

FDI COMMON HOST COMPONENTS END USER LICENSE AGREEMENT (EULA)

THIS LICENSE AGREEMENT (“Agreement”) for the FDI Common Host Components (“Software”) is made and entered into as of <<Effective Date>> (the “Effective Date”) by and between FieldComm Group, Incorporate, a not-for-profit corporation with an office located at 9430 Research Blvd., Suite 1-120, Austin, TX 78759, USA (“FieldComm”) and <<Company Name>>, a <<Company Type e.g. Corporation >>, having an address of <<Licensee Address >> (“Licensee”). Each of FieldComm 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 has developed FDI Common Host Components for FDI host systems that ensure the implementation and improvement of interoperable FDI Technology-based products.
- 1.2 FieldComm intends 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. Licensee agrees to pay FieldComm a licensee fee and enter into a Product Service Program agreement covering at least the first year after the Effective Date of this Agreement.
- 1.3 Licensee may propose modifications (e.g., improvements, enhancements, etc.) to the Software. These proposed modifications are permitted for the sole purpose of enhancing 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, Licensee agrees to provide all proposed Source Code and software modifications to FieldComm for evaluation and approval prior to any adoption or distribution of the proposed modification. Upon disclosure, FieldComm will determine which proposed modifications are to be incorporated in subsequent versions of the Software and will provide same for distribution. FieldComm agrees to evaluate and adopt all proposed modifications as FieldComm may deem appropriate in the best interests of all Licensees.
- 1.4 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 FieldComm 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 industrial 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:

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 FieldComm 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, modified 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” means throughout the world any and all now known or hereafter known (a) rights associated with works of authorship, 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 "Modified Software" means any modifications to the Software made by the Licensee to port or adapt the Software to Licensee's Licensed Product or for error correction as provided in this Agreement.
- 2.12 "End Customer" means any manufacturer or producer of raw or processed materials or products, and does not include other field device, equipment or system manufacturers, companies providing services to facilitate development of field devices, equipment, systems or related software components or suppliers.

3. GRANT OF LICENSE

- 3.1 FieldComm hereby grants Licensee, and Licensee accepts from FieldComm, a perpetual, non-exclusive, sub-licensable, royalty-free and world-wide license to the Software, including the right to sublicense those rights to Licensee's Affiliates, subject to the following conditions and the Affiliates otherwise complying with the obligations under this Agreement. 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, solely 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, in object code form, 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 or error corrections under 3.3, 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 FieldComm 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"). FieldComm 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 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 FDI Component. Licensee shall promptly provide FieldComm with such Error Correction in Source Code form free of charge and shall grant and hereby grants FieldComm 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 in object code form.
- 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. FCG shall make the open-source code available or accessible to Licensee only to the extent stipulated in the conditions of use underlying the open-source software. FCG 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 set forth above, including without limitation the right to copy (except for archival purposes), disclose or otherwise transfer the Software or other proprietary information or Confidential Information of FieldComm.
- 3.7 3.63.7 Use of the Software may require the use of other software and hardware. Licensee agree that it is solely responsible for acquiring, using and maintaining such other software and hardware, without any obligation on the part of FieldComm,

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 jurisdiction in which Licensee uses the Software. Licensee acknowledge 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 FieldComm, its officers, directors and employees harmless from and against any claims, liabilities, demands, penalties, fines and costs resulting from Licensee'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 FieldComm except with FieldComm's written consent.
- 4.5 Licensee shall not use a Pre-release Version of the Software in a production or commercial environment. FieldComm 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 FieldComm reserves all rights with respect to all and any portions 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 FieldComm 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, or (e) 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.
- 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 until such information or data becomes public.

7. WARRANTY, DISCLAIMERS AND LIABILITY LIMITATIONS

- 7.1 FieldComm represents and warrants to Licensee that FieldComm shall use its commercially reasonable efforts to develop the Software and to provide Licensee with the Software. FieldComm shall not be liable to Licensee if any version of the Software is delayed, not released, or proves to be unsatisfactory in any respect. FieldComm disclaims any warranty, express or implied, that the Software will lead to development by Licensee of any commercially successful products.

- 7.2 FieldComm shall not be responsible for correcting or be liable for any error or defect (including completeness or correctness) in the Software, or for any infringement of a third party's Intellectual Property Rights.
- 7.3 When distributing or promoting the Software, Licensee shall sublicense such materials at its own risk and therefore shall be solely responsible towards its respective licensees or other customers and shall have no claim against FieldComm.
- 7.4 If a third party brings any claim, suit, action or proceeding against Licensee due to any defect or error (including incompleteness or incorrectness) or any infringement of a third party's Intellectual Property Rights and that claim is based solely on the use or implementation of the Software (and not as a result of its combination with the third party's products) and Licensee is not itself responsible for such defect, error or infringement, Licensee shall immediately inform FieldComm. Licensee shall be free to control such dispute and any settlement negotiations solely for itself as long as this is done without recognition of a legal basis of such claim as to FieldComm and is without prejudice to FieldComm's interests. In responding to any such third party claim,
- (a) FieldComm and Licensee shall use commercially reasonable efforts to cooperate in the defense against any third party claim; and
 - (b) In no event shall FieldComm be liable for loss of profit, production stoppage loss of revenues, loss of use, loss of production, costs of capital or costs connected with interruption of operation, loss of anticipated savings or for any special indirect or consequential or any punitive damages. This limitation and exclusion of liability shall apply to the extent consistent with applicable law and regardless of the legal theory the third party claim is based on and shall also apply for the benefit of employees, agents and contractors or subcontractors of FieldComm and of Licensee.
- 7.5 Licensee agrees to indemnify FieldComm for any claim related to Licensee's use of the Software or related to a Licensed Product.

7.6 EXCEPT AS EXPRESSLY PROVIDED HEREIN, FIELDCOMM DOES NOT MAKE ANY, AND EXPRESSLY DISCLAIMS ALL, WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, OR ARISING BY USAGE OF TRADE OR COURSE OF DEALING, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.

THE SOFTWARE IS NOT GUARANTEED TO MEET ALL OF LICENSEE'S ACTUAL OR STATED REQUIREMENTS. THE SOFTWARE MAY REQUIRE CHANGES, INCLUDING MODIFICATIONS AT AN ADDITIONAL COST TO LICENSEE, IN ORDER TO FUNCTION IN A PRODUCTION ENVIRONMENT. FIELDCOMM DOES NOT WARRANT OR REPRESENT THAT THE SOFTWARE WILL OPERATE WITHOUT INTERRUPTION OR ERROR-FREE OR THAT THE SOFTWARE WILL MEET ALL OF LICENSEE'S REQUIREMENTS.

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER, EXCEPT FOR CLAIMS ARISING FROM A PARTY'S WILLFUL BREACH OF THIS AGREEMENT OR GROSSLY NEGLIGENT ACTS OR OMISSIONS.

ANY LEGAL ACTION AVAILABLE TO LICENSEE UNDER THIS AGREEMENT THAT IS NOT BROUGHT BY LICENSEE WITHIN TWELVE (12) MONTHS AFTER THE OCCURRENCE OF THE ACT OR EVENT GIVING RISE TO SUCH ACTION SHALL BE FOREVER BARRED.

8. FEES

- 8.1 Licensee shall pay to FieldComm the license fees and maintenance/product service program fees published in the pricing schedule in effect as of the Effective Date. The current pricing schedule is available from FieldComm.
- 8.2 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 FieldComm to collect, withhold or pay Applicable Taxes, if any, as required by any local laws.

9. TERM AND TERMINATION

- 9.1 This Agreement shall be effective from Effective Date and shall continue in force indefinitely unless terminated as provided in this Section.
- 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 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 wishes, for whatever reason, to terminate this Agreement, Licensee may do so at any time.
- 9.3 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 FieldComm up to the effective date of termination;
 - (c) 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;

- (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 Customers 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 with respect to protection of FieldComm's Confidential Information, which shall survive such termination.

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

- 10.1 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 in the English language in Austin, TX USA, in accordance with the applicable rules of American Arbitration Association ("AAA"). 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. If one party loses all claims in the arbitration, it shall be the unsuccessful party. If some claims are won by each party, the arbitrator(s) shall decide whether and to what degree each party shall be responsible for the fees of the arbitrator(s) and other costs. The award of the arbitrator(s) may be enforced in any court of competent jurisdiction.
- 10.2 The decision of the arbitrator(s) shall be final and binding upon both parties. 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.
- 10.3 This Agreement shall be construed and interpreted in accordance with the laws of the State of Delaware, USA, excluding its conflict of laws rules.
- 10.4 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.

11. STANDARD MAINTENANCE SERVICES

- 11.1 This Agreement does not include updates to the Software, access to Pre-release versions of the Software or technical support (“Services”). Licensee agrees to execute a separate Product Service Program Agreement for an initial term of no less than 12 months.

12. GENERAL PROVISIONS

- 12.1 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 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.
- 12.2 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.
- 12.3 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.
- 12.4 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 does not receive an automated email rejection
- 12.5 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.
- 12.6 The ownership, liability, and confidentiality obligations shall survive termination of this Agreement by either party for any reason.

12.7 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.

12.8 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.

12.9 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.

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

FieldComm Group, Inc.

Licensee: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SAMPLE