FieldComm. 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.

9.2.   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 FieldComm 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 FieldComm 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 FieldComm and lawfully obtained from FieldComm, or an authorized distributor as part of an effort to activate or use the Software violates FieldComm's intellectual property rights as well as the terms of this Agreement. You agree that efforts to circumvent or disable FieldComm's copyright protection mechanisms, the license management mechanism, or the license server violate FieldComm's intellectual property rights as well as the terms of this Agreement. FieldComm expressly reserves the rights to seek all available legal and equitable remedies to prevent such actions and to recover lost profits, damages and costs.

10. Third Party Licenses

10.1. For open source software, the provisions of this Agreement shall be superseded by the conditions of use underlying the open source software. FCG shall make source code available or accessible to You only to the extent stipulated in the conditions of use underlying the open source software. FCG 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.

11. General Provisions

11.1. 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 FieldComm. 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.

11.2. 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.

11.3. 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 FieldComm, 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.

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

11.5. 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.

11.6. 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.

12.   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.

Acknowledgment

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS LICENSE AGREEMENT, UNDERSTAND IT, AND HAD AN OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE PRIOR TO AGREEING TO IT. IN CONSIDERATION OF FIELDCOMM AGREEING TO PROVIDE THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE LICENSE AGREEMENT BETWEEN YOU AND FIELDCOMM, WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATION BETWEEN YOU AND FIELDCOMM RELATING TO THE SUBJECT OF THIS AGREEMENT.

FCG FDI DEVICE PACKAGE IDE UPDATED AUGUST 19, 2024