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TEST KIT LICENSE AGREEMENT

Recitals

1. The FieldComm Group owns or has been duly licensed certain rights from third parties for testing software, tools, test cases and related documentation (the "Licensed Materials") for use in testing user layer implementation for conformance with the FieldComm Group's Technical Specifications ("the Specifications").
2. Licensee desires to obtain, and the FieldComm Group's desires to grant, a single station license for Licensed Materials so that Licensee may test and evaluate for development purposes only Licensee's products or components which are intended to conform to the Specifications.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, and intending to be legally bound hereby, the FieldComm Group and Licensee agree as follows:

1.0 Definitions

Capitalized terms used herein shall have the following definitions:

- 1.1 "Authorized Location" shall mean the location where Licensee may use the Licensed Materials to perform First Party Testing, as such location may be changed from time to time by mutual agreement of the parties.
- 1.2 "First Party Testing" shall mean testing of software and/or hardware products or components (a) produced or marketed by the Licensee, (b) purchased or leased by Licensee, or (c) provided to Licensee free for a certain test period, with the restriction that Licensee receives no consideration of any nature from any third party and shall not disclose the results of such testing to any third party.
- 1.3 "Licensed Materials" shall mean the FieldComm Group's proprietary software in object code form and the related documentation and test cases.

2.0 License Grant

2.1 Subject to the terms and conditions of this Agreement and in consideration of the Licensee's payment as set out in Section 3.1 for Licensed Materials, the FieldComm Group hereby grants to Licensee a single-site, single computer, non-exclusive, non-transferable license to load and use the Licensed Materials at the Authorized Location solely for First Party Testing. The FieldComm Group will not unreasonably withhold its consent to any written request by Licensee to change the Authorized Location.

3.0 Payment

3.1 In consideration for the above license granted by the FieldComm Group for the Licensed Materials, Licensee shall pay to the FieldComm Group the license fees and/or service fees published in the pricing schedule in effect as of the Effective Date.

3.2 The license fees for the Licensed Materials or the service fees for any services to be 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 the FieldComm Group to collect, withhold or pay Applicable Taxes, if any, as required by any local laws.

4.0 Restrictions and Limitations

4.1 Except as expressly permitted in this Agreement, Licensee shall not:

- (a) make any copies, in any form, of all or any part of the Licensed Materials except for one copy for security and backup purposes, which shall be kept in a secure manner at the Authorized Location;
- (b) modify, enhance, reverse compile or reverse assemble the Licensed Materials, or create translations or derivative works thereof;
- (c) use the Licensed Materials at other than the Authorized Location;
- (d) use the Licensed Materials to provide any services to third parties;
- (e) grant a sub-license or any other rights in the Licensed Materials to any person or organization;
- (f) give, copy, or distribute to third parties in any way, reports produced using the Licensed Materials;

- (g) represent, state or imply that Licensee's own products or the products of any third party have passed any test by the FieldComm Group or otherwise met any requirements by the FieldComm Group without the FieldComm Group's prior written consent; or
- (h) make representations to any person relating to the purpose or significance of any of the FieldComm Group's tests, in connection with any testing performed by Licensee and involving any of the software and/or test cases within the Licensed Materials without the FieldComm Group's prior written consent.

4.2 Licensee understands and agrees that the Licensed Materials:

- (a) should only be used by qualified engineers and scientists who are familiar with the Specifications and with the limitations and restrictions on the Licensed Materials;
- (b) are designed and intended solely for off-line tests of implementations (hardware and/or software) and must be used only in a laboratory environment to test implementations which are NOT part of any operational mechanical, physical, chemical or production process;
- (c) are designed and intended solely as a limited simulation exercise with respect to the Specifications and cannot provide a complete test of any implementation as a matter of principle;
- (d) may allow an implementation to execute a set of test cases within the Licensed Materials without error and yet not permit any conclusions to be drawn about the general conformity or interoperability of such implementation or the suitability or reliability of such implementation for any particular purpose.

4.3 The FieldComm Group reserves the right, in its sole discretion and without notice to Licensee, to amend or modify the Specifications and/or specification for the Licensed Materials as set forth in its user documentation, including without limitation the amount of memory or time required for execution of any program, and to provide new releases and versions of the Specifications and/or the Licensed Materials, as may be the case.

5.0 Warranties and Limitations

5.1 The FieldComm Group warrants that it has the power and authority to grant the right to use the Licensed Materials as provided in this Agreement.

5.2 OTHER THAN AS EXPRESSLY SET FORTH ABOVE IN SECTION 5.1, THE FIELDCOMM GROUP DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY FOR THE LICENSED MATERIALS, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. THE LICENSED MATERIALS ARE LICENSED ON AN "AS IS" BASIS. THE FIELDCOMM GROUP MAKES NO REPRESENTATION CONCERNING THE QUALITY OR PERFORMANCE OF THE LICENSED MATERIALS OR THAT THE LICENSED MATERIALS CONFORM TO A PARTICULAR STANDARD, AND THE FIELDCOMM GROUP DOES NOT PROMISE THAT THE LICENSED MATERIALS WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION.

5.3 The FieldComm Group shall not be liable for any loss of revenue or profit by Licensee or any other person or for any indirect, incidental, special or consequential damages of any nature relating to or arising out of the use of the Licensed Materials by any person, whether arising in contract, tort (including, without limitation, negligence or strict liability) or otherwise and whether or not the FieldComm Group was specifically informed of the possibility of damages in advance.

5.4 The FieldComm Group's sole and total liability, and Licensee's sole remedy, for any loss or damage of any degree or kind relating to or arising out of the use of the Licensed Materials shall be a refund of the license fees and/or service fees paid by Licensee to the FieldComm Group hereunder.

6.0 Confidentiality

6.1 "Confidential Information" shall mean the Licensed Materials, including without limitation any proprietary software, know-how or trade secrets therein or any improvements, modifications and additions thereto which may be hereafter provided to Licensee, provided, Confidential Information shall not include any information which:

- (a) is published or otherwise generally available to the public through no act or omission by Licensee;
- (b) is acquired by Licensee from a third party rightfully in possession thereof and authorized to transfer it without any restrictions on disclosure;

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- (c) is developed independently by Licensee without any use of or reliance on the Licensed Materials; or
- (d) is required to be disclosed under law.

6.2 Licensee acknowledges that the FieldComm Group considers any Confidential Information provided hereunder to constitute a trade secret of the FieldComm Group. Licensee shall not disclose Confidential Information or any details of the method of operation of the Licensed Materials to any other person and shall not use Confidential Information in any way except as expressly permitted herein or as authorized in writing by FieldComm Group or its designated agent.

6.3 Licensee shall protect the FieldComm Group's Confidential Information in the same manner and to the same extent as it protects its own proprietary and non-public information. Without limiting the generality of the foregoing, Licensee shall take reasonable precautions to ensure that:

- (a) the Licensed Materials are stored in a controlled area to which access is appropriately limited;
- (b) no unauthorized person may take or remove from the Authorized Location any copy of the Licensed Materials; and
- (c) only those of Licensee's employees, consultants and agents with a reasonable need to know and use the Licensed Materials for the purposes permitted by this Agreement shall have access thereto, and only after any such person is made aware of and agrees to be bound by these confidentiality obligations.

6.4 Licensee acknowledges that any material breach of its confidentiality obligations under this Article 6.0 may substantially diminish the value of the Licensed Materials to the FieldComm Group and/or to its licensors of such materials. Licensee therefore agrees that the FieldComm Group may seek any form of equitable or legal remedy, including injunctive relief, at any time if it has reason to believe that any such breach has occurred or is about to occur.

7.0 Infringement

7.1 If any third party makes a claim against Licensee that the Licensed Materials infringe any copyright, trade secret or other intellectual property rights of such third party or if the FieldComm Group believes the Licensed Materials may become the subject of such an infringement claim, the FieldComm Group may, at its option and expense, either (a) secure Licensee's right to continue using the Licensed Materials or (b) revise or modify the Licensed Materials to make them non-infringing, provided any such revision or modification shall not

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alter or reduce the essential functionality of the Licensed Materials. If neither of the foregoing is practical, in the FieldComm Group's judgment, the FieldComm Group may terminate this Agreement upon written notice to Licensee. Upon such notice of termination, Licensee shall promptly discontinue any use of the Licensed Materials. If the license for the Licensed Materials is terminated under this Section 7.1, Licensee's sole and exclusive remedy shall be a refund by the FieldComm Group of a reasonable sum but, in any event, not more than the aggregate of the licensee fees and service fees paid by Licensee prior to the effective date of such termination.

7.2 Except as provided in Section 7.1 above, the FieldComm Group shall not be obliged to defend or settle any third party infringement claim against Licensee or to indemnify Licensee in connection with any such infringement claim.

7.3 This Article 7.0 states the entire responsibility of the FieldComm Group concerning any alleged or actual intellectual property infringement by the Licensed Materials.

8.0 Term and Termination

8.1 This Agreement shall be effective on the date of purchase and shall be of indefinite duration unless terminated upon written notice for any of the following grounds:

- (a) if Licensee breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days of notice thereof;
- (b) if Licensee ceases to conduct business, is the object of a bankruptcy or insolvency proceeding, makes an assignment for the benefit of its creditors due to insolvency or takes steps for its winding up, liquidation or dissolution;
- (c) if Licensee give at least sixty (60) days written notice to the FieldComm Group of Licensee's voluntary termination of this Agreement; or
- (d) if the FieldComm Group terminates this Agreement under Section 7.1 above.

8.2 Upon termination of this Agreement, Licensee shall immediately discontinue use of the Licensed Materials and shall return to FieldComm Group, at Licensee's expense, all copies of the Licensed Materials or, alternatively, shall provide to FieldComm Group a certificate, signed by a responsible corporate officer of Licensee, that all copies of the Licensed Materials, in whatever form or media, have been irretrievably destroyed or erased.

8.3 The obligations of the parties contained in Articles 5.0, 6.0 and 7.0 hereof shall survive the termination of this Agreement for any reason.

9.0 General

9.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any other prior correspondence, memoranda, negotiations or proposals. This Agreement may be amended or modified only in a writing signed by both parties.

9.2 No waiver of any right or of any breach of this Agreement shall be deemed a waiver of any other right or breach or of any subsequent breach.

9.3 This Agreement may not be assigned by either party without the prior written consent of the other party, provided, however, this Agreement may be assigned without such consent if a party makes such an assignment because it is merged into or is acquired by a third party and if such third party agrees in writing to be bound by all the terms and conditions of this Agreement and provides a copy of such written commitment to the other party prior to the effective date of such merger or acquisition. Subject to the foregoing, this Agreement shall be binding upon all the heirs and assigns of each party.

9.4 Any notice required or permitted under this Agreement shall be given to the other party by personal or courier delivery, facsimile with electronic confirmation or first class registered mail or international airmail (as the case may be) at the address of the other party shown on page 1 of this Agreement. A party may change its address upon written notice thereof in accordance with this Section 9.4.

9.5 This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Texas, without giving effect to principles of conflicts of law. Each of the parties to this Agreement consents to the exclusive jurisdiction and venue of the state and federal courts located in Travis County, Texas.

9.6 If any provision of this Agreement is held to be invalid, such finding shall not affect the balance of this Agreement, which shall remain in full force and effect.

**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. 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.